

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT

CORPORATION

HELD AT

TSHWANE, PRETORIA

10

15 APRIL 2019

DAY 28

20

PROCEEDINGS HELD ON 15 APRIL 2019

CHAIRPERSON: Good morning, everybody.

ADV JANNIE LUBBE SC: Good morning, Mr Commissioner and members.

CHAIRPERSON: Yes, Mr Lubbe.

ADV JANNIE LUBBE SC: We have the same players and teams as on Wednesday.

CHAIRPERSON: It is the continuation of the cross-examination of Mr Holomisa. You are still under oath, if I may remember. In fact, I think since we have been away for a couple of days, it will be well to take the oath again. Do you swear that the evidence you will continue to give, will be the truth, the whole truth and nothing but the truth? Raise your right hand and say, so help me God.

MR BANTUBONKE HOLOMISA: So, help me God.

BANTUBONKE HARRINGTON HOLOMISA: (s.u.o.)

CHAIRPERSON: Thank you.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I am sorry. To beg your indulgence, but I do have a preliminary point to raise before the continuation, if you will allow me.

CHAIRPERSON: [No audible reply]

MR THEMBEKA NGUCKAITOBI: The first is. I am told by Mr Lubbe, the evidence leader that certain documents were handed to him on Friday, last week with the provision that they should be handed to Mr Holomisa. We would like to ask for a ruling that those documents should be provided to Mr Holomisa.

And the second is. We have in the course of the preparation

brought two extra documents that would help the Commission. The first is the annual report of 2007 of the PIC where there are comments that we want the Commission to take – pay attention to. It is comments made by the chairperson of the PIC, Mr Moloketi about the PAIDF and comments made by the CEO of the PIC at the time, Mr Brian Molefe. That would contextualise the answers that were given by Mr Holomisa.

The second document that we would like to introduce is a document called a Trust Deed of the Harith Holdings Employee Trust. The Commission will recall that in the course of the cross-examination of Mr Holomisa, questions were asked about who is allocated shares under the employee trust and Mr Holomisa's answer was to question why Mr Moloketi is allocated shares when he is not an employee.

So, we would like to introduce those documents, because they are relevant to the questions that were being asked to Mr Holomisa, but they are also relevant to the work of the Commission, generally.

CHAIRPERSON: Mr Burger.

MR DANIEL BURGER: Thank you, Chair. Chair, I am going to start with the second issue first and then I will go back to the first issue. The second issue in relation to the further documents that my learned friend wishes to hand in.

Chair, as you are aware this is completely irregular. In the middle of cross-examination to seek to have a conversation with Mr Holomisa, to get further documents from Mr Holomisa and then to hand those documents in, whilst he is being cross-examined. It is

something I have never heard of before.

My learned friend knows that he should not be having any communications with Mr Holomisa, whilst he is under cross-examination. We were shown those documents for the first time this morning. We have no issue with those documents going in at the appropriate time.

The appropriate time would be to hand the documents to Mr Lubbe, so that Mr Lubbe can re-examine, if needs be, on those documents at the end of the cross-examination. With respect, now is – it is just completely wrong to follow this route and we ask our learned friend before you came in, if we can follow a different route, but clearly he disagrees with us. So, we will require a ruling on that, Chair.

Chair, as regards to the first issue which is the witness's statements. It is been the practice, as we understand it of this Commission since it started, that witness' statements are only handed out immediately before a witness is about to give evidence.

My clients are not about to give evidence. Mr Holomisa does not occupy the position of a special witness before this Commission. He is an ordinary witness. He has no special right of cross-examination. As the matter stand at the moment and as we hope to demonstrate, Mr Holomisa has no evidence at all and all that he does is to speculate.

So, there is no basis upon which he is entitled to special treatment which is not afforded to anyone else. He will get the statements like everyone else, just before our clients are about to

testify. Unless of course, the Commission rules otherwise.

There is, if I may just elaborate a little bit about cross-examination, is a provision in the rules. It is Rule 3.7 of this Commission's rules which gives the Commission and the Commissioner, yourself, the discretion to allow the cross-examination of a particular witness.

It would be odd if a person were automatically be allowed to cross-examine a witness without an application having been made to the Commission, setting out precisely what it is that, that person wishes to cross-examine on. I can give the Commission a copy of an extract. It is of no binding value but certainly, it is an extract of a ruling by the Zondo Commission of Inquiry where – and perhaps members of the Commission will recall just from their reading from the media.

An application was made to cross-examine on behalf of... And now my mind has just gone for a second. Oh, yes. It was Minister Lynne Brown was attempting to cross-examine Mr Jonas because of certain evidence that he had given at the Zondo Commission of Inquiry.

And the chairperson of that inquiry asked the representative of Ms Brown: What version is it that Ms Brown wishes to place or to cross-examine on? And there was no version that could be put forward. Just as Mr Holomisa in this case has no version. All he does is speculate.

And the Justice Zondo ruled in that instance, that Ms Brown – she was mentioned, but she was not entitled to cross-examine. So,

the point is, there is no absolute right to cross-examine. It must be motivated by way of a formal application and then the Commission will have to decide, taking into account the particular fact put forward whether to allow the cross-examination or not.

It does not follow that simply because Mr Holomisa has been cross-examined now, he is implicating my clients and therefore we have applied for and have been given permission to cross-examine him. My clients are not implicating him. My client say nothing against him, other than that all his evidence is speculation.

So, because he does not occupy the position of a special witness or a witness who is entitled, at this stage to cross-examine, our view is and our submission is, subject to the ruling of this Commission, that he is not entitled to any preferential treatment. He is not entitled to have the documents before everyone else would get those documents. Thank you.

CHAIRPERSON: Mr Nguckaitobi.

MR BANTU HOLOMISA: Thanks, Mr Chairman. I would just deal with the first issue which is the question whether or not Mr Holomisa is entitled to the – to hand in documents. The fact of the matter is that the cross-examination as it began on Wednesday, last week, has taken place solely on the basis of the documents that were handed in by our learned friends.

When one inspects those documents, they are nothing more than the bundle that was handed in the high court in relation to the deformation interdict and nothing more, nothing less.

Secondly, there is a version that is obviously being put to Mr

Holomisa. He is constantly being accused of not having evidence and not having produced evidence. Now, it is quite clear from where we are stand, that he has produced evidence and he has produced information.

But there is not point debating the extent to which that evidence should be taken into account but insofar as he is being cross-examined and a version is being put to him, he is put in an incredible disadvantageous position because he is obviously unable to answer the questions that are asked in a vacuum without the documents.

And so, he has specifically said, he needs the documents. Not only to empower himself, but also to empower the work of the Commission and to enrich the work of the Commission.

But thirdly, there is something unique about what Harith is trying to do. They are trying to get this Commission to accept an ambush. That the witness must be cross-examined completely blank and they are entitled to put a version without necessarily putting documents in front of the Commission.

And so the documents we have – I will give you an example, Mr Chairman. Last week two propositions are put to Mr Holomisa. Proposition one is that Mr Holomisa says there is an Employee Share Trust Scheme, in terms of which non-employees are allocated shares.

That issue is disputed. Mr Holomisa is told that Mr Mahloele was entitled to participate in the Employee Share Trust Scheme, because he was an employee as CEO.

The documents that Mr Holomisa seeks to produce which is

the amended under the stated Trust Deed of the Harith Holdings Employee Trust, shows that Mr Mahloele, as put to him, was a participant but it also shows that not only was Mr Mahloele a participant, Mr Moloketi was also a participant.

In other words, it proves precisely the argument that Mr Holomisa was making, that there were non-employees that were allocated shares in a scheme that was purportedly on behalf of employees.

You are not told that he should make reference to that document and at the end of the cross-examination, it will be suggested that Mr Holomisa has lied to the Commission or that Mr Holomisa has failed to back up his allegations.

And so, if one has regard to the prejudice that Mr Holomisa faces is he faces the prejudice of being regarded as an unreliable witness. A witness who has come to the Commission without facts. A witness who has come to the Commission and basically lied to the Commission.

And yet, he does have a document that would be substantiate his allegation and now that document, you are being told it should be excluded from the cross-examination.

But what is the point then of cross-examination? The point of the cross-examination, particularly of the Commission of the Inquiry, is not to discredit a witness to no end. The point of the cross-examination is to get to the bottom of the truth.

We are never going to get to the bottom of the truth if we continue on the basis that is suggested by Harith which is that,

witnesses must be cross-examined in the dark and documents must be excluded.

This is not a court of law. Any information – Clause 3.7 makes it clear – any information, including information that would be inadmissible in a court of law, is admissible to the Commission and it is up to the Commission to verify its authenticity.

And this witness truly occupies the place of a whistle blower. He has come to the Commission and he has said that there is something seriously wrong with the transactions and concluded by Mr Moloketi and his people and he wants the Commission to investigate that.

He has now got a document and you are being told to exclude that. So, we would submit that there is no basis that has been laid for the exclusion of that document.

Document 1, to give you an insight, Mr Chairman, is the annual report of 2007 produced by the PIC itself. You remember the cross-examination, the way it went on Wednesday. The cross-examination was, there is no link between the PIC and the PAIDF.

This was a decision taken by the GEPF and in fact, I remember Commissioner Marcus specifically asking this question about what is the linkage between the PIC and the PAIDF Fund and our understand of the cross-examination is, this is a decision independently taken by the GEPF.

But the annual report shows that according to Mr Moloketi in December 2007 when he was still the chair person, it shows that the PIC was their sole advocate of the PAIDF which was created to raise

one billion US\$ for infrastructure development project.

It also shows that the GEPPF was simply one of the clients of the PIC. The same point is restated by Mr Brian Molefe in the same annual report, showing that the PIC was the key facilitator of the PAIDF. It was placed under its Isibaya Fund which was led by Mr Mahloele.

So, the attempt at trying to create a distance between the PIC and the PAIDF is completely destroyed by the report, annual report of 2007 and quite apart from anything, this annual report can cause no prejudice to our learned friends, because this is a public document.

What it does show for us, at least, is to show the connection between the PIC and the PAIDF and to show the attempt that was made at drawing a disconnect between the PIC and the PAIDF, is simply not credible at all.

And so, we would submit that there is no prejudice at the handing in of this document. If anything, it will assist the work of the Commission. I know my learned friend complaints about the fact that I consulted with the witness. Of course, I did consult with the witness and I did so, even during the course of the cross-examination, but that is precisely because of the way in which this cross-examination has been run.

A witness is been given no documents and where a witness is being cross-examined, completely in the dark. This is a commission of inquiry. All of us are simply trying to get to the bottom of the truth. This is not a court of law.

And so, in those circumstances, there would nothing irregular.

I mean, he calls it irregular. There would be nothing irregular in consulting with the witness and saying to the witness: You have been coitized in these two respects. Have you got any facts to substantiate your allegations? And the witness producing the facts and the first thing we do when we get the opportunity is to produce those documents before the Commission.

So, we must always understand the character of the body that we are dealing with before trying to impose artificial roles that are designed, ultimately, to exclude evidence, so that the Commission is not given a full scope of what actually transpired.

So, we would submit that this idea that there is something irregular, should simply be rejected. What we are all trying to do is to assist the Commission to have as much information as possible and to assist the Commission to get to the bottom of who is lying and who is telling the truth.

What we cannot allow, is where we know where the witness has been misled into making the concession. We cannot allow that to stand without being challenged and that is why we asked Mr Holomisa in consultation to produce any evidence that he has, that he relies upon for the employee trust issue.

He has produced it. We are duty bound to bring it to your attention. We asked him to produce anything that would connect the PIC to the PAIDF as early as 2007. He did so. We are duty bound to bring it to your attention and there should be no artificial attempts at suppressing the evidence. That is not the function of this Commission.

So, we would submit with respect, there is no basis for the objection to the introduction of the two documents. They are perfectly within the rules and there is nothing irregular in consulting with the witness in the middle of his cross-examination in a commission of inquiry, whose mandate is to get to the bottom of what actually transpired with public funds.

Then we can go to the second issue which is the question of the witness statements. I did not know that these are witness statements. I was made to understand that there were documents handed in and those documents were handed in on the basis that Harith intended to rely upon them at the time it gives its evidence.

It is true that as yet we have not made an application for cross-examination and we will make the application in due course but we would obviously assisted greatly by having regard to the documents that they have handed up.

We do not know whether or not in the course of the cross-examination any propositions will be put to Mr Holomisa where the foundation of these propositions is to be found in the documents that were handed in, but if it is intended that there will be propositions put which are founded in terms of their genesis in terms from the documents that were handed in, it is obviously prejudicial that Mr Holomisa should answer those questions completely blank about the standing of those documents.

But nevertheless, the entire debate, Mr Chairman you would realise, centres around this idea that Harith is entitled to cross-examine Mr Holomisa and Mr Holomisa is not entitled to cross-

examine Harith. They are entitled to tell him that he is lying. He is not telling the truth. But they are not entitled to accept the same when it comes from him.

They themselves have put Mr Holomisa in the category of a special witness by demanding to cross-examine him because they could have done ourselves and themselves a big favour by simply not cross-examining Mr Holomisa.

And so what he is asking for is not something special or unique. He is simply asking for precisely the right that they have asked, that it must be exercised against him and my learned friend says: Oh, well. We did not implicate Mr Holomisa. You tell a witness that he is lying and then you say that you are not implicating him. I mean, come on.

It is quite clear that Mr Holomisa is being gravely assaulted in relation to his credibility and his standing and he is entitled to shoot back. He is entitled to ask the difficult questions about who are the people that actually lying. Are these not the people who got hundreds of millions from PIC money that should also be subjected to the microscope of cross-examination?

So, in those circumstances there is no basis to say that Mr Holomisa can be cross-examined by...[intervenes]

CHAIRPERSON: I thought you are arguing that or you are suggesting that there will be an application for permission to cross-examine the witnesses, but you are getting into that now.

MR THEMBEKA NGUCKAITOBI: Yes, I am simply saying, Mr Chairman that in order for that application to make sense, I am

entitled to the documents that they have handed in because I want to see the evidence that they claim that they will be relying upon when they give their evidence.

I need that as well for the purposes of the application for cross-examination. I am laying the foundation for that and to sum up on this argument. I make two points. I say firstly, the mere fact that they have subjected Mr Holomisa to cross-examination regardless of what documents they have handed in, means that I am entitled to the full scope of the documents that they are handing in.

But I am entitled more precisely because I intend making an application for the cross-examination of Mr Holomisa, and the reason why this is also important, Mr Chairman and I thank you for your interjection, because it does point us to the problem that we are faced with.

If ultimately I am not entitled to cross-examine Mr Holomisa, then I am also entitled to object to the cross-examination of Mr Holomisa. That he should actually stop at this stage because if Harith is not prepared to subject himself to the cross-examination, then there is no basis upon which they should be cross-examining Mr Holomisa.

They are only cross-examining him, from what I understand, to simply show that he has no credibility, but that is simply an abuse of this Commission's time because this Commission is not interested in whether or not a witness is not credible.

This Commission is only interested in finding out what the truth is because for precisely that reason, it is a commission of inquiry. So, at some point in time the mere fact that Harith has asked

to cross-examine Mr Holomisa, should now start counting against them.

So, if ultimately their point is, we refuse to be cross-examined, well, then obviously they should not continue cross-examining Mr Holomisa and because they have cross-examined Mr Holomisa, then they should accept that they will be cross-examined.

And that is why I suggest to you, Mr Chairman and the Commission, that I should be entitled to all of the documents that they have handed in and I should be entitled to read them, even for the purposes of the continuation of the cross-examination.

I should be entitled to consult with the witness about those documents, but I would not insist on handing them now because we are in the middle of the cross-examination but what I will ask for a ruling on, is that they should be handed in to Mr Holomisa.

CHAIRPERSON: I do not understand the last bit. What should be handed in to Mr Holomisa?

MR THEMBEKA NGUCKAITOBI: They should be handed to Mr Holomisa. The documents that have been given to the evidence leaders.

CHAIRPERSON: Yes.

MR THEMBEKA NGUCKAITOBI: The only point I make is that I will not insist that they should be given to him before the finalisation of his cross-examination. What I will ask for is a ruling that they should be given to him.

CHAIRPERSON: If I understand you correctly. It is the statements of Mr Moloketi Mahloele and Mr Wheatley. Are those the documents you

are talking about?

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I do not know the documents. All I know is that certain documents were handed in on Thursday and I got the information on Friday from my attorney. I only got to know this morning that those documents include statements.

I do not know if there were any other objective documents other than statements that were handed in, but if there was statements then I need the statements.

CHAIRPERSON: It is actually statements with some annexures, is it not, Mr Burger?

MR DANIEL BURGER: The statements referred to documents, yes. And the documents have accompanied the statements. Chair, can I just respond to my learned friend?

CHAIRPERSON: Since this is a commission of inquiry, I will allow you to respond.

MR DANIEL BURGER: Thank you, Chair.

CHAIRPERSON: I am going to give Advocate Lubbe a chance as well.

MR DANIEL BURGER: Yes. Perhaps if I could say this. What my learned friend has done now is utterly objectionable. He has now spent the last twenty-five minutes talking about the case, talking about the facts in the middle of Mr Holomisa's cross-examination. That should not have happened and in his presence, yes.

The second thing that is astounding is that my learned friend says he is entitled because this is a commission of inquiry and not a court of law. He is entitled to consult with Mr Holomisa whilst Mr Holomisa is under cross-examination.

There is a rule of the bar. It is not a rule of court. It is a rule of the bar to which both my learned friend and I belong, that it is improper. It is not allowed. It is forbidden for counsel or an attorney to consult with a witness whilst that witness is under cross-examination.

Whilst that witness has been sworn and is under cross-examination which is exactly what the position was on Wednesday and for my learned friend to say that he was consulting with Mr Holomisa whilst he was being cross-examined, it is just unbelievable to hear that. That is... It is conduct that is simple not allowed of an advocate. I will leave that for a moment, because that is not a matter for this Commission.

Let me say this. My learned friend repeats over and over again that my clients are refusing to be cross-examined. That is not so. My clients have made it clear that they will be cross-examined by Mr Lubbe to his heart's content. He can refer their statements to his forensic investigators and units. We have said to Mr Lubbe.

They can investigator and our clients have freely submitted themselves to be cross-examined by the evidence leader, uphill and downhill. What they object to is being cross-examined by my learned friend on behalf of Mr Holomisa.

Let me make this point as well. My learned friend says over and over again that we have accused Mr Holomisa of lying. I do not believe that I have once accused Mr Holomisa of lying. What I have put to Mr Holomisa over and over again is that his allegations are mere speculation. That his allegations do not constitute statements of

fact. That his allegations do not constitute proper evidence. I have never once said to him that he is lying.

We do not take away from Mr Holomisa the fact that his agitation caused the creation of this commission. We commend him for that. The problem is, is that in his speculation against my clients, he has implicated the wrong people and that is the whole purpose of the cross-examination.

Then the other fundamental point is this. We applied for leave to cross-examine Mr Holomisa, because in terms of the rules, if a person is implicated by another witness giving evidence, as Mr Holomisa implicated my clients, that person is entitled to be advice in advanced which we were not.

But not withstanding that, that person is entitled to apply for leave to cross-examine as an implicated person which we did and we put forward a full and substantiated application which served before this Commission.

That application was also served on Mr Holomisa who did not respond to the application and once the order of this commission was granted, giving us leave to cross-examine, no steps were taken by Mr Holomisa or his legal team to have that decision reviewed and set aside.

In other words, that decision was not challenged. It does not lay in my learned friend's mouth now, to say he wants the cross-examination to stop. The proper procedure, with respect, is that as I said at the start. The documents that my learned friend got from Mr Holomisa whilst under cross-examination should have been handed to

Mr Lubbe, so that Mr Lubbe can deal with it in re-examination.

We should not have had this half an hour discussion about facts that my learned friend discovered whilst consulting with Mr Holomisa whilst under cross-examination.

My clients are not saying that those documents should not serve before this Commission, but the point is this. Mr Holomisa is being cross-examined on the submission that he made to this Commission on the 20th March 2019. That is what we applied to this Commission for leave to cross-examine and it is that evidence that I am busy testing in cross-examination.

If there are other documents that Mr Holomisa has that is for later but for now, the whole purpose of the cross-examination is to deal with the evidence that he produced, voluntarily. That he produced on the 20th March 2019. It is that evidence that is being the subject of the cross-examination.

Thank you, Chair.

CHAIRPERSON: Mr Lubbe, is there anything that you would like to say?

ADV JANNIE LUBBE SC: Mr Commissioner, I'll be very brief, it's not my fight but I will make certain submissions to try and assist the Commission. First of all, the order granted to cross-examine was an order granted by agreement between the parties. When the application was served on me I consulted with General Holomisa and he intimated to me that he had absolutely no objection to be cross-examined and for that reason the order was made by agreement between the parties.

CHAIRPERSON: Okay.

ADV JANNIE LUBBE SC: With regard to the witness statements that were filed on Friday with the condition that it must not be made available to General Holomisa. In my submission the position is somewhat *sui generis* in that the parties now before the Commission were involved in litigation in the High Court in 2018. I haven't analysed exactly all the statements filed but what I had a cursory look at, it is not much different and the explanations given in 2018 by my learned friend's clients that there is no substance in these allegations of General Holomisa and they gave an explanation.

So in my respectful submission there is really in my view no substance in saying at this stage he cannot have access to those statements and he cannot prejudice, in my respectful submission, Mr Burger's clients.

With regard to the cross-examination, in principle I'm in agreement with Mr Burger. It is not for any whistle blower to pitch up at the commission and say I've listened to this witness's testimony and I'm not in agreement and I apply for cross-examination. So that in brief, Mr Commissioner, is my submissions.

CHAIRPERSON: I'm going to make a ruling. If it so happens that reasons for the ruling are required they can be requested and I'll draw them up.

RULING

Insofar as the witness statements are concerned, the procedure that this Commission has been following is that they are made available to whoever just before the maker of the statements

gives evidence and I don't we need to depart from that procedure that we've been following. So the statements won't be made available to Mr Holomisa or his legal adviser at this stage.

Insofar as the documents are concerned, that Mr Nguckaitobi applies to hand up, I think the correct procedure would be for the documents to be handed to the evidence leader and for the evidence leader to place them before us, if he feels that that is necessary.

I'm not going to deal with the question of whether Mr Holomisa's legal representative should cross-examine the witnesses, that application can be brought at the relevant time, so that's - is there anything that I'm leaving out?

MR DANIEL BURGER: Chairperson, can I request that my learned friend be asked to move his seat to directly opposite me and not remain next to Mr Holomisa?

CHAIRPERSON: I think he's the adviser, I think Mr Holomisa is entitled before giving an answer to – for him to step in and advise him. I don't think there's anything wrong with that, so I refuse to order him to move.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I mean, this request is completely out of order, to be honest.

CHAIRPERSON: No, no, no, I've ruled on it, I don't need further argument Mr Nguckaitobi.

MR THEMBEKA NGUCKAITOBI: Yes, Mr Chairman, I just wanted to come back to your ruling but I thought I wouldn't miss the opportunity, nevertheless. I have handed the two documents to Mr Lubbe so it's really within his discretion when to hand them in.

CHAIRPERSON: Thank you.

ADV JANNIE LUBBE SC: Can I just perhaps then go on record, Mr Commissioner? It was handed to me and I've asked the admin staff to place it before the Commission, I think it is fair that it is before the Commission whilst the witness is being cross-examined.

CHAIRPERSON: Any objection to that?

MR DANIEL BURGER: No objection.

MR THEMBEKA NGUCKAITOBI: Not from our side.

MR DANIEL BURGER: Chair, can I just at the risk of belabouring point just get some clarity from the Commission? Is it – is the Commission permitting my learned friend to sit next to Mr Holomisa so that they can confer during the cross-examination?

CHAIRPERSON: I think I need to reconsider that. Can I get time to reconsider that?

MR DANIEL BURGER: Yes, certainly, because as I pointed out it is a fundamental rule of practice.

CHAIRPERSON: Yes, no, no.

MR DANIEL BURGER: That if someone is under oath and testifying that they cannot consult with their legal adviser.

CHAIRPERSON: Can I invite counsel to chambers please?

MR DANIEL BURGER: Certainly.

CHAIRPERSON: We'll adjourn for a few minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Early I, in refusing to move, as it were, Mr Nguckaitobi from where he's sitting next to Mr Holomisa. I said that

he's entitled to advise the witness but I'm reversing that simply to say that it's not necessary for him to move but he cannot advise the witness before answering questions. But of course as his representative he can object to unfair and unreasonable questions and that's as far as it goes. Thank you.

MR DANIEL BURGER: Thank you, Mr Commissioner.

MR DANIEL BURGER: Mr Holomisa...

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: I'm going to ask you please to listen to my questions and try and contain your answers to what I'm asking and hopefully we can move a lot faster than we did last Wednesday. Now we dealt with the whole issue of the seed capital loan, I'm not going to revisit that and we dealt with the establishment of the PAIDF as well. Would you concede that it was necessary to form a company to manage the funds invested in the PAIDF? In other words, to establish a company that would be a fund manager.

MR BANTU HOLOMISA: No, I don't have any objection to that.

MR DANIEL BURGER: And we know that the company that was established as the fund manager is Harith Fund Managers which we called Harith FM.

MR BANTU HOLOMISA: Yes, we agree.

MR DANIEL BURGER: And that was set up by Mr Mahloele in 2007, January 2007?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: If you have a look at the replying affidavit in the urgent application which was Exhibit 1, I believe. Exhibit 1, page

289. Do you have it?

MR BANTU HOLOMISA: What number?

MR DANIEL BURGER: Page 289 paragraph 9.2.

MR BANTU HOLOMISA: Yes, sir. I see it.

MR DANIEL BURGER: Sorry, I'm just waiting for the Commissioners to get to the same page.

MR BANTU HOLOMISA: Oh, sorry.

MR DANIEL BURGER: Sorry, Mr Commissioner, is it Exhibit 1 or Exhibit 2?

CHAIRPERSON: I think it's Exhibit 1.

MR DANIEL BURGER: It is Exhibit 1, yes. Thank you. And then we also went through it on Wednesday the manner in which the PIC share dropped from 100% to 46%. Do you recall that?

MR BANTU HOLOMISA: Yes, I recall when you stated it.

MR DANIEL BURGER: Yes. And then in paragraph 9.3, the bottom of page 289 you'll see there the shareholders of Harith FM are listed, the PIC as to 46%, Old Mutual Life 12%, ABSA Trading and Investment 12% and then the HSIST 30%. Do you see that?

MR BANTU HOLOMISA: Ja.

MR DANIEL BURGER: And you'll see also in paragraph 9.4 that Mr Moloketi was appointed a non-executive director of Harith FM by virtue of the fact that he was the *ex officio* Chairperson of the PIC at the time.

MR BANTU HOLOMISA: I see that.

MR DANIEL BURGER: And that there were two other non-executive directors appointed from the PIC to Harith FM.

MR BANTU HOLOMISA: Okay.

MR DANIEL BURGER: And you're also aware that Mr Moloketi received no remuneration from Harith FM or from the PIC for that matter whilst he was the Chairman of the PIC and then Chair of Harith FM.

MR BANTU HOLOMISA: I don't have those facts. That should be verified by the Commission.

MR DANIEL BURGER: Okay, you can't dispute that?

MR BANTU HOLOMISA: I don't have those facts, that's your version on it.

MR DANIEL BURGER: I beg your pardon?

MR BANTU HOLOMISA: On your version.

MR DANIEL BURGER: Mr Holomisa, I'm going to ask you please just answer my questions.

MR BANTU HOLOMISA: I've answered your question.

MR DANIEL BURGER: And let's keep – alright.

MR BANTU HOLOMISA: Thank you.

MR DANIEL BURGER: Let's keep the tone and the temperature down, if you would.

MR BANTU HOLOMISA: You seem to want to tell us whose temperatures is low and high. Can we also do the same?

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Then I'll do so.

MR EMMANUEL LEDIGA: I don't think it is correct for you to direct yourselves at each other rather than via us here.

MR DANIEL BURGER: You say I must own the version. What I'm

putting to you, Mr Holomisa, is that these are facts which were brought to your attention at the time of the urgent application, long before you made your submission to this Commission.

MR BANTU HOLOMISA: I have a problem, Chairperson, with this continuous reference to the court papers. We have noted an appeal on that process. Few minutes ago the legal representatives of the Harith said they applied to cross-examine me on the evidence I tabled – I mean, on my presentation I tabled here in the Commission. On my part I agreed to come and be cross-examined on that on that document I presented here. There is therefore a legitimate expectation on my part that the cross-examination will be focused on what I have said in this Commission. Because if you continue to go back to the court issues, we have noted an appeal and that means, therefore, we disagree with some of the points they have argued in court and also that we don't accept the judgment. I mean, it's our right to continue to make reference to that, it's not going to help this Commission. You have just said on the 20th that you applied to cross-examine Mr Holomisa on what he has submitted into this Commission, not into the court. So if I continue to discuss what I've said I'm appealing it may end up contracting myself when we are in another court. So I need a ruling on this issue. I have submitted documents here, I've painted a picture of how this conflict of interest by your clients has been conducted. You still want to take me back to court issues. Sorry, I'm not prepared to take this.

CHAIRPERSON: Mr Holomisa, I think if you are asked about certain facts it's either you say they are correct or they are not correct or

you're unable to answer those questions. I don't think it is correct to say that you can't go back to the court. If you say that's precisely what I'm going to oppose or rather to argue against when we hear the appeal, if I'm granted leave to appeal but if it's a factual issue and you say you don't know the facts then say so, it's not necessary for this toing and froing. If you don't know that Mr Moloketi was paid or was remunerated, just say I don't know about that rather than to say don't go back to the court. You can raise it with us here and we can deal with that, okay? But if it's a factual issue and you say you don't know, you're absolutely entitled to say I don't know.

MR BANTU HOLOMISA: With due respect, sir, I've already said no twice to that question.

CHAIRPERSON: To whether Mr Moloketi was remunerated ...[intervenes]

MR BANTU HOLOMISA: Yes, I don't have facts on that.

CHAIRPERSON: Yes, Mr Burger.

MR DANIEL BURGER: Thank you, Chair. Mr Holomisa, I'm not going to answer your questions but let me say this to make you rest easy. Yes the urgent application is going on appeal. Well, you have applied for leave to appeal, that hasn't yet been granted but the issues that might go on appeal or might not are not the issues that we are dealing with here today. Here today it's a factual issue and the factual issue is that this replying affidavit was filed and you read it and you were aware of it at the time that the court application was argued. That doesn't go to the merits of the court application. Let me continue then.

MR BANTU HOLOMISA: In the same vein, Chairperson, one can argue and say at the time I didn't have this information which I've tabled here. For instance, this share certificate, this – ja, this document which I've tabled this morning. I didn't have that. They didn't even surrender it themselves and also the annual report but I've taken note of what you're saying.

MR DANIEL BURGER: Yes and I will give you an opportunity – every time I ask you a question to say whether or not you have such evidence and if you have then you'll tell the Commission whether you have that evidence. So let's move on.

We know that in September 2008 Mr Moloketi resigned as the Deputy Minister of Finance, correct?

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: And if you turn to page 292, paragraph 10.2 of Exhibit 1.

MR BANTU HOLOMISA: Yes, I'm here.

MR DANIEL BURGER: You'll see there that Mr Moloketi resigned but he was requested by the shareholders of Harith FM to remain on as the Chairman of Harith FM. So in other words he resigned as Deputy Minister of Finance and he was requested by the shareholders of Harith FM to remain on as Chairman. Do you have any facts to contradict that?

MR BANTU HOLOMISA: Can you produce documents to corroborate this paragraph or (inaudible – speaking simultaneously)

MR DANIEL BURGER: I'm asking you the question.

MR BANTU HOLOMISA: I don't have them.

MR DANIEL BURGER: Thank you.

MR BANTU HOLOMISA: Yes. These are your court papers, sir, not mine, so you should be helping the Commission and display a (inaudible – speaking simultaneously) to say these are the meanings.

CHAIRPERSON: Just give us a moment, Mr Holomisa?

MR DANIEL BURGER: Mr Holomisa ...[intervenes]

CHAIRPERSON: Just give us a moment.

MS GILL MARCUS: Thank you. If I could – Mr Burger, if I could ask you whether you're in a position to give us the actual shareholding at that time, who the shareholders were which – who authorised or requested that the Chairperson continue in that role?

CHAIRPERSON: If you are able to.

MS GILL MARCUS: If you're able to do that.

CHAIRPERSON: To give us that information.

MR DANIEL BURGER: There was a constant – or there were negotiations in play at that point in time where the investors were saying that the idea – the management company could not be one hundred percent government controlled but I think the transfer of the shares only took place in 2009, if my memory serves me correctly.

MS GILL MARCUS: Ja but that's why I'm asking. When the Chairperson was asked after resignation to continue, who the shareholders were at that time, who made that request and therefore, if you haven't got that information now, if we could get it?

MR DANIEL BURGER: Yes.

CHAIRPERSON: Mr Burger, are you saying yes you'll be able to provide that?

MR DANIEL BURGER: Sorry, sorry, Chair, I will get that information.

MR EMMANUEL LEDIGA: Just give us another moment. Just to double-check, if you look at page 289 at the bottom there, 9.3, you've got the shareholders there.

MR DANIEL BURGER: Yes.

MR EMMANUEL LEDIGA: Are these the shareholders then?

CHAIRPERSON: That you are referring to.

MR EMMANUEL LEDIGA: That you are referring to.

MR DANIEL BURGER: Mr Lediga, I'm not sure because I know that the final shareholding of 46%, 12, 12 and 30%, that, according to my memory, only was finalised in 2009. So I'm not sure that that was the position. I can't say. I'll have to get instructions on that.

ADV JANNIE LUBBE SC: If I can assist according to our information, the transfer happened on the 30 June 2009.

MR DANIEL BURGER: 2000 and...?

ADV JANNIE LUBBE SC: 9.

MR DANIEL BURGER: 9, yes.

ADV JANNIE LUBBE SC: And in 2007 the sole shareholder was still the PIC but my learned friend will confirm that.

MS GILL MARCUS: Ja, I think the point I'm making is which shareholders authorised that Mr Moloketi continued to be the Chair.

MR DANIEL BURGER: I will take instructions on precisely who the shareholders were or who decided or requested that he stay on as Chair. And – can I continue? And Mr Mahloele was the CEO and a director of Harith FM. You're aware of that?

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: Mr Holomisa, are you aware that Harith FM did not have a stake in the – or was not an investor in the PAIDF?

MR BANTU HOLOMISA: If my memory serves me correct the HFM was tasked by the PIC to oversee the project of PAIDF1 among others and also the PAIDF1 was – that task was given to the CEO, Mahloele, who was running this project whilst he was in charge of Isibaya. So it was transferred to Harith Fund Management.

MR DANIEL BURGER: No, I think you're wrong there.

MR BANTU HOLOMISA: No, no, no, no, no.

MR DANIEL BURGER: Because ...[intervenes]

MR BANTU HOLOMISA: Okay.

MR DANIEL BURGER: ...the evidence and unless – sorry to interrupt but unless you have evidence to contradict this, Mr Mahloele was the head of the Isibaya Fund at the PIC.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: You're quite right there.

MR BANTU HOLOMISA: Yes, yes.

MR DANIEL BURGER: He resigned at the end of March 2006 to establish the PAIDF. What was then established was a PAIDF facilitation trust.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: We went through this on Wednesday. The PIC paid R17 million as seed capital to the PAIDF facilitation trust.

MR BANTU HOLOMISA: Fine.

MR DANIEL BURGER: So that Mr Mahloele as largely the sole employee of the trust could then go about travelling internationally,

finding investors and so on and ultimately setting up the PAIDF and then HFM to manage the PAIDF.

So, in other words, what I'm putting to you and asking if you have any evidence to contradict this is that this creation of the PAIDF and the establishment of HFM happened after Mr Mahloele resigned from the PIC.

MR BANTU HOLOMISA: Yes, we know that Mahloele left PIC but what I'm not sure of is to whether he was deployed because if PIC were to prove to us that Mr Mahloele was earning let's say 300 000 per month, I mean just an example and that whilst he joined the Harith Fund management he retained the same salary, therefore he would say he was seconded to start this project but it's only the PIC who can tell us how Mahloele has gone – has been transferred or ended up working at HFSC.

MR DANIEL BURGER: But the evidence that is contained in the replying affidavit tells you – and I'm asking whether you have any evidence to contradict that. It tells you that Mr Mahloele resigned from the PIC and moved – and was tasked to go and establish the PAIDF.

MR BANTU HOLOMISA: To make you happy, I note that he has resigned. Next question.

MR DANIEL BURGER: The question is, do you have any evidence to contradict that?

MR BANTU HOLOMISA: What evidence do you want? The documents will show of the PIC how Mahloele was transferred whether he resigned or not. What evidence do you want from me?

MR DANIEL BURGER: Well ...[intervenes]

CHAIRPERSON: I think again, Mr Holomisa, address yourself to us.

MR BANTU HOLOMISA: Okay.

CHAIRPERSON: Chair and Commissioners.

MR BANTU HOLOMISA: Thank you, thank you, sir.

CHAIRPERSON: I don't know what evidence counsel requires and then we can step in.

MR BANTU HOLOMISA: Can you help me here exactly through you, Chairperson? What evidence do you want? You say Mahloele had resigned, I said I don't have any objection to that. Why do I have to prove that he didn't – he resigned or he didn't resign?

CHAIRPERSON: No, no, but do you know – do you know that he resigned from the PIC to go and establish the PAIDF?

MR BANTU HOLOMISA: Yes I have read that in the newspapers.

MR DANIEL BURGER: You see the point is this, Mr Holomisa, you engage in speculation, you say well ...[intervenes]

MR BANTU HOLOMISA: What speculation are you talking about?

CHAIRPERSON: No, no, just let him finish the question, Mr Holomisa.

MR DANIEL BURGER: You say well, I see that he resigned but maybe he didn't resign, maybe he was deployed, maybe he was earning two salaries, maybe he was earning a salary from the PIC and earning a salary from the PAIDF facilitation trust or HFM.

CHAIRPERSON: But Mr Burger I think – I thought you had put it to him that Mr Mahloele resigned from the PIC to go and set up the PAIDF.

MR DANIEL BURGER: Yes, that is exactly what I ...[intervenes]

CHAIRPERSON: So and I'm not sure that – you see, I'm not sure that – they way you are questioning Mr Holomisa, for instance to say do you have an evidence to contradict that rather than say do you know that or don't you? Do you have any evidence to contradict that? I don't think he has contradicted anything. The question that you are asking, I would expect him to say I know or I don't know that but you ask him do you have any evidence to contradict that? Did he contradict that or does he contradict that?

MR DANIEL BURGER: Well, he speculates in contradiction of that.

MR BANTU HOLOMISA: Where?

CHAIRPERSON: No but you have just put to him that Mr Mahloele resigned and you are saying do you have any evidence to contradict that.

MR DANIEL BURGER: Yes. Chair ...[intervenes]

CHAIRPERSON: But you put it to him that he resigned do you know that or don't you know that?

MR DANIEL BURGER: But Mr Holomisa claims or he suggests and his evidence before this Commission is perhaps this happened or perhaps this happened or perhaps that happened and in this particular instance he said – he just said to you now, Mr Commissioner, he said perhaps he didn't resign, perhaps he was deployed. Perhaps he was earning two salaries at the same time. Now that ...[intervenes]

CHAIRPERSON: Which means I don't really know. You see, you must remember that this is a Commission of Inquiry. What Mr Holomisa has done is to place evidence or place information rather than evidence before the Commission to say investigate this. I think this is worthy of

investigation. Right, if there are facts that he has placed as facts before the Commission, fine, you can – you know, you can cross-examine on that, but the major part of what he has placed before us is that this is information that I have and I think the Commission should investigate this.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I just want to put one more point to substantiate the issue. What is being put by Mr Burger was he was tasked to set up the PAIDF. By who, when, what are the documents? Witness is entitled to ask those questions.

MR BANTU HOLOMISA: Produce them.

MR DANIEL BURGER: The witness didn't ask those questions, my learned friend just asked the question.

MR BANTU HOLOMISA: Can we proceed, Chairperson?

CHAIRPERSON: What I'm saying to you, Mr Holomisa, if you don't know that this is fact you are absolutely entitled to say I read about it, that's the information that I have or yes I know that is fact.

MR BANTU HOLOMISA: Will do so, sir.

MR DANIEL BURGER: Mr Holomisa, I'm not sure if you answered this question and if you did you'll make it clear but if you look at the bottom of page 290, paragraph 9.6.

MR BANTU HOLOMISA: 9.6?

MR DANIEL BURGER: 9.6, right at the bottom.

MR BANTU HOLOMISA: Yes, Sir.

MR DANIEL BURGER: It says:

“By August 2007 the sum of 630 million dollars had been raised and the PAIDF was then closed. The

investors were...”

And there you see from 9.6.1 to 9.6.7 are all of the investors in this 630 million dollar fund.

MR BANTU HOLOMISA: H'm. I've read about it.

MR DANIEL BURGER: And HFM is not amongst them.

MR BANTU HOLOMISA: Yes, I see that, it's not amongst them.

MR DANIEL BURGER: Do you know whether HFM or are suggesting that HFM could have been an investor in the fund?

MR BANTU HOLOMISA: Why would they be investing in the fund whereas they were appointed to manage the process?

CHAIRPERSON: I'm not sure I understand the question, Mr Burger. Do you know whether there could have been investors in the fund? I mean, what – is that what you're actually asking? Because if you say do you know whether there could have been, I mean, what answer do you expect?

MR DANIEL BURGER: I'll rephrase the question, Chair. I think from your answer, Mr Holomisa, you accept that the HFM was not an investor in the PAIDF. The HFM was the company appointed to manage the PAIDF?

MR BANTU HOLOMISA: Ja, that's my understanding because the PIC, as the records will show, in that annual report we gave you, were responsible for starting this project. So the Harith Fund Managers were given a task to even go and raise monies from other investors as you correctly put it earlier on.

MR DANIEL BURGER: Yes.

CHAIRPERSON: It will help us, Mr Holomisa, if you were to say yes, I

know and there rather than – because your further response will raise further questions.

MR BANTU HOLOMISA: Okay. Thanks, sir.

MR DANIEL BURGER: Yes and by August 2007 that fund was closed.

MR BANTU HOLOMISA: I'm not aware about that.

MR DANIEL BURGER: Well, that's what is stated at 9.6. Are you aware that in a fund such as the PAIDF investors such as for example the Government Employee Pension Fund they commit a certain amount as an investment the fund? In this case an amount of 250 million dollars but they don't pay that amount upfront. Do you understand that?

MR BANTU HOLOMISA: I don't understand it.

MR DANIEL BURGER: And that the money is drawn down as an when the various projects require.

MR BANTU HOLOMISA: I don't know – I don't understand it, that that should be – that question should be clarified by the people who put money there, that is GEPF as well as PIC.

MR DANIEL BURGER: Are you aware that HFM was established to manage a single fund? It was a single fund manager.

MR BANTU HOLOMISA: Which fund was that?

MR DANIEL BURGER: Have a look at paragraph 9.5 on page 290 which reads:

“The purpose and objective of Harith FM was solely the management of the PAIDF. As such it was precluded from establishing further funds.”

Do you see that?

MR BANTU HOLOMISA: Yes, I see this. Who would verify this is the Commission, not me.

MR DANIEL BURGER: You don't know whether that is correct?

MR BANTU HOLOMISA: No.

MR DANIEL BURGER: But you can't dispute that, can you?

MR BANTU HOLOMISA: That's a speculative question.

MR DANIEL BURGER: No, you personally have no facts to dispute that.

MR BANTU HOLOMISA: This thing is not being presented by me, it's your version.

MR DANIEL BURGER: Okay.

MR BANTU HOLOMISA: I disagree with the line of questioning, with your line of questioning, through you, Chairperson. I don't know about what he's talking about. I need to be asked on the document I presented here.

CHAIRPERSON: Yes, carry on.

MR DANIEL BURGER: Now if you look at 291, 9.7 speaks about investors not being required immediately to pay over the full amount of their commitments. Do you see that?

MR BANTU HOLOMISA: 9 point?

MR DANIEL BURGER: 9.7 on page 281.

MR BANTU HOLOMISA: Yes, I see that.

MR DANIEL BURGER: And then you'll see at 9.8 it is described how the investors participated through an investment committee.

MR BANTU HOLOMISA: Right, I see that. What's your case?

MR DANIEL BURGER: Alright, now have a look at 9.9. The statement

is made there that the return on investments made by the PAIDF was almost double the amount originally invested. As at March 2018 the GEPF's initial investment of R4.5 billion forming part of the 630 million dollars was independently valued at R8.2 billion. In other words, the investment of the GEPF had almost doubled in value.

MR BANTU HOLOMISA: So what's your question?

MR DANIEL BURGER: Do you have any comment on that?

MR BANTU HOLOMISA: Unless you table the reports in this Commission and share that information with us because some analyst I'm sure will come up with a different version to say we have not performed well on that score so but we need to check your annual report, if you can share it with us, so I don't know – I cannot give you an outright answer on this.

MR DANIEL BURGER: Have you instructed any analysts to value the GEPF's investment in PAIDF1?

MR BANTU HOLOMISA: I wish I had money to do so, I didn't it.

MR DANIEL BURGER: I can give you the exact figures. Of the 250 million dollars that the GEPF committed, the actual drawdown was 248 million dollars, so it was almost the 250 million dollars and that as at the 31 March in dollar terms that was valued at 279.3 million dollars.

CHAIRPERSON: Mr Burger can I ask, what did the witness say in his statements in relation to that issue?

MR DANIEL BURGER: The witness said in his evidence before this Commission that his information was that the investments were actually doing poorly and that they had lost money. Is that – that is your evidence, not so, Mr Holomisa?

MR BANTU HOLOMISA: It's my evidence and the Commission has got the tools to verify the authenticity or otherwise of that information. They are – they should be having asset managers as part of that toolbox to check this information.

MR DANIEL BURGER: Let me refer you to the evidence you gave before this Commission. At page 22 of bundle - Exhibit 2, Chair, it's the transcript of the 20 March 2019. Do you have that before you, Mr Holomisa?

MR BANTU HOLOMISA: I don't have it, you can read it for me.

MR DANIEL BURGER: No, I think it's important that you see your evidence.

MR BANTU HOLOMISA: Okay.

MS GILL MARCUS: Can you just give us the reference again to where in Exhibit 2?

MR DANIEL BURGER: It's Exhibit 2, Commissioner, page 22, paginated page 22, it's also at the bottom of the page, it reads page 4 of 29 and at line 4 you say:

“Many people including myself were concerned when reports started surfacing about the possible depletion of the Government Employee Pension Fund which could negatively affect hundreds of thousands of retired and current employees which include military and police personnel, correctional services employees, teachers, justice personnel, medical practitioners and nurses as well as all other government officials. Our interest in the matter was sparked when we received an anonymous tip-off that something

untoward was happening with the management of the PIC and by implication the GEPEF.”

And then if I can refer you to page 28, paginated page 28 of the same bundle, line 14, you said the following, Mr Holomisa, you said:

“Yes, one other transaction that needs careful scrutiny is the Pan African Infrastructure Development Fund where these monies are invested, that is the pension monies of the workers. We are told this was delegated to a company called Harith and Harith, according to the documents I’ve given you, and also possible the leadership of the PIC could be in a position to give more details as to where in the continent are those monies invested under this Pan African Infrastructure Development Fund. Can we go and do an inspection *in loco* of these areas where the monies are invested? Are they invested in railway lines, properties? What is exactly and what are the returns because according to our information, in terms of the current value, the estimate is around 8.2 billion and our sources are telling us that it is underperforming so we need clarity. Perhaps the people who are experts on that can make calculations. So I hope I’ve clarified it.”

That was your evidence.

MR BANTU HOLOMISA: That’s my evidence and the answer to your question is contained in what you have just read.

MR DANIEL BURGER: Are you talking about paragraph 9.9 on page 292 of Exhibit 1?

MR BANTU HOLOMISA: Yes, I’m talking about the need for experts to

verify this. Last week for instance, through you, Chair, I raised the issue of certain figures which are declared in rands as part of performance of these investments and I've said this was a dollar transaction, why is it not in dollars but I'm sure the asset managers around your team can assist us on this. This is a technical issue.

MR DANIEL BURGER: The point, Mr Holomisa, is this. When you gave evidence before this Commission on the 20 March you suggested that you were in possession of information which suggested that the investment of the GEPF was underperforming and in fact that the GEPF was being depleted by its investment in the PAIDF. Correct? That was your evidence.

MR BANTU HOLOMISA: That was my evidence and I still stand by it and if you want me to sit down with your assessors I can go down with the work I've done.

MR DANIEL BURGER: But you, when you gave that evidence to this Commission, you failed to bring to the attention of the Commission that you were aware that according to the people involved in managing the PAIDF they were saying that the GEPF's investment had almost doubled in value.

MR BANTU HOLOMISA: No, that was not my version. That was not my brief. It would have never been my brief.

MR DANIEL BURGER: You just didn't – you think it ...[intervenes]

MR BANTU HOLOMISA: Why would I have to say that? I'm entitled to present my own version.

MR DANIEL BURGER: Well, because ...[intervenes]

MR BANTU HOLOMISA: You are convinced, the Commission, that this

fund is performing and prove to us then we are going to call the PIC and other people to verify that.

MR DANIEL BURGER: Alright, let me just ask you this, on this point. You did not think it necessary to advise this Commission that according to the people who are managing the fund the value of the GEPF's investment had almost doubled. Instead you suggested that you were in possession of information that the value of the GEPF's investment had been depleted. That was your evidence.

MR BANTU HOLOMISA: Well, I'm sorry to say this, the version – the testimony I tabled, I presented here, I didn't have to cater for what you are saying. I based on what I have researched. You are avoiding a question why this money is declared in rands and not in dollar terms as per the investment. Why are you not answering that?

MS GILL MARCUS: I'm sorry, can I interrupt this a little bit? Please excuse me for that. I'm going back to, Mr Burger, to your point on page 22 of what the General is saying, he doesn't mention the PAIDF at all there or any specific investment. He is saying, as I've read this and understood it to be, that generally there is concern about what is happening in the GEPF and if you looked at the recent actuarial releases that have been done there is cause for concern that has been put there as to what is actually happening between investment income and contributions of those civil servants to that. I didn't see that and I didn't read it and it doesn't mention the PAIDF at all, it is referring to the – as I read it, a general situation, that is page 22, the points that you actually read out, refer to the general concern about the GEPF's funding. That's how I've read that.

Secondly, when you look at what you're raising on point 9.9, the question does arise why would you give figures in rand terms and say this has more than doubled when in actual fact in dollar terms over 2007 to 2018 the profit is 31 million dollars. I'm not sure that that is a great return on investments of 250 million dollars. That is the whole fund, that's not just the GEPF money, right?

MR DANIEL BURGER: No, no, that's the GEPF's money.

MS GILL MARCUS: Even if it is the GEPF money at 31 million dollars over 7, 8 years, I wouldn't have thought that shoots the light out. So I'm just asking that this is – this is misleading to say it has doubled in rand terms because it doesn't take account of the rand value and what is happening to the rand so – and I don't think that's a point necessarily here, it comes up quite a bit where you use dollar, rand interchangeably and we'll need to deal with that as the evidence gets presented.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: Because it does create a different picture. But I'm raising the question of your issues here because this does not – General Holomisa was not, in my reading of it, referring to the PAIDF at all but a general concern.

MR DANIEL BURGER: Commissioner, there's no doubt that when Mr Holomisa refers to the depletion of the GEPF he's speaking about it in the context of its investments in the PAIDF. That has been his evidence throughout. If you look at page 22 he talks about possible depletion of the Government Employee Pension Fund and if you read that with page 28 he's saying:

“We are told that this was delegated to a company called Harith.”

That’s line 17 – 16, 17.

MS GILL MARCUS: But that’s not the only issue that General Holomisa has raised. Yes, 28 refers specifically to the PAIDF and what is happening with Harith but in terms of page 22, he’s making a general point because he’s raising – as I’ve read his testimony and heard his testimony, it’s not the only issue he’s raised, he’s raised a number of investments, PAIDF being one, Harith being one to be looked at. I’m just making the point that when he’s making the evidence on 22 it comes later in 28 where he’s very specific, right?

MR DANIEL BURGER: Yes.

MS GILL MARCUS: But it is in the general context of a concern around the – what is happening in the GEPF.

MR DANIEL BURGER: Well, the only link to my clients and the GEPF is their management of the PAIDF.

MS GILL MARCUS: Certainly and therefore your reference in page 28 I think is correct but not necessarily on page 22. It’s different points.

MR DANIEL BURGER: Well, I ...[intervenes]

MS GILL MARCUS: I mean, I’m just looking at it from the question of what I’ve heard from him, so all I’m raising is that I would like the consistency of if it’s dollar investment, a dollar return because I think that should be the actual evaluation that is possible in – and that will need to be done as we go through the witnesses and that the general point about GEPF is one thing, the specific on page 28 I accept.

MR DANIEL BURGER: When my clients give evidence they will give

you both the rand and the dollar ...[intervenes]

MS GILL MARCUS: No, if it's a dollar investment I want dollar returns.

MR DANIEL BURGER: Yes, yes.

MS GILL MARCUS: If it's a rand investment, rand returns.

MR DANIEL BURGER: You will get that.

MS GILL MARCUS: Thanks but in that context I would also want to be sure because it does come up in a – an obviously we're going a little bit beyond this cross-examination which is not the purpose of it but we're taking as given the question of the shareholding and the investors which comes into question at a later point in time as to who was actually there.

So at this point in time we're accepting what is on the – in the report for the purpose of cross-examination.

MR DANIEL BURGER: Yes. No, no, that ...[intervenes]

MS GILL MARCUS: Not necessarily for what occurs later.

MR DANIEL BURGER: No, no, with respect, Commissioner, that's correct. This cross-examination is on the basis of the evidence presented by Mr Holomisa against the backdrop of the information that he had at the time. What comes afterwards will enable the Commission to make final findings of fact but certainly you're not being asked to make findings of fact on the basis of the cross-examination, this is part of a larger whole.

MR EMMANUEL LEDIGA: Mr Chairman, can I also put...?

CHAIRPERSON: Sorry, my other colleague would like to say something.

MR EMMANUEL LEDIGA: Can I just check something? What is the reporting currency in terms of the money that the GEPF give you guys because that is the money that the GEPF will get back. What is the reporting currency, is that the rand or the dollars?

MR DANIEL BURGER: Mr Commissioner, I don't know. I could speculate but then I would be doing the same thing that I'm accusing Mr Holomisa of.

CHAIRPERSON: To speculate.

MR EMMANUEL LEDIGA: Yes because if it's dollars you must tell us returns in dollars. If it's in rands you must tell us returns in rands.

MR DANIEL BURGER: Mr Commissioner, the purpose of this aspect of the cross-examination is to illustrate to the Commission that when Mr Holomisa came to testify and to impute certain unlawful conduct to my clients, in particular in this regard Harith and Harith FM in particular, he sought to draw a link, we would argue, between Harith's management of the PAIDF and the possible depletion as he put it of GEPF funds because the GEPF was a significant investor in the PAIDF and what he ought to have said to this Commission and which we are bringing out now, what he ought to have said at the time was, there is another view because he doesn't have the facts, he's speculating and in that pool of speculation there's another view that in fact far from the funds being depleted the GEPF's investment in the PAIDF as managed by HFM and later HGP has actually increased in value rather than decreased in value. That's the point. So there's no – there hasn't been a depletion, there's been an accretion, Commissioner Marcus says it's not a great accretion. Well, that's something, Commissioner,

that with respect you can debate with my clients when they testify but it's certainly on the other side of a depletion and to say that pensioners are losing their savings and their money through fleecing and depletion and all of that is simply not true. The investments is there, it's a good investment and it has appreciated in value. That's the only point that's been made at this point in the cross-examination. I hope I've answer the question.

MR EMMANUEL LEDIGA: Fair enough, ja, fair enough, ja.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I do want to put one point on this possible misleading line of questions. One of the documents handed in by Mr Holomisa in the morning of the day he was cross-examined was a bundle that was – I don't know if it was given any label but item 11 of that bundle refers to a statement made by the principal executive officer of the GEPF, Abel Sithole. It's item 11 of the set that was handed in in the morning of the General's cross-examination and in the last paragraph, the first column on the left, this is how he is quoted. He says:

“Sithole says the GEPF's commitment to walk the talk is evidenced by its 250 million USD investments in the Pan African Infrastructure Development Fund phase one in 2007 and 350 million USD in the Pan African Infrastructure Development Fund phase two in 2016. He points out that the GEPF made these capital commitments directly to the PAIDF 1 and 2 and not through the PIC.”

But the next paragraph is important:

“It is too early to have a definitive assessment on the

financial returns of the PAIDF 1 and PAIDF 2 close and private equity funds as the investment terms are 15 years with option to extend two more years and 12 years with option to extend two more years respectively. However, Sithole expects fair returns.”

Now the point I make here is that in 2018 the Principal Executive Officer of the GEPF was not as bullish as our learned friends are about these returns. His point was actually we'll have to be careful before we make a definitive statement on the returns and he went on to explain where the money and the risks associated with it. I mean the first one is the telecommunications main or cable, second one is electricity Lake Turkana, third one is transport, the Henri Konan, Beitbridge and Abidjan and those were the four items. But he didn't say that in 2018 we have generated returns of R8.2 billion. He said we have to be careful because this is a long term investment.

So that is a perspective that should be put to Mr Holomisa as part of the evidence that he has produced before the Commission. In addition to the fact that this is a return – so-called return of investment in rand terms, this is the point he has made repeatedly.

MR DANIEL BURGER: Chair, I'm not sure how that helps. My learned friend is referring to a newspaper article. From what I just heard from my learned friend, fair returns are expected. Again, that contradicts a view that the funds of the GEPF are being depleted by their investment in the PAIDF. It's not helpful and again it's disruptive of the cross-examination. It's not an objection to my question.

CHAIRPERSON: You see, I'm not sure that it helps when a witness

has said according to my information this is supposed to be the position, that when you cross-examine, you then cross-examine him or her as if that witness placed it as fact that that is so. If somebody says that is my information one would expect – and I don't want to sort of give advice on how to cross-examine, how not to cross-examine but I would expect something along the lines of where did you get that from? How sure are you that that is the correct position because the information that we have or on what the witnesses are going to say when they get here, this is the position. I don't think – I don't really think it helps to try and cross-examine on issues where a witness says I have information that this is so and I'm referring to that precisely because the Commission is the entity that has been asked or mandated to enquire into whatever information, whatever information comes to us. So I think it is – you're sort of making it difficult to cross-examine a witness on issues where he says I have information - and if remember correctly, on a number of occasions he would say it during his evidence and I asked the Commission to go and verify that because it doesn't really have the correct facts, as it were, this is the information that I have. And so that's the line of cross-examination that one would expect when a witness says I have information. From where? From whom? How sure are you about the correctness of that?

MR DANIEL BURGER: Mr Commissioner, the difficulty is that in his evidence to this commission Mr Holomisa says he does have the facts but then he insinuates certain unlawful conduct on the part of my clients. He says they could be members of a cartel, they could be involved in unlawful activity, there could be something wrong with the

way in which they conduct business, there are conflicts of interest and so on and he goes on and on like that. Take a very simple example. I see a person walking down the street who is walking in tattered clothing, tattered shoes and in my mind that person is apparently poor and yet I see on that person's arm an expensive looking watch. Is it fair to then come to some public forum and say well, it appears to me that that watch might be stolen and I'm not saying it is stolen but it suggests that there needs to be an investigation as to whether that watch is stolen and the person wearing the watch says no, it's – and the onus then becomes on the person wearing the watch to say no, I paid for this watch and here is the receipt for the watch and then the person who said well, it looks like it's a stolen watch says well, let me cross-examine you on that, perhaps it's not so that your invoice is correct. And so on.

The whole onus is being reversed here, that Mr Holomisa can come here and throw up allegations and say I'm not – I'm not saying that – or he can draw conclusions without putting the facts. So what we are trying to do in this cross-examination, I'm sure there'll be an objection if I were to say to Mr Holomisa who are your sources, who gave you that information? There'll be an objection coming, that I'm seeking to disclose the identity of whistle blowers.

So what we're submitting and what we've seeking to establish through the cross-examination is to say when you asked these questions and when you cast aspersions on my clients you knew certain – you knew that certain statements had been made, whether those statements are factually correct or not and you out to have

factored that into your presentation to the Commission because it's one thing to say my sources tell me that the funds of the GEPF are being depleted. It's another thing to say on the one hand I've heard that information but I must tell you that on the other hand the fund managers say that in fact the GEPF's investment is secure and has in fact appreciated in value.

So that, with respect, is the basis of the cross-examination. But if the Commission is of the view that Mr Holomisa has not brought any factual evidence and that all he has brought is speculation, if that is the Commission's view, then we can short-circuit the cross-examination.

CHAIRPERSON: We are certainly not in a position to say that what all that he said was speculation, because if one says: I have information. Again, I must emphasise that the Commission has been tasked to investigate information and verify or to ascertain whether that is true or not and then give the president recommendations after its findings.

So, what we are doing is to investigate or what we are supposed to do is to investigate the information that has been placed before us by Mr Holomisa. Whether he says: This is information that I have got and I am concerned about it. And I do not think he can be criticized for doing that. It is for the Commission then to investigate.

What I am worried about is to cross-examine on issues where he said: I have information that this is so. And in your cross-examination to make him appear as if he said that as a fact that, that is so. That is all I am worried about. So, you may continue your cross-examination. I will raise an issue where I am not happy with it.

MR DANIEL BURGER: Thank you, Chair. Mr Holomisa, do you know when...[intervenes]

CHAIRPERSON: Yes, if I can just say that, indeed, you know, the people who are mentioned in his evidence are also free to come and testify before court, to say that is not so what has been placed before the Commission. Thus far, is not correct. These are the correct facts and surely we will take account of that.

MR DANIEL BURGER: Yes, I am not... I have no doubt that the Commission will take that into account, but the question is. What value – what weight do you attach to Mr Holomisa's evidence?

CHAIRPERSON: That is for you to argue later.

MR DANIEL BURGER: Yes. And that is what the cross-examination is directed at. Mr Holomisa, do you know why Harith GP was established? Harith General Practitioners? General Partners. I beg your pardon.

MR BANTU HOLOMISA: Chairperson, the PIC subsidised(?) HFM hundred percent.

MR DANIEL BURGER: That is not my question.

MR BANTU HOLOMISA: No, no. I am giving you a background. Because another person does not know this, what you are talking about HGP. Now later on the HFM is left empty shelled after the H... What do you call it? The HGP was established. Transferred the staff. You will strip that HFM completely. Its asset and you transferred them to HGP, right.

And that HGP, we want the Commission to tell us how was that transaction done, because you will see the same directors

appearing on HFM as well as to the HGP.

So, we want to know: Why did you dissolve that? Because the mandate was given to the Harith Fund Managers to manage whatever fund as it was mentioned earlier on. But why did you do that?

MR DANIEL BURGER: You were given an answer in the replying affidavit. Let me refer you to page 293.

MR BANTU HOLOMISA: No, no. I am not going to waste my time on that. I have answered you.

MR DANIEL BURGER: No...[intervenes]

MR BANTU HOLOMISA: You striped...[intervenes]

MR DANIEL BURGER: Mr Holomisa, I am asking you...[intervenes]

MR BANTU HOLOMISA: Your clients stripped HFM naked.

CHAIRPERSON: Mr Holomisa...[intervenes]

MR BANTU HOLOMISA: Strip those assets.

CHAIRPERSON: Mr Holomisa.

MR BANTU HOLOMISA: Sorry.

CHAIRPERSON: Just wait. Do you remember the question though?

MR BANTU HOLOMISA: I remember the question.

MR DANIEL BURGER: Please answer the question.

MR BANTU HOLOMISA: The HGP was established after you liquidated HFM.

MR DANIEL BURGER: HFM was never liquidated. I do not know where you get that fact from.

MR BANTU HOLOMISA: After... Sorry. After you have transferred everything. That management you delegated to HGP. That is what

you did.

MR DANIEL BURGER: No, what...[intervenes]

CHAIRPERSON: Who did that?

MR BANTU HOLOMISA: That is why I was asking. It was a board director... The directors of HFM who established the HGP.

CHAIRPERSON: Well, I think it will help if you say, these are the people that did that. Rather than to say: You did that.

MR BANTU HOLOMISA: Mr Moleketi, you and Mahloele, the chairperson of the HFM and the CEO of HFM were part of that exercise to establish HGP. As we speak today, the HFM has got nothing. It is a shell. Empty shell. Yet, they were given a mandate by the PIC. How did it come to this management to be delegated to the GP? I mean, HGP. So, they need to explain that.

MR DANIEL BURGER: Let me read to you, because you do not want to seem to read it. Paragraph 10.3 on page 293 says:

“Given the limitations of Harith FM...”

MR BANTU HOLOMISA: Excuse me. Is that my testimony?

MR DANIEL BURGER: Can I finish my question, Mr Holomisa?

MR BANTU HOLOMISA: No, I want to assist you.

MR DANIEL BURGER: I have told you. It is page 293, paragraph 10.3.

MR BANTU HOLOMISA: Right.

MR DANIEL BURGER:

“Given the limitation of Harith FM, it was anticipated that it would be necessary to it would be necessary later to make use of a vehicle under which further

funds in addition to the PAIDF could be established and managed, in contract to the single fund mandate of Harith FM. For this reason, Harith GP was established which as the same suggests was mandated to manage several funds under a single umbrella...”

And then what you were talking about when you were talking about stripping, is not stripping. It is dealt with in paragraph 11.1:

“In the year 2012, Harith FM determined to sub-contract its management agreement with the PAIDF to Harith GP. This meant that all the active staff and skilled employees of Harith FM were transferred to Harith GP. The transaction required the approval of Harith FM shareholders together with ten investors in the PAIDF which was duly granted...”

So, when you say that my clients stripped Harith FM to create Harith GP, well that is a...[intervenes]

MR BANTU HOLOMISA: What is a ...[indistinct]?

MR DANIEL BURGER: I am not answering your questions. I am putting to you, that is a gross over statement and also what you fail to take into account Mr Holomisa, is that, that transfer and transition from HFM to HGP was with the approval of all the shareholders and ten of the investors in the PAIDF. One of the shareholders being the PIC.

CHAIRPERSON: Do you know that, Mr Holomisa?

MR BANTU HOLOMISA: I do not have that information, but what is

coming out clear here is that they setup a fund from the PIC. Then they setup a separate asset management company and awarded themselves, both the management contract from the fund as well as the large shareholding in that asset management for free.

This Commission, when you examine their documentation, I am sure you will ask those questions. And also, the PIC must come up and say: How much was paid for this and so on and so on. This is what is happening here.

CHAIRPERSON: You would like us to investigate that?

MR DANIEL BURGER: Yes, please.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I should also point to this paragraph 10.3. That it should also be put in context. If you go back to the bundle handed in on the last occasion by Mr Holomisa, item 4 which might shed light on the establishment of these entities. So, if you go to item 4, what we see there, the first item is Harith Fund Managers.

What it tells us is that it was registered in 2007 and amongst its directors where Mr Mahloele, Tertius Steyn, Patrick Koen, Jakobus Wessels. Barry Groenewald, *Roshan Moora and Riaan Sibanja*.

And the date of the registration is the 30th January 2007. If you turn over the page, we will see Harith General Partners. The date of the registration is the 29th January 2007, but if you look at its directors, they include Mr Jabu Moleketi and Mr Tshepo Mahloele.

If you compare that what has just been put to the witness at page 293 at paragraph 10.3, the impression can easily be created that Harith GP came after Harith FM. In fact, many years after Harith FM.

Whereas, on the registration documents, Harith GP predates Harith FM by one day.

MR BANTU HOLOMISA: Shu, let us look at that.

MR DANIEL BURGER: I do not if my... I do not why my learned friend had to interject again. Paragraph 10.3 says...[intervenes]

CHAIRPERSON: No, I think he says, matters must be placed into perspective. If there is a paragraph that supports or does not support the paragraph you are referring to, I am sure he is entitled to say: But look at so and so, Mr Chairman and Commissioners.

MR DANIEL BURGER: But there is nothing, Chair that I said in paragraph 10.3 when I read it to Mr Holomisa that contradicts what my learned friend has referred to. And in fact, if one reads further down, paragraph 12.1, it makes it clear that Harith GP only became active in October 2013.

MR THEMBEKA NGUCKAITOBI: No, I am talking about its registration. It is clear that it was registered on the 29th January 2007. It was registered by Mr Mahloele and Mr Moleketi and that is the day before Harith FM even came into existence. That is what you should put to the witness.

CHAIRPERSON: Yes, Mr Burger.

MR DANIEL BURGER: Now my learned friend is telling me what I should put.

CHAIRPERSON: Yes. No, carry on Mr Burger.

MR DANIEL BURGER: The company, Harith GP was a shelf company. It only became active in October 2013 and that is exactly what it appears from paragraph 12.1.

MR BANTU HOLOMISA: Chairperson, this is where you begin to trace this issue of conflict of interest. Here is a former deputy minister who was chairing PIC. In 2007 he was still active. And he started these two – this company. Why did he do that while he was still the minister? This information must be investigated, my friend. You are not going to have a short cut here. I am sorry for you. We are going to go deep and get to the bottom of the truth.

CHAIRPERSON: If again you are going to address yourself to us. Yes, please Mr Holomisa.

MR DANIEL BURGER: Do you know how much the PIC paid for its 30% shareholding in HGP? I can tell you. It was R30,00.

MR BANTU HOLOMISA: It is R30,00?

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: So, what is your point?

MR DANIEL BURGER: Do you know?

MR BANTU HOLOMISA: I do not know.

MR DANIEL BURGER: Okay.

MR BANTU HOLOMISA: Because you say it was R30,00. So, you have already told the Commission. What is the point?

MR DANIEL BURGER: And you know Mr Moleketi was the chairperson and a non-executive director of Harith GP. Is that correct?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And Mr Mahloele was again the CEO and a director of Harith GP. Correct?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And then Harith GP went and established a

second fund that we know of which we now call PAIDF2 which operated in a similar manner to PAIDF1 which was the original PAIDF. You are aware of that?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And you will see in paragraph 12.5 at the bottom of 294, it says the second fund which is known as PAIDF2 in the amount of 435 million dollars was then raised by Harith GP with the following investors and you will see there that the GEPF committed 350 million dollars of the 435 million dollars.

MR BANTU HOLOMISA: I see your document. Go ahead.

MR DANIEL BURGER: And again, you were told at page 295, paragraph 12.7... Well, 12.6 that PAIDF2 was finally closed to further funding contributions in June 2016 and the funds invested in similar projects as the inaugural fund.

And again, as at March 2018 the GEPF's initial investment of 1.2 billion dollars which was part of the 435 million dollars was independently valued at 1.7 billion dollars.

Again, I can give you the dollar amounts.

MR BANTU HOLOMISA: Well, Chairperson...[intervenes]

MR DANIEL BURGER: The... Can I just tell you?

MR BANTU HOLOMISA: Okay.

MR DANIEL BURGER: The evidence will be that the GEPF of the 350 million dollars initially what was drawn down was 87.5 million dollars and that was valued on the 31st March 2018 at 102.6 million dollars. And then in February 2019, the GEPF increased its investment because further money was drawn down and it was

increased to 182 million dollars. But you do not know any of those facts. Am I correct?

MR BANTU HOLOMISA: All those figures you have mentioned are going to be subjected to scrutiny. Let us leave it there. You have been told already that, and you promised that you are going to consult your clients about those figures. Let us not confuse this process.

MS GILL MARCUS: Sorry. Can I just have a point of information, if you have it now or if you can provide? In 12.5.2 you referred to DTD. A net high worth individuals. Can we get the names of those individuals for 350 million dollars? And 12.6, PAIDF2 similar projects. It would be useful to get the list of projects that are being invested in... That would be then the PAIDF1 which we have got the list, but this list of investments for PAIDF2.

And if I could just understand it correctly because this is meant to be, as I understood, an Africa Wide Fund.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: And if one look at the investors here, I cannot tell you who 12.5.2 is, but the only fund is the Botswana Public Officers Fund because I understand the African Development Bank Fund did not materialise because of technicalities. So therefore, this is an South African – the funding was mainly South African contribution.

MR DANIEL BURGER: I am sure Mr Mahloele will be able to testify as to the constraints and what he tried to do and what he managed to do in establishing that fund.

MS GILL MARCUS: Sure. I am just raising it, so that when he does testify these issues are addressed.

MR BANTU HOLOMISA: Thank you.

MR DANIEL BURGER: Mr Holomisa?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: Will you then turn to page 33 of the Exhibit 1.

MR BANTU HOLOMISA: 33?

MR DANIEL BURGER: Yes, that is your evidence before this Commission.

MR BANTU HOLOMISA: Page 33?

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Yes, sir. I have it.

MR DANIEL BURGER: You see there at page 33, line 4 you start dealing with the role of Harith.

MR BANTU HOLOMISA: H'm.

MR DANIEL BURGER: So, at line 9, Commissioner Marcus asked you when was the seed money granted. This is the seed money of R5 million which was actually R17 million. Do you see that?

MR BANTU HOLOMISA: Yes, I see. Is that the question where Ms Gill Marcus says: Sorry, sorry. When was that?

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: She says:

“When was that seed money granted, because in your documents I cannot see when it was granted to Harith?...”

And you said:

“I would have to furnish you with this. The more

information on which year was this...”

But you already knew at the time when you gave this evidence that, that seed money was granted or paid in April 2006. Did you not?

MR BANTU HOLOMISA: Not the exact figure, perhaps. But everybody knows that PIC helped Harith.

MR DANIEL BURGER: Yes, and you knew from your participation in the court case, you knew that, that payment was in April 2006.

MR BANTU HOLOMISA: So, what is wrong with it? What exactly do you want to know? Just frame – just rephrase your question. Maybe I did not hear you. What I...[intervenes]

MR DANIEL BURGER: Well, you claimed not to know.

MR BANTU HOLOMISA: Not knowing what?

MR DANIEL BURGER: When the money was paid.

MR BANTU HOLOMISA: No, I do not know which date the money was paid. It is true but I know that the money was paid. You are wasting our time.

CHAIRPERSON: Do not comment further, Mr Holomisa. Please, just answer the question. Which you have done.

MR BANTU HOLOMISA: Next question.

MR DANIEL BURGER: Then at the bottom of page 33, you say:

“The PIC owns the stake in both companies. There is little distinction between the companies and they appear to operate from the same premises and share a website...”

Why do you say there is little distinction between the companies? The one company was formed specifically to manage a

single fund. The second company was formed so that they could manage another fund. They could manage a second fund under the first company. Is that not so?

MR BANTU HOLOMISA: The confusion here comes when you find that these people are operating in the same address. You would have expected maybe that they have different offices, but they seem to be sharing a passage. They seem to be having same directors.

MR DANIEL BURGER: Yes, is there anything wrong with one company having the same directors or two companies having the same directors? Or shareholders holding a shareholding in different companies?

MR BANTU HOLOMISA: Well, it might not be looking – it might look good to you, but to us where we want to know what are the returns of this pension monies, what you see that there is a purification of companies but originating from a fund which was paid by the PIC.

And the same crew, when you listen to them talking in the media like, after the testimony... I mean, after our hearing last week, Wheatley... What is his name? Mr Wheatley? Warren. Yes, Warren Wheatley. He is speaking on behalf of profits made by Harith.

Yet, he claims to be... Yet, he is an Lebashe registered director. I have not seen him where Warren in the Harith documentation. So, there is a confusion by themselves, if you listen to them.

MR DANIEL BURGER: Mr Holomisa, what facts do you have to suggest that there is something improper or that there was something improper in the creation and establishment of Harith GP? What facts

did you have when you testified before this Commission that there is something improper?

MR BANTU HOLOMISA: I am more interested in knowing as to how much was paid in these transactions? Which board decided to take or relegate or delegate the work of HFM to the other institution which is... What do you call it? HGP. Where are the minutes which will collaborate that decision?

MR DANIEL BURGER: You have no facts, Mr Holomisa.

MR BANTU HOLOMISA: That is why... This is information which I have collected from your document and I have presented it to the Commission. The Commission is going to verify that.

MR DANIEL BURGER: What you know and what everyone knows is that the only exposure of the PIC was in the payment of the R17 million seed capital and that has long since been repaid back.

MR BANTU HOLOMISA: Even that one, we need to prove that it was paid. For instance, I tabled a spreadsheet here where your client are showing that they are owing almost 700... Over 700 million.

MR DANIEL BURGER: Mr Holomisa...[intervenes]

MR BANTU HOLOMISA: I tabled... I showed you last week and I said, this spreadsheet might need an update.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: But be proved that you have paid that money you need to produce it to the Commission.

MR DANIEL BURGER: Mr Holomisa, you are getting confused now. I am not talking about the 700...[intervenes]

MR BANTU HOLOMISA: I am sure it is you who is confused. I know

what I am saying.

MR DANIEL BURGER: No, you do not. I am not talking about the 720 million. I will come to that.

MR BANTU HOLOMISA: Which you refused to answer last week.

MR DANIEL BURGER: Mr Holomisa, please listen to my question.

CHAIRPERSON: Mr Holomisa, I said, listen to the question and then direct yourself to us here.

MR BANTU HOLOMISA: Okay, bring your question.

MR DANIEL BURGER: I will repeat my question. The PIC paid 17 million and more. It came to about 22 million in the end as seed capital. That was paid to the PAIDF Facilitation Trust. Subsequent to that, Harith FM was established.

MR BANTU HOLOMISA: Right?

MR DANIEL BURGER: And then subsequent to that, in 2013 Harith GP became active.

MR BANTU HOLOMISA: Which was registered even before the Harith FM in 2007.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: What was the motive by these two directors to do that?

MR DANIEL BURGER: You will find out about that. My question to you is this. You have no facts to suggest that the establishment of Harith GP and the transfer of the management agreement from Harith FM to Harith GP, the transfer of the staff from Harith FM to Harith GP, you have no facts to suggest that any of that was irregular.

MR BANTU HOLOMISA: The answer is yes and no. Because we have

provided information to the Commission to verify this transaction. If you want to say, I am wrong in doing so, so be it. I have done it like that.

MR DANIEL BURGER: No, you...[intervenens]

MR BANTU HOLOMISA: So, the onus is on PIC, sir. Your clients and the Commission to come up with a final determination as to what was happening in this transaction.

MR DANIEL BURGER: But you see, you go further, Mr Holomisa. Page 34, line 20. You say the following:

“So, the role of Mahloele and Jabu Moleketi as former PIC operatives, it would appear they have gone out to create an empire as you will see in my submission where they are involved and I hope they will be given an opportunity to clarify these issues, but more importantly, is to see that there seems to be a conflict of interest here, because later on they get monies from the PIC as and when they want to extent their businesses...”

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And then you move – and then you say you want to move onto Lebashe. Let us leave Lebashe out for the moment.

MR BANTU HOLOMISA: Okay.

MR DANIEL BURGER: Let us deal with Harith.

MR BANTU HOLOMISA: H’m.

MR DANIEL BURGER: Harith FM and Harith GP. On what basis can

you say that Mr Mahloele and Mr Moleketi are PIC operatives? What is your factual basis for saying that?

MR BANTU HOLOMISA: The chairperson of Harith was a PIC operative. He was a chairperson of the PIC. That is Jabu Moleketi. The CEO of Harith was an employee of PIC.

CHAIRPERSON: That is what you mean when you say they are operatives?. PIC operatives.

MR BANTU HOLOMISA: H'm.

MR DANIEL BURGER: What is a PIC operative to you? Someone who was once involved with the PIC?

MR BANTU HOLOMISA: Well I can say, if I maybe I should have said, the former employees or operatives of the PIC.

CHAIRPERSON: You day say... You did say former on the record.

MR BANTU HOLOMISA: I... Let me check.

MR DANIEL BURGER: You say: Former PIC operatives.

MR BANTU HOLOMISA: Yes. They were. What is wrong with that? What is your worry?

CHAIRPERSON: And I suppose by using the term operative, you mean an employee and a chairman?

MR BANTU HOLOMISA: They were working for the PIC. Or you want to give us Latin words for that? They were working there.

MR DANIEL BURGER: And it would appear that they have gone out to create an empire.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: What is the empire that they created in Harith FM or Harith GP? Can you explain they empire they have created?

MR BANTU HOLOMISA: Well, if you look at the spider web which I have tabled in this report. This one. You will see from here. From PIC up to them getting involved in a number of transactions or companies. I think I have outlined in my testimony. Where they are also involved in areas of the Lebashe Charters and Aviation Finance...[intervenes]

MR DANIEL BURGER: I am asking you about Harith. Harith.

MR BANTU HOLOMISA: I am saying, these two gentlemen former operatives of the PIC have gone out to create an empire for themselves. Their names are appearing in these companies.

MR DANIEL BURGER: Are you referring to Lebashe?

MR BANTU HOLOMISA: Lebashe for what?

MR DANIEL BURGER: You make an allegation...[intervenes]

MR BANTU HOLOMISA: I am talking about the two operatives. The two gentlemen. They went out to create an empire. So ...[intervenes]

MR DANIEL BURGER: When they were at the PIC?

MR BANTU HOLOMISA: When they left PIC. They were already outside. But there is a curious question which we must deal with. What was the aim of establishing this company which was given power to manage the fund from Harith Fund Managers? Why was it registered whilst the minister was still a deputy? And also, he put his name there. What was his interest?

MR DANIEL BURGER: So, is that your big point now?

MR BANTU HOLOMISA: No, no. I am just asking.

MR DANIEL BURGER: No, is that your point? Forget about everything else. Now we are going to the registration of Harith GP. Is

that where you are going?

MR BANTU HOLOMISA: I have answered you but you may also ask a follow up question.

MR DANIEL BURGER: Let me try and ask the question again. What is it in Harith FM and Harith GP that makes you say that Mr Mahloele and Mr Moleketi have gone out to create an empire? What is it in the creation in Harith FM and Harith GP that you find offence or unlawful? What facts do you have to suggest that?

CHAIRPERSON: No, but the word or name empire does not necessarily mean anything unlawful.

MR DANIEL BURGER: Except, Chairperson. They are asking... This Commission has been established to investigate whether there was any unlawfulness, to put it at its basic. Any unlawfulness at the PIC during certain periods. And so, the evidence that is put before you, which implicates Mr Mahloele and Mr Moleketi can only be related to some alleged unlawful conduct on their part whilst they were at the PIC.

Well, in Mr Holomisa's subsequent submission which he handed in last week, Wednesday. In paragraph 1, the very first page. He says in the first bullet point. He says:

“It is clear that a select few by taking advantage of their prior positions and connections at the PIC, have been able to benefit unduly from the public funds held by the PIC. These...”

Sorry, I am told that the Commission is not there.

CHAIRPERSON: [Indistinct]

MR DANIEL BURGER: Okay.

“These connections have been used to influence the PIC’s decisions on loans, funding and investment...”

And then in bullet point 3:

“The PIC has essentially been used as a piggy bank or slush fund for Mr Mahloele and Moleketi to further their private interest in various companies. The stellar rise...”

And then he goes onto to Lebashe as a key player and the investment ...[indistinct] is testimony to the power of major funding from the PIC, all within a few years.

These are statements of fact which Mr Holomisa has now made before this Commission. So, my question is... I will come to Lebashe, but as far as Harith FM and Harith GP are concerned, does Mr Holomisa have any basis and fact to draw these conclusions which he states as statements of fact?

CHAIRPERSON: I do not have any difficulty with that. All I was correcting is the use of the term empire. Does not necessarily mean it was there unlawfully.

MR DANIEL BURGER: Yes, but... I take your point, Mr Chair. But in the context of all the allegations that are made by Mr Holomisa, the use of the word PIC operatives, going out to create an empire. That is not used in a benign way. There is the sting of unlawfulness attached to this evidence.

CHAIRPERSON: Well, certainly it would not be unlawful to leave the PIC and start a fund managing company. Certainly?

MR DANIEL BURGER: Well, that is the point of my clients that there is nothing unlawful. But Mr Holomisa seems to suggest that there might be something unlawful in there.

CHAIRPERSON: Mr Holomisa, are you suggesting that there is anything unlawful in creating the empire that you referred to?

MR BANTU HOLOMISA: Yes, if it is not following the regulations. For instance, when we go – we get the documents. The pity with this cross-examination is being done even before I have seen their submission because we would want to know whether there were tenders for instance, when they decided to establish these management funds and we do not have that information.

So, but I hope that when I get that document this afternoon, we will be able to scan it again and possible say: Is it in line with the PFMA Rules, because these are public monies.

And we are going to insist that they be – they must table every - these documents in these Commission. I am not going to be intimidated by all these questions: Do you have this? Do you have that? I have provided the information and I am asking question in certain categories and areas which your clients will have to answer here. Hopefully, we will be sitting at the back that time.

CHAIRPERSON: Mr Burger, my colleague wants to clear up something.

MR EMANUEL LEDIGA: To clarify up something here. Just in terms of the growth of the group, say Lebashe and the other companies. I mean, did not the PIC give two loans to Lebashe to buy the Capitec shares in Coral Lagoon and Lebashe, in terms of just the growth of the

group, the product group?

MR DANIEL BURGER: Commission, yes. That is quite correct. That is why my question was to draw a line. I will come to Lebashe. As far as – and there are two Capitec transactions that I will deal with in relation to Lebashe.

As far Harith FM and Harith GP are concerned, the exposure of the PIC was in the sum of about R22 million which has long since been repaid. There was no further... Oh, and the R30,00 which was paid for the shares in HGP.

There is no exposure. There is no risk on the part of the PIC in Harith FM or Harith GP. The PIC has also not invested any funds in PAIDF1 or PAIDF2. It was the GEPF who have done that and they have done it independently as I said on Wednesday.

Both decisions to invest the 250 million and the 350 million were done independently of the PIC by the board of trustees of the GEPF. So, when assesses Mr Holomisa's evidence one has to compartmentalise it.

Because otherwise one runs the risk of just getting a general impression that there is something that is not quite right, but you cannot put a finger on where it is.

And that is why if you break it down into... Let us deal with the Harith companies and see whether there is any suggestion of unlawfulness, and it appears that there is not.

Because the only exposure and that is what this Commission - as I read the terms of reference – what this Commission is concerned with, is the management of the PIC and the investments undertaken by

the PIC and various other related questions.

So, as far as the PIC is concerned; What is its relationship? What is its exposure *visa vie* the two Harith companies. So, I will come... I promise that I will come to Lebashe and there is a very good explanation for Lebashe as well but I do not want to mix the two, if that is possible.

MR EMANUEL LEDIGA: Okay, fine. Ja.

MR DANIEL BURGER: Thank you.

MS GILL MARCUS: I think just to make a small point about – on what you have said. I think the terms of reference include very particularly the question of governance.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: And the terms of reference are for the Commission to look into the actions and activities and functioning of the PIC. There may be issues that relate to different entities which are not necessarily the concern of or involvement of the PIC, but in this issue, there is the question of governance, because that is whether it is real or perceived. Is a different question.

But apart from – a part of the question is the perception around: Was there something in having a connection with the PIC? And then going on to be involved in the entities that are created by the PIC.

And as the evidence shows, this was done at the mandate and with the authorities of the Minister of Finance and so on and so forth.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: But I am just saying, in relation to your point

about whether there was malpractice, the terms of the commission include a very important question on the legal framework and governance.

And therefore, in hearing of which nature is part of the issue, is the perception of poor governance or the reality of poor governance.

MR DANIEL BURGER: Yes, but with governance. If there is a perception of poor governance, it might be that all the facts are not known.

MS GILL MARCUS: I am disputing that. I am saying that is the work of the Commission to assess.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: So, when you are saying it is only about impropriety which is what you said in the beginning and you broadened it later. I am just emphasising the question. That the Commission is looking at this, it is an impropriety but it also includes a whole range of things, including governance.

So, therefore part of what we will be looking at here is; How do we address the question of governance, if there has been – I am not saying there has been – but if there has been any concern about governance.

MR DANIEL BURGER: Yes, I am not sure that Mr Holomisa can help the Commission on that point.

MS GILL MARCUS: No, I am raising it from the point that you raised in relation to the question being only about impropriety which is what you said at the beginning and I am saying it is actually broader.

MR DANIEL BURGER: Thank you. Can I just ask what time the

Commissioners want to take an adjournment, because I am about to go on to Lebashe.

CHAIRPERSON: We were looking at one o'clock.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, can I also raise one point? You see my learned friend – it is not clear what he was doing. Whether he was arguing or not, when he says that it appears that Mr Holomisa is not able to point to unlawfulness.

The last answer that Mr Holomisa gave was to ask: Was the PFMA followed? And if the PFMA was not followed, is that lawful?

CHAIRPERSON: I suppose, Mr Holomisa, I should not be asking counsel whether the PFMA made provisions were followed, but rather to give a reply and maybe counsel will then follow up on that reply.

MR THEMBEKA NGUCKAITOBI: Thank you, Mr Chairman.

MR DANIEL BURGER: Mr Holomisa, to respond to our question. As far as you are concerned, the question is really this. Do you have any information or facts to show that the PFMA was not followed?

CHAIRPERSON: In creating these or the empires? Using the ...[intervenes]

MR DANIEL BURGER: In anything that has to do with the creation of HFM or HGP or the payment of the R17 million seed capital or the payment of the R30,00 for shares in HGP.

MR BANTU HOLOMISA: The mistake you have is that you are targeting a messenger. What I have done here was to do a research after I have read all these nauseating exposes about the PIC management of our pensions and I have submitted that report to the Commission and the Commission will verify the authenticity of that –

of this testimony which I have presented.

And also, you must also know that the Commission itself have got powers to appoint forensic auditors and also, those forensic auditors will come up with timelines which would paint a picture as to what has to been happening in this fund.

For you to always ask for evidence, I have provided evidence. Even this morning about the shareholders and I ask a question to say: On what basis a chairperson of this entity become a shareholder, yet is a non-executive director?

You are still going to deal with these shares. How the shares certificate(?) document. What interest did he have here? And this is the same company. These things accrue from the same companies they established while he was a deputy minister.

MR DANIEL BURGER: That document is unsigned but...[intervenes]

MR BANTU HOLOMISA: That is fine. But is it going to be verified?

MR DANIEL BURGER: Just wait a minute, Mr Holomisa. But it has a date there of 2015. Is that correct?

MR BANTU HOLOMISA: Yes, will check.

MR DANIEL BURGER: Coming back to my original question. I do not know why you find it so difficult to make this concession, but the simple question...[intervenes]

MR BANTU HOLOMISA: You are wasting your time. You are not going to get any concession from me, because I want...[intervenes]

CHAIRPERSON: Mr Holomisa, can you wait for the question? Let counsel finish his question.

MR BANTU HOLOMISA: Okay.

MR DANIEL BURGER: You have no facts, other than the allegations that you contained or that you put into your submission to this Commission on the 20th March. Am I right?

MR BANTU HOLOMISA: Thank you very much that you have concede that I have tabled something to the Commission. Let the Commission verify whether that is factual or not. Not you.

MR DANIEL BURGER: When you talk about your report that you submitted to this Commission, it is the submission that you made on the 20th March. Is that correct?

MR BANTU HOLOMISA: Yes. If I may address you also?

CHAIRPERSON: No.

MR DANIEL BURGER: No, I have not ask the whole question.

CHAIRPERSON: No, address me. Address us here.

MR BANTU HOLOMISA: [speaking vernacular]. If I may, Chairperson through you? If I may address you, Chairperson and Commissioners. You see when you talk about this conflict of interest. It is written here. It is here in the house.

His clients are sharing the same offices. Same companies appearing in their websites. Same address. They even hire together, but they claim to be separate. Hire one legal firm. They are here. Thank you.

MR DANIEL BURGER: And that is your evidence of conflict of interest?

MR BANTU HOLOMISA: We are still going to elaborate on that. Bring us your document, then we will assess them which you refuse me to scan.

MR DANIEL BURGER: Okay, Mr Holomisa. Let us move to Lebashe. Are you aware that Lebashe is a private company?

MR BANTU HOLOMISA: I am aware that it is a private company established by the former PIC operatives.

MR DANIEL BURGER: Mr Wheatley is a former PIC operative? To use your words.

MR BANTU HOLOMISA: Not necessarily all of them, but what is the role of Mahloele there?

MR DANIEL BURGER: Sir, it seems to be your impression that, that if somebody was once employed in a government institution or a parastatal or some institution related to government, that having left that institution for ever and a day that person would be tainted or cannot get involved in private business because questions will be raised. Is that what you are saying?

MR BANTU HOLOMISA: The problem is that you do not want to address your questioning in context. The point we have raised here is about conflict of interest. And we have sketched the relationships between these companies and individuals, but you choose to avoid that.

MR DANIEL BURGER: Yes, you have mentioned the same address.

MR BANTU HOLOMISA: You are not going to get an answer which is like you are asking me to do. I am afraid. I will keep on referring to the relationship they had. Then to have a clearer picture. Maybe they did not brief you properly.

MR DANIEL BURGER: Chair, through you, I am going to ask. Mr Holomisa has continuously being insulting me and my clients this

morning. I have kept quiet, but he really needs to be called to order, with respect. He needs to stop his snide comments and his insulting comments because I have not insulted him.

I have been polite and I have asked him questions. This is not a way that a witness who pretends to be attempting to help, should go about things.

CHAIRPERSON: Mr Holomisa, please answer the question and do not make comments. But Mr Burger, I am not sure that it is correct to say that he is attempting whatever he is attempting, because that now calls for another comment from him.

So, Mr Holomisa listen to the question once again and answer to us, sitting here, directly and limit yourself, please to the answer.

MR BANTU HOLOMISA: Thank you, Chair. So, I am not even allowed to give a little bit of background or to qualify that, my answer?

CHAIRPERSON: If it has got to do with the question he is asking, yes.

MR BANTU HOLOMISA: But if it is a ballot question, yes or no, then we can go – we can finish quickly. If you want a ballot question.

CHAIRPERSON: Let us try it.

MR BANTU HOLOMISA: Ja.

MR DANIEL BURGER: So, you know that Lebashe was established in 2015. Am I correct?

MR BANTU HOLOMISA: Yes, it is fine. We can verify that. It is not important, but there is a company called Lebashe.

MR DANIEL BURGER: And initially, it was name – it was established under the name of Petro Touch.

MR BANTU HOLOMISA: Petro Touch, yes.

MR DANIEL BURGER: Pty Ltd. You know that?

MR BANTU HOLOMISA: H'm.

MR DANIEL BURGER: And that happened in 2015.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: Seven years after Mr Moleketi left government.

Seven years after Mr Mahloele left the PIC. Correct?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And Mr Wheatley to whom you referred, he was never employed by government. He was never employed by the PIC. Correct?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: He was employed by ABSA Capital (Pty) Ltd.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And Mr Mahloele was one of his clients.

MR BANTU HOLOMISA: Oh, okay. I did not know that.

MR DANIEL BURGER: If you have read paragraph 13.1 at page 295, you would have seen that.

MR BANTU HOLOMISA: Are you referring to court papers?

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Okay, I have got some reservations about your court papers, but let us continue.

MR DANIEL BURGER: Now, your issue with Lebashe concerns the Capitec shareholding. Correct?

MR BANTU HOLOMISA: I did raise that issue to be investigated.

MR DANIEL BURGER: Yes. And we are talking in particular about

10 million Capitec shares. Correct?

MR BANTU HOLOMISA: I would not be accurate about that. I will have to check.

MR DANIEL BURGER: And those 10 million Capitec shares were purchased by a company called Coral Lagoon. You know about that company. You have referred to it many times.

MR BANTU HOLOMISA: Yes, I have read – I have seen it. I have read about... I mean, I have read about the lagoon.

MR DANIEL BURGER: And Coral Lagoon had purchased those Capitec shares way back for R30,00 a share, 10 million Capitec Share.

MR BANTU HOLOMISA: I would not know that.

MR DANIEL BURGER: Well...[intervenes]

MR BANTU HOLOMISA: Sorry.

MR DANIEL BURGER: You would because it is at page 295, paragraph 13.2.

MR BANTU HOLOMISA: In your court papers.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: But I have told you and the Commission that a lot of water has passed under the bridge since that court case. I have answered him.

MR DANIEL BURGER: And then to fast forward on page 296. Coral Lagoon made an offer to the PIC in 2012 to sell the PIC some of its Capitec shares. Just under 5.3 million Capitec shares. You are aware of that fact?

MR BANTU HOLOMISA: Not aware, but the Commission will help us. Both of us.

MR DANIEL BURGER: For record purposes. It is page 296 of Exhibit 1, paragraph 14.1. And so, in February 2012, the PIC purchased those 5.3 million shares for R156,00 per share.

MR BANTU HOLOMISA: I am not going to contest that. That information you have, must be verified. You have already submitted those documents to the Commission. So, let the Commission come up with some findings on that.

MR DANIEL BURGER: And it was a provision of that agreement of sale that the PIC would only on sell those shares to another suitable qualified BEE purchaser.

MR BANTU HOLOMISA: It might well be, but the Commission will tell us.

MR DANIEL BURGER: That is page 296, paragraph 14.1. What is not there, an additional requirement, was that the shares had to be sold within five years. But you would not know that either.

MR BANTU HOLOMISA: No, either. You are correct.

MR DANIEL BURGER: Do you know that, that sale was publicly disclosed in the media? It was disclosed through the Johannesburg Stock Exchange, a new service. It is called JSE Sens.

MR BANTU HOLOMISA: Even that one, you will be of good help to the Commission if you attach it to them.

MR DANIEL BURGER: Well, you could have also in your scratch...[intervenes]

MR BANTU HOLOMISA: No, no.

MR DANIEL BURGER: In your scratch work, you could have come up with that.

MR BANTU HOLOMISA: That is not my worry. That line of questioning is trying to cover the tracks of what we have established. What is been going on here.

MR DANIEL BURGER: I am not trying to cover any tracks, Mr Holomisa. I am laying things out chronologically.

MR BANTU HOLOMISA: Okay, go ahead, sir.

MR DANIEL BURGER: Now there are three directors of Lebashe. That is Mr Wheatley, Mr Moleketi and Mr Mahloele. You are aware of that?

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: And in 2015, Lebashe wanted to buy the 5.3 million Capitec shares that were held by the PIC.

MR BANTU HOLOMISA: Thank you for the providing the information, but it will be verified.

MR DANIEL BURGER: And in order to purchase those shares, Lebashe had to get funding for those shares and they managed to get a fully funded deals arranged with Investec Bank. You know that?

MR BANTU HOLOMISA: I read about that. Part of it.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Not whole, but part.

MR DANIEL BURGER: And they presented this fully funded proposal to the PIC in 2015.

MR BANTU HOLOMISA: PIC would corroborate your allegations.

MR DANIEL BURGER: It is also at page 297 of Exhibit 1, paragraph 16.3. Now, I must tell you, also in paragraph 16.3 which you might have read at the time of the court application. It says:

“The PIC accepted the proposal at a price of R370,00 per share, subject to various conditions precedent...”

It turns out that the R370,00 was the spot price, but the agreed price was R325,00 per share, not R370,00.

MR BANTU HOLOMISA: You see, Chairperson. The...[intervenes]

CHAIRPERSON: Do you know that?

MR BANTU HOLOMISA: Ja, I do not know.

CHAIRPERSON: You do not know?

MR BANTU HOLOMISA: But I want to assist you. You see the disadvantage of a court process *visa vie* an inquiry is that although he in his answering affidavit he could argue as he is reading those pages, but the court do not have the instruments to verify those. \

But this inquiry is far better. Because we will be able to verify those. For him to expect me to say: Do you agree? How will I agree on that? Because even in court, we did not have the tools to verify that.

CHAIRPERSON: I think earlier I suggested that if you know something say: I do not. If you do not know it, just say: No, I do not know anything about that.

MR BANTU HOLOMISA: You can continue, sir.

MR DANIEL BURGER: So, we have a situation where a private company is formed. Lebashe is formed. It has nothing to do with the PIC. There is no money from the PIC used to form Lebashe. With me so far?

MR BANTU HOLOMISA: Well, the allegations which I have tabled here will help you to answer that question when the inquiry is cross-

questioning or cross-examining the PIC.

MR DANIEL BURGER: In your bundle which I... If it does not have an exhibit number, Mr Chair.

CHAIRPERSON: I do not think it has.

MR DANIEL BURGER: Then can we call it Exhibit 4?

CHAIRPERSON: It will be Exhibit 4.

MR DANIEL BURGER: Thank you, Chair. In the first page of Exhibit 4, Mr Holomisa.

MR BANTU HOLOMISA: Which one is that?

MR DANIEL BURGER: You say this:

“The PIC has essentially been used as a piggy bank or slush fund for Mr Mahloele and Moleketi to further their private interest in various companies. The stellar rise of Lebashe as a key player in the investment area is testimony to the power of major funding from the PIC, all within a few years ...”

Do you see that?

MR BANTU HOLOMISA: I stand by what I have said, subject to the verification by the Commission.

MR DANIEL BURGER: Yes, but you see. You state this as a fact. This is not a question. This is a statement of fact. And the truth is, that you have no evidence to back this up.

MR BANTU HOLOMISA: [No audible reply]

MR DANIEL BURGER: Let me break me this down, Mr Holomisa. You have no evidence that any PIC money was used to establish Lebashe. Am I right? Because it is simple not so.

MR BANTU HOLOMISA: Well, I am sorry. I have asked this Commission to investigate these matters. These allegations. I have asked them and the Commission must come up with the finding.

But the cost of the shares around the 2.4 billion was funded by Invested Corporation Bank in the amount of 1.7 billion and by the PIC in the amount of R720 million. So, that would need verification. That is not your job. It is the job of the Commission. That is what I have said.

MR DANIEL BURGER: You keep answering something that is not asked of you.

MR BANTU HOLOMISA: Okay.

MR DANIEL BURGER: Let me repeat my question, Mr Holomisa. In the establishment of Lebashe, there was no PIC money used.

MR BANTU HOLOMISA: Why would PIC be used, when you are establishing a company?

MR DANIEL BURGER: All right. So you accept that Lebashe was established without any money from the PIC? You accept that as a fact now?

MR BANTU HOLOMISA: No, I am not accepting that. I am saying it must be investigated. There is that allegation.

MR DANIEL BURGER: You will not accept that? All right.

MR BANTU HOLOMISA: Thank you.

MR DANIEL BURGER: But you have no facts to suggest otherwise.

MR BANTU HOLOMISA: I am not accepting it.

MR DANIEL BURGER: You have no facts to suggest otherwise.

MR BANTU HOLOMISA: I reserve my comment.

MR THEMBEKA NGUCKAITOBI: Mr Chairman, the witness has explained what his concern is and this concern is not – is actually supported by what they say in their own affidavit. If you look at page 297...[intervenes]

MR DANIEL BURGER: No, Chair. I am going to object to my learned friend.

MR THEMBEKA NGUCKAITOBI: No, but that is what the witness just read.

MR DANIEL BURGER: No.

CHAIRPERSON: No, no.

MR BANTU HOLOMISA: What are you hiding?

MR DANIEL BURGER: I am not hiding...[intervenes]

CHAIRPERSON: Mr Holomisa, your counsel is now addressing us. Do not come in.

MR THEMBEKA NGUCKAITOBI: I am saying, Mr Chairman. It is from the replying affidavit of Lebashe itself at paragraph 16.5 at page 297, where they say:

“The cost of the shares amounting to 2.4 billion was funded by Investment Corporate Bank in the amount of 1.7 billion and by the PIC in the amount of R720 million...”

So, the fact is, Lebashe is a beneficiary of PIC funding.

CHAIRPERSON: My colleague is referring me to that part as well, that there was R700 million from the PIC. R720 million.

MR DANIEL BURGER: Yes, but I am talking about the establishment of Lebashe. I am coming to the Capitec transaction. I have asked Mr

Holomisa a number of times now. In the establishment of Lebashe, was there any PIC involvement?

CHAIRPERSON: And if I remember correctly, he said: Why should there be that money in the establishment?

MR DANIEL BURGER: Yes, and then my learned friend points the witness to paragraph 16.5 which is not about the establishment of Lebashe. I am coming to what Lebashe did in his business.

CHAIRPERSON: All right. My colleague needs to ask something.

MR EMANUEL LEDIGA: Perhaps this could be a question of semantics in some ways. Because if you look at the documents is that the PIC funded the Capitec shares twice. R720 million and I think the other one was R1.2 billion.

So, I mean in the broader scheme of things, one could say there was some funding of Lebashe, you know. Where do you separate establishment versus getting loans? Maybe that is legal speaking, but broadly Lebashe was funded by the PIC to buy Capitec shares.

MR DANIEL BURGER: Commissioner...[intervenes]

CHAIRPERSON: No, I understand what you are saying. You are saying, when it was established, when Lebashe was established, no PIC funds were used. That is what you are saying?

MR DANIEL BURGER: Yes.

CHAIRPERSON: And that is what you are putting to him.

MR DANIEL BURGER: Yes.

CHAIRPERSON: And his answer is: The Commission will inquire into that and they will give us the answer.

MR DANIEL BURGER: And I went further to say: Mr Holomisa has no facts to assert the contrary. And then my learned friend points to 16.5. But that is not what I asked.

CHAIRPERSON: All right. Do you...? You were asked the question and I think you did respond, Mr Holomisa. You agree that no funds were used in the establishment of Lebashe? You accept that?

MR BANTU HOLOMISA: I accept that. That is why I pose that question: Why would you expect PIC to pay you for establishing your company?

CHAIRPERSON: That is what I remember you saying, but your answer is: Correct, I accept that.

MR BANTU HOLOMISA: [No audible reply]

MR DANIEL BURGER: Thank you, Chair. Now...[intervenes]

MR BANTU HOLOMISA: What is your take...? Sorry.

CHAIRPERSON: No, Mr Holomisa. No.

MR BANTU HOLOMISA: Okay.

CHAIRPERSON: Okay.

MR DANIEL BURGER: I read to you that the Lebashe presented the proposal. The PIC accepted Lebashe's proposal at a particular share price but there were various conditions precedent. Those conditions had to be met. Sometime elapsed and by the time PIC was ready to proceed with the deal, the share price, the Capitec share price had risen, according to paragraph 16.4, had risen to R472,00 per share. But again, I must tell you, that is the spot price and the price that the shares had risen to for purposes of the deal was R461,00.

So, in other words, the share price had risen because of the

delay from R325,00 per share to R461,00 per share.

MR BANTU HOLOMISA: So, what is your point?

MR DANIEL BURGER: You are aware of that?

MR BANTU HOLOMISA: No, I am not even...[intervenes]

MR DANIEL BURGER: You see because...[intervenes]

MR BANTU HOLOMISA: I am not even worried about that, because what you are asking will be verified by the Commission.

MR DANIEL BURGER: You see, you are concerned about the lawfulness and correct me if I am wrong, but it appears that you are concerned about the lawfulness of the R720 million loan. Am I right?

MR BANTU HOLOMISA: Yes, I am questioning that, but...[intervenes]

MR DANIEL BURGER: Right.

MR BANTU HOLOMISA: The Commission must deal with that matter.

MR DANIEL BURGER: So, if you are concerned about it, one would have expected you to have investigated the reason for the loan.

MR BANTU HOLOMISA: I did not go that far to come up with your – an answer which would satisfy yourself and your clients.

MR DANIEL BURGER: Well, it is set out in the affidavit at page 297, paragraph 14. So ...[intervenes]

CHAIRPERSON: Would this then be a convenient time to take the lunch adjournment or do you want to ask a follow up question?

MR DANIEL BURGER: No, I can continue after lunch. Thank you.

CHAIRPERSON: We shall adjourn until two o'clock.

MEETING ADJOURNS UNTIL 14:00

MEETING RESUMES AT 14:00

MR DANIEL BURGER: Thank you, chair. Mr Holomisa, I would like

refer you to your bundle, Exhibit 4 and in particular to the document...[intervenes]

MR BANTU HOLOMISA: Page?

MR DANIEL BURGER: It is on page...[intervenes]

MR BANTU HOLOMISA: Oh, okay. Okay.

MR DANIEL BURGER: It is not paginated, but I think it is item 3 where you have done the – you have copied the company details of Harith Fund Managers. Do you have that?

MR BANTU HOLOMISA: The SAPI.

MR DANIEL BURGER: Yes. The CIPC, I think.

MR DANIEL BURGER: Yes. All right, you have got Harith Fund Managers and then over the page, you have got Harith General Partners.

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: And the point you seek to make with this document is that Harith General Partners was registered on the 29th January 2007 and Mr Moleketi was a director at that date. That is the point you were driving home to the Commission. Am I right?

MR BANTU HOLOMISA: Yes, I think so.

MR DANIEL BURGER: Yes, I think so too.

MR BANTU HOLOMISA: H'm.

MR DANIEL BURGER: And in fact, one of the points you have made there is this grievous conflict of interest is because at the time, the 29th January 2007, Mr Moleketi was the Deputy Minister of Finance.

MR BANTU HOLOMISA: And chairperson of PIC.

MR DANIEL BURGER: Yes. So, this was this conflict of interest that

you referred to today. Correct?

MR BANTU HOLOMISA: Not the whole, but I was tracing the involvement or questioning the involvement of the deputy minister in that company, whilst he was still deputy minister and also the chairperson of the PIC. So, you can educate us why he was there. That is what I asked.

MR DANIEL BURGER: Yes, but you see. This is the problem with raising all of this – the supposition and casting aspersions because this document that you got is simply a document of a snapshot in time. It is a document that you have got recently which records the current directors of Harith GP. Is it not?

MR BANTU HOLOMISA: So, in your own, you would have expected me to have this document in 2007? Why would I be doing that? Because there was nothing to worry about. We thought everything was done above board by the comrades.

MR DANIEL BURGER: I am sorry. I beg your pardon. I did not get that?

MR BANTU HOLOMISA: So, I am saying. In 2007, there was no need for me to have known this information, because everybody thought the PIC and the funds are in safe hands. Little did we know that the comrades are also helping themselves in the process.

MR DANIEL BURGER: Another statement of fact. Well, let me put to you the real fact, Mr Holomisa. The real fact is that Mr Moleketi only became a director of Harith GP on the 23rd May 2012.

MR BANTU HOLOMISA: What is this document say, you have referred us to? Whose document is this? Is this mine or the government

document?

MR DANIEL BURGER: The document that you produced as a document that you obtained.

MR BANTU HOLOMISA: Yes, is this not a state document, government document?

MR DANIEL BURGER: Mr Holomisa, let me just put to you what it reflects. This is a document that reflects a company that was established in 2007.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: Your document. But it records the current directors of Harith GP. In other words, it does not indicate that all of these directors were directors on the 29th January 2007.

MR BANTU HOLOMISA: What is your point exactly? Because the same name appeared in 2007 of Moleketi. It still appears in your date which you have submitted. What is your case? What is your problem? Just explain to us.

MR DANIEL BURGER: I think I have explained myself quite well, Mr Holomisa, but I will just put it and then I will move on.

MR BANTU HOLOMISA: Thank you, let us move on.

MR DANIEL BURGER: You have produced this document to insinuate a document that has been produced in 2018. You produced this document to insinuate that Mr Moleketi was a director of Harith GP, where as in fact, he only he became a director of Harith GP in 2012.

MR BANTU HOLOMISA: So, you want to say now that Moleketi was not...? Why his name was appearing in this document, as you heard from your learned friend next to me?

MR EMANUEL LEDIGA: I think the correct way is to say. His name appeared in 2007 already.

MR BANTU HOLOMISA: Yes.

MR EMANUEL LEDIGA: Is that you are saying?

MR BANTU HOLOMISA: That is what I am saying, because my legal representative here read that document for him, but it seems, he does not understand.

MR DANIEL BURGER: This document that you rely on was created in 2018.

MR BANTU HOLOMISA: Created by who?

MR DANIEL BURGER: By the person who took it off the CIPC's website. If you look...[intervenes]

MR BANTU HOLOMISA: And then?

MR DANIEL BURGER: Mr Holomisa, it is fine. I have made my point.

MR BANTU HOLOMISA: Thank you. You can make my day as well.

MR EMANUEL LEDIGA: Can I...? Just a quick point. When someone is registered as a director it is captured in the CIPC database and I think the Commission can actually try to find it out or you can send the document.

MR DANIEL BURGER: Yes.

MR EMANUEL LEDIGA: I think this can be dealt with very easily.

MR DANIEL BURGER: The point I am making, Commissioner Lediga is that, this document records the current directors of Harith GP.

MR EMANUEL LEDIGA: Yes.

MR DANIEL BURGER: But what Mr Holomisa attempted to suggest, was that Mr Moleketi was a director of Harith GP in 2007 at a time

when he was still the Deputy Minister of Finance and that is false.

MR EMANUEL LEDIGA: Sure. We can really find out when he was appointed as a director from CIPC. I think that can be found very quickly and very easily.

MR DANIEL BURGER: Indeed.

MR EMANUEL LEDIGA: Yes.

MR DANIEL BURGER: And the point is, so could Mr Holomisa have done.

CHAIRPERSON: [Indistinct]

MR DANIEL BURGER: Yes, he will testify.

MR BANTU HOLOMISA: Your client will also bring proof, I am sure. He will help us. Next question.

MR EMANUEL LEDIGA: Let me rather ask him to carry on with his questioning.

MR BANTU HOLOMISA: [speaking vernacular]

MR DANIEL BURGER: All right, Mr Holomisa we were dealing with the sale of the Capitec shares. I was at page 297 of Exhibit 1. And we had discussed how the share price had increased during the time that the PIC was engaged in its processes.

Now, so if you look at paragraph 16.4 on page 297, you will see there that the PIC insisted on the receiving the higher price for the shares, even though there had been an agreement at a lower price. Do you see that?

MR BANTU HOLOMISA: I see your – that paragraph which you prepared on behalf of your clients. That is not mine. I see it.

MR DANIEL BURGER: And so, the PIC when they sold the shares to

Lebashe, this is the 5.3 million shares, they made a profit of R316,00. In other words, the difference between the R156,00 per share which they had bought the shares for and the R461,00 the price at which they sold the shares. Do you see that?

MR BANTU HOLOMISA: I see what you have written here.

MR DANIEL BURGER: And that was in the space of three years, that profit which in the affidavit, it says there: A total profit of R1.7 billion. Now you say that is just stated here but was public knowledge because this sale too was disclosed through the Sens announcement and published widely in the media on the 12th May 2015.

So, you had the sale in 2012 which was public widely and you could have got information about that and then the sale in 2015, also published widely. You could have got information about that.

MR BANTU HOLOMISA: So, that is good for you. You have convinced the Commission on that argument. This research which have been produced the supporting staff. Not me. I have asked this matter to be investigated. I do not prove. Sorry.

MR DANIEL BURGER: Do you deny that the PIC made a profit on a sale of the shares?

MR BANTU HOLOMISA: I do not know.

MR EMANUEL LEDIGA: No, but is that really of relevance to what we are here for, who made profit and so forth? Is it relevant for our purposes?

MR DANIEL BURGER: The allegation... Mr Holomisa's allegation, Chair is that my clients have been involved in fleecing the PIC and this goes back to even before this commission.

It goes back to earlier utterances of Mr Holomisa and so part of what we are trying to establish in cross-examination is that, there has been no fleecing of the PIC. In fact, the PIC has made a profit at the instance of my clients.

MR EMANUEL LEDIGA: In respect of this transaction?

MR DANIEL BURGER: Certainly in respect of this transaction, yes. And then, Mr Holomisa it goes further. That because there was... Sorry, you are looking somewhere else, Mr Holomisa.

MR BANTU HOLOMISA: No, I am listening, sir.

MR DANIEL BURGER: It looks like you are reading something.

MR BANTU HOLOMISA: Yes, just carry on. I am listening. I am going to answer you.

MR DANIEL BURGER: Because there was a difference in the share price, Lebashe had to fund that difference in the share price, which was R720 million and Investec said no, their funding is set. They cannot increased their funding. \

And so, it was agreed after lots of negotiations that the PIC would loan the money of R720 million to Lebashe at very favourable terms to the PIC. In fact, I think it was 13% interest, if my memory serves me correctly. Loan this money of R720 million, repayable within two and half years. Anything wrong with that?

MR BANTU HOLOMISA: Well, you cannot answer that question from me, because you have been asked to produce documentation to support your argument. I am still waiting for those documents.

MR DANIEL BURGER: Do you have any evidence that the loan of R720 million by the PIC to Lebashe had any wrongfulness associated

with it?

MR BANTU HOLOMISA: Your line of questioning is not going to take you anywhere. I want to repeat it again. That here we are going to ask the Commission or we expect the Commission to verify all these, but key to this submission, is the question of conflict of interest which the Commission has got better understanding in evaluating my document, as well as your reaction to that, the submission.

So, what you are asking is irrelevant. It is too early. Relax. I am not going to anywhere in exile. I am still here. You can subpoena me later when after you had made your submissions.

And also, I need that document which you have refused to hand it over to me so far.

MR DANIEL BURGER: Which document?

MR BANTU HOLOMISA: The one which you should have responded to my testimony and the document which you were ordered by the Commission to be tabled to us. You remember last week, the Commission said: Please, make a submission. Tell us, what are the links in this companies and PIC. You have not done that.

MR DANIEL BURGER: Mr Holomisa...[intervenes]

MR BANTU HOLOMISA: I am sorry. I am not going to be of assistance to you if you have not prepared to produce document and say: Here is the prove that we have paid. Here is the prove that we have made profit in dollars and so on and so on.

MR DANIEL BURGER: Did you hear the ruling of the Commission this morning?

MR BANTU HOLOMISA: Yes, I heard.

MR DANIEL BURGER: It is not exactly what you have just said now.

MR BANTU HOLOMISA: What was the ruling? Then remind us.

MR DANIEL BURGER: Let us move on.

MR BANTU HOLOMISA: Thank you.

MR DANIEL BURGER: You say... Oh, before I get to that. Are you aware that the R720 million loan plus an amount of R215 million in profit was repaid by Lebashe to the PIC by the 14th April 2018. Are you aware of that?

MR BANTU HOLOMISA: Thank you very much for that information because last week I made a reference to a spreadsheet where I even said, maybe this is not an updated version. But according to the spreadsheet I have, it shows that it had not yet been paid. So, I said so last week. So, if you say they have paid, this is exactly what we want. Bring the evidence to the Commission and say: This is a proof of payment.

MR DANIEL BURGER: If you would have a look at page 298 of Exhibit 1, paragraph 18. It says under the year 2018:

“Lebashe repaid the loan that it had received from the PIC of R720 million plus accrued interest in the first quarter of 2018. The PIC therefore earned interest in excess of R200 million over 2.5 years. 18.2 The PIC profited on the acquisition of the 5.3 million shares. It received R1.7 billion in capital profits and in excess of R200 million in accrued interest...”

MS GILL MARCUS: Sorry. Can you just break down 18.2 for us?

MR DANIEL BURGER: Yes, Commissioner Marcus. If you go back to paragraph 16.4 at page 297, you will see there that if you take R316,00 per share, which is the difference between what the PIC bought the shares at and what they sold the shares at and you multiply that by 5.3 million shares, you get... I think... I did the calculation again yesterday. Something like R1.699 billion which is rounded off to R1.7 billion and the interest of R200 million was in fact R215 million which is the interest portion of the loan.

MS GILL MARCUS: And just remind me what the PIC paid Coral Lagoon for the initial 5.1...[intervenes]

MR DANIEL BURGER: R156,00 a share.

MS GILL MARCUS: [Indistinct]

MR DANIEL BURGER: I am sorry?

MS GILL MARCUS: R156,00 for 5.3. The total?

MR EMANUEL LEDIGA: Which is around R827 million, I think.

MR DANIEL BURGER: And that you will find... Thank you, Commissioner Lediga. That you will find at paragraph 14.1 on page 296 of the bundle.

MR EMANUEL LEDIGA: Just a moment. 14.1. Okay.

MS GILL MARCUS: I just want to try and get a picture which I do not quite have at the moment of what the PIC's engagement with this was. So, the first one was the purchase from Coral Lagoon for 5.3 million shares at R156,00 a share?

MR DANIEL BURGER: Correct.

MS GILL MARCUS: They then sold those...[intervenes]

MR DANIEL BURGER: And that was in 2012.

MS GILL MARCUS: All right.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: They then sold those shares to Lebashe at – for a total of R2.4 billion.

MR DANIEL BURGER: At R461,00.

MS GILL MARCUS: At R461,00 a share.

MR DANIEL BURGER: That is right, yes.

MS GILL MARCUS: They then – Lebashe bought – wants to buy the additional 3.1 million shares.

MR DANIEL BURGER: No, no. That is in a separate transaction.

MS GILL MARCUS: I understand it is in a separate transaction. What I am asking... That is why I said, what the PIC's role was in all of this with the shares. As a separate lot of shares. There was 10 million originally. So, now you have got 3.1 being bought and 5.3 bought before which the PIC gave a loan for.

MR DANIEL BURGER: Correct.

MS GILL MARCUS: And that loan was for 1.1 billion.

MR DANIEL BURGER: 1.2 billion.

MS GILL MARCUS: 1.2 billion for that loan.

MR DANIEL BURGER: Yes, there was a facility of 1.4 but 1...[intervenens]

MS GILL MARCUS: And 1.2 was a PIC loan.

MR DANIEL BURGER: That is correct, yes.

MS GILL MARCUS: So, if we look at the PIC's engagement with that share purchase, Lebashe and Coral Lagoon, it is three stages of it.

MR DANIEL BURGER: Yes, yes.

MS GILL MARCUS: The first one being the R156,00 share. The second one being the R461,00 a share.

MR DANIEL BURGER: R461,00.

MS GILL MARCUS: And the third one being a loan of just R1.2 billion.

MR DANIEL BURGER: That is correct, yes.

MS GILL MARCUS: Okay.

MR DANIEL BURGER: But the total price of the shares, just to complete the picture.

MS GILL MARCUS: Sure.

MR DANIEL BURGER: Was R1.4 billion in the second tranche, the 3.1 million shares and that was funded – the R200 million was funded separately from the outside funders.

MS GILL MARCUS: Yes, that is fine.

MR DANIEL BURGER: Yes.

MR EMANUEL LEDIGA: So, just to add. Am I correct in saying that the total loans given by the PIC on the purchase of Capitec shares, is that R1.2 billion?

MR DANIEL BURGER: Yes.

MR EMANUEL LEDIGA: And the R720 million which is an odd R1.9 billion.

MR DANIEL BURGER: That is correct.

MR EMANUEL LEDIGA: In total. That what the PIC contributed in terms of loans? Of the Lebashe... Or loans to purchase Capitec shares through Lebashe. Is that correct?

MR DANIEL BURGER: That is correct, yes. I am just being... I am just checking something. Yes, the second loan, jus to be clear of R

R1.2 billion was not from the PIC. It was from the GEPF. Mr Mahloele will testify to that.

MR EMANUEL LEDIGA: Okay, all right. So, the first one was from the PIC?

MR DANIEL BURGER: From the PIC.

MR EMANUEL LEDIGA: The second one was from the GEPF?

MR DANIEL BURGER: That is correct, yes.

MR EMANUEL LEDIGA: We will have to understand that. It is fine. I think we will... Ja.

MR DANIEL BURGER: The GEPF was approached through the PIC but it was the GEPF that loaned the money to.. Or that made the money available to Lebashe. And in fact, just to also complete the picture, the 3.1 billion shares that were purchased...[intervenes]

MR EMANUEL LEDIGA: The 3.1 million.

MR DANIEL BURGER: Million not billion.

MR EMANUEL LEDIGA: Yes, yes.

MR DANIEL BURGER: I am confusing my telephone numbers. That was pledged to the GEPF as security for the loan.

MR EMANUEL LEDIGA: I am sure we will get that explanation later. Ja.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Come to me now, sir. What is your point.

MR DANIEL BURGER: Now, I have just been an instruction that where it says in the statement that it was Lebashe who approached the GEPF through the PIC, that was not the GEPF. It was the PIC. So, Commissioner Lediga. You are correct. The total amount of the loans

was about R1.9 billion.

MS GILL MARCUS: And where is that reference? In which paragraph? So, that we can...[intervenes]

MR DANIEL BURGER: 74.

MS GILL MARCUS: Paragraph 74?

MR DANIEL BURGER: Ja. Of Mr Mahloele's statement, but I will take Mr Mahloele there.

MS GILL MARCUS: At the time.

MR DANIEL BURGER: Can I just correct that while we...? Mr Holomisa?

MR BANTU HOLOMISA: Yes, sir.

MR DANIEL BURGER: Coming to your schedule that you handed in as part of Exhibit 4. Where did you get that schedule from? This is now the schedule of all the listed investments and it is about three sections from the end. It is fold out.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: Where did you get that document from?

MR BANTU HOLOMISA: From my associates which are not going to be disclosed. But what you should be worried about is the content of the document.

MR DANIEL BURGER: I am not worried about the content of the document.

MR BANTU HOLOMISA: You accept it as correct?

MR EMANUEL LEDIGA: No, Mr Holomisa. You are playing the position of counsel, asking questions from the witness.

MR BANTU HOLOMISA: So, I have answered that I am going to give

you my associates where I obtained it from.

MR DANIEL BURGER: Is this a PIC document? Is that what you are saying this is? Because the reason I ask you. Is has no letterhead. No logo or anything to indicate that this is a PIC document.

MR BANTU HOLOMISA: Well, I would have to go and check from my associates as to why it did not have the letterhead as you claim. Maybe it was an attachment to another document. So, I will verify that.

MR DANIEL BURGER: All right. Do you know the date of this document?

MR BANTU HOLOMISA: I do not know the date. Why?

MR DANIEL BURGER: Did you not say that it was this document reflected the position in 2016?

MR BANTU HOLOMISA: No, I did not say that. I did not say that the document says you have not paid in 2016, but as you can read it, it tells you the date that up to this time – that particular year, you have not paid.

MR DANIEL BURGER: Yes, but it depends when – what the date of the document is. Otherwise, we do not know.

MR BANTU HOLOMISA: That is why I said to you. This document appears to have not been updated. I said so.

MR DANIEL BURGER: Okay.

MR BANTU HOLOMISA: What language must I use? Xhosa.

MR DANIEL BURGER: Mr Holomisa, it really is not difficult. I am trying to establish the date of this document. If you say... Let me finish. If you say, this document has not been updated, it would help

to know the date of the document. But let me move on.

MR BANTU HOLOMISA: Thank you.

MR DANIEL BURGER: Because I can show you another document that does have a date and that does have a logo and if I can hand this up to the Commission and give Mr Holomisa a copy.

MR BANTU HOLOMISA: That must be the updated version. Thank you very much for it giving it to us.

MR DANIEL BURGER: Well, I do not know if it is an update to your document, but this is a document. You can see there is the PIC logo in the top left hand corner.

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And you can see it is described as the Isibaya detailed Investment Schedule as at 31 March 2017. It is a public document. Do you see that?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And it lists all the investments of the PIC in its Isibaya Fund. Correct?

MR BANTU HOLOMISA: Yes, you are talking about the Isibaya document. I have said to you, in as far as my, I will have to verify. I think I am on record as having said that. I am not going to dispute that this is not a Isibaya document.

MR DANIEL BURGER: Ja, I know you are not.

MR BANTU HOLOMISA: I am not questioning it either.

MR DANIEL BURGER: I know. And this is the latest – this is the most recent document that has been made available publicly and you will see that it is dated 31 March 2017.

And you will see in this whole host, there must be a more than a hundred transactions... I think it is 119, if I am not mistaken. Transactions that are listed here. If you turn to the page... Unfortunately, it is not numbered but we have flagged it. You have a flag there?

MR BANTU HOLOMISA: No. Just read it for us, then we will our ears. Yes, to listen carefully.

MR DANIEL BURGER: If you look... I think it is in alphabetical order. So, you will find Petro Touch (Pty) Ltd.

MR EMANNUEL LEDIGA: Is it the third block from...?

MR DANIEL BURGER: The fourth block from the bottom. It is in alphabetical order. Okay, we are going to give it to you now. So, the position is recorded there as Petro Touch (Pty) Ltd, Lebashe Investment Group in the financial services sector.

And then you see the Debt Funding to facilitate acquisition of Capitec BEE shares and the people involved; Mr Mahloele and Mr Wheatley. And then you will see there that the interest rate in respect of both transactions is 13%.

The one transaction, the loan is R719 million and change which rounds off to R720 million about which we have already spoken and then the other one was sitting there in March 2017 at R1.303 billion and that is for the second tranche for 3.1 million Capitec shares. Do you see that?

MR BANTU HOLOMISA: I heard you. But what is your point?

MR DANIEL BURGER: And then you will also see going further on, the second last column. It says there: Financial performance in line

with expectation. And the evidence will be that...

Well, I have already told you that in relation to the first loan, R720 million that was fully repaid with interest by the 14th April 2018 and the second loan for the 3.1 million Capitec shares, Lebashe has not missed a single payment to date. Which is why you will see that there is the comment: Financial performance in line with expectation. Do you have any evidence that...[intervenes]?

MR BANTU HOLOMISA: Thank you for informing the Commission because as I have said earlier, last week, I said this version needs an update. Now that you are saying Isibaya has updated this version, but we would like to hear from the PIC as well as to say, that there is this document which Mr Holomisa tabled and there is this document which you have tabled today on behalf of your clients. Do they need – not rather to this documents or the names appearing on these pages are the same.

Forget about the letterheads for now, because I said it could have been an attachment. So, let the PIC come up with a final version of what is contained on both. I am not dismissing your document. Nor can you say you are dismissing mine. Fifty, fifty.

MR EMANNUEL LEDIGA: Mr Burger, the second date, you put it as – you have put it at 1.5 billion. I thought we have said it is 1.1. I am not sure.

MR DANIEL BURGER: Yes. There was a facility granted of 1.5 billion, but the loan that was given was 1.2 billion and the reason for that is, that there will be costs and other figures and so it will go up because of that. But... So, it cannot go over 1.5 billion.

Let me put it this way. The contribution towards the purchase price of the shares from the PIC was 1.2 billion. The other funders contributed 0.2 billion and the total price R1.4 billion.

MS GILL MARCUS: Sorry. The number in the column is 1.3 billion. 1.303 billion. Look there.

MR DANIEL BURGER: Yes.

MS GILL MARCUS: So, the draw they think – the draw down was 1.3 of the 1.5. Not 1.1 or 1.2.

MR DANIEL BURGER: 1.2 but there is been interested charges as well.

MS GILL MARCUS: Ja, but that says draw down of the 1.5.

MR DANIEL BURGER: No, it says... Commissioner, it says committed amount of 1.5.

MS GILL MARCUS: Yes and drawn down from inception is 1.3. Two columns beyond.

MR DANIEL BURGER: Yes, yes.

MS GILL MARCUS: So, it is not 1.2, it is a 1.3. The drawn down is 1.3.

MR DANIEL BURGER: Yes, but the contribution to the price of the shares was 1.2. Mr Mahloele will explain to you...[intervenes]

MR EMANUEL LEDIGA: You are saying the 1.2 was the purchase of the shares?

MR DANIEL BURGER: Yes.

MR EMANUEL LEDIGA: And the extra, say 100 million odd is cause and the other things. Is that what you are saying?

MR DANIEL BURGER: Yes, yes. That is my understanding.

MS GILL MARCUS: That is fine, but the essence of the drawn down is that it is 1.3 of the 1.5.

MR DANIEL BURGER: Yes, yes. Without a doubt.

MR EMANNUEL LEDIGA: Yes, yes. Broken down to 1.2 and costs.

MR DANIEL BURGER: Yes.

CHAIRPERSON: Can I just understand, Mr Burger?

MR DANIEL BURGER: Yes.

CHAIRPERSON: The purpose of this document that you are handing in, this document, is to indicate that at least... Well, let me not say at least. That in this transaction, you are saying there were no fleecing of the PIC, because that is what I am interested in.

MR DANIEL BURGER: Yes. Mr Holomisa, in his evidence before the Commission said that there is a – there are these unlisted investments and he wanted... In fact, he asked in the transcripts, he asked for a printout of all the unlisted investments. This is the latest available printout of the all the unlisted investments of the PIC.

As far as my clients are concerned, they are one of 119, 118 other investments of the PIC and they are in funding arrangements with the PIC that are very favourable to the PIC.

As you correctly say, Mr Chairman, there is no fleecing of the PIC. There are loan agreements in place as it is indicated here with a very favourable interest rate for the PIC of 13%. Mr Mahloele will tell you, that is higher than any other interest rate that they pay.

So, this document serves several purposes. One is, no fleecing. Two, is this is the latest available document. It shows that my clients are one of many people and institutions that get funding

from the PIC.

CHAIRPERSON: And who had been paying or has paid?

MR DANIEL BURGER: And the one loan fully repaid with interest. The second loan, fully up to date.

CHAIRPERSON: All right. I am getting bit worried with time.

MR DANIEL BURGER: Okay. I am almost done. Can I ask that this document be accepted as Exhibit 5?

MS GILL MARCUS: And perhaps just for Advocate Lubbe, the question of – in checking out the issues around what we are looking at of governance that the document is actually over two years out of date. There should be something that would be... I would imagine it is pretty easy to have available. It should not be a 2017 March document.

ADV JANNIE LUBBE SC: It is noted.

MS GILL MARCUS: It is not related to the questioning, but it relates to other issues.

ADV JANNIE LUBBE SC: Thank you.

CHAIRPERSON: Yes, can I just place on record that this document had a expired detailed investment schedule as 31 March 2017 and is handed up as Exhibit 5.

MR DANIEL BURGER: Thank you, Chair. Mr Holomisa, will you confirm that this document, this PIC document that has been handed in Exhibit 5, is made available by the PIC to the parliament?

MR BANTU HOLOMISA: Which one?

MR DANIEL BURGER: That one that I have just handed up. The PIC report regularly to parliament and it reports on its activities to

Parliament's Standing Committee on Public Accounts, as well as to the Public Finance Committee?

MR BANTU HOLOMISA: They do that and I think even the one I tabled here, subject to confirmation from my associates, that they took it from parliament. They do that.

MR DANIEL BURGER: And you have a representative on Scopa?

MR BANTU HOLOMISA: No.

MR DANIEL BURGER: And the Public Finance Committee?

MR BANTU HOLOMISA: Yes, we do.

MR DANIEL BURGER: Is there any aspect of the second transaction, the purchase of the 3.1 million Capitec shares and the consequent loan of 1.5 billion by the PIC, is there any aspect of that, that you have evidence which shows that it is – that there is an element of irregularity, unlawfulness, conflict of interest, any of the phrases that you used?

MR BANTU HOLOMISA: I will suggest that you leave that to the Commission.

MR DANIEL BURGER: You do not have any evidence?

MR BANTU HOLOMISA: I have pointed out to the Commission where to get more information and I have put documents together and I have also helped them to list a number of question which will be directed to your clients not in the too distant future.

We need the people who have been in the forefront of this. I wish that the PIC would be this side and then your clients are on that side and they respond to the questions. This is the role of a public. We have to ask questions.

MR EMANUEL LEDIGA: Okay, we have taken note of that, Mr Holomisa

MR BANTU HOLOMISA: Thank you.

MR DANIEL BURGER: You are waiting for the evidence. That is what you are doing.

MR BANTU HOLOMISA: What evidence you want? I have provided information.

MR DANIEL BURGER: I said you are waiting to hear the evidence.

MR BANTU HOLOMISA: I am waiting to hear the response, including this document which talks about – which you have been avoiding to discuss while I am here. The document which talks about the Mahloele as well as the chairperson.

MR DANIEL BURGER: I can tell you...[intervenes]

MR BANTU HOLOMISA: A document which relates to Harith Holding Employee Trust and I still want more information as to why a chairperson who was a non-executive director become an employee and get shares.

MR DANIEL BURGER: He did not get shares. That is what I will put to you.

MR BANTU HOLOMISA: You will convince the Commission. Not me. I have provided that information.

MR DANIEL BURGER: Okay, in your... I am wrapping up, Chair. In our evidence before the Commission, Exhibit 1, page 36, you say at line 10:

“Lebashe has also acquired an undisclosed stake in the 4r Africa Exchange where Mr Mahloele is a

director...”

Is it correct that 4AX, Four African Exchange is a private company?

MR BANTU HOLOMISA: It could be. I do not remember a government company by that name.

MR DANIEL BURGER: So, you want this Commission to investigate a transaction between one private company and another private company?

MR BANTU HOLOMISA: Just in case some of the public funds have been used in that transaction.

MR EMANUEL LEDIGA: We are looking into whether it is relevant for the purpose of the Commission. Indeed some of the information that have been placed before us, might not be relevant or it might be relevant. We look into that.

MR DANIEL BURGER: At page 298, paragraph 19. You were told that Lebashe did not seek the involvement of the PIC in any other funding arrangements with Aluwani, RainFin, EOH and the other entities referred to in your letter which included 4AX. Am I right? 4 Africa Exchange.

MR BANTU HOLOMISA: Lebashe did what...? Did not seek..?

MR DANIEL BURGER: The involvement of the PIC in any other funding.

MR BANTU HOLOMISA: Well, even if you argue in that way, I do not have tools to check that. PIC will assist us on all these transactions. I do not know what you are trying to get at.

MR DANIEL BURGER: So, all the questions that you raised in your

evidence before the Commission, for example, page 36, line 15: Did Messrs Mahloele and Moleketi make the appropriate declarations in terms of the Companies Act? It is one question you put up. You want to know the role of the directors of Lebashe. All these questions. You are just asking questions, but you do not have the evidence.

MR BANTU HOLOMISA: It is my right to ask a question when you see that there is something untoward when you read about these articles and the role of the same people opening up these companies. They are all over. One is chairperson here. Here is a director. And all of them, when they want money from PIC anytime they want, they get it.

So, one has to ask questions.

MR DANIEL BURGER: What is...? There are so many things you have just said there. Let us start off with the first one. What is untoward? What in your view is untoward?

MR BANTU HOLOMISA: Untoward is when you identified that there is a conflict of interest and I have argued that for that and I hope that the Commission will have a finding on this.

MR DANIEL BURGER: And where...? And just unpack again. Where is that conflict of interest?

MR THEMBEKA NGUCKAITOBI: Mr Chairman, I am sorry. This is really repetition. We have gone through this road many, many times. And my learned friend, if he has run out of questions, he should stop the cross-examination.

MR BANTU HOLOMISA: [speaking vernacular]

MR DANIEL BURGER: Chair, I will refrain from commenting, because if I do, I am afraid I might say something unfortunate.

MR EMANUEL LEDIGA: Yes, please carry on with the cross-examination.

MR DANIEL BURGER: Let us deal with your conflict of interest. At top of page 37 of Exhibit 1. Well, in fairness to you. Let me go to the bottom of page 36. You say... You were asked a question by Commissioner Lediga. He said:

“Just to check something. So, are you saying that you are talking about three companies, sort of. Harith is a fund manager and then there is a PAIDF which is a fund and Lebashe. Lebashe seems to be a separate company that is not linked. But are you saying also that one is a private company belonging to these people, that it was funded by the PIC2...”

That is the question you were asked and here is your answer:

“Well, the role of the directors of Lebashe, if you look at them, they are part of Harith. They are also part of Lebashe and they are sharing the same building...”

So, you make two points. You say, the directors of Lebashe are also directors in Harith, and the second point is, they share the same building. So, all I am asking here – I am trying to develop a story, that there is a conflict of interest somehow:

“And what we need to do, who is funding Lebashe. Is it funded through Harith? Have there been any transfer of monies from PIC to Harith and then to Lebashe?...”

Let us just stop there. There is no evidence that Lebashe was funded through Harith. Am I right?

MR BANTU HOLOMISA: Chief... Sorry, Chairperson. My evidence is still going to be tested by the Commission. They are going to get information from you – your clients rather and also from PIC.

Those questions, I am not obliged to answer them to you because I have asked the Commission to investigate this matter. Why would I have called for the president to institute an inquiry if I had answers?

MR DANIEL BURGER: You do not have a smidgen of evidence that Lebashe was funded through Harith. Nothing.

MR BANTU HOLOMISA: Right here, for instance, you have been told that PIC did fund Lebashe or transactions. They did get money from PIC. And Harith, bearing in mind, that it was established by the PIC to manage some of the investments. So, what is wrong in making reference through Harith? Because Harith and PIC are partners.

MR DANIEL BURGER: Have there been any transfers of monies from PIC to Harith and then to Lebashe? No evidence that there has been such transfers of monies. None whatsoever.

MR BANTU HOLOMISA: If you want evidence, then you are going to be answered by the PIC as to why did the PIC give money which lend it to Lebashe, given that even the directors of Lebashe and Harith... That is where the other confusion comes. Are they the same.

MR DANIEL BURGER: You see, Mr Holomisa. This is where you in the asking of your questions insinuate that in fact there has been a transfer of money from Harith to Lebashe. And let me show you

why...[intervenes]

MR BANTU HOLOMISA: That is fine. Leave that to be investigated.

MR DANIEL BURGER: Let me show you why...[intervenes]

MR BANTU HOLOMISA: You are not a competent individual to convince this Commission, because you are representing a certain interest.

MR DANIEL BURGER: Commissioner Lediga asked you. This is at line 9:

“And so you are saying that there is a possibility that some of the money in Harith could have been used to fund Lebashe or that maybe there could have been direct money from the PIC to help Lebashe. Is that what you are saying?...”

And you said: Yes.

MR BANTU HOLOMISA: I still say yes. Next question.

MR DANIEL BURGER: All right, and then you come to page 38. At the bottom of page 38. You asked the questions again. And you say: Well... commissioner Marcus says:

“All I am clearing is, I understand that... All I am clearing...”

This is line 14:

“Clearing with the point in time with your first bullet. Is that according to what you are saying, is that they were in the PIC at the time that this took place?...”

This is the establishment of the PAIDF and Mr Moleketi went and chaired Harith outside the PIC ended, you said. And then

Commissioner Marcus said:

“Being the chair and employee in terms of the conflict of interest issue...”

And you say:

“Yes, it could be established...”

You are suggesting that there is a conflict of interest between Mr Moleketi being the chair of the PIC, the chair of Harith and his later role in Harith. Am I right?

MR BANTU HOLOMISA: [No audible reply]

MR DANIEL BURGER: You are nodding. That is a yes?

MR BANTU HOLOMISA: Yes.

MR DANIEL BURGER: And then you say:

“Yes. Ja. Were the proper declarations made with regard to these transactions?...”

And that despite the fact that there is no evidence to suggest otherwise.

MR BANTU HOLOMISA: What is your reading of this role which they have played in these companies? Can you take into confidence?

MR DANIEL BURGER: I have taken you through chapter and verse of how they were involved.

MR BANTU HOLOMISA: Okay. Thank you.

MR DANIEL BURGER: And you ignored that. Then you say:

“Harith Fund Managers, Harith General Partners and Lebashe all operate from 34 in Parlour Road, as I have said...”

That is your address point.

“Is there absolute separation between the companies? Are there any shared employees and executives? If so, this would create a conflict of interest, if not properly handled. Despite the evidence that you have got. Harith FM, Harith GP. Completely separate from Lebashe...”

It is set out chapter and verse in the replying affidavit. But then you say this:

“This style of doing business with friends and colleagues reminds us of what we heard from the Zondo Commission, where to twist the adichie. A leopard changes its spots, but it still remains a leopard. Merely changing a company name from Bosasa to African Global Operations, does not mean that the looting spree stops. So, that is... So, far it is fine. This is what I would say about Lebashe, Harith and the PAIDF...”

So, in summary. Your allegations before the Commission, following on from this leopard analogy, you are saying that the leopard changing its spots is Harith FM, becoming Harith GP, becoming Lebashe.

MR BANTU HOLOMISA: No. Lebashe was a Petro Touch before.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: But it retained the same directors.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: They changed their name to Lebashe.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: And then you have Harith Fund Managers.

MR DANIEL BURGER: Yes.

MR BANTU HOLOMISA: Who decided to establish the other HGP without even telling us or producing evidence here by yourself, to say that these are the minutes. This was the decision of the board.

In fact, even that board of those two, you are going to be confused because you have the same leaders appearing on both sides. It looks as though they took a decision by a stroke of a pen to say: We are moving from this to that.

MR DANIEL BURGER: So, the leopard changing its spots is Harith FM to Harith GP?

MR BANTU HOLOMISA: I have listed three here, to say: Lebashe, you change names from Petro Touch to Lebashe. And then you abandon the original agenda or the mandate which you were given by the government to PIC to establish Harith Fund Managers.

MR DANIEL BURGER: What is the problem with Lebashe changing its name from Petro Touch to Lebashe?

MR BANTU HOLOMISA: But you retain the same names. That is what I was trying to explain to the Commission.

MR DANIEL BURGER: Petro Touch...[intervenes]

MR BANTU HOLOMISA: That is why I said, even on Zondo Commission... That is why I made a reference to Bosasa. From one company to the other and so on, it is not going to help you.

MR DANIEL BURGER: This analogy is completely off point, but let me ask you this question, because it is quite serious. You say: That does

not mean that the looting spree stops. Where is this looting that you are referring to?

MR BANTU HOLOMISA: A looting spree, in my own submission, would be where you establish Harith Fund Managers and then you strip it of its assets and its personnel and you transfer them to HGP. What is this?

MR DANIEL BURGER: HGP.

MR BANTU HOLOMISA: Yes, HGP. Same directors of the fund managers and HGP are found on both documents, right. And then you have actually.. What you have done now, you have actually taken that money which was started at Harith...[intervenes]

MR DANIEL BURGER: No, that was repaid.

MR BANTU HOLOMISA: Yes, that is fine. It is fine. But Harith Fund Managers today, it is just empty. Can you tell us what is there now?

MR DANIEL BURGER: Let me just understand, Mr Holomisa. You are saying that my clients were involved in a looting spree when they changed HFM into HGP and when they changed Petro Touch into Lebashe? That is your allegation before this Commission. Correct? Is that correct?

MR BANTU HOLOMISA: This Commission is going to verify my testimony, right. The authenticity of it or otherwise. But further, it will have to satisfy itself as to how much was paid, for instance, for shares which were registered in this... What do you call this? In this employee trust. Did you buy those shares? How much were they paid.

MR DANIEL BURGER: Mr Holomisa, you are not answering my

question. I know you want to say all sorts of other things. My questions...[intervenes]

MR BANTU HOLOMISA: How do you know that?

MR DANIEL BURGER: Because you have made it clear. My question is simply this. In this paragraph, in this part of your evidence, you are alleging that my clients have been on a looting spree. And I take it that it is the looting spree of the PIC. Am I correct?

MR BANTU HOLOMISA: Yes, I stand by what I said in order to satisfy your question. I am not withdrawing that remark, subject to the verification by the Commission.

MR DANIEL BURGER: And you can make that comment without any facts to substantiate it.

MR BANTU HOLOMISA: What do you mean? I have already demonstrated facts. What more do you want? I have given you everything. But to you, you do not accept it as evidence or facts, that is your baby that the Commission is going to verify those.

MR DANIEL BURGER: Thank you Chairperson, we have no further questions.

CHAIRPERSON: Thank you.

MR BANTU HOLOMISA: At last.

CHAIRPERSON: Mr Lubbe.

ADV JANNIE LUBBE SC: Thank you. Mr Commissioner, my learned friend kept to our agreement and he intimated to me that he is ready, if we can just change the chairs to start with his first witness, if we can have a brief adjournment for five minutes, just to rearrange everything?

CHAIRPERSON: But can we at this stage release or excuse Mr Holomisa?

ADV JANNIE LUBBE SC: Yes, I have no objection to that.

MR THEMBEKA NGUCKAITOBI: Thank you Mr Chair, we would also be excused together with Mr Holomisa. Subject to one, one aspect, we are still to take instructions on whether to apply, to cross-examine. Our preliminary instructions are we should apply, but during lunch I had discussions with Mr Lubbe who suggested that we should pend our application until his cross-examination and only at that point should we make an assessment about whether it is still necessary to cross-examination and or and on what aspects. I think his suggestion is a proper suggestion, where we are inclined to follow it.

CHAIRPERSON: Note.

MR THEMBEKA NGUCKAITOBI: Thank you.

CHAIRPERSON: Thank you Mr Holomisa. You are excused. We will take an adjournment until when Mr Lubbe?

ADV JANNIE LUBBE SC: Five minutes.

CHAIRPERSON: Five minutes.

ADV JANNIE LUBBE SC: 15:10.

CHAIRPERSON: Let us make it 15:10.

SESSION ADJOURNS

SESSION RESUMES

CHAIRPERSON: Yes.

ADV JANNIE LUBBE SC: Mr Commissioner, thank you we are ready to start. And as in the case with Dr Survé, my learned friend will lead his own witness.

CHAIRPERSON: Your full names please sir?

WITNESS: My name is Tshepo Don Mahloele(?).

CHAIRPERSON: Do you have any objection to taking the oath, prescribed oath Mr Mahloele?

MR TSHEPO DON MAHLOELE: No Chair.

CHAIRPERSON: No objection. Do you swear that the evidence you are now about to give will be the truth, the whole truth and nothing but the truth? Raise your right hand and say: So help me God.

MR TSHEPO DON MAHLOELE: The truth and nothing but the truth, so help me God

CHAIRPERSON: I could not hear.

MR TSHEPO DON MAHLOELE: And so help me God.

CHAIRPERSON: Thank you, you may be seated.

MR TSHEPO DON MAHLOELE: (d.s.s.)

MR DANIEL BURGER: Thank you Chairperson. I agree that, that I have been asked by my learned friend that I lead Mr Mahloele. Just before I start leading Mr Mahloele, can I ask if the Commission has a bundle of documents which we have marked EXHIBIT 3, which accompanied the statements.

CHAIRPERSON: Those documents are?

MR THEMBEKA NGUCKAITOBI: I beg your pardon?

MS GILL MARCUS: Is it not this here?

CHAIRPERSON: What are those documents?

MR DANIEL BURGER: There is a ...

MS GILL MARCUS: It is the yellow ...

MR DANIEL BURGER: Bundle of documents.

CHAIRPERSON: Ja. The yellow pad.

MR DANIEL BURGER: Which has got, it starts off with an organogram of Lebashe Investment Group, an organogram of Harith Entities.

CHAIRPERSON: Ja.

MR DANIEL BURGER: And so on.

CHAIRPERSON: We do have those.

MR DANIEL BURGER: And you will see in the tramlines we have marked it EXHIBIT 3, if that ...

CHAIRPERSON: EXHIBIT 3.

MR DANIEL BURGER: If that is okay.

MR TSHEPO DON MAHLOELE: EXHIBIT 3, what is called? Judge, EXHIBIT 3?

CHAIRPERSON: Is it the one index to bundle of documents, EXHIBIT 3?

MR DANIEL BURGER: Yes, that is the bundle.

MR TSHEPO DON MAHLOELE: Okay, we do have that.

MR DANIEL BURGER: And that is the bundle that Mr Mahloele and the other two witnesses will refer to.

CHAIRPERSON: Yes.

MR DANIEL BURGER: During the course of their evidence.

MR TSHEPO DON MAHLOELE: Yes.

CHAIRPERSON: Alright, ja.

MR TSHEPO DON MAHLOELE: Thanks.

CHAIRPERSON: Thank you.

MR DANIEL BURGER: Also can I ask the statement of Mr Mahloele, is that going to – is that going to have an exhibit number? And if so, can

I ask that it be marked EXHIBIT 3A?

CHAIRPERSON: No, we have not, we have not been giving exhibit numbers to the statements.

MR DANIEL BURGER: Alright. Thank you. Mr Mahloele in common with the approach adopted by evidence leaders and in particular Mr Lubbe, I am going to ask you to read your statement into the record and at certain points I will interpose with questions if necessary.

MR TSHEPO DON MAHLOELE: Okay.

MR DANIEL BURGER: You will have to speak up.

MR TSHEPO DON MAHLOELE: Thank you. Okay, thank you.

MR DANIEL BURGER: Alright, so this document which runs from page 1 to 27, this is your statement?

MR TSHEPO DON MAHLOELE: This is my statement counsel.

CHAIRPERSON: And Mr Burger do you have a signed copy, because my copy is not signed? If there is a signed copy and we are giving the assurance that this is a copy of the signed one, that will be fine.

MR DANIEL BURGER: Mr Lubbe had asked that the statement be signed. I am not sure if he got a signed statement.

ADV JANNIE LUBBE SC: Not yet, but Mr Commissioner you will have a signed copy for the record.

MS GILL MARCUS: It looks like the same one.

CHAIRPERSON: That is fine, that is fine, you can proceed.

MR DANIEL BURGER: Can I ask Mr Mahloele if he has made any notes and if not, he can sign that statement and hand it in after his ...

CHAIRPERSON: That is fine, I am happy with that.

MR DANIEL BURGER: Mr Mahloele have you made any notes on that

document?

MR TSHEPO DON MAHLOELE: My one?

MR DANIEL BURGER: Yes.

MR DANIEL BURGER: Alright, we will give you another document.

MR TSHEPO DON MAHLOELE: I can sign anyone that they give me.

MR DANIEL BURGER: Very well.

MR TSHEPO DON MAHLOELE: Which is similar to the one that I have in front of me.

MR DANIEL BURGER: No it must be identical.

CHAIRPERSON: If it has the same contents.

MR TSHEPO DON MAHLOELE: Yes.

CHAIRPERSON: That is fine.

MR DANIEL BURGER: Similar is not good enough.

MR TSHEPO DON MAHLOELE: I have heard people who said they just signed, so I am hoping that what I am signing is similar to mine. So.

CHAIRPERSON: That is a long signature.

MR TSHEPO DON MAHLOELE: I just wrote a small history.

MR DANIEL BURGER: Mr Mahloele do you confirm that the contents of this statement are to the best of your knowledge correct?

MR TSHEPO DON MAHLOELE: I confirm.

MR DANIEL BURGER: Please continue or begin reading your statement.

MR TSHEPO DON MAHLOELE: My name is Tshepo Don Mahloele, I am male of 52, of 52 years old. And before I get to paragraph 2, I would just like to say into like my understanding as to being here

today and representing Harith and our entity called Lebashe, mainly based on the allegations which have been said and made and presented, not only to this Commission but also prior starting last year round about June, July and Holomisa. And without going into all the other insinuations, defamatory and hurtful things he had said, I will try to restrict myself to talking about what I believe perhaps for this Commission are like what you know my understanding of what they are all about and what needs to be answered based on issues of business or whatever other than the other insinuations of you know cartels and operatives and hyenas, I will not endeavour to deal with. My understanding of the issues, if I unpack them, the way perhaps is informed or told to short of like try and attack what it is about. There is a concern about perhaps our proximity or conflict of interest in relation to the PIC. That is one or two, I do not know if however one reads it, how that baring on my statement, I would have like attended to that. The second one, the way I see it is that there is then that narrative that we are wishing to be the favoured one. It is nice to be you know – there are many people who have been persecuted because they have been perceived to be the favoured people of maybe somebody. So that is what I also like perceive to be one of his sort of like issues and I will then talk about what we have done as Harith. And initially when I talk about Harith I will be talking about Harith Fund Managers and Harith General Partners and I will say how those like evolved. But upfront I would like to sort of like state categorically that I am talking about two private entities which is Harith General Partners, which has got private shareholders being a trust owned by

Management, ABSA, Old Mutual and the PIC at 46%. And I will give a history as to how that happened.

CHAIRPERSON: I take it that is contained in your statement?

MR TSHEPO DON MAHLOELE: It is in the statement.

CHAIRPERSON: Ja.

MR TSHEPO DON MAHLOELE: And the second issue I will also deal with and I need to state upfront is that I get a sense that there is a belief that Harith is a state owned company or perhaps it is supposed to be. From the beginning Harith was never supposed to be a state owned company or a state owned entity as I will outline and as I will also provide proof to that extent, and as to how that happened and how it got to be what it is today.

CHAIRPERSON: I do not think anybody in this Commission has made the suggestion that Harith is a state owned company.

MR TSHEPO DON MAHLOELE: Okay. It is in some of our understandings, Chair that is the sense that we got as to like know why those and that is why you know there is a concern as to how did we move from being 100% state owned company to being 30% only PIC, PIC only. PIC only remaining only with 30%. So therefore to deal with that narrative, I think it stems from the argument which has been like, no people would like to perpetuate that as if Harith is supposed to be an SOE. So that is my understanding. I might be wrong Chair and then the – I have not heard the Commission say that, but it is what we are answering to and it is what we have been living with since last year in terms of accusations. So it is my humble assessment of what is being levelled at us. I might be wrong.

CHAIRPERSON: Alright, if it is in your statement you can carry on with your statement.

MR TSHEPO DON MAHLOELE: Okay. And Chair I will be saying this, it is something that started in 2006 and then to today to give the context of where all this comes from. Since that will give then the whole proper thing of what all this is, is all about. I am a businessman, I am a Director of each of Harith Fund Managers, Harith General Partners and of Lebashe Investment Group. In addition I am employed as the CEO of Harith General Partners and I am the Chairman of Lebashe. When as I said earlier on, when I use the term Harith it will be like to Harith Fund Managers or to Harith General Partners, except when I come to explain how each one changed. But in the beginning it will be Harith Fund Managers and then it changes over. I have made all necessary declarations and disclosures of my directorships and interest to all the companies on whose boards I have served or continue to serve. I obtained a B ...[indistinct] role genversed(?) in 1988. My interest in the investment market was sugared when I joined RMB Management Program which target young graduates in the early 1990's. I have completed various courses in finance, as well as like in 2010 completed a Harvard Advanced Management Program. I am a recipient of various awards, including two recognition awards which this one for me is very special in a sense that it was from ABSIP. You know which was for CEO of the decade which was in 2014, which recognised all the work that we had in building Harith to what it have been today. And some of the work that we have done in the financial services sector. I have spoken on

various international and local platforms to promote infrastructure investment on the African continent. In additions to the positions I have already referred to, I also serve on some other boards, perhaps to confuse the matter even more, like Novo, Anagy, Lanseria International Airport, RainFin ...[indistinct] Exchange, Creed Power and Infrastructure Investments and Dark Fibre Africa, amongst others. Where any of these companies have invested in either of PIDF1 or PIDF2, which in a sense of something like Novo, of Anagy or Lanseria or Dark Fibre Africa. These directorships are all of these are of a non-executive nature and it is a representative of the funds which we ...[indistinct] which is PIDF1 and PIDF2. And I would venture to say that this is very normal in our business that the entities that we have invested in, we sit on their boards, we enhance them, we help them with their growth and we look at how like to not to extract more value out of that investment. That is in a normal course of what we do in these two funds, PIDF 1 and PIDF2. Between 2003 and 2006 I was employed as the head of Corporate Finance and of the Isibaya Fund at the PIC where I reported to the then CEO Mr Brian Molefe. At that stage the PIC was known as a secretariat. I think not many people know that up to that stage the secretariat, it was a secretariat reporting to the National Treasury. And it was in 2004 when the Public Investment Corporation Act was passed, which was entered modernising, expanding the functions of the PIC. The Isibaya Fund was sub-fund of the Government Employee's Pension Fund managed by PIC and this fund in turn reported to the National Treasury and the GEPF and consisted of an allocation of funds. I think at a stage it was

about 3,5% I don't know what it is today. I think it might have been increased to 5 or not, but I stand to be corrected. These funds were devoted towards supporting infrastructure and BEE investment. There are funds meant for like driving the transformative and developmental sort of like investments portfolio of the fund. I was tasked to implement the PIC's BEE strategy during those years of 2003 to 2006. During that time I concluded a total of 13 billion rands worth of transactions between 2003 and 2006. I also put in place a strategy for the fund which achieved in 2003 and 2004 a 45% return. And in 2004 and 2005 a 40% return.

MR DANIEL BURGER: Question, yes.

MR THEMBEKA NGUCKAITOBI: Can I please ask you a question Mr Mahloele? It has been a long time. I have not seen you in a long time.

MR TSHEPO DON MAHLOELE: It has been a while Commissioner.

MR THEMBEKA NGUCKAITOBI: Good afternoon sir.

MR TSHEPO DON MAHLOELE: Good afternoon sir.

MR THEMBEKA NGUCKAITOBI: Thank you, thanks. Can you please give us some examples of the key transactions which you did in paragraph 5? Just one or two or three?

MR TSHEPO DON MAHLOELE: At the time ...

MR THEMBEKA NGUCKAITOBI: If you can recall, I mean it has been a while

MR TSHEPO DON MAHLOELE: I can, ja I can recall. And I think that is where some of like my interest in perhaps infrastructure and investment started. At a time we looked at things like you know the

N3 Toll Road, that was privately funded. It was at a time when the N4 was being built. It was at the time when like you know Vodacom and MTN were still in a growth stage and like you know still like taking up a lot of capital in terms like their growth. There was investment in some of those, so those are some of the transactions of a large nature that I can recall up to now that we, that we looked at, at the time.

MR THEMBEKA NGUCKAITOBI: Okay, thank you.

MR TSHEPO DON MAHLOELE: And ja, we also like did some small there and then, BEI ...[indistinct] but in the main my infrastructure investments were like, our experience started, started then. Paragraph 6.

MR DANIEL BURGER: Mr Mahloele you then, you then move on in paragraph 6 of your statement to a memorandum. And I want to take you there, it is in EXHIBIT 3 at page 7. Do you have EXHIBIT 3?

MR TSHEPO DON MAHLOELE: Yes Counsel.

MR DANIEL BURGER: Now this is a document that runs from page 7 to page 28. Do you see that?

MR TSHEPO DON MAHLOELE: Yes Counsel.

MR DANIEL BURGER: And who prepared this document?

MR TSHEPO DON MAHLOELE: This document was prepared by Mr Brian Molefe.

MR DANIEL BURGER: Well it says submitted by Brian Molefe.

MR TSHEPO DON MAHLOELE: Yes. I prepared the document, but as the CEO since it was going to the GEPF it had to be signed off by the CEO, Mr Molefe.

MR DANIEL BURGER: Okay, so you have personal knowledge of the

creation of this document/

MR TSHEPO DON MAHLOELE: Yes Counsel. Since most of the, what do you call it? The work done on it in terms of like finding about infrastructure, how infrastructure funds are structured, what was like the opportunity on the continent and why the initiative. You know we had done a lot of work up to then. And as I had said earlier on, I said that we started like you know the actual office of the Facilitation Trust in 2006. But then the work of the investigating this issue started even within 2005, when all sorts of like research was done as to like why aren't Africans investing in infrastructure across the continent, because that is what was regarded that the continent needs more than anything to improve our fortunes.

MR DANIEL BURGER: So what, what was the point of this memorandum at page 7?

MR TSHEPO DON MAHLOELE: In 2005, after the challenge to the PIC as to say, you have invested in things like the N3, the N4 and all these infrastructure projects, and out of the challenge which was at then posed by President Thabo Mbeki, as to try and to challenge pension funds to invest in infrastructure, it was tried to see whether you can get an initiative going which can like get infrastructure funded across the continent. And then the first point of call to be made from the PIC point of view was to say, let us go and ask the GEPF to start supporting this initiative and then to the extent that this can be done. And then like you know to talk to other people. I might as well as say at this stage we had already been speaking to the World Bank. We had been speaking to other private sector entities. Looking at what

was going to be the best way to get the fund going to get Africans to start investing in infrastructure as opposed to always asking for aid and that to drive and build our infrastructure. And at the time, maybe I also like saw that last week, perhaps it was not better understood that it went to like the GEPF. At this stage the PIC was asking of the GEPF to let the PIC out of its funds in Isibaya to commit to this initiative to get the fund going, to commit 250 million dollars. That is what the PIC did, wrote to the GEPF. And why it did that, is that at that time the PIC did not have an Africa mandate. And that is how that sort of like happened, and that is how that was driven.

MR DANIEL BURGER: Alright, let us continue.

MS GILL MARCUS: Can I just ask a couple of questions there? Thank you. Just in terms of the submission to the GEPF, did – what was the response of the GEPF? Was it their investment using the PIC as the vehicle? That it was a GEPF 250 million dollar investment that was given to the PIC to manage on its behalf? Was it a direct investment by the GEPF into the Harith Fund?

MR TSHEPO DON MAHLOELE: Commissioner that is actually a very good question and which many people have failed to understand up to now. The GEPF chose to invest directly these funds and not invest them through the PIC. And even the approval by the GEPF was given that they will do that. And even the negotiations during like documentation and everything paused, this was now after 2006, was done by the Investment Committee of the GEPF. It was not done by the PIC at all.

MS GILL MARCUS: So that is – and the subsequent investment by the

GEPF was equally a GEPF investment in Harith GP?

MR TSHEPO DON MAHLOELE: Affirmative. All of it was done through that way and I think if I may as a side, if I may ...

MR DANIEL BURGER: Can I, sorry can I just interrupt for a moment? There might not have been – the Commissioner asked you whether the 350 million dollars was invested in Harith GP.

MR TSHEPO DON MAHLOELE: Okay, both commitments Commissioner of 250 million dollars was made to PIDF1 in 2006. The documents establishing PIDF1 were signed in 2007, it was made directly by the GEPF itself, representing itself. At no stage was the PIC involved in the decision making of that. And even after the PIC had an Africa mandate in 2014, I think either 2014 or 2013, the GEPF still chose to make the investment directly itself. The GEPF sits on our ...[indistinct].

MS GILL MARCUS: Sorry, just to stay with that. So that was the second one was the 350 million dollars and that was made into PIDF2?

MR TSHEPO DON MAHLOELE: Yes Commissioner. Yes.

MS GILL MARCUS: Okay, no that is fine and then I just wanted to ask one other question in relation to that. No, it is alright, that is what I wanted to check on that.

MR TSHEPO DON MAHLOELE: Can I - ...[indistinct] in relation to this point. I would like to make it categorically clear and that is actually what has caused all the confusion in some of these issues. Actually if you read on page 16 and 17 of EXHIBIT 3, paragraph 34, which was the letter, which was actually a written to the GEPF. Then it reads:

“The fund would be promoted from South Africa. The

reason for this proposal is that South Africa is the country with the most developed financial sector on the continent. The country is well advanced in establishing accountability and forcing strong corporate governance and maintaining transparency and efficiency in its capital markets. Furthermore, it is likely that South African institutions will make up the largest single African investment in the fund. However, the PIC Board has further agreed that this initiative should be managed outside of core PIC activities through a separate management agreement.”

MR DANIEL BURGER: Arrangement.

MR TSHEPO DON MAHLOELE: I need to make that point clear Commissioner because even from that stage it was envisaged that funds would be raised from all over the place, wherever we could raise them from. And if you – it is easy today perhaps you think about raising funds and like raising perhaps like huge amounts of money, but in 2006 when you talked about infrastructure and you talked about Africa, all you could talk about was desk spots and like unsettled continent and everything, it was not the perhaps the continent that it is today. I am not saying that like you know there are no problems, but I am saying that 2006 was a very different place. But to the extent that even then when we set out to establish this fund, the first place we went to overseas that told us that there is not a market for billion-dollar fund for infrastructure on the continent. So that should give a bit of a sense of like what challenges we were going to come upon. And

why this statement was also made already then upfront, it was also the understanding that there would be other entities invited to invest in the fund other than perhaps like GEPF, more so. It was to leverage public and private sector funds. And as it is clear later on in my statement who all those other investors are that sit in the Pan African Infrastructure Development Fund and who upfront were made that promise and undertaking that this is the manner in which the PIDF would be managed.

MR DANIEL BURGER: Mr Mahloele can I direct you back to your statement at paragraph 7?

MR THEMBEKA NGUCKAITOBI: Can I – ja. Can I have just two questions on paragraph 6? The first one is that you sort of had a PIC and this GEPF, did they have when they put in this money, did they have the infrastructure to monitor the investments? And who is monitoring PAIDF1 at the moment and PAIDF2 in terms of performance and all that? Ja from GEPF up until now? Am I clear? Am I clear?

MR TSHEPO DON MAHLOELE: Ja, it is very clear.

MR THEMBEKA NGUCKAITOBI: Okay.

MR TSHEPO DON MAHLOELE: Commissioner, and actually as we go along perhaps I will give some of the thing that at the time what one actually thought of that. Actually in 2006, 2007, when that was happening and the GEPF of its own decided that it will make the investment and look after it. There was a bit of a disappointment on my side because I thought that at the time how would the GEPF be able to look after this? Be able to? Because in a fund of this nature you know you have a commitment, you do not have all the money up

front, you make draw downs, you do that. Before the fund is established you negotiate legal agreements, you negotiate issues of you know how does the investment thesis, how the management of all that will be done. But at the time the GEPF insisted that its officials within will do that and they will not give that function to the PIC. And so all the negotiations since then have been with the GEPF and its officials directly from its legal, you know team to its investment offices to its CEO's at that time, whatever, whoever they are. Those are the people that we interact with and report to and send quarterly performance reports, and who also in addition to that for both PIDF1 and PIDF2, they sit on the Investment Committee of the fund. So the Manager, Harith, we prepare proposals. We go look for them all over the place. We assess them. We do due diligences on them. And we present that investment proposal to a board of a sub-committee of the PIDF Fund which is a Investment Committee. And that Investment Committee of the fund makes a recommendation to the Board of Trustees. The Investment Committee is made up of representatives from ABSA, from Old Mutual, from GEPF, from DBSA, from African Development Bank, two independents and myself. And they have monitored this since the beginning. We report to them and that then they make – then they make recommendation to the Board of Trustees. The Board of Trustees has similar like sort of representatives to it. But sometimes like same person from – because some of the entities decide to use the same person for Investment Committee and the Board of Trustees. Some use very different individuals for those.

MR THEMBEKA NGUCKAITOBI: So it is pretty strange because I

mean you know one will think the PIC can manage this much better than GEPF?

MR TSHEPO DON MAHLOELE: Is that a question? Is it a trick question?

MR THEMBEKA NGUCKAITOBI: It is a question you know because it is causing a bit of confusion you know that why isn't the PIC managing this directly you know.

MR TSHEPO DON MAHLOELE: I – you know Commissioner perhaps in 2006 I would have shared your view. Sitting here today I think the GEPF is doing a very good job of looking after that investment directly in our fund. The Counter Investment Committees, they come to the Board of Trustees. They do proper assessments of what do. When they are changing we go to them. They are never not found at that thing. And more so you must remember at that table, you do not only have GEPF, you have other entities. ABSA's representatives, you have like on the Board of Trustees your share of like all the other smaller investors also have appointed a common you know trustee. You have like Old Mutual, so therefore you have very proper expertise sitting at that. And thus far I would not say that they have not had the or it has delayed us in any way, or it has hampered the operations of the fund, because there are other people around the table. And it has actually been for us I think a pleasant experience and perhaps some day over a glass of wine I would be able to tell you why it has maybe turned out to be a better one than perhaps it having been – if it were to be from the PIC or maybe later on you will understand why.

MR THEMBEKA NGUCKAITOBI: Ja. Thanks.

CHAIRPERSON: I hope that conversation would be good.

MS GILL MARCUS: Can I just ask in terms of this, you referred to former President Mbeki having this vision for the Africa Fund and Infrastructure. Was there any formal instruction to the PIC at the time or the GEPF, if you know it, but otherwise specifically for the PIC where you worked, because you then approached the GEPF to look for the funding? Was there any formal instruction, authorisation, either from President Mbeki or from the Minister of Finance? Or was this an initiative of the PIC arising from the vision that the former President Mbeki had?

MR TSHEPO DON MAHLOELE: Commissioner there was normal instruction. It was at the launch of the corporatisation of the PIC, when it was noted that if you look at some of the investments which have been made by the PIC, especially in infrastructure and this is at the time when NEPAD was like an African relations was very much like of a topic on the mouths of everybody and what is happening and like what should Africans be doing. And it had been noted that this which we now called a PIC was perhaps, it was a secretariat which had been there in the National Treasury since 1911. And all the things that it had funded up to then. And if you see some of the things that it had been able to do, all the type of patient money it has and it was almost in a form of a challenge that then President Mbeki said at this launch, we have seen what is like you know the PIC has invested in with regards to infrastructure and all these other good things. And it is noted that one of Africa's biggest problems is its lack of infrastructure which is a asset class which requires a very long time to build. So

therefore can we find or put a challenge to you guys to see that to the extent that you have done this in South Africa, what do the other pension funds on the continent invest in? Are there any? Do they invest in the infrastructure? Why is Africa keeping on bagging money everywhere all the time to drive her own agenda? Go and find that out. That would be like at this stage at which then you know you becoming a corporatized entity. See how is it that you can then start playing a role in terms of like contributing to that challenge. There was in no way an instruction of any sort, because as a I have eluded to it, the decision to invest was made by a Board of Trustees of the GEPF made up of representatives from labour, half of them, and half of them from the employer organisation.

MR DANIEL BURGER: Thank you. We are going to have to go a bit back in time. Back to paragraph 7.

MR TSHEPO DON MAHLOELE: Okay, can I go on?

MR DANIEL BURGER: Yes please.

MR TSHEPO DON MAHLOELE: Okay. The PIC's Management Executive Committee identified me. I do not wish to sound arrogant at all about this. It is simply that that at the time I was managing the Isibaya Fund. I had been the one who had been investing in other private funds, I had been the one been doing all the work, I had been the one doing some of the research and doing that, and some of the investments in infrastructure. With effect from 31 March 2006 I resigned from the PIC with a specific task of establishing the PIDF, outside of the PIC and in deed of all institutions in which government had a stake. My resignation was not – I have said it was not a

secondment. Can I also like say again, it was also not a deployment. I had in fact been intending to leave the PIC anyway at that stage. I was actually planning to like move down to Cape Town at the time, but then I abandoned those plans. It was actually towards my own fund there, but those plans were abandoned. And it is also like if I may Counsel, on page 21.

MR DANIEL BURGER: This is of EXHIBIT 3.

MR TSHEPO DON MAHLOELE: Of EXHIBIT 3. Clause 55. Even then already we had been talking and we eluded to the issue of the Fund Manager. Clause 55 reads:

“The most successful independent private active funds and fund managers are those where the partnership is structured to ensure continuity of the investment team. Investors will ensure that investment professionals are full-time employees of the Fund Manager.”

Clause 58 further down says:

‘Tshepo Mahloele, that is me, who is currently heading Isibaya Fund, it appears he will lead the secretariat which will report to the steering committee and coordinate processes required to bring the fund to fruition.’

When I talk about the secretariat, I may just elude to the fact that post leaving the fund, or post leaving the PIC in 2006, what was created was the PIDF Facilitation Trust. And the Facilitation Trust was meant to be the vehicle to bring everybody together to try and drive this initiative forward. And the two trustees of that fund were Brian

Molefe as the CEO of the PIC then and Professor Wiseman Nkuhlu. And if you remember then, Professor Wiseman Nkuhlu at the stage was the heading the NEPAD secretariat. And it was on that basis that he sort of like you know wisdom and advice would be brought on to help with the facilitation of this initiative. I will go on.

MS GILL MARCUS: Sorry, just going back to your point 58 there, because that is a little bit ambiguous in that it says, who is currently heading Isibaya Fund at the PIC will lead the secretariat. I did not see where it said the secretariat would be part of this fund that was initially set up, because this is not or does not state clearly that you would be leaving the PIC. Did you leave the PIC at that time?

MR TSHEPO DON MAHLOELE: Yes, I left the PIC end of April 2006. What was created with approval of the PIC Board and National Treasury, which attachment I in my submission, it was because what we were advised then, what the PIC and everybody was advised then, is that in order to drive this initiative forward the best legal structure to create would be a trust. And then see how that – and because at the end of the trust you can wind it down in terms of that. And then that is why it was actually called a Facilitation Trust.

MS GILL MARCUS: No, that is fine. I was just saying because this does not make it clear that you left the PIC to do that.

MR TSHEPO DON MAHLOELE: Oh okay.

MS GILL MARCUS: That we just needed to get the date in which you left the PIC in relation to clause 58.

MR TSHEPO DON MAHLOELE: Okay. The date was April 2006. There is a letter, I think an attachment which you know wherein like my

resignation you know was done. But also there is an agreement between myself and the Facilitation Trust for my services that I would offer to the Trust. But my resignation, everything, even taking my pension fund out of the PIC was from April 2006.

MR DANIEL BURGER: And this document is dated 11 November 2005?

MR TSHEPO DON MAHLOELE: Yes. This was at a time when like the initiative was still being put together and sold around.

MR DANIEL BURGER: So at the time of this document you were still very much in the PIC?

MR TSHEPO DON MAHLOELE: Yes.

MR DANIEL BURGER: I think we are at paragraph 8.

MR TSHEPO DON MAHLOELE: It was a risky and unprecedented challenge for a number of reasons. The PIDF was envisaged as part of implementation of the important vision of the African renaissance of President Mbeki to attract private sector investment for the advancement of African infrastructure and the creation of wealth on the continent. The PIDF had to be and had to be seen to be entirely independent of government control. The example I always make, if I may Commissioner, is that you know it would be a challenge if we had like raised money from all over the continent, from whether it is Botswana or Ghana or whatever, and then we then have to explain why you made an investment in Cameroon to a parliamentary committee of one of the – which then affects like that. So that is why it had to be seen to be independent of all those different influences. Paragraph 9.

MR THEMBEKA NGUCKAITOBI: Question. Coming back to paragraph

7, you were working for the PIC and this fund was funded by the GEPF, who asked for who to say you need to leave the PIC to start a fund? Did the GEPF go to the PIC and say, they need you or did the PIC go to GEPF and say they can release you and all that? Can you explain that please if you can clarify that?

MR TSHEPO DON MAHLOELE: I wish it had been the GEPF which said like, you know we want you to release this guy by then, but that is not what happened. What happened was that the PIC before – when we got this point, you must know there has been a whole lot of reiterations with other investors whether they would be there and how that would happen. And what was agreed was that, it was not even agreed then that I would be the CEO of Harith Fund Managers. At that time what was created was the PIDF Facilitation Trust. And I would be then the secretariat and the person driving that initiative of the Facilitation Trust. So up to that stage there had not been talk of let us say me being CEO or anything, I was going to head up the secretariat which was going to go about establishing, running, managing, raising funds, preparing information memorandums, visiting all these other people, establishing the investment case for such an initiative. And even at the time why even a secretariat was thought of to be even outside of that, if I – to even like bring out some of like that information. Even at the time we actually thought of partnering up with Nigeria to put up this whole thing together. So this thing took on many different reiterations, formats as it was developed going forward. But at the time what was decided was to give this thing impetus, let us establish a secretariat outside of PIC, so that it is able to attract other

funds, able to attract other partnerships and then see what is it that we can put together in the form of funds to drive this initiative forward. Both public and private.

MR THEMBEKA NGUCKAITOBI: Ja, sorry sir, ja.

MR DANIEL BURGER: Sorry.

MR THEMBEKA NGUCKAITOBI: Mr Burger, ja, sorry. Ja, so the fund is established, the trust is established? What? I mean then was there some looking for a Chief Executive, how did the process go further then after the trust you know had been established?

MR TSHEPO DON MAHLOELE: Once the Facilitation Trust was established from about April, May 2006 to October 2007, we visited many pension funds across the continent, across the world, but more so in Africa. Some of the places we went like you know three times in any one year. Like I think we went over like 15 countries that we visited from Morocco to Egypt, to Zambia, understanding how all of them invest their pension funds and whether we could entrust them in this initiative going forward. And I had by that time also like built up and like know hired two other people to help me with that, with the work of establishing that. And actually from April 2006 a separate office was actually established to run with this initiative. And actually even then why even a separate office was actually established was that actually, we were actually expecting some Nigerian partners or colleagues who were like had shown an interest to be in this to come and join us in that. Unfortunately we could not agree with that offices would be in Pretoria or Johannesburg or Lagos. So those are some of the issues. By then a lot happened during that time and what the

platform which was used to drive that, was the Facilitation Trust. And how at the time in October 2007, when then all this work had been done and all these investors had been like secured, then the PIADF Fund actually was created. And what then happens is that all these investors, all eight or nine of them, commit to the PAIDF Fund. They do not deposit their money, they sign a commitment letter to say that over the life of the fund this is the amount they will commit to the fund. And as you create that then you also then create a manager who then contracts with the fund to manage those funds. That is where now HFM is then created.

MR DANIEL BURGER: Before, before we get there and I have been told by Mr Lubbe that the Commission stops at 4 o'clock, can I just make a reference and just put a line there? Your formal relationship with the Facilitation Trust was started with the document – if you will turn to page 51 of EXHIBIT 3. Am I correct that the document from page 51 to 66 was the agreement which secured your services for the PAIDF Facilitation Trust? Just press the button please.

MR TSHEPO DON MAHLOELE: Okay. Yes Counsel, this was through a Chair. This was in round about June 2006, wherein I contracted directly after having resigned from the PIC to now do this work on behalf of the secretariat which is like the Facilitation Trust. And it states that the Trust hereby appointed me to render services to the Trust. And I accepted such appointment. And I undertook to provide to the Trust the following services for the duration of this agreement which was to establish the Fund, establish the secretariat for the Fund, establish the Fund Manager and raise an initial US billion

dollars for the fund.

MR DANIEL BURGER: You were reading there from page 57, is that correct?

MR TSHEPO DON MAHLOELE: Yes Counsel.

MR DANIEL BURGER: Chair would this be an appropriate time to take an adjournment?

CHAIRPERSON: Yes, the Commission will adjourn until 10 o'clock tomorrow morning.

INQUIRY ADJOURNS