

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO.: 2015/42219

In the application of:

TSHEPO LUCKY MONTANA

Applicant to be admitted as
amicus curiae

In re:

PASENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SWIFAMBO RAIL LEASING (PTY) LTD

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT Tshepo Lucky Montana intends to apply to this Court, on the hearing of the main application, set down for the 1st and 2nd June 2017, for an order in the following terms :

- 1 That Tshepo Lucky Montana is admitted to these proceedings as an *amicus curiae*;
- 2 That the Founding Affidavit of Tshepo Lucky Montana attached hereto is admitted as evidence in the matter between the PRASA and Swifambo;
- 3 Further and/or alternative relief;

TAKE NOTICE FURTHER that the affidavit of **TSHEPO LUCKY MONTANA**, together with the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed **SAINT ATTORNEYS** as its attorneys of record, at the address set out below, where it will accept service of all further notices, documents and other process in connection with these proceedings.

DATED at SANDTON on this the 6th day of MARCH 2017.

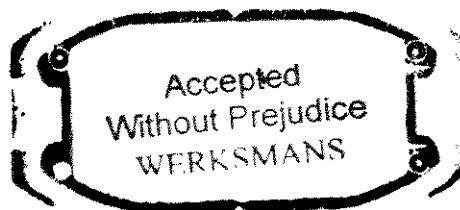


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TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT
GAUTENG LOCAL DIVISION

AND TO:
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7/3/2017
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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO.: 2015/42219

In the application of:

TSHEPO LUCKY MONTANA

Applicant for leave to be
admitted as *amicus curiae*

In re:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SWIFAMBO RAIL LEASING (PTY) LTD

Respondent

FOUNDING AFFIDAVIT

I, the undersigned –

TSHEPO LUCKY MONTANA

do hereby state under oath as follows:

- 1 I am an adult male and I reside at 335 Main Street, Waterkloof, Pretoria. I am the former Group Chief Executive Officer (GCEO) of PRASA.


T.L.M.

- 2 The facts to which I depose are within my own knowledge, save where otherwise indicated, and are true and correct. Where I make legal submissions, I do so on the advice of my legal representatives.

INTRODUCTION AND OVERVIEW

- 3 I have read the founding papers in the application of the applicant (to whom I shall refer herein as "**PRASA**").
- 4 PRASA has not cited me as a respondent to its application. Although PRASA seeks no relief against me, PRASA, in its founding affidavit has made a series of untrue allegations which may have an adverse effect on the outcome and findings of this Honourable Court at the hearing of the main application.
- 5 I submit that after having read the Answering Affidavit it becomes clear that the Swifambo Rail Leasing (Pty) Ltd ("Swifambo") is unable to answer to many of the allegations made in the Founding Affidavit of the Review Application as they relate to specific internal PRASA policies and processes. I and my former colleagues at PRASA have intimate knowledge of these facts, I wish to put before this Honourable Court material information which will most certainly affect the outcome of this matter.
- 6 I confirm that I will abide by this Honourable Court's decision and I do not seek a cost order against any of the parties. I do not support nor oppose the application

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by PRASA and simply file this affidavit to ensure that a proper decision is made in the interests of justice.

7 In this affidavit I intend on making a contribution in respect of the facts of the case. I wish to assist this Honourable Court with these additional facts to come to a conclusion on the issues raised.

8 As Swifambo is not in a position to answer to much of the allegations contained in the Founding Affidavit, this I submit constitutes a clear breach of the Constitutional transparency that our Constitution dictates, as PRASA should have laid out all of the necessary information so that it may be scrutinized by this Honourable Court, the Public and Swifambo.

9 PRASA is a public entity. Section 32 of the Constitution states, everybody has the right of access to information that is held by another person and that is required for the exercise or protection of any rights. I quote the pertinent provision below for this Honourable Court's reference

" 32 Access to information

(1) Everyone has the right of access to—

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights."

- 10 Whilst my admission into these proceedings is not at the request of either of the parties, I respectfully submit the information held by me, which is contained in this affidavit, should form part of the public sphere and within their knowledge. The information contained herein is expressed solely with the intention of this Honourable Court being fully appraised of the facts.
- 11 As I shall demonstrate more fully below, I seek leave to be admitted in this matter as it is in the public interest and in pursuit of my objectives to provide this Court with the relevant context in which the tender was awarded to Swifambo. In order to do this, I seek to be admitted as *amicus curiae* to advance legal argument and for my evidence to be admitted into these proceedings.
- 12 I respectfully submit that transparency and openness is one of the core founding provisions of the Constitution, this Honourable Court must be appraised of all the relevant facts and not only selective facts, particularly when a Court is presiding over matter of this serious nature. Further, to put facts before the Court selectively is unconstitutional.
- 13 There is no clear guidelines as to what an ex- public official, or any person who holds intimate knowledge of a dispute, should do where he knows that an application is brought for the review and setting aside of a decision while knowing that application is based on incorrect information. He is in essence precluded from joining as a Respondent as he has no direct interest in the outcome of the litigation, whilst the evidence which he wants to provide is clearly in the interests of justice.

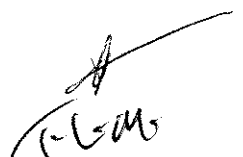
This would evade the entire purpose of transparency under our Constitution if such a person were not allowed to adduce such evidence.

- 14 This application raises the question of which procedure to take in this particular scenario. It is with respect submitted that this Honourable Court be called upon to provide guidelines for what should be done in cases such as these where if material information has not been laid down, it would result in an order which be against the interests of justice.

Background

- 15 Popo Simon Molefe ("Mr Molefe") has incorrectly made statements which allude to me being the driving force behind the granting of the tender to Swifambo but fails to provide the evidence to support his claims. As the former GCEO of PRASA, I was never involved in the tender process for the procurement of the locomotives or in the evaluation and adjudication of tenders in general. The PRASA Supply Chain Management (SCM) Policy provides for the business to set up independent committees and processes to evaluate and adjudicate on tenders, make a determination on whether or not to award any business and to make appropriate recommendations to the GCEO or the Board as per the Delegated Authority of PRASA.

- 16 In his Founding Affidavit, Mr Molefe attacks my personal integrity and advanced numerous false allegations against me. Key, among these, is that the locomotive tender was rigged in favour of Swifambo and that I was the central person behind such unlawful conduct. Mr Molefe further alleges that I, in my capacity as GCEO of PRASA, did not have the authority to enter into a contract with Swifambo. He concedes in his Replying Affidavit and acknowledges that (1) the tender followed processes provided for in the PRASA SCM Policy and (2) the award to Swifambo was approved by the erstwhile Board of PRASA and not by me.
- 17 The Board of PRASA approved, in July 2012, the award to Swifambo at the recommendation of its Finance, Capital Investment and Procurement (FCIP) Committee. The Board further authorised me in my capacity as GCEO to finalise the Contract. As a direct result of the Board approval, PRASA and Swifambo entered into a Sale and Purchase Agreement, which PRASA is irrationally seeking the Court to declare as unlawful and an Order setting aside the contract with Swifambo.
- 18 However, PRASA and Mr Molefe realise that they could not cancel the contract based on (1) Claims of possible default on the part of Swifambo as provided for in the Contract because this could not be substantiated, and (2) PRASA seeks to avoid dispute-resolution mechanisms provided for in the Contract because this will simply reinforce the Contract between itself and Swifambo. Instead, PRASA is attempting to use other tricks in the book, including scurrilous claims the bid was rigged by me in favour of Swifambo, as a justification to cancel the contract with

A handwritten signature in black ink, appearing to be 'T. G. M.', is located at the bottom right of the page.

Swifambo. But a careful look at the reasons advanced by PRASA proves that these are simply false, invalid and totally irrational. I will explain these dynamics in greater detail in the body of my affidavit below.

19 At the very least, I respectfully submit that I am sufficiently interested in this application to justify my admission as an *amicus curiae* in the abovementioned proceedings. I accordingly apply to be admitted as an *amicus curiae*.

20 In making these submissions and as stated above, I point out that I take no position on the merits of the relief sought in PRASA's application, I shall neither support nor oppose it. In this affidavit, I shall address the following issues:

20.1 First, I shall address the nature of my interest in these proceedings;

20.2 Second, I shall provide the evidence I wish to place before this Honourable Court;

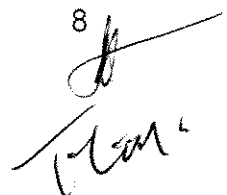
20.3 Third, I shall explain the reasons why my evidence would be of value to the this Court in its determination of the matter in the event that I am admitted as an *amicus curiae*; and

20.4 Finally, I shall explain the other parties' attitudes to the admission of myself.

21 I respectfully state further that the Applicant is taking a cheap shot by alleging corruption against me without joining me to these proceedings, the Applicant is using this Court as a podium to insult, tarnish and defame my good name. This I submit is a blatant disregard for the law and constitutes an abuse of process.

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T. L. M.

- 22 Furthermore, I wish to demonstrate to this Honourable Court that the evidence of Mr Molefe constitutes hearsay and is actually wholly inaccurate due to his lack of personal knowledge of the material facts. In this regard I submit that Mr Molefe has perjured himself and will find himself in a very difficult position once he has had regard to the factual content contained herein.
- 23 Mr Molefe's affidavit is incorrectly leaving the public to believe that the entire agreement between PRASA and Swifambo is erroneous. This is simply incorrect as only 20 locomotives, out of the consignment of 70 locomotives, were in the process of being delivered, moreover the remainder of the consignment are different locomotives to the initial 20 in their entirety. This will be dealt with more fully below.
- 24 It is my intention to bring to this Honourable Court material facts which Mr Molefe has intentionally omitted to present. I will present evidence to display that there is no merit in the review application instituted by PRASA and is instead part of Mr Molefe's bigger plot and personal vendetta against me.
- 25 This matter is one of public interest and has been and will continue to be widely reported, I respectfully submit that almost everything within the past two years that has been reported about the locomotives in question is false, as I will demonstrate below. To this end, the public are being misled which is damaging to our country.
- 26 I shall deal with each of these issues in turn.

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UNLAWFUL SURVEILLANCE

27 This review application instituted by PRASA against Swifambo and the serious allegations levelled against me, are in fact a child of an unlawful investigation. This is managed by Werksmans Attorneys but the information is primarily generated from surveillance reports compiled by Basileus Consilium Professional Services ("BCPS"). Individuals and companies being investigated are subjected to unlawful threats, intimidation, surveillance, interrogation and even blackmail to provide information that could be used to "nail Montana".

28 I wish to give an indication to this Honourable Court of this malicious vendetta, I can confirm that I have been the subject of a wholly unlawful intelligence operation which is continuously violating my rights as a citizen of the Republic of South Africa.

29 PRASA has been working with a number of companies and individuals in conducting an unlawful investigation against me. The companies involved in this illegal intelligence operations are Werksmans Attorneys, BCPS, Crowe Howard Forensics, Ngubane and Company, and Private Investigators: Mr Paul O'Sullivan and Mr Dion Pienaar. These companies and individuals were appointed under the pretext that they are conducting a forensic investigation as part of the remedial actions of the Public Protector, when in fact, they are running a rogue intelligence operation.

- 30 Details of the unlawful surveillance activity are recorded in my letter to the Minister of State Security, Honourable David Mahlobo, MP, dated 10 February 2016. A copy of which is annexed hereto marked "**TLM1**". The letter was sent on 15 February 2016 and formally acknowledged on the same date by Lungile Setlogelo of the Office of the Minister, who "noted with thanks and the letter will be passed on to the Minister" a copy of such response is annexed hereto marked "**TLM2**".
- 31 I have further written to the Head of the DPCI, Major-General B Ntlemeza, I annex hereto marked "**TLM3**" my letter to him confirming the above.
- 32 I have been subjected to an intense surveillance activity by BCPS and my home in Waterkloof has been broken into on three different occasions, with agents desperately trying to find information they believe could "nail" me. It is important that this Court be made aware of the nature and modus operandi of Mr Molefe.
- 33 Mr Molefe is fully cognizant of the pitfalls and legal deficiencies he has created as a result of this investigation and is now attempting to use this Court to "legalise" the unlawful investigation as well as manipulation of historical facts into negative speculation and placing much of it before this Honourable Court in a form of affidavits. It is my humble view that this is a blatant abuse of process and must be dealt with by this Honourable Court in a very stern manner.
- 34 In light of the above, this Review Application is misplaced and premature. It is also an attempt by Mr Molefe and PRASA to pre-empt a proper investigation by the

Directorate for Priority Crime Investigation ("DPCI"), otherwise known as the "HAWKS". The matter of Swifambo is but one among a number of matters that PRASA has apparently reported to and are being investigated by the "HAWKS". However, Mr Molefe and PRASA have been unable to provide evidence whatsoever to support their wild claims of tender rigging and widespread corruption. Mr Molefe and PRASA know that if they did, they would probably incriminate themselves in criminal conduct. The so-called evidence refers to illegal intelligence operation that Mr Molefe and PRASA has authorised against me, Swifambo and others through a company called Basileus Concilium Professional Services (BCPS), which is being paid for the unlawful activities through Werksman Attorneys. This explains the massive cost of the Werksman investigation, which is reportedly in excess of R120 million and still not complete.

- 35 PRASA is afraid to place before the "HAWKS" the information generated by BCPS for fear of being caught. I have brought this unlawful conduct to the attention of the Minister of State Security early in February 2016 and opened cases at Brooklyn Police Station as well as reported this to the DPCI.
- 36 The intelligence operation, which violates various statutes governing intelligence in South Africa includes physical surveillance, the monitoring and interception of communications, including tapping of telephones, hacking of bank accounts, surveillance and monitoring of houses, offices and vehicles and numerous break-ins into houses.

- 37 Since July 2015, I have been subject to this intensive campaign by a gang of criminals who had arrogated to themselves key functions of the State. The trail of this operation is established that it will no longer be possible to undo. This is in breach of the Constitution and the various laws that govern intelligence in South Africa.
- 38 Reports from BCPS contain information which was obtained unlawfully through surveillance and armed men would forcefully entering people's homes. In one particular instance, the armed men pretended to be building inspectors from the City of Tshwane forcefully entered my house or present themselves as coming from the National Prosecution Authority.
- 39 This I submit is clear evidence of the unlawful intelligence operation. This report provides solid evidences that PRASA is being run by rogues whose behaviour can be likened to the "mafia". I annex hereto marked "TLM4" a copy of the file content of the unlawful investigation which is ongoing.
- 40 The strategy of the Applicant is to hide its own criminality and attempt to place before the Court information obtained from the illegal intelligence operation by BCPS and attempt to secure a judgement based on untested allegations. Mr Molefe and PRASA hope the Court will rule in their favour and then present this as well as Court Records to pressurise the "HAWKS" to act in line with their wishes. In this way, the unlawful surveillance conducted by BCPS against myself, Swifambo and others will not be detected. If the allegations of rigging and corruption are true,

PRASA should submit its evidence and allow the, "HAWKS" to do a proper investigation in terms of the Prevention and Combating of Corrupt Activities Act of 2004. The National Prosecution Authority ("NPA") will make the final decision on whether or not to prosecute based on the evidence submitted to it by the investigators.

- 41 The review application against Swifambo is premature. It should not precede a proper investigation by the "HAWKS" and a successful prosecution by the "NPA". This Court should not make a determination based on untested allegations unless these have been properly investigated by the "HAWKS" and the "NPA" has decided to prosecute and secure a conviction against those responsible for criminal activities.

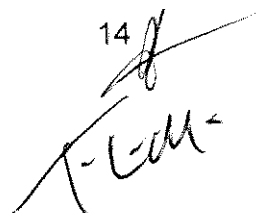
ALLEGED INVOLVEMENT OF THE AFRICAN NATIONAL CONGRESS

41.1 In his desperate attempt to prove instances of corruption and manipulating the mood of the public, which seem to be strongly against corruption, Mr Molefe in his replying affidavit makes an alarming claim that public funds meant for the acquisition of locomotives had been paid to the African National Congress (ANC). PRASA never paid any money to the ANC during my tenure as Group CEO.

41.2 Further, Swifambo never defaulted on any of its contractual obligations, and therefore could not have used funds earmarked for locomotives to pay the

ANC. If any of the Swifambo Director donated or contributed money to any political organisation or individuals, this is their own decision and had nothing to do with PRASA. I still cannot comprehend the real motive of Mr Molefe in dragging the good name of the ANC into the mud.

- 41.3 Both PRASA and the Office of the Chief Procurement Officer in National Treasury are in possession of financial records proving beyond any doubt that the bulk of the funds paid to Swifambo ended up with Vossloh and other component manufactures of locomotives. This means that the public funds were used for the intended purpose, prompting Treasury officials to urge PRASA not to pursue their litigation because the allegation of corruption are not be supported by facts.
- 41.4 Popo Mr Molefe is playing to the gallery and simply trying to manipulate the public outcry against corruption and the perception of failure by Government and/or the ANC to deal decisively with this malaise in our society. He is effectively alleging that the ANC is a beneficiary of corrupt money and involved in money laundering. I have noted that the ANC had issued a public statement denying ever receiving money from PRASA, Mr Mashaba or Swifambo. As a senior member of the ANC, I expected Mr Molefe to consult with the ANC first to verify these false claims.
- 41.5 The statement by Mr Molefe in his Replying Affidavit that almost R80 million of the locomotive money went to the ANC is not supported by evidence. It is an inference that the ANC benefitted from payments made to certain

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individuals alleged linked to the organisation. This statement by Mr Molefe is however the clearest confirmation that investigators conducting illegal surveillance under the auspices of BCPS and Werksman Attorneys, had in fact illegally hacked bank accounts of individuals and companies. The Applicant must explain where and how they obtained these financial records.

41.6 I joined the ANC in 1987 following years of activism in the student and youth movement in Mamelodi. I remain a member to this day. I have been involved in many ANC activities and had helped in fundraising for the party in the past. However, I have never used my position as GCEO of PRASA to channel public funds to the ANC. This accusation is strongly denied.

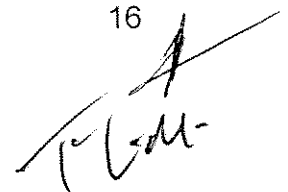
41.7 To the contrary, I have fought against corruption within PRASA. There are instances when I fought against individual ANC leaders or members who wanted to use their positions to benefit unduly from tenders within PRASA. There was one particular instance where an ANC leader, claiming to be acting on behalf of the ANC, pressured me to channel 10% of the first payment of R460 million due to Swifambo, in terms of the Sale and Purchase Agreement, towards him. I rejected this outright, indicating this was first and foremost unlawful and I was not interested. I concluded this was the work of a greedy individual who was using the name of the ANC to enrich himself. It never happened.

41.8 There were other powerful forces that attempted to influence improperly the PRASA Rolling Stock Fleet Renewal Programme (RSFRP). I resisted such

attempts and there were threats to dissolve the erstwhile Board of PRASA and fire me as GCEO if I did not accede to the demands. I resisted these attempts and indicated that I was prepared to resign but promised to spill the beans on these unlawful activities. We resolved with the erstwhile Chairman of the Board, Mr Sfiso Buthelezi that we rather lose our jobs than collude in what would constitute acts of criminality. We resolved that we would push the transaction to its successful conclusion, with the understanding that we may lose our jobs.

41.9 The contract for the acquisition of new commuter trains for Metrorail to the tune of R53 billion was signed between the Alstom CEO, Mr Patrick Kron on behalf of Gibela rail Consortium and myself as GCEO of PRASA, in October 2013 in Johannesburg. This significant moment coincided with the State Visit of the President of France to South Africa. The signing ceremony was attended and witnessed by the President of the Republic, His Excellency Mr JG Zuma and his French counterpart, His Excellency Mr Frascois Hollande and Ministers of State from the two countries.

41.10 The final victory came when South Africa's Finance Minister gazetted the deal in April 2014 and we reached Financial Close. The contract came into force and this was a major victory against powerful political and economic forces who wanted to interfere in the procurement process and manipulate this in favour of their preferred partners.

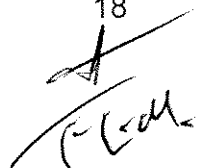


- 41.11 Powerful individuals, using the name of the Black Business Council (BBC), had tried to manipulate PRASA employees during the period of the acquisition of new commuter trains and direct these in favour of their partners. With the support of the Board, we changed the rules for the invitation to participate for black players in the industry. We ensured that the process was transparent and opened to all black South Africans who were interested to participate in the transaction, rather than allow "elite pacts" where international companies select a few individuals among influential and well-connected groups and money exchange hands.
- 41.12 We also needed black players in the industry who would become long-term partners and gradually become genuine industrialists in a revitalised rail engineering sector. A massive campaign to discredit me followed the PRASA decision on BBBEE participation in the rolling stock tender process and my resoluteness in blocking attempts to make easy money by black elites.
- 41.13 I feel proud that as a disciplined and loyal member of the ANC, I have been in the forefront of the fight against corruption and attempts by individual leaders and/or influential members of the ANC to manipulate tender processes. I offended a lot of powerful people within the ANC and Government and knew "the daggers were out for me".
- 41.14 When the new Board of PRASA was appointed, I knew my time was up. I raised my concerns about the appointment of the new Board under Mr Molefe with some Government and ANC leaders. I pause to point out that some of

the newly appointed Directors had criminal records and were not suitable for appointment as Directors. Despite assurances that the new Board will work with me, the offensive started immediately after the new Board assumed office. I knew that the knives were out for me and decided to step down from my position. I submitted my letter to the Chairman on 15 March 2015 informing the Board of my decision to step down and committed to serve a 6 month notice period. I had fought and blocked attempts by powerful forces to manipulate tenders at PRASA and had I relented to this, I probably may still have been the GCEO of PRASA today.

MY INTEREST IN THIS APPLICATION

- 42 During or about September 2004, I was appointed as the Deputy Director-General in the Department of Transport. I was managing the biggest branch within the Department, specifically responsible for rail, bus and taxi operations and served on the Board of the South African Rail Commuter Corporation (SARCC), the predecessor to PRASA. PRASA as a legal entity was only established in March 2009 following Amendments to the Legal Succession to the South African Transport Services (SATS) Act in December 2008 as well as numerous Sale of Business Agreements between the SARCC and Transnet governing the transfer of Metrorail, "Shosholoza Meyl" and Autopax.
- 43 I was appointed by the Board after consultation with the Minister of Transport, as the Acting CEO of the SARCC in July 2006 on an eighteen (18) month contract to deliver the following:

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- (a) Arrest the decline of commuter rail services otherwise known as Metrorail;
- (b) Drive the consolidation of passenger rail entities (SARCC, Intersite, Metrorail and Mainline Passenger Services (MLPS), otherwise known as "Shosholozza Meyl"; and
- (c) Prepare Rail to play a meaningful role during the 2010 FIFA World Cup.

44 Cabinet confirmed my appointment as permanent CEO of the SARCC in October 2007. I was able to deliver on the Government mandate by the end of the 2009/10 Financial Year. I presented a new strategy for PRASA to the Board in September 2010, which made provision, among others, for the acquisition of a modern commuter fleet for Metrorail and modern locomotives, as part of the turnaround of the inter-city rail business ("Shosholozza Meyl"). This Strategy was a major turning point in the direction of PRASA, and was accordingly approved by the Board. It was from this that I was given the mandate to drive the modernisation of passenger rail services in the country.

45 During my time as GCEO, I was responsible for, among other things, providing leadership in the operations of PRASA, drive the implementation of PRASA Strategy as approved by the PRASA and the Minister of Transport, responsible for the day to day operations of PRASA, manage PRASA assets, served as the custodian of PRASA policies, position PRASA within the public transport market. Overall, I was responsible for making important decisions about the future of the

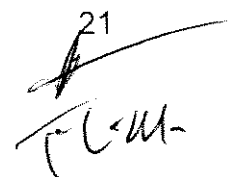
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company within Delegated Authority. In addition to this, I was a member (Executive Director) of the Board of PRASA for almost a decade.

- 46 I respectfully state that as a result of my role and experience within PRASA, transformation of Public Transport, restructuring of State-owned companies such as Spoornet and Ports within Transnet, South African Airways (SAA), Eskom, Telkom, Safcol, SASRIA as well as involvement in the Property Portfolio of the State and Construction Industry, I am an experienced executive and have a very intimate knowledge of the operations and business of PRASA (including its rail, bus and property portfolios) and as such I am in a position to provide valuable material information to this Honourable Court which I believe the Applicant has omitted to divulge which will have an adverse effect in the outcome of the review application.
- 47 I respectfully state further that given the magnitude of this matter and given that PRASA is a public entity, which is ultimately accountable to the citizens of our country, it is absolutely imperative that all information necessary, must be forthcoming and placed before this Honourable Court.
- 48 I respectfully state that Mr Molefe has placed a substantial amount of information before this Court which relate directly to the inner workings and business operation of PRASA. It is my respectful view that the information before this Court is fraught with factual inaccuracies and actually demonstrates that Mr Molefe is not familiar with the very entity of which he holds the position of Chairman. He has attempted to put together information which he has no intimate personal knowledge but tries

to create negative speculation which lead him to a costly and unlawful investigation against Swifambo and myself.

- 49 As stated above, I have reason to believe that the litigation instituted by PRASA is driven by a vendetta against me as well as a shoddy motive of Mr Molefe in an attempt to ultimately obtain a financial benefit. I am aware that Mr Molefe had pressured PRASA Management to speak to independent contractors and explore ways of providing alternative locomotives to the Swifambo/Vossloh locomotive. It is an attempt to create a deal that he and his Board will be directly involved in, even before this Honourable Court has made a determination on the review application. Mr Molefe is driven by greed and jealousy which define his hidden agenda against me which will surface at some or other time. It is for this reason that the Applicant makes such bold, unsubstantiated allegations of among others, rigging and by inference corruption, against me in its founding and replying affidavits.
- 50 The Applicant's dispute with the Respondent should be exactly that, a dispute with the Respondent, however the Applicant chose to air out a string of unnecessary and irrelevant distortionary statements of the true facts which directly and indirectly relate to me which I respectfully submit will not assist this Court whatsoever in the determination of the review proceedings.
- 51 I am particularly disappointed with Mr Molefe for placing before this Honourable Court information that is irrelevant to the Review Application. I expected him to be sensitive and refrain from making false and unfounded allegations. He has been

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himself a victim of similar accusations in the past, many of which had not been fully investigated.

52 Mr Molefe has been accused of being involved in fraud and corruption during his tenure as the Premier of the North West Province. This includes allegations of improper conduct in the management and "looting" of the "D Account", which was established to house royalties from mining houses meant for rural communities and their chiefs in the North West Province. The "D Account" matter is currently being investigated by the Office of the Public Protector. There were allegations against Mr Molefe that he manipulated the issuing of gambling licences and used the proceeds to benefit himself and his companies. There is a serious allegation that a portion of the more than R120 million paid to Werksman Attorneys for the PRASA investigation was meant for and went to Popo Molefe directly through cash payments facilitated by BCPS. There are also allegations that Mr Molefe receives monthly cash payments facilitated by Moya Nape, a Director of SA Fence and Gate, which may explain his reason to protect this company despite overwhelming evidence that it failed to deliver on its contract obligations to PRASA.

53 A further allegation widely reported in the media came from his previous wife claiming Mr Molefe molested his 10 year old daughter and this matter seem not to have been properly investigated. He has denied these allegations in public and claimed they are part of a political agenda against him. The principle is that untested allegations should not be put before the Courts unless these have been properly investigated by the relevant law-enforcement agencies.

- 54 However, some of the allegations had proved to be true. For example, he has admitted to paying himself money as Chairman of PRASA and had already repaid over R680 000 of almost R2 million he stole from PRASA. This after the Portfolio Committee on Transport and the Minister of Transport instructed Mr Molefe and his Board to bay back monies they had illegally paid themselves. Mr Molefe and his Board were given a deadline of 31 January 2017 by the Minister of Transport to repay the money.
- 55 The Auditor General South Africa made a finding against him for undue benefit in the use of a PRASA Mercedes Benz S500 and ordered him to pay the South African Revenue Services (SARS) an amount totalling R560 000 for the improper use of the vehicle. There are many other illegal transactions that Mr Molefe and his Board had been involved in since I left PRASA.
- 56 I would expect a man with such a troubled history to be careful in making false allegations that are not supported by evidence.
- 57 The only explanation that can be inferred, by virtue of the style of the PRASA's affidavit, is that PRASA wants to mislead this Court and the public at large about the inner workings of PRASA and to tarnish my good name, the reason for this will be more fully dealt with below.
- 58 I respectfully state that this conduct must not be entertained by the Court, especially in instances where the truth is demanded for the progress of the country. The flagrant lies deposed to in Mr Molefe's affidavits are to say the least, disappointing

and I submit have a substantial impact on the emotion of our Country. The Applicant has made allegations of corruption very loosely and frequently without having placed any proof of the alleged corruption whatsoever. The effect of this is devastating, as Mr Molefe, through PRASA, pursues his own personal vendetta at the expense of myself and PRASA and moreover, advertently discredits functional operation of a public entity.

59 In this regard, I respectfully place on record that the appointment of Mr Molefe and three other PRASA Directors were infact unlawful. Unlike the rest of the other Directors appointed to the Board of PRASA, Mr Molefe, Mr Willem Steenkamp, Ms Zodwa Manase and Mr Pitsane were never nominated and selected from a list of candidates nominated through a public process, which is the correct process. Instead they were appointed to the Board and Mr Molefe specifically as chairman of the board of PRASA solely because he is the personal friend of the Minister of Transport. I will not delve any further into this as this I submit shall be ventilated at different time and forum. To this end, I highly doubt that Mr Molefe is acting under the necessary authority to institute these proceedings.

60 Furthermore, the founding affidavit comprises of very complex and intricate technical mechanical detail which relate to the specifications of the locomotives in question. Mr Molefe, has placed much information about the locomotives which is totally false, this in itself is a clear indication that Mr Molefe has no personal knowledge of the matter at hand as his technical explanation of the locomotives are glaringly incorrect.

MY ROLE AND THE SUCCESSES IN PRASA DURING MY PERIOD OF GCEO

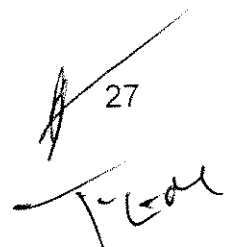
- 61 Mr Molefe makes many false statements which incorrectly allude to the company being mismanaged and subject to corruption, mostly by myself, which has resulted in an entity which is misguided and incapable of making any progress. This is completely denied. I respectfully submit that PRASA had its best successes whilst it was under my supervision which totally contradict the allegations of corruption on my part.
- 62 As GCEO, I had taken overall responsibility and accountability for the performance of PRASA, including its many successes and failures. PRASA, in its Founding Affidavit, targets me as a person as they create an illusion of dishonesty and corruption on my part whilst being GCEO. This approach of PRASA's where focus is about creating "drama" around persons heading public institutions is not the meaning of true accountability in our system of governance and is embarrassingly incorrect.
- 63 As GCEO, I was responsible for the day to day management of PRASA as a business and to provide strategic leadership in its operations, I could summarise my primary details as follows:
- 63.1 Make the most important decisions about the running of PRASA in line with approved strategy of the entity and within the delegated authority;
- 63.2 Enhance the financial position of PRASA and develop funding strategies;
- 63.3 Drive the delivery of strategic infrastructure;

- 63.4 Put in place systems for protection of assets;
- 63.5 Exercise the authority on behalf of PRASA in the signing of contracts and legal documents, within delegated powers;
- 63.6 Position the PRASA brand; and
- 63.7 Put in place proper systems and procedures necessary for the effective running of the business, as well as adequate and effective controls to meet requirements.
- 64 Despite the personal attacks, nowhere in the Founding affidavit does PRASA present evidence that I as GCEO, failed to perform any of my duties as laid out in my contract of employment entered into by and between myself and PRASA. However, Mr Molefe creates an air of “drama” about my conduct being irregular, unlawful and constituting maladministration. It must be noted that I have never been tested for any of the allegations which is made by Mr Molefe as there was never even the slightest bit of corruption on my part. Any allegations of corruption levied against me are denied in the strongest of terms. To this end, I annex hereto marked “TLM5”
- 65 PRASA quotes extensively from its various policies, systems and procedures that I, as GCEO, spear-headed as part of the consolidation of passenger rail, bus and property companies into PRASA, which policies are highly effective and have been duly followed throughout my tenure. Contrary to the inferences created in PRASA’s Founding Affidavit, I have not failed in my duties as Group CEO and there was

never a Board during my tenure at PRASA that ever recorded any failure to perform my duties.

66 PRASA, whilst I was GCEO recorded major successes over the period of my employment. Most of these successes are recorded in the PRASA's annual reports, which were approved by the Board of PRASA, adopted by the Minister as shareholder in various annual General meetings and tabled before Parliament over the years. Hereunder, I list the major successes of PRASA and its predecessor, the SARCC during my tenure:

- 66.1 Received 8 consecutive unqualified audit opinions from the Auditor- General South Africa. Notwithstanding any weakness that the auditors may have highlighted, the reports indicate that the internal controls were in place and effective.
- 66.2 A stable functioning Board for almost a decade, with a strong and effective Audit and Risk committee and other Board committees. The Board had effective control and complete strategic oversight of the affairs of the Public Entity.
- 66.3 Increased value of assets from under R8 billion in the year 2006/07 Financial Year to over R40 billion by the 2014/15 Financial year. Assets grew by over 25% which further strengthened the group balance sheet.
- 66.4 In 2010 the auditors identified a going-concern issue for the PRASA group. Management devises strategies to address this critical challenge, including

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undertaking a technical review of the treatment of the capital subsidy which resulted in an adjustment of R2.7 billion in prior years financial statements. This had a major positive impact on the financial position of PRASA for the 2011/2012 and for the coming years. The PRASA 2011/2012 Annual report and audited financial statements detail the strategies implemented by management and records "the restated shortfall of R795,6 million for the 2010/11 financial year has been reduced to R26,9 million"; an improvement of R766,7 million or 96.4%. Improvements are also noted in the quick ratio of 95.8% ON 20010/11to a level of 1.37 and cash ratio of 95.8% on 2010/2011 to a level 1.31. Minutes of a meeting with the Auditor- General dated 15 June 2010 confirm the going concern issue and the intervention by the PRASA Board and its Management in this regard.

- 66.5 Increased the value of investment properties by 34% during the period under stewardship.
- 66.6 Unlocked the value of its property assets as part of its balance sheet restructuring programme and increased its revenue base through the implementation of the Real Estate Strategy. The long term goal strategy was to increase revenues from the exploration of property assets and reduce subsidy requirements from the National Fiscus.
- 66.7 Successful merger of Passenger Rail Entities (SARCC, Metrorail and Shosholozza Meyl), property management subsidiary (Intersite) and bus subsidiary (Autopax) to create PRASA, a massive public entity with over

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15 000 employees. The consolidation process required the restructuring of disparate systems, procedures, policies and working conditions and benefits as well as changing the organisational cultures of the different businesses.

- 66.8 Stabilised commuter rail operations by improving availability and reliability of infrastructure and the fleet so that Metrorail continues to deliver over 560 million passenger trips in the six Metropolitan areas of South Africa.
- 66.9 Delivered on the country's mandate during the 2010 FIFA World Cup, with commuter rail transporting over 1.4 million spectators to the games and fan parks. New buses transported the FIFA Family and supported the cities in their 2010 operational plans.
- 66.10 Spent over R30 billion on rail infrastructure since 2008.
- 66.11 Almost 500 bursaries awarded annually and over 1000 learner-ships involved at various levels of the business.
- 66.12 PRASA initiated the Women in Rail (WIR) Programme as an integral part of Economic Transformation in the country and set R3.6 billion worth of projects for women owned enterprises.
- 66.13 Completed the Bridge City Rail Link with a new underground station, bringing much needed socio-economic benefits to the Inanda, Ntuzuma, KwaMashu and Phoenix area in the North of eThekweni Metropole. The investment in this major development was to the tune of R1.3 billion. This is the type of mixed

urban projects that the Minister of Finance mentioned in his 2015/2016 Budget speech.

- 66.14 Completed the doubling of rail tracks in Mamelodi and the construction of a new-generation, Greenview Commuter Station for over R500 million. This capacity enhancement project was about reducing journey times for rail commuters on the Pienarspoort – Pretoria Corridor as well as facilitate accessibility and greater mobility for the increasing human settlements in the East of Tshwane.
- 66.15 Over 300 stations built, refurbished or upgraded by PRASA since 2008. The experience in visiting stations such as Johannesburg Park Station, Cape Town Station, Newlands Station, Berea Station, KwaMashu Station, Cetary City Station, Moses Mabida Station, Rhodesfield Station, Pretoria Station, Durban Station, Bridge city Station, Orlando Station, Nasrec Station, to name but a few of model stations, which were built or upgraded by PRASA has changed commuter experience for better.
- 66.16 Through its Accelerated Rolling Stock Programme, refurbished and upgraded over 3000 passenger coaches to the tune of R6 billion since 2007/08.
- 66.17 The passenger coaches and locomotives released for refurbishing and upgrade as well as ad-hoc repairs, were key to sustaining rail engineering firms, emerging black enterprises in the sector and over 3000 direct jobs.

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- 66.18 Developed the Signalling Master Plan for PRASA and introduces electronic inter-lockings in the South African commuter rail network. This is world class technology and model for safe movement of trains as well as traffic management and monitoring.
- 66.19 Commenced the Re-Signalling of the Commuter Rail network to the tune of R7 billion in Gauteng, Western Cape and eThekweni region. The construction of the Gauteng Nerve Centre ("GNC") located in Kaalfontein is almost complete. The GNC was recently launched by the Minister of Transport and the Board.
- 66.20 The most significant achievement for PRASA was the successful conclusion of its Rolling Stock Fleet Renewal Programme ("RSFRP") in April 2014. The contract would enable PRASA to acquire 600 new modern commuter trains over a 10 year period to the tune of R51 billion. The contract further provides for technical Support and Spare Supply Agreement ("TSSSA") for the maintenance of the trains over an 18 year period. This acquisition is regarded as amongst the best rolling stock procurement in the world. It has been praised by the industry players for its high level of professionalism, efficiency, transparency, fairness and competitiveness. The bids were evaluated by a team comprising of PRASA, the Department of Transport, the DTI and National treasury, supported by a team of transaction advisors. This is more than a train acquisition programme but structured to revitalise the Rail Engineering Sector in South Africa through local manufacturing, achievable through local content targets, employment creation and skills development.

- 66.21 A key feature of the Rolling Stock Acquisition Strategy was the structure of the B-BBEE, which not only facilitated new black entrants into the rail sector but also made provision for employees of PRASA and employees of the Project Company to have shares through Employee Trusts as well as an education Trust to invest in new skills.
- 67 In fact, in recognition of my milestone achievements stated above, PRASA issued a press statement on my impending departure and commented on the sterling work I did. The statement stated that PRASA would not have asked for a better person to drive its modernisation programme. It is interesting that Mr Molefe has had such an extreme change of sentiment toward me.
- 68 I make the above submissions solely for this Honourable Court to consider Mr Molefe's allegations against me tested against the work and milestone successes which have been achieved through my period of GCEO. I respectfully state that if any of what Mr Molefe alleges about me were true, I would not have been at PRASA for 10 years as, the evidence above displays.
- 69 Mr Molefe has also used the Report of the Public Protector titled "Derailed" to support his claims. I have taken the report of the Public Protector on review in September 2015 already and had submitted grounds for the court to review same. In my Founding Affidavit, I detail the serious errors of law committed by the Public Protector and this was followed by a Supplementary Affidavit in January 2017, which points out significant factual inaccuracies and failure by the Public Protector

to conduct an investigation into PRASA in line with the Constitution and the Law. I annex hereto marked "TLM6" the Founding Affidavit setting out the grounds of my review for this Honourable Courts attention.

PRASA'S URGENT REQUIREMENTS FOR NEW LOCOMOTIVES AND THE
TENDER PROCESS FOLLOWED

- 70 I respectfully state that Mr Molefe, in his affidavit, makes it seem almost as though the decision to acquire new locomotives was an arbitrary one calculated to further a corrupt motive. In an attempt to refute these inferences, I wish for this Honourable Court to carefully consider the details below which demonstrates that the decision to acquire new locomotives was in fact borne out of careful consideration, calculation and thought to address the immediate needs of our rail networks.
- 71 The Mainline Passenger Services ("MLPS"), otherwise known as "Shosholozha Meyl", is the long-distance rail division of PRASA. However, the business of this division has been facing major challenges in delivering adequate and reliable long-distance rail services over the past number of years. The major challenges have been lack of funding for its operations, outdated locomotives, poor access to the network, uncompetitive journey times, poor punctuality owing to MLPS interface with freight trains. The poor state of the rolling stock fleet as well as poor access to and quality of the Transnet network remain major contributors to the MLPS poor performance, with passenger numbers on serious decline since 2004/05 from

almost 3.8 million passengers per annum to below 1,3 million, while the number of trains operated decreased from 6 600 per annum to below 3 000, currently.

72 The decline affected revenues and had a severe impact on MLPS business viability, leading to unexpected losses in excess of R700m per annum and MLPS currently only covering 26% of its costs.

73 This decline can be attributed to:

73.1 MLPS receiving 124 poor, outdated locomotives from Transnet when the business was transferred from Transnet to PRASA on 1 April 2009.

73.2 Transnet failed to fulfil its commitment made to National Treasury that it will spend R200 million of its own capital resources to refurbish and upgrade the 124 locomotives before they were transferred to PRASA. However, the poor state of the locomotives had suggested that this promise was not honoured resulting in over 50% of these not being available for the service.

73.3 As a result, MLPS was forced to lease unreliable locomotives at a high cost from Transnet leading to extreme delays and cancellations of its trains.

73.4 Equipment reliability leading to reduction in network coverage and frequencies.

73.5 Poor network quality causing unattractive scheduling in terms of speeds, frequencies and reliability, affecting customers' confidence in the service.

- 73.6 Inability to market services to retain and attract customers.
- 73.7 Infrastructure access costs too high with ineffective contractual regime and service level agreements with TFR.
- 73.8 Contributing internal inefficiencies, low staff morale and inflexible labour contracts.
- 74 The challenges facing long-distance rail services have been a subject of many discussions and analysis within PRASA and Government since the Cabinet decision of 1 December 2004 to consolidate passenger rail entities into a single company reporting to the Minister of Transport. The first detailed Due-Diligence exercise on MLPS and other rail entities was undertaken in 2004 to determine the financial, human resources, rolling stock, systems, IT and other requirements for continuing this long-distance service. This was reviewed by the SARCC during 2008 as part of preparations for the transfer of this business from Transnet to PRASA in 2009.
- 75 PRASA concluded that one of the urgent interventions in saving long-distance rail travel was to acquire suitable locomotives, with the recognition that reliability was a critical success factor in the planned turnaround of its long-distance rail service. Reliability of this service was critical in its ability to compete with buses, taxis and air travel as far as long-distance travel is concerned. The acquisition of suitable locomotives was to this end identified as the number one priority and catalyst for the MLPS turnaround strategy.

76 With the decision to acquire new, modern locomotives, PRASA had set out in various of its Corporate Plans and Strategic Plan approved by the Board and the Minister of Transport the following key objectives:

76.1 Deliver a quality and reliable long-distance rail service within a highly competitive market;

76.2 Improve on operational efficiencies:

76.3 Improve on passenger safety and comfort;

76.4 Reduce the cost of running the service; and

76.5 Contribute to the shift of passenger traffic from road to rail

77 In the medium-term, PRASA had a vision for long-distance rail travel, which included improved running speeds on the network whilst envisaging in the long-term a shift towards “High-Speed Rail” (HSR) solutions. The PRASA Strategy had set other ambitious objectives such as acquiring lighter locomotives in a manner that could reduce the negative impact of the wheel on the track. This is one major maintenance cost for railway operators. The other objective was to deploy appropriate technology to conserve energy, including energy generated during the “breaking moment” of a train and feed this back into the system as part of a broader energy efficiency plan.

78 Therefore, PRASA had set itself ambitious goals with the acquisition of modern locomotives. It is important to emphasise however that the primary focus of PRASA

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in the short-term was on acquiring suitable, modern locomotives to address the huge challenges faced by MLPS and more specifically, respond to its operational environment as a passenger and not a freight business. Passenger business demands improved mobility and passenger satisfaction which result from reliability, quality rail service and reduced journey times which could be achieved through better scheduling, higher speeds and better access to a quality network, flexibility and high-levels of passenger satisfaction, comfort and safety.

79 However, the strategy did not only focus only on the acquisition of modern locomotives to the exclusion of other interventions. There were other strategies implemented by Management to turn the fortunes of MLPS around. As part of these ongoing efforts, PRASA acquired the services of Lufthansa Consulting to develop a Turn-around Strategy for the Mainline Passenger Services business. The focus of the Turn-Around Plan is to manage MLPS to at least retain the same activity and service levels as prevailed prior to 2009/10, with improved efficiencies and covering wider services. It was envisaged that this process will take a period of 3 years to achieve, with indicative subsidy requirement of R550m to R600m per annum, not taking into account market growth potential through additional routes and serving new markets with appropriate technology investments.

80 The medium to long term strategic framework for long distance and regional passenger rail in Southern Africa has to include the migration to higher speeds, with possible specialized networks to serve the appropriate technology application.

Handwritten signature and initials, possibly 'F. C. M.', located at the bottom right of the page.

- 81 Following the initial development of a high level strategic framework for the turnaround, Lufthansa completed a final draft Turnaround Plan which was presented to the Board in February 2014.
- 82 The findings of the report is contained in an executive summary with the detailed report covering 300 pages and containing detail chapters on market, operations, organizational and financial analysis, with turn-around recommendations. After approval of the MLPS turn-around Strategy by the PRASA Board. I annex hereto marked "TLM7" copy of the final report MLPS turn-around strategy prepared by Luthansa Consulting and DB International.
- 83 Summary of MLPS Turn-around Strategy Findings and Recommendations can be as follows;
- 83.1 Sufficient travel demand and market interest/potential exist to support a Turn-Around of MLPS, while MLPS has an obligatory mandate as public service provider.
- 83.2 The MLPS Turn-around Strategy recommends a focus on drastically improving the current services provided on existing corridors with high demand and confirmed market potential. Service levels to be restored to 2009/10 service levels with improved efficiencies and aggressive marketing approach/campaigns in order for MLPS to become a self-sustaining business, requiring some level of government financial support, instead of a business largely reliant on government subsidy.

- 83.3 Creating regularity in service provision and restoring public confidence in MLPS services and schedules are key determinants of the Turn-around over 5 years, with Turn-around Strategy slogan of: "Every route, every class, every day".
- 83.4 Expansion of new and regional services and routes have been identified to be incrementally introduced by priority corridor, once sufficient turn-around successes have been achieved on existing routes.
- 83.5 The provision of services for regional rail markets require very different service and technology responses and need to be evaluated for feasibility on case by case basis, before implementation.
- 83.6 Financial and business turn-around is based on sweating available assets and resources with over 50% reduction in locomotives, trains and stops, while almost doubling train activity through increased frequencies and services on key routes. R900m accumulated savings over 5 years is envisaged from turn-around efficiency interventions.
- 83.7 Passenger numbers will incrementally increase by over 50% over the turn-around period of 3 – 5 years.
- 83.8 Although efficiencies in the major cost drivers of personnel, security and access charges will fund the turn-around requirements, no reduction in personnel numbers is envisaged, while available staff numbers will be absorbed in increased and expanding train activity/services.

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- 83.9 Transparent infrastructure access (train slots co-ordination) and fair access charges from TFR have been identified as pre-requisites for a successful turn-around of MLPS. The Turn-around strategy included international benchmarking on access charges and found that the tariffs PRASA is being charged by TFR is at least 30% higher than the tariffs charged on European rail networks, while such networks represent high quality standard networks including the availability of high and ultra speed passenger train access.
- 83.10 Various institutional service level regimes with regulatory and organization rationalisation interventions are proposed as key success factors for a sustainable turn-around strategy.
- 84 I share this background and detailed information because Mr Molefe, on the part of PRASA, has failed to provide these crucial facts to the Court simply because he does not have personal knowledge of any of these matters. Mr Molefe makes a false claim in his Affidavit that PRASA did not do its homework before embarking on the acquisition of the new locomotives. This is simply not true.
- 85 In the evidence contained in his affidavit, Mr Molefe refers to information prepared by one Ingwa Sichula, the Executive Manager at PRASA Technical Division on the locomotives requirements for MLPS. This information is quoted out of context and Mr Molefe fails to disclose that this was part of a briefing prepared by Mr Sichula to me on 15 April 2010. I attach this document hereto marked "TLM8". Other than summarising the quantity requirements, the briefing was about the Request for

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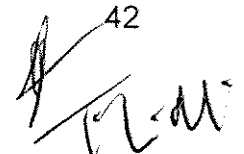
Information (RFI) which was aimed at testing the market and determining whether there was capacity and ability on the part of the industry to meet the needs identified by PRASA. There is no better way of testing the market than issuing an RFI and requesting the industry to provide information which assists in determining the most practical way of realising the objectives. The information received during the RFI process was incorporated when PRASA drafted and finally issued its Request For Proposal (RFP) in 2011.

- 86 As stated above, I was not involved in the drafting of the tender documents, first the RFI and then the RFP, nor involved in the evaluation and adjudication of the tender. This is because the GCEO does not get involved in these processes. As GCEO and the Board, we come at the tail end of the process once the evaluation and adjudication of tenders are complete. We consider and approve recommendations from the relevant committees responsible for the evaluation and adjudication of tenders. These processes are guided by the PRASA SCM Policy that is approved by the Board and not me.
- 87 For Mr Molefe to expect this Court and the Public to infer that the decision taken to acquire new locomotives was part of a plot to solicit funds is simply pathetic, as can be seen from the above, the decision to acquire the new locomotives were born out of careful consideration and as a solution to meet the Republics desperate needs for an upgraded passenger railway network.

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MR MOLEFE'S VENDETTA AGAINST ME

- 88 Mr Molefe is pursuing a personal vendetta against me which is clear from the comments he has made about me in PRASA's Founding Affidavit. Mr Molefe is attempting to use this Court, as well as other methods, such as the Public Protector's report "Derailed", which I have taken on review, as a podium to discredit me.
- 89 Mr Molefe, as well as certain members of the Board of PRASA are trying their very best to "nail me". At the heart of this conflict between the new Board and myself was the Board's interference in PRASA operations and serious corporate governance breaches.
- 90 In a normal environment and as provided in the Board Charter of PRASA, the Board should have 4 quarterly meetings in a year, with Special Board meetings where necessary. However, the Board of PRASA met 18 times in the 2015/2016 financial year and rewarding itself handsomely.
- 91 Furthermore, I submit that the Board is involved in the day to day operations of the public entity and its business, which should not be the case. The Board is designed for a specific purpose and not to interfere with the day to day business operations. I raised these concerns with Mr Molefe and further, met with Mr Molefe, in his capacity as Chairman of the Board, in Knysna on 4 April 2015 to discuss these issues which were destroying PRASA internally. It should come as no surprise that


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Mr Molefe did not like what I had to say and immediately began intensifying his battle against me.


92 I also voiced my concerns with the Minister of Transport on 7 May 2015, and again in a subsequent meeting involving the Minister of Transport, Mr Molefe and myself on 27 May 2015. I continued to speak out against Mr Molefe and his Board's irregular work ethic. Mr Molefe could not accept what I had to say as he was directly responsible for conniving against me.

93 The role of the Board is to shape the strategic direction of the entity, manage key risks, develop appropriate policies, ensure that there are effective internal controls, exercise oversight over the performance of the PRASA as well as stakeholder management. The Board is not mandated to interfere with the day to day operations of PRASA, such conduct would constitute a breach of the PRASA policies.

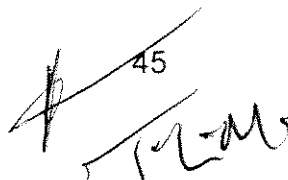
94 In a Board meeting held on 1 June 2015, I presented evidence, that the Board had assumed the primary management function of the day to day operational control of PRASA and the running of its business, that the board crossed the line and involved itself in PRASA's day to day operations. Naturally, this was met with strong denial and immediately created and/or reinforced bad sentiments toward me as the Board knew that what they were doing constituted a serious corporate governance breach.

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- 95 In 2012, an entity known as SA Fence and Gate (Pty) Ltd ("SA Fence and Gate") was awarded a tender by the Board of PRASA for the supply and installation of fencing on a national scale at all PRASA depots.
- 96 The total amount of the award of the above tender was R209 million and the services which were to be provided by SA Fence and Gate were due for completion in September 2014.
- 97 In September 2014, SA Fence and Gate requested a variation to the contract, in terms of which an additional R100 million was needed for no reason whatsoever. I rejected this request and refused to vary the contract as I found that the amount which the company requested was unreasonable and not prudent.
- 98 During this time, it came to my attention that Mr Palello Lebaka, an executive Manager at PRASA Technical, a division of PRASA, together with other project managers, had irregularly and without approval of the PRASA Board, extended the scope and time of the SA Fence and Gate contract to December 2014.
- 99 I was then told that SA Fence and Gate had already done the work and incurred costs.
- 100 It was upon this fact that I recommended to the Board that SA Fence and Gate should be paid only upon the assessment of the work which was done. The amount for the work done was assessed to be R47 million, which was fair and reasonable.

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- 101 The Board of PRASA agreed with my recommendation and SA Fence and Gate were accordingly paid that amount. I recommended further that action be taken against Mr Palello Lebaka and the other Project Managers, as they had irregularly and without authority varied the scope of the contract.
- 102 On the recommendation that PRASA take appropriate disciplinary action for this misconduct and collusion with SA Fence and Gate, as well as other separate and distinct acts of misconduct, Mr Palello Lebaka was subsequently dismissed.
- 103 Subsequently and during the period July 2014 to August 2014, I decided to physically inspect the work of SA Fence and Gate personally at various locations of PRASA.
- 104 SA Fence and Gate had represented to PRASA that the lights which were installed at the various locations were imported and of a very high quality. I had been advised by some of the Project Managers that the lights which were delivered by SA Fence and Gate were actually substandard and not of the quality mentioned in the contract. By December 2015, SA Fence and Gate had delivered only 5 of 2000 lights they were scheduled to deliver, a year after they were paid by PRASA.
- 105 This, I submit, was in clear breach of the contract and resulted in PRASA being defrauded of millions of Rands. PRASA had paid the SA Fence & Gate in excess of R33 million in respect of lights which were never delivered.

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- 106 In addition, SA Fence and Gate did not deliver on the same quality fence provided in its bidding document and an inspection by the PRASA team revealed the poor quality of the fencing. Again, this is a further act of fraud against PRASA which resulted in a substantial loss to PRASA.
- 107 In January 2015, SA Fence and Gate requested a further variation to the contract which entailed an extension to the scope and increase in the quantum of the fixed term contract. The variation of the contract required an additional R58 million was approved by Ms Martha Ngoye on 20 January 2015, who did so whilst acting in the capacity as Group Chief Executive Officer of PRASA. I was away on leave during this period and had no knowledge of what was transpiring back at PRASA. I have reason to believe that Ms Ngoye approved this on the influence of Mr Molefe, who protected her from facing appropriate disciplinary action.
- 108 In May 2015, there was a submission from SA Fence and Gate requesting a further extension and more money. In June 2015, I rejected the submission for additional time and had instructed the PRASA Technical Division to cancel the contract as SA Fence and Gate was clearly in breach of the contract with PRASA. On 9 June 2015 and after consultation with me, Mr Saki Zamxaka, the CEO of the PRASA Technical Division cancelled the contract.
- 109 During this time, there was sustained pressure from the Board of PRASA and the Minister of Transport for SA Fence and Gate to be paid irrespective of its failure to meet contractual obligations.

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- 110 Subsequent to the cancellation of the contract, SA Fence and Gate initiated legal proceedings against PRASA.
- 111 PRASA, surprisingly and intentionally, despite very strong defences it had, colluded with SA Fence and Gate resulting in a default judgment being granted against PRASA in the sum of R22 million. I believe that the amount was not due and is irregular.
- 112 This is supported by the fact that SA Fence and Gate made a "donation" to the golf day organised by the Popo Molefe Development Foundation, which was hosted at Sun City during the 23rd to 25th April 2015. The exact amount of the donation is not known to me, however I respectfully submit that a reasonable suspicion can be drawn to the relationship between Mr Molefe and SA Fence and Gate. This is a serious conflict of interest on the part of the Chairman.
- 113 The only inference that can be drawn is that Mr Molefe is financially benefitting from the contract between PRASA and SA Fence and Gate. It is clear from the above that Mr Molefe has been orchestrating acts of fraud and corruption.
- 114 The instruction from me to effect the cancellation of the contract was the last throw of the dice with Mr Molefe and I submit this is what broke the camels back. Mr Molefe could not accept that I would not stand for corruption and look the other way while intended to drain PRASA.

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115 In fact, Mr Molefe and a few members of the board were so disgruntled, that a decision of the Board was taken in my absence on 15 July 2015, which was that I should no longer serve the remainder of my notice period to PRASA.

116 Mr Molefe, on the 20th of July 2015, met with one Daniel Mtimkhulu ("Mtimkulu"), an ex-employee of PRASA, where Mr Molefe promised Mtimkulu protection if Mtimkulu could provide any information about me which involved corruption or any untoward conduct. This affidavit shall be accompanied by the confirmatory affidavit of Daniel Mtimkulu.

117 I respectfully state that Mr Molefe, as Chairman of PRASA, should be held to the highest standards of ethics and business practice. Such conduct cannot be condoned under any scenario, I pray that this Honourable Court give due consideration to the submissions made above when considering the evidence of Mr Molefe as I submit this will shed light on the motive behind the review application and display that Mr Molefe has, through PRASA, not come to this Court with clean hands.

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THE EVIDENCE I WISH TO PLACE BEFORE THIS HONOURABLE COURT

118 At the onset, I must point out that I do not wish to place any defences up which may be in support or against the interests of PRASA nor Swifambo, my intervention is merely aimed at expressing the truth to this Honourable Court and the public.

119 If admitted as a friend of the Court, in support of my submission that PRASA has unnecessarily made allegations which should not form part of the review proceedings and furthermore that PRASA has not given this Honourable Court the full story, my submissions will address three issues in turn:

119.1 First, I shall address the factual inaccuracies of the business operations of PRASA and Mr Molefe's lack of knowledge in the subject of locomotives.

119.2 Secondly, I shall expound on the effect of the review application on the Public;

119.3 Thirdly I shall place before this Court pertinent facts which will be crucial for the Court's consideration which Mr Molefe has deliberately omitted to present;

120 I expand upon these submissions below.

PRASA AND THE LOCOMOTIVE TENDER PROCESS.

121 Firstly, the corporate structure of PRASA consists of the GCEO reporting to the Board of Control (Board), which consists of 11 non-executive directors. There are three divisions and two subsidiaries each headed by a CEO as well as group

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functions headed by Group Executives. The divisional CEOs and Group Executives reported to the GCEO.

122 Any material decision made on and on behalf of PRASA, will be tabled at a board meeting and put to a vote, if the board is satisfied, a resolution will be adopted and thereafter the decision taken will be a decision taken by PRASA, irrespective of whoever the individual may be acting in execution of such resolution. This I submit is standard business practice.

123 PRASA however, in its affidavits, appears to be attempting to wipe its hands off decisions taken by its erstwhile Board and to pass the responsibility to the person delegated to implement the Board resolution, who, in this case, happens to be myself.

124 As stated above, one of the largest needs of PRASA, during 2009, which needed to be addressed was the issue of a long-distance rail service which needed to be safe, efficient and economical for the people of our country. The long-distance business was originally owned by Transnet and during 2009 this business was transferred to PRASA. Along with the transfer of the business, 124 locomotives were transferred to PRASA, all of which unfortunately were not fit for its purpose. This created an urgent need for PRASA to acquire new locomotives.

125 I wish to briefly take this Honourable Court through the tender process which was as follows;

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- 125.1 User-departments and/or engineers prepare the needs assessment (I have no involvement in this process whatsoever);
- 125.2 The Group Supply Chain ("GSC") then prepares the RFI and subsequently RFP (I have no involvement in any of these processes);
- 125.3 The RFI or RFP are put out in advertisement to the open market;
- 125.4 Prior to the bidding stage, a compulsory briefing session for those who bought the documents. Bidders who do not attend the compulsory briefing will not be allowed to bid;
- 125.5 Bidding is then opened and a closing date is made known to all bidders;
- 125.6 The Group Procurement receives bids and does assessments and checks for completeness and compliance *inter alia* tax certificates, on the bids;
- 125.7 The Group Chief Procurement Officer then sets up a Bid Evaluation Committee;
- 125.8 The bids are all assessed and if they meet the requirements set out in the RFP, a minimum requirement of 70% is necessary in order for the bidding company to enable it to move to the next stage;
- 125.9 The Bid Evaluation Committee makes may recommendations to the Bid Adjudication Committee, which is known as the Corporate Tender and Procurement Committee ("CTPC");;

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[Signature]

- 125.10 In terms of the delegation of authority, the GCEO, myself at the time, had powers to sign off on all tenders up to R100million, any amount beyond that would have to be put to the Board, through its Finance, Capital Investment and Procurement ("FCIP")
- 125.11 The Swifambo bid went through these processes and controls in line with the PRASA Supply Chain Management ("SCM") policy. The CTPC made recommendations, which were presented on its behalf to the FCIP by Mr Chris Mbatha who was at that time one of its members and the Group Chief Procurement Officer;
- 125.12 The FCIP was satisfied with the recommendation of the BAC, and then put same to the full Board of PRASA, for approval.
- 126 I confirm that as the GCEO I was mandated to set up the team to negotiate the details of the agreements between PRASA and Swifambo. The negotiating team was lead by the then GCPO Mr Chris Mbatha. The issues to be covered are contained in the Negotiations Handbook, a copy of which is annexed hereto marked "TLM9".
- 127 I respectfully submit that if one has regard to the checks and balances in the tender process, it becomes clear that it is impossible to rig, with each and every level of the process having its controls, which is precisely why these processes exist. The true state of affairs are in fact that Swifambo won the bid fairly.

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128 I respectfully state that if there was any untoward dealings in the awarding of the tender to Swifambo, PRASA would have volumes of evidence which would indicate this, including testimony of many employees of PRASA who were involved in the process. However, the only evidence before this Honourable Court is that of Mr Molefe, which I submit is of no merit and crafted in an attempt to pursue his personal vendetta against me. In fact, I invite Mr Molefe to gather up evidence from the various members of each of the committees outlined above to corroborate what is contended in PRASA's founding affidavit, I respectfully state that he will not be able to present this evidence as it simply does not exist.

129 Now, it is Mr Molefe's contention that I had my hand in the series of events of the bidding process outlined above, which resulted in me corrupting and/or rigging the bid, furthermore that I did not have authority to bind PRASA to the contract signed with Swifambo and moreover that the locomotives ordered under the contract did not meet the required specification. This is denied in the most vehement of terms.

130 Effectively, Mr Molefe is saying that I could manipulate the independent committees at different stages of the tender process. This is totally impossible as the various stages which a bidder is required to go through have been designed with the specific purpose of avoiding and combatting fraud and corruption.

131 The first task was for the engineers of PRASA to prepare the Request For Information ("RFI") to assess the market and approximately 18 or 19 interested parties responded to the RFI.

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T. Lewis

132 Secondly, the Request For Proposal (“RFP”) was put to the market, 6 companies responded with firm offers. I wish to emphasise that the RFP right at the outset contained a request for leasing for 88 locomotives, including the 15 year lease with an option for outright purchase. A copy of the RFP is annexed hereto marked “TLM10”

133 I pause to point out that the option for purchase is clearly contained in Option 2 at page 19 of the RFP. Mr Molefe is distorting the purpose of the RFP by contending that the RFP did not contain an option of purchasing locomotives. I respectfully submit that on a proper interpretation of Option 2, bidders could very well have known that there would exist an option for purchase. It would be simply illogical to narrow the scope of the tender to such an extent that it would cause prejudice to PRASA, which is what Mr Molefe is attempting to do by making these illogical arguments. It is only sensible that PRASA must enter into the most feasible and beneficial arrangement which would benefit itself and in which instance, all possibilities must be explored, this is made absolutely clear at page 28 of the RFP and at paragraph 17.5, I quote the pertinent clause below for the sake of ease of reference

“17.5 BEST AND FINAL OFFER

PRASA intends to appoint the preferred Bidder after evaluating the submission and presentation of the responses to the RFP however, PRASA reserves also the right to embark on the Best and Final Offer Process where:

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- *None of the proposals meet the RFP requirements;*
- *None of the responses to the RFP are affordable and demonstrate value for money; and*
- *There is no clear preferred Response to this RFP"*

I respectfully submit that if one has regard to the above, it becomes clear that the purpose of the RFP is to solicit the best bid, and limitation of any its provisions which would act to the contrary of PRASA's best interests, must be avoided.

134 The allegation that the consideration of the outright purchase option was part of tender rigging simply does not have merit. PRASA acted within its right as provided for in the RFP. I annex hereto marked "TLM11" a letter from PRASA to Swifambo dated 14/08/2012 in terms of which PRASA confirmed its decision to proceed with an outright purchase of locomotives.

135 Swifambo was the only bidder to meet the 70 percent minimum threshold for functionality or technical competence as required by the RFP. A bidder receiving the minimum 70 percent or above from the Bid Evaluation Committee (BEC) would proceed to the next stage of financial and BEE evaluation. The Applicant fails to provide evidence to show that the BEC erred in its scoring and/or that its members colluded in favour of Swifambo. There is no such evidence in either the Founding Affidavit or Replying Affidavit of the Applicant. If the BEC had indeed erred in its evaluation, the next stage is the Bid Adjudication Committee (BAC), which had a

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duty to assess the work of the BEC and ensure that the bids were evaluated in terms of the RFP. Again, there is no evidence provided why members of the BAC did not raise concerns and ultimately recommended to the Board that business be awarded to Swifambo. Unless if PRASA can provide evidence and rational grounds for a review, the decision of the Board in 2012 that Swifambo rightfully won the bid over the 5 other competing companies remains valid.

136 The Board of PRASA duly considered all of the necessary documents from the BAC and approved the acquisition of the 88 locomotives from Swifambo. I annex hereto marked "TLM12" correspondence from Mr Chris Mbatha of PRASA to Swifambo dated 27/07/2012. In terms of which PRASA confirmed "the evaluation of the above tender has been done in accordance with the terms and conditions of the RFP as issued to all bidders. At all times and PRASA accepted and evaluated the comprehensive bid from Swifambo which included Vosloh Espanol ("Vossloh") as the technical partner for the purposes of discharging their obligations under the contract. There were different locomotives designed and manufactured by Vossloh that were part of the Swifambo bid offer. The claim therefore that Swifambo did not have the necessary capacity to deliver on the contract is simply bizarre.

137 After the awarding of the Bid to Swifambo, one of the immediate needs of PRASA at the time was the acquisition of 88 locomotives, this was tabled to the Board of PRASA who duly considered all of the necessary and approved the acquisition of the 88 locomotives from Swifambo. At all times, everybody was aware that Vossloh

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was the main technical partner of Swifambo for the purposes of delivering on their contract.

DESIGN REVIEW AND PRODUCTION FOR THE AFRO 4000

138 It is important for this Honourable Court to note that following the successful award of the contract to Swifambo for the supply of the 88 hybrid diesel electric 25KV locomotives, which was in accordance with the RFP, PRASA requested from Swifambo to immediately provide PRASA with 20 locomotives, for short-term relief, to prevent the collapse of its long distance service. However Swifambo was not able to deliver 20 hybrid locomotives on an urgent basis, as requested by PRASA. In light of this, Swifambo and Vossloh indicated that the Euro4000 was available immediately but would require modification in order to meet PRASA's short term needs.

139 PRASA accepted the Euro4000 subject to design modification and adaptation to meet South African railway standards and requirements. PRASA had agreed to take 20 of these customised diesel locomotives, which would be known locally as the Afro4000. In order for the Afro4000 to meet the safety requirements, a detailed process to review the design of the Euro4000 was undertaken by PRASA, Swifambo and Vossloh engineers. The Afro4000 is based on the same technology platform of the Euro4000 but the locomotive had been modified to meet South African operating, regulatory and safety standards. The height of the Euro 4000, as

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part of the design review process mentioned above, was reduced by 10 mm from 4140mm to 4130mm.

140 The locomotive design modifications were undertaken by Vossloh, Swifambo and the PRASA engineering teams. I annex hereto marked "TLM13" a copy of the design and development procedure which guides the PRASA engineering team when they design any locomotive. This document was very assistive to the PRASA design team when they were redesigning the Afro4000.

141 I annex hereto marked "TLM14" a copy of the Additional Option requested by the customer for EuroDual Locomotive.

SUITABILITY OF LOCOMOTIVES ON SOUTH AFRICAN RAILS

142 The Afro4000 for PRASA is designed based on the existing Eurolight and UKlight design platform, but is adapted to South African conditions. The modifications include on bogie for track gauge reduction from standard gauge (1435mm) to the cape gauge (1065mm), vacuum brake, height, automatic coupler radio, fuel levy sensor, driver cab and others. This locomotive platform was designed to be compatible with different safety standards.

143 PRASA advised the RSR of the modifications on the Euro 4000 so that they are fully compliant. I annex hereto marked "TLM15" a copy of the RSR report dated 24 November 2014.

144 It must be noted that the radio systems in every country are different and even sometimes in the same country, different operators use different radio systems, the locomotive – as described in the technical specifications- only included pre-installation for the trunk radio systems. Apart from the Trunk Radio modifications, PRASA was also interested in equipping the locomotive with a;

144.1 GSM-R radio system;

144.2 Passenger Information System (PIS)

144.3 Public Address;

144.4 Intercom system (between driver and train staff);

144.5 CCTV system;

144.6 Cab-cab communication system;

145 It is clear from the above that much thought had gone into the design of the Afro 4000 to adapt it to South African standards. The PRASA design team who was tasked with this modification process consisted of the following members;

145.1 Daniel Mtimkulu (manager Executive Engineer)

145.2 Sunnyboy Nhlapo (Safety and Risk Compliance)

145.3 Thabo Mahlobogoana (National Maintenance Operations S-Meyl)

145.4 Shadreck Dube (Vehicle Dynamics)

145.5 Bongani Nyathi (Mechanical System)

145.6 Sihle Twala (Electrical System)

145.7 Sekute (Auxillary System)

145.8 Tony Vermueleum (Infrastructure)

145.9 **Peter Stow (Manager S-Meyl)**

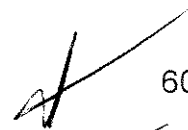
145.10 Floyd Mo (telecommunication)

145.11 Portia Xaba

146 I pause to point out that Peter Stow too was part of the design review process and it is interesting to see how he now makes assertions that the locomotives do not meet the required standard as contained in the safety standards.

RAND/EURO EXCHANGE RATE

147 The exchange rate of the Rand to the Euro, at the time of the bidding process was the equivalent of R10.18 to the Euro. At the time of signing the contract with Swifambo, in 2013, the exchange rate was R10.40 to the Euro, for this reason PRASA elected to settle for 70 locomotives as opposed to the original 88 as envisaged because for the same amount of money, it could only buy few locomotives due to movements in the rand/euro exchange rate. The impact of the


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exchange rate on PRASA are detailed in an internal memorandum prepared by General Manager, Mr Sipiwe Mathobela, a copy of which is attached hereto marked "TLM16".

148 The Board discussed the locomotive contract again in May 2014 and mandated the GCEO to amend the Sale and Purchase Agreement as the Rand to Euro exchange rate had fluctuated by a serious margin. At the time of negotiating the Sale and Purchase Agreement, the rate was R10.18 to 1 euro which at that time would mean the bid would amount to approximately R3.4 billion. On signature, being 31 May 2013, the Rand to Euro exchange rate was R13.12 to 1 Euro. This fluctuation translated to a near 30% increase in the price of the Sale and Purchase Agreement. This is when it was approved to amend the terms of the Sale and Purchase Agreement and PRASA would acquire fewer locomotives.

149 Mr Molefe was not at PRASA at the time of these negotiations and therefore does not have personal knowledge of the reasoning behind the renegotiation. Originally, the deal with Swifambo was structured in a manner that should the exchange rate exceed R10.40 to the Euro, the risk would be carried by PRASA, the Board took decision to mitigate this risk and preferred to renegotiate the terms such that this risk would rest with Swifambo. This is clearly outlined in the memorandum from Mr Sipiwe Mathobela to me.

150 The Board of PRASA discussed this contract again on 15th of July 2015, the Board expressed its support for the work done and how management was dealing with

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this particular issue. The Board did not express any concern that PRASA had acquired tall locomotives which were not suitable. I urge PRASA to present the transcript of the discussions of the Board meeting which was chaired by Mr Molefe.

DELIVERY OF THE 20 DIESEL LOCOMOTIVES

- 151 On the 1st of December of 2014, the first of the 20 locomotives – modified for South African standards, had arrived and were seen and inspected by Mr Molefe himself, who was proud and delivered a speech and conducted interviews praising the new Afro400 locomotives. Mr Molefe did not express concern whatsoever.
- 152 In January 2015, the Minister of Transport joined Mr Molefe in receiving the next batch of the Afro4000. At this event, a train journey was embarked upon pulled by the new Afro 4000 locomotive from Cape Town to Stellenbosch and back to Cape Town with Mr Molefe, the Minister, the Board members, MEC of Transport in the Western Cape, other dignitaries, the media and myself as passengers. At no stage, did any of the Board members or Mr Molefe express any concern, in contrast they expressed full satisfaction of the arrival and performance of these locomotives.
- 153 During the testing and commissioning phase the Afro 4000 travelled through bridges and tunnels and went through perfectly without any complications. Mr Molefe in fact commented on the suitability of the Afro 4000 at the launch, I annex hereto marked “**TLM17A-TLM17C**” respectively copies of the articles published in the media confirming the above launch.

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154 I wish to quote a few statements made by Mr Molefe at the above mentioned launch,

"the new locomotives were part of the company's overall modernisation programme and strategy to turn around mainline passenger services in order to rebuild the business following years of neglect and underinvestment in rail passenger services.

He further added that PRASA's journey to modernise the country's rail infrastructure was on track

"Prasa is continuously working on improving train services performance, and this has led to the introduction of the new, modern locomotives, which are more reliable and fitted with the latest technology that will result in real travel improvement," Mr Molefe said.

Mr Molefe further added that *"the new locomotives were designed to PRASA's specifications to suit local conditions and came fitted with the latest technology."*

155 In "TLM17C", the media reported that Mr Molefe himself added that the new locomotives (Afro4000) were designed to PRASA specifications to suit local conditions and came fitted with the latest technology. I confirm that these statements were indeed made by Mr Molefe at the time.

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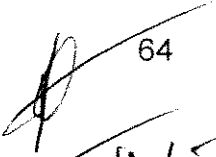

156 It is of no coincidence whatsoever that Mr Molefe changed his entire mind regarding the locomotives only after I had left PRASA and following a series of public spats between the Board and I.

PRASA'S APPLICATIONS TO THE RAIL SAFETY REGULATOR (RSR)

157 On the 13th March 2014 PRASA advised the RSR of its intention to procure diesel electric locomotives to replace its aging fleet. PRASA further advised the RSR that it had procured 20 Vossloh Euro4000 locomotives branded as Afro4000 after some modifications to suit South African conditions.


158 The RSR first granted approval on 25 February 2015 and indicated that it had "no objection to the purchase of the Afro 4000 diesel electric locomotives". It further indicated to PRASA "to go ahead with testing and commission of the locomotive and provide the RSR with confirmation that the modifications done on the locomotive meet the requirements as indicated in the Subject section above". The RSR report was given to PRASA, signed by 5 representatives of the RSR. A copy of the report is annexed hereto marked "**TLM18**"

159 I am aware that there was ongoing interactions between PRASA and the RSR in respect of the results of the testing and commissioning phase. The RSR CEO writes to PRASA on the 30th September 2015 and impresses upon PRASA to provide information which they required for the analysis and verification of the results. He stated that "*the RSR believes that an all encompassing approach to the deployment of the locomotives is critical for PRASA to ensure that the locomotives enter into*


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service in the earliest time possible.”. The sentiments on this letter express that the CEO of the RSR was well aware of the challenges facing long distance passenger services and clearly viewed the introduction of the new locomotives a significant movement, including from a safety perspective. The CEO is actually interpreting the RSR Act correctly in terms of the role of the RSR in promoting rail transport. I annex hereto a copy of such correspondence marked “**TLM19**”.

160 PRASA, following 6 months of testing, formally submitted an application to the RSR for the introduction of “the Afro4000 series of locomotives into revenue earning service on identified 25Kv lines in the Free State, Northern Cape and Eastern Cape provinces”. It is important to note that the Afro4000 locomotives were procured mainly to serve regional services whose routes are mainly non-electrified and on 25kv lines. They were not purchased for deployment on the 3Kv lines however the interface and maintenance issues on the network still needed to be addressed. The RSR recognized that the height of the locomotive “poses an operational risk on the 3Kv lines where 3Kv contact wire is lower than 4.5m. There was a corridor by corridor assessment to be undertaken by both PRASA and TFR to ensure that adherence to a clearance of 150mm is adhered to. This I submit points out that the problem of the height of the locomotive does not rest with the locomotive but rather with the poor infrastructure. However this is not recognized and is not what is reported in the media, more surprisingly though is that Mr Molefe seems to have absolutely no knowledge of this either. The RSR granted its approval on 4th November 2015. A copy of this report is annexed hereto marked “**TLM20**”

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161 The report confirms that the RSR applied the SANS standard 101280-1:2013 NRS 041-1:2013 edition 2 regulating overhead power lines for conditions prevailing in South Africa, as well as the Transnet Freight-Rail (TFR) Electrical Safety Instruction of 2012 (BBF3690,2012) signed between Transnet and PRASA. This standard provides for electrical contact wire with a minimum height of 4,5m and that the minimum height of the locomotive clearly meet the minimum clearance requirement of 150mm. The RSR when it approved this locomotive was applying the SANS standard and the Electrical Safety Instructions of 2012. I respectfully submit that there exists no other standards governing overhead lines other than what is described above and any allegations about tall or short locomotives will be tested against these standards.

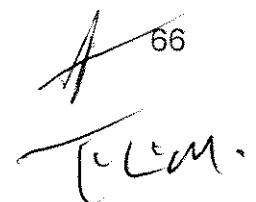
162 I pause to point out that the fact that PRASA had applied to the RSR for approval indicates that PRASA was satisfied with the product and believed that it was adequate for use on South African railways. I respectfully submit that Mr Molefe had ample opportunity at this stage, to raise any concerns which he may have had regarding the technical specifications of the locomotives, he however had none.

163 The RSR, after conducting the necessary reviews has, a number of possible responses;

163.1 Approved;

163.2 Approval with recommendations;

163.3 Approval with improvements;

A handwritten signature in black ink, appearing to be 'T. Molefe', is written below the number '66'. The signature is stylized and cursive.

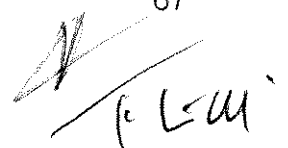
163.4 Not approved.

the RSR, in its review of the applications and all the relevant information, approved the Afro4000 on the 4th November 2015, the approval was granted with improvements. The report was duly signed by 5 members of the RSR review team. It is important, once again, to note that the Afro4000 was never intended to run on 3KV lines. The RSR was satisfied that the Afro4000 complied with the SANS Standard and Electrical Safety Instruction signed between Transnet and PRASA in 2012, a copy of the Safety Instruction is annexed hereto marked "TLM21".

164 After the issuing of the approval of the RSR in respect of the Afro4000, Mr Molefe began putting pressure on certain members of PRASA and RSR to change its approval of the 4th November 2015. The RSR, acting unlawfully and against its legal mandate and seemed to succumb to the pressures of Mr Molefe.

165 It would appear that the RSR had issued a further report which applied a very different set of standards which flies in the face of its report. The RSR may have acted unlawfully and irregularly when it changed its original report to satisfy the demands of PRASA and Mr Molefe. The RSR cannot issue two reports in respect of the very same locomotive (Afro4000), which reports are diametrically opposed to each other. The issuing of this further report created a major confusion.

166 I respectfully submit that the initial RSR report has been issued in accordance with the SANS standard and the Electrical Safety Instructions and is proof, beyond

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reasonable doubt, that the Afro 4000 is suitable for our railways and meet the necessary requirements. If this were not the case, the RSR would have immediately rang the alarm bells when it did its first testing, as it would be impossible to overlook such a glaring defect, If such defect existed.

167 I further submit that Transnet, like PRASA, is an operator and has no authority to act as a regulatory body. They are in no position to approve the specifications of any locomotives, this approval rests with the RSR. However PRASA and Transnet are required by law to enter into interface agreements and collaborate when new technology is being introduced in the network. I am aware that PRASA and Transnet had been collaborating on the engineering tests performed on the Afro 4000. In support I annex hereto marked "**TLM22**" a copy of a joint report issued by PRASA and Transnet on engineering tests.

168 Transnet seemed not to understand its role when it tried to act as a regulator to PRASA, in some instances it has elevated its own views above that of the SANS standards and electrical safety instruction. I annex hereto marked "**TLM23**" a copy of a letter dated 2 March 2015 authored by Transnet to Mtimkulu confirming that there has been major dispute on the interpretation and application of safety standards.

169 Mr Molefe and Peter-Louise Myburg (Myburg) have mislead the country that the locomotives are not suitable for South African railways. They also do not

understand, the remaining 50 Hybrid locomotives which are part of the Sale and Purchase agreement fully fit into our railways.

Further information which Mr Molefe has deliberately omitted to present

170 It is respectfully stated that all of this "drama" has been created by Mr Molefe for no reason. In support of this, it must be brought to this Honourable Court's attentions that Mr Molefe himself endorsed the launching of the very same locomotives which are the product of the tender that is now under review.

171 Mr Molefe was aware about all or any issues which may have existed regarding the locomotives under question, 1 year prior to instituting this review proceedings. At all material times, Mr Molefe supported the program and was a key player in the successful delivery of the new locomotives. This submission is supported by the following:

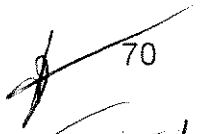
171.1 The Erstwhile Board of PRASA adopted the resolution for the acquisition of the locomotives in question;

171.2 The Minister of Transport was satisfied with the roll-out strategy of the locomotives;

171.3 Mr Molefe travelled to Spain to meet with Vossloh to inspect the production of the locomotives for South African tracks;

171.4 Mr Molefe received the first locomotives and officiated at its launch on December 2014;

- 171.5 Mr Molefe and his board dealt with the issue of this locomotive from time to time in board meetings
- 171.6 Mr Molefe and his board received management reports on progress on the acquisition and delivery of these locomotives and from me specifically,
- 172 It is respectfully stated that Mr Molefe has taken an about turn on his sentiments on the locomotives in question.
- 173 Based on the above, I submit that Mr Molefe must be precluded from making the allegations that the tender for these series of locomotives was rigged and that the locomotives in question are not in accordance with the correct specification.
- 174 PRASA relies on the evidence of Peter Stowe ("Mr Stowe") by using his affidavit to support the false claims that have been made. I pause to point out the Mr Stowe formed part of the very same Bid Evaluation Committee set up for the locomotive tender and further was a member of the design review team. Mr Stowe's scoring sheet, does not support the assertion by Mr Molefe of tender rigging, in fact he finds nothing wrong with Swifambo or the tender process.
- 175 The Confirmatory Affidavit by Mr Stowe in the Founding Affidavit to the review application however, sings a very different song, I submit that this is clearly an afterthought when one has regard to his scoring sheet. There is no valid reason why the PRASA would want to rely on only one weak affidavit and fail to get other members of the BEC, members of the BAC and the Board members whi served on


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the FCIP to provide sworn statements. the reason for this is that PRASA is unable to obtain further evidence from the many others who were involved as they simply would not tell a lie.

176 PRASA is unable to and has failed to demonstrate any irregularities on my part as the former GCEO. There was no evidence before me or the board of PRASA, at the time of the approval of the bid, to challenge results of evaluation and adjudication processes in the locomotive tender. There are no irregularities today that could justify the judicial review. The fact of the matter is that Swifambo submitted the most comprehensive bid out of all the competing bidders. The detailed bids were presented to the FCIP committee by Chris Mbatha, the then GCPO of PRASA. In support of this, I attach hereto marked "TLM24A to TLM24D" copies of pertinent correspondence and summaries of the bid offer of Swifambo.

177 There is no evidence to suggest that the other bidders were unfairly disadvantaged by PRASA and none of these bidders submitted any objection nor did they challenge the outcome of the bid. No other bidders have reviewed the Swifambo contract award, this is simply because there was no irregularity. It is 3 years down the line and Mr Molefe makes an attempt to set aside the award by the erstwhile Board of PRASA. I make these submissions in a valiant attempt to defend the integrity of the tender process of PRASA as due process has been followed, the first hurdle which PRASA would need to overcome is to show that the process is flawed, which it has failed to do.

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178 PRASA has not rejected the delivery and acceptance of any of the Afro4000 locomotives as required by clause 15 of the Sale and Purchase Agreement (Annexure FA74 to the founding affidavit) with Swifambo. If PRASA had rejected in terms of this clause it must provide full and detailed reasons, which it has failed to do.

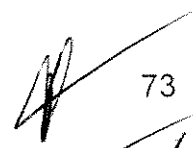

179 Clause 15 of the agreement states that the Purchaser must reject acceptance within 14 days of inspection which could be extended to 28 days. PRASA now rejects these locomotives 3 years later, which is wholly irregular in terms of the law and the Contract. The applicant chose the legal route to cancel because of their failure to follow the arbitration mechanism provided for in the agreement. I submit that Mr Molefe did not go through arbitration process because that process is much more subtle and not widely reported, whereas a Court Application falls squarely in the public domain. I pray that this Honourable Court read clause 15 as though specifically herein incorporated.

180 The failure of PRASA to review the award sooner confirms that the first 20 locomotives were duly accepted by PRASA.

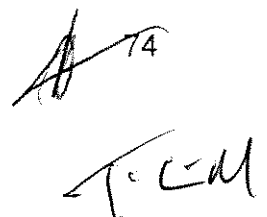
181 There are numerous individuals who were directly involved in the evaluation and adjudication, these individuals have first-hand knowledge but yet are not here to lead evidence. Mr Molefe does not have knowledge on this as he was not at PRASA there at the time. This is conclusive that his information is not true.

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- 182 Mr Molefe and the new board, which he led, were fully aware of the issues in the locomotive tender when they joined PRASA in August 2014, in fact, the locomotive contract became their first issue to be dealt with by the new board. The issues raised by the AGSA related to whether PRASA had physical control of the locomotives and how to recognise the locomotives or components thereof already acquired in the Annual Financial Statements of PRASA. There was a huge debate between PRASA management and the audit team from the Auditor-General South Africa (AGSA) on the accounting treatment of the locomotives, I annex hereto marked "**TLM25**" a copy of the detailed audit findings. The key question was whether PRASA had control of locomotives or their components before actual delivery by the Seller (Swifambo). This created an accounting question of how to recognise these assets in the books of PRASA.
- 183 The accounting treatment was either Work in Progress ("WIP") in Property, Plant and Equipment (PPE) or as Prepayment. AGSA preferred WIP and were prepared to travel to Valencia, Spain, to verify the assets. However, later on and for reasons unknown to me, AGSA insisted that the transaction must be treated as a prepayment. AGSA stated that if PRASA did not recognise this as Prepayment, the financial statements of PRASA would be qualified.
- 184 The ongoing debate between the AGSA and management of PRASA are evident from the management letter (detailed audit findings). This was the only issue which delayed the annual financial statements of PRASA for the 2013/2014 financial year.


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- 185 The financial statements must be submitted by end July each year as provided for in the PFMA. The new Board of PRASA, under the leadership of Mr Molefe and its audit committee dealt with this in their first meeting.
- 186 There were other issues beyond the accounting treatment issue between PRASA and the AGSA. PRASA was not in agreement with the AGSA and sought a legal opinion from Medwaba Mazwai incorporated, who prepared an opinion which did not give any indication of irregularity on the contract of Swifambo, briefly the issues listed *inter alia* were as follows;
- 186.1 Extension of the Tender Closing Date;
 - 186.2 Non-compliance with the requirements of the bid documents Joint-Venture;
 - 186.3 Non-compliance with the requirements of the bid document and the contract Performance-bond;
 - 186.4 Capability and capacity of Swifambo;
 - 186.5 Swifambo's VAT status discrepancies;
 - 186.6 Non-compliance with the PRASA Supply chain management policy;
 - 186.7 Inconsistencies with the implementation of the requirements of the bid document;
 - 186.8 Authority to enter into and sign tender; and
 - 186.9 Memorandum.

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187 I submit that Mr Molefe and his new board were fully aware of all the issues which may have existed. PRASA expressed its satisfaction with the locomotive tender process, this was presented to the Minister of Transport and in September 2014 at the PRASA Annual General Meeting and subsequently tabled before Parliament in the same month. In the annual report signed by myself, Mr Molefe, and Zodwa Manase, PRASA expressed its satisfaction with the locomotive tender.

188 There were other issues of disagreement during the 2013/2014 audit. PRASA was of the view that these issues were beyond the scope of the audit and for this reason sought legal opinion from Ledwaba Mazwai Attorneys. I annex hereto marked "TLM26" a copy of the legal opinion from Ledwaba Mazwai

189 It is important to note that in terms of the opinion provided by Ledwaba Mazwai to PRASA, they unambiguously stated that "8. *Other than for the queries listed below we do not at this stage agree with the queries realised by the AGSA. Furthermore we do not think that any of the queries raised warrant the disqualification of the recommended bidder and/or the termination of their appointment. The queries pertaining to the procurement phase are of a nature that could have been dealt with by clarification process within the confines of the legal prescripts in that regard.*"

190 I annex hereto marked "TLM27" a copy of a letter authored by Swifambo dated 3 May 2013, evidencing that PRASA was aware of all the above.

SAGA OF THE TALL TRAINS – HULLABALOO


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191 The media saga around the locomotives of the Swifambo Contract dates back to November 2013. It all began at a meeting that I had with the delegation of the United Transport and Allied Trade Union- South African Railway and Harbours Workers Union (UTATU – SARHWU) which was led by Mr George Strauss (president), and included Mr George Goitsimang Phoolo Phoolo (deputy president), and a number of shop stewards from the unions working for PRASA (Mr Brian Jacobs, Rodney Blom and Peter Swart), the meeting was convened on the 11th floor of Umjantshi House in Braamfontein during August 2013. There was an apology tendered for Mr Steve Harris, the general secretary of the union as he was not in attendance.

192 I was accompanied in this meeting by the former CEO of the PRASA rail division, Mr Mosenngwa Mofi and the senior manager for employee relations, Mr Sello Maluleka and spokes-person Mr Moffet Mofokeng. The key issues raised in this meeting was the acquisition of PRASA locomotives from Spain – specifically Vossloh. I must point out that this meeting was held at their request which followed from a session they had held, shortly prior to this meeting, with Transnet Engineering, formerly known as Transnet Rail Engineering (TRE).

193 The union reported on their meeting with Transnet Engineering where they were informed by executive management that locomotives being acquired by PRASA from Spain, were not suitable for the South Africa rail network, would result in job losses in the rail sector and ultimately destroy the industry. They further asserted that Transnet had the capacity to build the required locomotives in South Africa themselves.

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194 In my response to the union submission, I took the leadership of UTATU SARHWU through the modernisation programme that PRASA had embarked upon and addressed specifically the PRASA strategy in re-building the rail engineering sector in South Africa. I assured the union leadership that three months prior to my meeting with them, PRASA had allocated an additional 30 coaches each to Transnet and Union Carriage and Wagons (UCW) as part of sustaining the industry and addressing concerns about job-losses. In light of this, I had confirmed with them that PRASA was already awarding a significant amount of its locomotives and coaches for refurbishment and upgrading to Transnet Engineering.

195 I further explained that our detailed assessment and analysis of the industry capacity was that neither Transnet nor any of the competing companies in our industry had the capability to build new locomotives or commuter trains. I demonstrated to them that South Africa has the capacity to manufacture components, carry out heavy maintenance and refurbishment as well as conduct certain systems integration. However this was not sufficient and at the time, South Africa fell short of the knowledge, skills and capacity to design, manufacture and integrate a modern train.

196 I shared the same information when I addressed the Leadership Team of Transnet Engineering Management held at the Irene Country Club early in 2014. I reaffirmed that it was PRASA's mission to sustain the raiing industry. However I made it very clear that the statement that Transnet could build locomotives for PRASA is not borne by the facts on the ground and is simply untrue. This was supported by the fact that Transnet could not even build locomotives for itself and in 2013 and 2014

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and had appointed General Electric (GE) to build their own locomotives. It is my submission that if they could really build their own locomotives, they would naturally not have appointed General Electric.

197 Furthermore, additional contracts for new built locomotives were awarded by Transnet to China South Rail (CSR), GE, Bombardier and other companies as part of their strategy. There was no local manufacturing except of the assembling of new locomotives in Transnet facility in Koedoespoort, Pretoria. Transnet had no capability to design and manufacture its own locomotives. This point was put forth to the union leadership.

198 A few weeks after my meeting with the union, the Democratic Alliance (DA) spokesperson on transport, the Honourable Mr Ian Ollis repeated the same assertion made by UTATU SARHWU, His statements were widely covered in the media. The media, as a result started making "noise" about the locomotives in question. The statements that South Africa can build its own locomotive, as it could in the past, were baseless and not supported by facts. This was followed by a statement from the Federated Unions of South Africa (FEDUSA) which created more of a flair.

199 I challenged the Honourable Mr Ollis on this in a debate, over breakfast, hosted by the Cape Town Press Club, Mr Ollis was unable to support his assertion with objective facts and instead spoke about the experience of his own dad and other people that were experienced as railway engineers. However, he could not get the simple point that due to over 30 years of under-investment in our rail industry, South

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Africa no longer had the capacity that could meet its demand for new, modern locomotives or commuter trains.

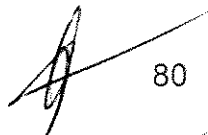

200 A few weeks after my debate with Mr Ollis, the then Minister of Public Enterprises, the Honourable Mr Malusi Gigaba, made a public statement that Transnet had the capacity to manufacture locomotives here in South Africa. Some of my colleagues challenged the statement of the Minister in public. I reprimanded my team for taking on the Honourable Minister in public. I was deeply dissatisfied about the Minister's Gigaba's statements however I knew at the time that this was as a result of the Minister being fed this information by the Transnet Engineering team.

201 After the launch of the first locomotive and second batch of locomotives and during the testing and commissioning phase of the locomotives, the story broke of PRASA purchasing new locomotives that were "too tall" for the network and that R600 million had already been spent. There was no scientific proof behind this story except reference to leaked documents. This article was written by Peter-Louise Myburg (Myburg) and published in the Rapport Sunday newspaper, and re-printed in its sister newspaper, the City Press.

202 Myburg had relied on leaked correspondence between PRASA and Transnet engineers. At this point in time, PRASA had responded comprehensively to the media allegations denying the allegations reported in the media. A copy of the PRASA's response to the media reports is annexed hereto marked "TLM28".

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T. L. M.

- 203 The media reports were wholly inaccurate as they failed to show that Transnet had already given PRASA its approval to test these locomotives on its own network. The articles, as a result were full of factual inaccuracies. Myburg seemed to have read about the Euro4000 in the internet and made assertions that the Afro4000 locomotives would not fit on our railways. He failed to recognise that while the Afro4000 was based on the same platform as the Euro 4000, it was modified to fit South African specification.
- 204 The biggest failure of this media reports and claims about “tall” trains is a fact that they do not have any reference to the applicable standards. They did not know of the SANS standards which provide for the minimum 4.5m clearance for contact wire and 150mm tolerance gap between the electrical lines and the train. The journalist has not seen nor read the Electrical Safety Instruction between Transnet and PRASA signed in 2012.
- 205 Myburg was actually given an award for his articles which he had written with a great degree of sensationalism. Interestingly, he was the only reporter to write 2 stories on PRASA per week. The reason for this is that there was no investigation done on the locomotives prior to writing any of the articles. The media reports were based on leaks of correspondence between Transnet and PRASA. Collectively the locomotives have done over 73 000km. I call this the biggest lie of the 21st century.


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206 Furthermore, I annex hereto marked "TLM29" a copy of the media statement which PRASA had made titled PRASA's response to misleading allegations. This statement I submit was made against all the allegations in the media.

207 It is furthermore important to note, that the then Minister of Public Enterprises, Malusi Gigaba was a shareholder of Transnet. During this time there was a campaign that sought to make the public to believe that Transnet was capable of building our own trains, which was simply not true. This unfounded assertion had found itself to the top officials of the government, including the likes of Cabinet Ministers.

EFFECT OF REVIEW APPLICATION ON THE PUBLIC INTEREST

208 I respectfully submit that had this review proceedings not been launched, the locomotives would have already been up and running for at least 1 year and would have benefitted millions of passengers. Furthermore, it would have avoided the catastrophic damage to PRASA which has now occurred which also resulted in the citizens losing faith in the entity and public institutions as a whole. I submit that a careful reading of the PRASA annual report indicates that the long distance rail service has effectively collapsed as a result of this.

209 I submit that it is exactly this conduct which makes a spectacle of our country in terms of the world economic platform, which is wholly unnecessary.

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- 210 I respectfully submit that PRASA, as it currently stands is in a much worse position now than it was 2 years ago. The Chairman, has misdirected his Board and has caused them to take uncalculated and foolish decisions which result in an excessive wastage of funds. This will ultimately bring the entity to its knees.
- 211 The Board's conduct has severely impacted the business and operations of PRASA. From July of 2015, the board has not focused on the mandate of the business of PRASA but rather on driving unlawful investigation.
- 212 During this period, the PRASA Board has cancelled a multitude of contracts – big and small, regardless of the impact on operations, these contracts range from critical contracts for maintenance to minor repairs. Small enterprises are, as a result, falling to the floor which naturally impacts the economy of our country. Across the country, rail services have collapsed and moved from good to bad. Without the operational leadership, effective maintenance, availability of spare parts, reliability of coaches and infrastructure, the services will continue to deteriorate, with more coaches being taken out of action as a result of the flagrant mismanagement.
- 213 PRASA as a business has not been able to effectively discharge its responsibility toward better public transport. The witch-hunt disguised as an investigation has simply distracted the PRASA Board and Executive Management from focusing on its ambitious modernisation programme. This business is focusing its time and

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T. L. M.

energy on rogue intelligence operations which has got nothing to do with the mandate of PRASA.

214 The media reports have focused on PRASA's claim against Swifambo whilst ignoring the real risk of PRASA losing this review application and the negative adverse impact thereof on the public. If one has regard to paragraph 26.2.2 of the Sale and Purchase of Locomotives agreement, annexure "FA73" to the Founding Affidavit, it becomes clear that PRASA has exposed the country to a possible claim in excess R2 billion. For the sake of ease of reference, I quote the pertinent clause below

214.1 *"26.2.2 in the event of this agreement being terminated (excluding termination based on seller's default), the purchaser shall reimburse the seller all costs incurred in the manufacturing of the locomotives until termination date, including costs of materials and components ordered for the manufacturing of the locomotives (or any part thereof) which have been delivered to the manufacturer of the locomotives and for which the manufacturer of the locomotives has paid for, or is liable to pay for, or for which the manufacturer of the locomotives is liable to accept delivery and pay for"*

These concerns were highlighted in annexure A of the detailed audit findings (TLM12)

215 This I submit, is one of the reasons I wrote to the Speaker of Parliament, Honourable Baleka Mbete about PRASA's contingent liability being grossly understated in the financials. The Minister of Finance will soon be aware of this real

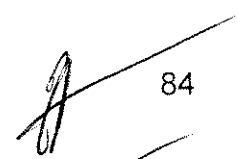
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risk and this will be occasioned by the considerations other than default by Swifambo of the Contract. This will create a lot of uncertainty and will yield a very serious going-concern issue for PRASA. It is not in the interest of the public nor the State to allow Mr Molefe to continue on this irresponsible path. I annex hereto marked "TLM30" a copy of my letter to the Honourable Baleka Mbete

216 I respectfully submit that our country is trying hard to reduce carnage on the roads, the irresponsible and unnecessary delays in modernising of the rail system, occasioned by this review application, cannot be condoned as this indirectly places more pressure and forces more people onto the roads. This flies in the face of the very objectives of the country's transport policy. When one weighs up the prejudice cause by this review application on the country and its people, this court will realise that this application is of a very serious nature and demonstrates that Mr Molefe is being irresponsible. Specifically because this review application has not been carefully considered, and has been launched as part of a vendetta on the part of Mr Molefe.

217 I respectfully submit that the Treasury will have to bear the brunt and pay for Mr Molefe's reckless behaviour which is the consequent damages if things do not go according to Mr Molefe's plan, which I submit will be the case.

218 I urge this Honourable Court to take a robust approach and a broad look at the grave damage that the conduct of Mr Molefe has caused and still to be, this review application has not only cost exorbitant sums of tax-payers monies, but has also


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halted the progress of our Country in bringing our rail infrastructure up to world standard.

MINISTER OF TRANSPORT'S VIEWS ON THE PRASA BOARD

219 Mr Molefe, has failed to indulge this Honourable Court into the sentiments of the Organs of State toward his conduct in decision-making of PRASA. The media reported widely on the views of the Minister of Transport about the performance of the PRASA board. I respectfully submit that the Minister of Transport is extremely dissatisfied at the way PRASA goes about its business. I annex hereto marked "TLM31" a copy of a note delivered by the Minister of Transport at the PRASA Annual General meeting on 26 September 2016.

220 In terms of this note, the Minister has highlighted the concerns about PRASA's approach to its wasteful expenditure on the unnecessary investigation which I have detailed above. To date, PRASA has paid an amount in excess of R120 million to Werksmans attorneys for this fruitless investigation. This, I submit constitutes a total waste of tax-payers hard earned monies. This type of behaviour is unprecedented and displays a motive of a person who will stop at nothing. The rogue investigation is at the instance of Mr Molefe who will exhaust all the funds of PRASA in pursuit of phantoms which simply do not exist.

MY SUBMISSIONS WILL ASSIST THE COURT

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T. L. M.

221 In my submission that I have a direct and substantial interest in the PRASA's application, and I respectfully submit that it would be in the interests of justice that I be granted leave to be admitted as an *amicus curiae* and to have this affidavit admitted into the evidence of the review application. It is my respectful submission that the facts outlined above will still be useful to the Court in its determination of PRASA's application. Thus, I respectfully submit that this Court should permit me to intervene as *amicus curiae*.


222 Given the fact that I myself was party to the transaction which is the subject matter of this dispute, I respectfully submit that I am the party who is best-placed to speak to the true happenings of events.

223 I respectfully state that without my evidence, this Honourable Court will not be able to make an informed decision as required under the Constitution.

THE ATTITUDE OF THE OTHER PARTIES TO MY INTERVENTION

224 On the 6th October 2016 my legal representatives addressed correspondence to both parties in the review application and advised them of my intention to intervene as an interested party. I have attached the letter hereto marked "TLM32".

224.1 PRASA'S attorneys have responded and indicated PRASA's dissatisfaction to my intervention, I annex hereto marked "TLM33": a copy of such correspondence;

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T.L.M.

224.2 Swifambo, on the other hand, through its attorneys of record, replied to the abovementioned correspondence favourably, indicating that their client would not oppose my application in the matter.

225 I respectfully submit that Swifambo's consent to my application reinforces the reasons for me to be admitted as *amicus curiae*.

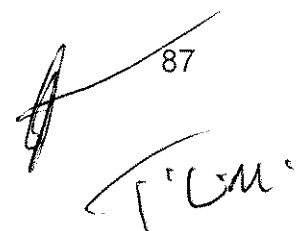
226 I further submit that my participation in these proceedings as an *amicus*, cannot occasion any prejudice to any of the parties.

227 PRASA's dissatisfaction stems only from the fact the true state of affairs will be laid out before this Honourable Court where intricate information, which I submit is necessary for the determination of this matter, will be placed before this Honourable Court which may negatively and adversely affect Mr Molefe.

CONCLUSION

228 A decision from this Court on the issue will also have a profound effect on the manner in which public entities and other state owned entities exercise their powers and conduct in all future matters.

229 I respectfully submit that granting me leave to be admitted in the application would be in the interests of justice as this Court will be able to make a more informed decision when determining the dispute at hand.

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T. M.

230 In my respectful submission, these reasons all point to a public interest in PRASA's application that is sufficient for this Court to permit my admission as an *amicus curiae*.

231 Having regard to all of the above, I respectfully request that this Court grant the relief sought in the attached notice of motion, including such further directions as this Court considers necessary or appropriate concerning my participation in these proceedings.

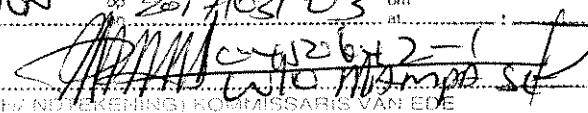

TSHEPO LUCKY MONTANA

I hereby certify that the deponent declares that he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at _____ on this

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I certify that the above statement was sworn to by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to before me and deponent's signature/mark/fingerprint was placed thereon in my presence.

SANDTON op 2017/03/03 om _____ at _____


(BY NOTARIËREKING) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS

SETHOPANA Ephraim MAMPA
VOLLE VOORNAAM EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

Nº 27 Summit Road
RESIDENSIËSGADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)

MOENWESIDE
W/O

SA POLISIEDIENS
SA POLICE SERVICE

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
SANDTON
03 MAR 2017
KLIENTE DIENSSENTRUM
SANDTON
SUID-AFRIKAANSE POLISIEDIENS



the _____ day of _____ 2017, and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended have been complied with.

COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION: