



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA



**public enterprises**

Department:  
Public Enterprises  
REPUBLIC OF SOUTH AFRICA

# PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

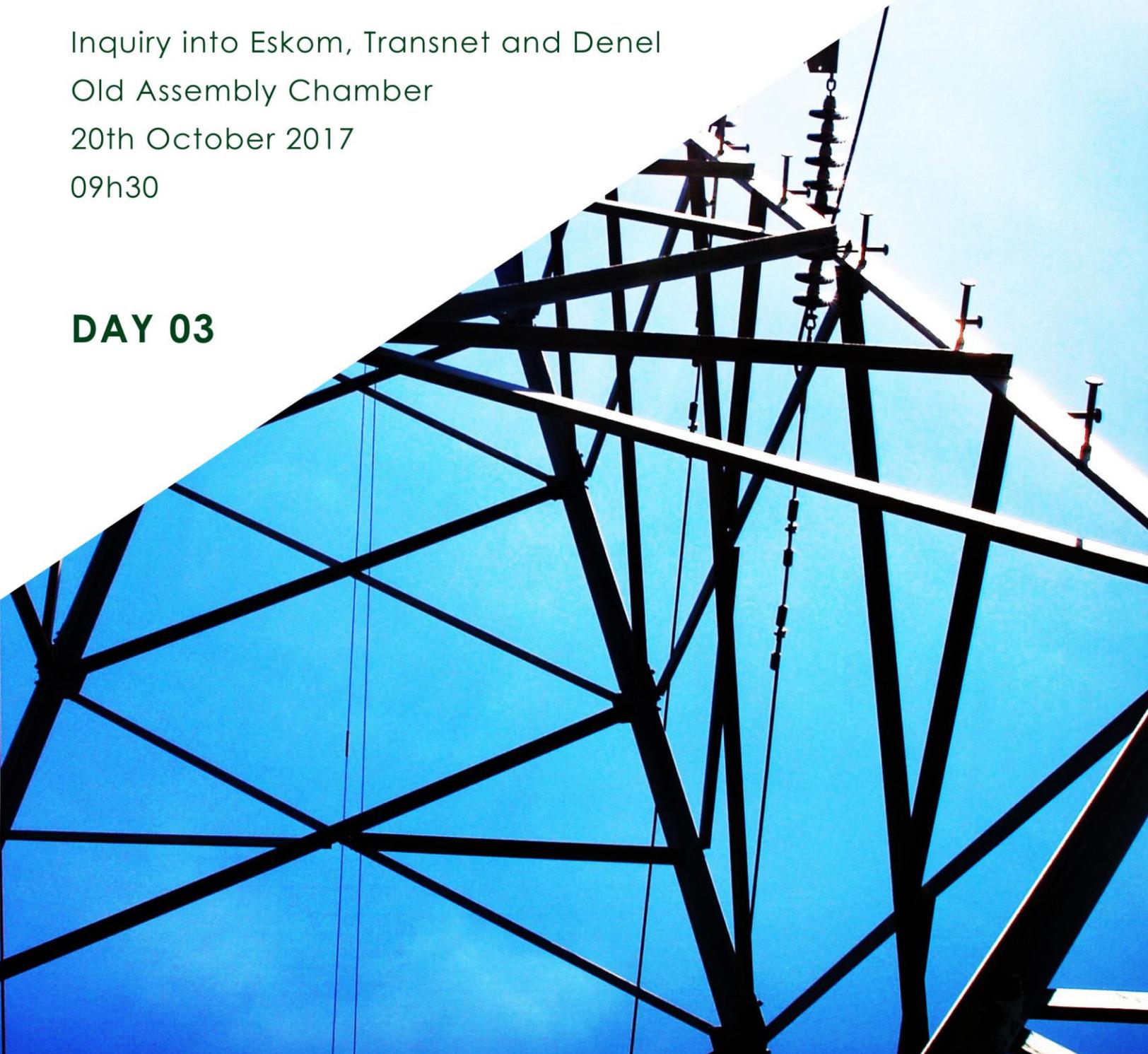
Inquiry into Eskom, Transnet and Denel

Old Assembly Chamber

20th October 2017

09h30

**DAY 03**



[00h00:15 - START OF AUDIO]

**Ms Daphne Rantho - Chairperson** - ... Officials, the media... we are about to start with our meeting but we are waiting for the presentation... the, what you call it?... [Off mike and inaudible].... No the presentation that we are going to get today, we do not have copies of it. So somebody has gone to photocopy it... We don't want to start without the members seeing what is written on those copies. That is why I am sort of lingering around and not and not starting the meeting. Members do you allow me to do that or I am taking just a in irrational decision on my own? [Laughter] Are you allowing me to do that?

**Honourable Member** - Chair you've got that liberty but you might want to at some stage deal with the other preliminary issues, ja.

**Ms Daphne Rantho** - [Off mike and inaudible].... That presentation has 34 pages, it's going to take some time for us to..... But anyway let me, for now, open the meeting officially and welcome everybody in the meeting.... Today Honourable members, apologies, let me start with the apologies.... [Off mike conversation]... We don't have any written apologies; we have verbal apologies which I'm not going to present here because they are verbal. Members, we are going to get a presentation from Eskom that will be led a few minutes by the evidence leader. And then from there we will, we will, let Eskom present... the pension fund, the pension fund, Eskom pension fund and provident fund. But before we do that, we would want the members, I'm not sure, are you all from the pension fund? Firstly, all of you who are seated here? There is no one who is not supposed to be here who is here?... Ok, very good... Before the.... we have two presenters of the Pension Fund issue and we are going to... ask them to take an oath or an affirmation, I'm not sure... They are going to take an oath; they agreed to take an oath. So before we start we will first read them, read to them the oath and then they will sign the... papers in front of them, do we have that? Honourable Mazzone.

**Honourable Mazzone** - Chair, if I may make a suggestion? And I don't mean to usurp your leadership as Chair but Chair while we're waiting for the presentation and before we do the oath because I think it's only right that we do the oath once we start the presentation. Could we perhaps deal with the issue of the letters of, what I would term, 'blatant intimidation' that this committee has received? And how we're going to be dealing with them?

[00h04:00]

**Ms Daphne Rantho** - Honourable members that's the suggestion...

**Honourable Member** - I support it Chair.

**Ms Daphne Rantho** - Honourable... [Off mike and inaudible]... Ok... I just... [Off mike and inaudible].... Honourable members, fellow South Africans, we have received a letter from the Black First Land First Movement... It is addressed to me, the committee secretariat and Honourable Baleka Mbete... I don't want to read the letter to you, do you allow me to read the letter as it is? [Off mike answer]... No, I don't want to read the letter but the content of the letter is asking the committee to stop the enquiry..... as of yesterday at 13 hours, that is One O'clock yesterday, mid-afternoon. If not, we will be taken to court.... [Reading letter]... Ja, it is like that. I will allow the members to speak on the letter because this letter is intimidating us not to work, not to go forward, it has names of people that they have that they have mentioned in this letter and also they

are saying the current enquiry by the committee the nature of the enquiry by the committee is not clear.  
Honourable members, Mazzone, Honourable Luyenge and Honourable Swart and Honourable Shivambu.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h06:36]

**Honourable Mazzone** - Chair firstly, you know, I hate to even give a letter of this ludicrous nature oxygen but one must. Chair the allegations within the letter are both legally unsubstantiated as well as completely floored. There is a lack of understanding of the constitution as well as lack of understanding of what the fundamental duties of a member of parliament in terms of our oversight obligation are. Chairperson I note the line that says 'that if we do not stop this committee by 13h00 of yesterday that legal proceeding shall be instituted against the committee'. Chair my response to that is, bring it on, I don't scare easily, this is not a committee that scares easily, we have an obligation to our country and certainly not Black First Land First Movement is going to stop us, nor anyone else. Very, very poor and failed attempt at intimidation in my opinion.

**Ms Daphne Rantho** - Thank you. Honourable Swart, oh Honourable Luyenge.

**Honourable Luyenge** - Ja, thank you Chairperson. Chairperson having received this letter, I want to first point out that as this committee, we are an extension of parliament and we have an obligation to listen to whoever wants to share information which is to the best interest of the public. And we have processes, we have mechanisms that are used in execution of that duty. Which I believe having gone through the contents of this letter and that writers of the letter have more information, broader information on state capture. But unfortunately now we are dealing with Eskom and we are dealing with particular and certain individuals if they have that kind of information they must liaise that with proper channels and we won't ignore what they seem to be part of what will we are doing. So this part of work that we are doing now it can't be stopped just because they have further information including other individuals that we might not be aware of. They must submit that information and ask us to do the same through those individuals. But not to, not for us to actually derail our focus and consider what they say, they must follow the right channels to give us that information and they will be called to come and say what they want at an appropriate time.

[00h09:32]

**Ms Daphne Rantho** - Honourable Swart.

**Honourable Swart** - Thank you Chair... [Overtalking and inaudible]

**Ms Daphne Rantho** - Sorry Honourable Swart, I'm afraid when... Honourable Luyenge said they will be called, If you remember the stance the very same people have done in the committee of finance, finance, here inside Parliament I hope you've got a protection on me that you have, you'll protect me.

**Honourable Swart** - Noted. Thank you Chair, we as a committee will decide who we call and we will not allow, we will not allow, anyone to intimidate us. We are resolute as you've heard it across political party lines you are determined to get to the bottom of the rot. And if they, if this group, the headline of this letter stop witch hunt of the Gupta's and let the judicial commission of enquiry on state capture run its course, we have a constitutional obligation this is an oversight enquiry and it is very important that we will not be intimidated. If there's any legal ground, I don't see any legal ground, let them go to court and let them try anything. But as I say, we will not be intimidated and an addendum to this is we also have information that one of my witnesses was, has received life threats, death threats. Any death threat against this witness here

or this committee is a death threat against parliament and it is threatening our parliamentary sovereignty. So we take it very seriously and we would say stop trying to intimidate this committee, stop trying to intimidate our witnesses. No weapon that is formed against us shall prosper thank you Chair.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h11:20]

**Ms Daphne Rantho** - Honourable Shivambu.

**Honourable Shivambu** - No thank you Chair. I really don't know why we are entertaining the Gupta militia. I mean like this BLF nonsense is the militia of the Guptas that seeks to divert honest work that is being done by Parliament. They tried to do that when we're busy with the corruption of Dudu Myeni and the misgovernance of the SAA, they came to literally disrupt the standing committee on finance and what I said when we got a letter from the Minister of Public Enterprises, Lynne Brown, is that the content, the pros, the packaging of the letter sounds like BLF and here it's confirmed now that the same issues that are raised by the Minister of Public Enterprises are raised by BLF. It looks like this state captured people, like the captured, the beneficiaries of state capture, are working from a central office. They are coordinated somewhere to try to resist the honest necessary work that we're doing to end state capture. I think we must dismiss this thing. I think we must respond to one, send this letter to say, 'we're not going to do what they're asking us to do' and it's finished..... And then they can go to court, we will respond to them because I don't think there's any rational court in South Africa which will say we can't conduct our constitutional obligation of overseeing the executive. We have to oversee the executive; it's a constitutional obligation which we must never neglect because of some rascals who are hired by a corrupt family. Thank you very much.

**Ms Daphne Rantho** - Thank you very much Honourable members. I did not get your prompt response in saying should I respond to the letter or not?..... Luyenge, Swart?

**Honourable Luyenge** - Chairperson it will only be professional and human to acknowledge receipt and respond. That unfortunately the contents of this letter does not make you feel that you have to do what is contained in the letter.

**Honourable Swart** - Chair it's important to respond because if there is any illegal action that is brought, this letter will form part of the annexure. So it's important to deal with the issues that are raised in the letter and I would refer to our legal department as well to advice as a correct response. But it's clearly a letter of trying to intimidate us but it does need a response, thank you Chair.

[00h14:31]

**Honourable Shivambu** - I already said Chair that we must respond with one sentence that says that, 'the committee has seen your letter and we are not going to do what you are asking us to do'. And you've got a right to go to court if you feel like the court is an option. And then we'll meet them in court and then they're going to lose the cost with costs and then we'll chase them to look for the money which they have wasted our time on...

**Honourable Mazzone** - Yes!

**Honourable Shivambu** - ... So let them bring it on.

**Ms Daphne Rantho** - Thank you Honourable members and I think we have disposed the matter now. Can we then go to the main agenda issue of the day? And that is the Eskom pension and provident fund. I will therefore read the oath to them and you will respond because you said you are taking an oath...

**Honourable Swart** - Sorry Chair. Are you, I'm just not sure a very large delegation. Are they all going to take the oath or how? Because and maybe we can get an explanation why there's such a large delegation?

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h15:43]

I presume each one has got some role to play? Thank you Chair.

**Ms Daphne Rantho** - Thank you very much Honourable Swart. The two presenters will take the oath. Whatever the presenters are saying we take it that they, all of them, are within the... they are going to listen to what I'm going to read to them, they are, they will fall in the same category but the two presenters will assign the oath and will take the oath. Thank you very much. Do you want to say something?

**Advocate Vanara** - Sorry Chair, it's just that they must take individual oaths. Ja, just wanted to make that point.

**Ms Daphne Rantho** - Ok I will start with Ms..... Maisela, you will be the first to take the oath neh....  
[Overtalking] You can switch off the line and listen. In accordance with section 16 of the powers privilege and immunities of parliament and provincial legislatures Act 2004, as a witness to this oversight enquiry please be informed that by law you are required to answer fully and satisfactorily to all questions lawfully put to you or produce any document that you are required to produce. In connection with the subject matter of the enquiry notwithstanding the fact that the answer or the document could incriminate you or expose you to criminal or civil proceedings or damages, you are however protected in that in that evidence given under oath or affirmation before a house or committee may not be used against you in any Court or place outside parliament except in criminal proceedings concerning a charge of perjury or a charge relating to the evidence or documents required in this proceeding. Please be aware that in terms of section 17 subsection 2 of the powers privileges and immunities of parliament and provincial legislature Act, a person who fully furnishes a house committee with information or makes a statement before it which is false or misleading commits an offence and is liable to a fine or imprisonment for a period of not exceeding 2 years. You are required to take an oath or affirmation, affirm that the evidence you are about to give is truthful. You may choose to take the oath or the affirmation. Which do you prefer?

[00h18:30]

**Ms Mantuka Maisela** - I prefer the oath.

**Ms Daphne Rantho** - Thank you very much ma'am. I swear therefore, I swear that the evidence I shall give, shall be the truth, the whole truth and nothing else but the truth so help me God. You'll raise your right hand and say... I, you, so help me God...

**Ms Mantuka Maisela** - So help me God.

**Ms Daphne Rantho** - Thank you very much ma'am, you've got the document in front of you, you'll sign it.

**Ms Mantuka Maisela** - Yes I will.

**Ms Daphne Rantho** - Thank you very much. The same with Mr.... Luthuli, it will be the same with you. You have listened to the content of the oath therefore you are saying, I swear that the evidence I shall give shall be the truth, the whole truth and nothing but the truth so help me God.

**Mr Sibusiso Luthuli** - So help me God.

**Ms Daphne Rantho** - Thank you very much and sign the document of the oath in front of you.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h19:37]

**Ms Daphne Rantho** - Thank you very much. Honourable members the oath has been taken by the two presenters which I think they will, they understand the content of the oath that they have taken. I will now give over to the evidence leader to take us through.

**Advocate Vanara** - I just want to start by giving a broad question so that allow you to do your detailed presentation. I've read your presentation; it's quite a detailed presentation. I will give you an opportunity to present it and later on I'll come and ask specific questions that you are here to assist the committee to understand the governance head Eskom, of course you're not at Eskom but you are a pension fund, of which Eskom is a contributing employer. We specifically would like to understand these circumstances that led to your involvement in the payment of a pension amount to one gentleman called Mr Brian Molefe. If you can take us through the governance structure of the EPPF, the relevant rules in that process and everything that you know, everything that you participated in during that process. Over to you.

**Ms Daphne Rantho** - Thanks. Before the EPPF is response, I just want to take the committee back to the 23<sup>rd</sup> of May. Remember in our resolution on the 23<sup>rd</sup> of May, we raised a concern on the 30 million rands that was going to be paid by Eskom or buy the pension fund to Mr Molefe. Then we said we would want to know how did they come to the, to the, conclusion that needs to be paid 30 million? We need to take, we need to consider and take that into, we will need to take that into consideration and see how do you calculate a person who has worked for 18 months and be paid 30 million for his contribution in the entity. So that we also claim ours, in parliament, we worked more than 18 months. Thank you, thank you.

**Honourable Shivambu** - No, no, I'm not going to ask, I wanted to ask that maybe before their presentation, they introduce the people that they came with and then so that we know who is that side there.

00h23:14]

**Ms Daphne Rantho** - Thank you very much, he will do that. You'll introduce yourself.

**Ms Mantuka Maisela** - Ok thank you very much, Madam Chair. I'm Mantuka Maisela, I'm the chairperson of the fund, I'm an independent member of the fund and next to me is Mr Luthuli, who's the chief executive and principal office of the fund. Behind me is Michelle Davids, she's our legal advisor and the senior counsel Mr Myinethi [Off mike question inaudible]... Myinethi. And over there it's Leboham Muhashwa, which is our legal advisor within the fund, and next to him, is Mr Sankar, who is responsible for the operations and behind him, is Mr Vitali, who is the benefit manager who administers the actual benefits and next to him, is Ben Steyn and Ben Steyn is a board member who is representing the pensioners at Eskom, he was previously the head of operations within the fund. Are we all done? And then Mashadi, she is also a legal, part of the legal team. Mr Luthuli is the CE and principal officer.

**Ms Daphne Rantho** - Have you introduced only eight? Or have you introduced all nine of your members? Because there are nine. [Off mike talking and inaudible]

**Ms Mantuka Maisela** - Yes, I've introduced everybody. I've introduced everybody.

**Ms Daphne Rantho** - [Off mike questions]... Ok thank you very much. You can then take over and present.

[Off mike talking and inaudible]

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h25:41]

**Mr Sibusiso Luthuli** - Can I proceed? Ok, thank you, Honourable members. I think it's important that I start by giving a background about the fund itself and then I'll proceed to describing how the fund works and operate board from a government point of view. I'll also then go specific to the issue pertaining to the circumstances surrounding the on boarding of Mr Molefe, then I'll proceed to talk about what happened when he was a member, I'll then talk about what happened and how he was exited at the fund, I will then talk about circumstances that arose after he had been exited at the fund and was retired and became a pensioner of the fund. Starting with the fund itself, I think they name of the fund as it has been indicated it's the Eskom pension and provident fund. Generally people refer to the fund as EPPF, so as I talk when I refer to the fund if I say EPPF I'm still referring to the fund it's a short acronym for the fund. So the fund is a defined benefit that is registered in terms of the pensions fund act. I think it's important that I just explain a little bit, that you can have a defined benefit or a defined contribution fund. These two funds work with in very different ways. In a defined contribution fund what happens is that members contribute on a monthly bases and when a member either exists the fund or retires from the fund, there is a benefit that is calculated based on the contributions themselves plus whatever market returns those contributions would attract. So the risk rates with the member in that type of a fund. In a defined benefit fund, when a member is contributed when they exit the fund there is a formula that is used to calculate the benefits of that member so in a way the member is shielded from the market fluctuations when they exit. The fund has to then assume the market risk that when they exit a member if the markets are down they still have to pay a particular benefit that's calculated via a specific formula. I think it's important that we just note and park that description because when I explain the circumstances surrounding how 30.1 million was calculated, those principles would then have to be factored in.

[00h28:28]

The fund has got its rules, these rules are registered by the FSP and these rules serve as the foundation of the fund, so the fund can't operate outside the rules it has to operate within the rules. The fund is governed by a board of trustees; it's got a board of fourteen trustees. Out of the fourteen trustees, seven are appointed by Eskom as the participating employer; seven are elected via an election process. Of the seven that are elected they represent various constituencies, two of the seven represent pensioners so they are elected amongst the pensioner pool. Three are represent trade unions, there are three recognised trade unions within Eskom, it's Solidarity, NUM and NUMSA. So each of those trade unions then again go through an election process where they then collect members that would represent them. Then two are elected from the general member population, who are, you know, are not bargaining unit members, they also go to an election. The term of office of the board, is four years... So each board sits for four years and after four years we then have to run an election process. The selection process is run independently by the fund which then results in those that get the highest number of votes either being re-elected or new members coming in. No board member can serve for more than two terms, so it limits that after the second term you then have to step off the

board. So currently there is a board that is in place, the board that is in place came into effect on the 1<sup>st</sup> of June 2016. Once the board exercises control and governance over the fund, it's however not practical that the board can attend to day-to-day activities. So the board has then, the fund as a management team which then attends to these day-to-day activities in terms of running and managing the fund and executing on board resolutions and board decisions and board mandates. The management team is led by myself as the chief executive of the fund as well as the principal office of the fund. I then have an Exco that assists me in terms of the day-to-day running of the fund.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h31:05]

The fund operates, the board has got, there's a governance framework in the fund whereby the board has delegated powers to my, either myself as the chief executive and there's further dedication to other management within the fund to make sure that from day to day there is a smooth running of the fund. So this is done through the governance framework, there are also specific delegations that the board would have, which would be relevant in terms of the application of the rules. The fund is a restricted fund, in the sense that its membership is restricted to eligible members only and also the participation as well; there is limitation that not everyone can participate. People that can participate in the fund are those that are employed by Eskom, strictly. Those that are employed by also Eskom subsidiaries, the one subsidiary that I can note is Eskom Rotek Industries, members of Eskom Rotek Industries are also members of the fund. As well as the fund itself employs employees, it's got employees and these employees are also members of the fund. So in the main in the fund there is three participating employers, the major one being Eskom and Eskom subsidiary and the fund itself. To be able, even if you are employed in one of these entities, there is an eligibility criteria in the rules of the fund that has to be applied such that you can then become a member. Part of the eligibility criteria requires that a member should not be more than 65 years old, so if the employer decides to employ someone who is above 65, then they cannot be part of the fund, they are not eligible. And also as indicated, is that you must be employed by one of the participating employers and then you must also not be on a fixed term contract or employed for fixed term purposes. So you must be permanently employed in terms for you to qualify as a member of the fund. Again I think that point I want to reinforce it because later on when we do speak specifically about the Molefe issue we need to then come back to that point and deal with issues of issues of eligibility. Just to give a sense in terms of the membership of the fund, the fund has about 85 000 members, of the 85 000 members roughly about 46 900 of those members are active contributing members that contribute on a monthly basis so that will be members employed by each of the various employers that I've mentioned before.

[00h33:56]

The fund is self-administered, what that means is that we do everything in house we do not outsource the administration of these members so we collect contributions every month we then manage the members that we have. We also pay out pensioners. Of the balance of the 85 000 being 46 900 being active members, is then pensioners. It will be pensioners, it will be beneficiaries and it will be what we call 'deferred' members of 'deferred' pensioners. 'Deferred' pensioners are people that have been working for an employer and when they leave the employer they decide to leave their benefits with the fund, such that the fund can manage their benefits up until the time that they get to retirement age. The fund also has got assets, currently the fund has got in excess of 143 billion rands in assets that the fund managers. Again even in the management of the assets we apply what we call a 'hybrid model' what I mean by 'hybrid model', is that some of the assets are managed by the fund itself. It's got its own Investment Management Unit, with its own investment management team that manages various asset classes. Then some of the assets we then offer or we allocate

to external asset managers where we do not have the requisite skills to be able to manage those assets. I think it's important that I also highlight that as a fund we operate on a good faith relationship with the employer. This good faith relationship with the employer is quite crucial and very important because without this good faith relationship it will become very difficult for the fund to be able to verify certain information. For example, in the instance of members that are joining the fund, the fund does not have access to documents for a member that joins the fund. We never get to see an employment contract, we never get to see the terms and conditions under which the member has been appointed by the employer, we do not know

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h36:10]

whether the member is, you know, temporal or if permanent employee. So we rely on a relationship of trust with the employer and we've gone through a process where we've defined what it is that we expect from the employer, you know, we've gone through a process where the employer knows and understands the rules, you know, I'll come back to the issue of that. And it's important to also articulate that when members come into the fund, there are no separate forms that those members complete because membership, as I alluded earlier on, is compulsory. So members, if they're permanently employed, they are compared to become a member. So there's a process which I will then allude to where on a monthly basis there is exchange of information between the fund and Eskom particularly, where we then get relevant information that will help us to be able to then process. So what happens on a monthly basis is that the fund receives certain information electronically from the employer, I'll particularly speak about Eskom, but I understand that, you know, we've put in Eskom RoteK in there as well it's the same process will apply. So we receive files on a monthly basis, generally it is three files that we receive. There's one file which we call a 'leg file', I think the terminology should not, sort of, concern you a bit, I'll explain what it means, then we receive another file called the 'pay file' and the third file that we receive is what we call a 'res file'. It is important to just differentiate between these files, they all come together electronically but what the 'lack file' contains, it actually contains information that has got membership data. So that is where we would pick up that there are new members from that file and we have gone through lengths to agree with Eskom in terms of what information should be on that file, how would we identify whether a member is permanent or not permanent, we went to an extensive exercise, I think the round about 2012, we, the fund migrated into new systems and following that Eskom used to send us documents that had people that did not qualify to be members. Where the codes were people that were temporal employees and this caused huge problems for us in terms of having reconciling items so we then had, there is a lot of exchange that happened between the fund and Eskom to agree that these are the people that in terms of the rules qualify as members. These are the people, this is the information that we expect on the file and there was an agreement subsequent to that and we then started getting information that is information that is useful to the fund. I did mention that there was a 'pay file'. The 'pay file' is the file that contains payment information. So for each member, member (a) this is how much contribution that is being paid for that particular member. Again this is driven by the rules that there is what is called a 'pensionable salary' and your contribution must then be based on the pensionable salary. There's a formula that is used, whereby the employee contributes 7.3% and the employer contributes 13.5%, so we then do a calculation to test that what we are getting as a contribution ties back to what the member earns as categorised as a pensionable salary.

[00h39:55]

Then we get a third file. This third file is called a 'res file'. What really the res file contain is information of all members that are exiting the fund for that month. So when we get these files, the fund goes through various tests to make sure the lack file we test, it gets uploaded then we get a list of all new members because those

members will not have existed in the prior month. So the system generates, restore a list of these are the new members, then there is someone that would go and check that actually these members, the codes actually says that this is a permanent member, they would check that the information, there is an ID, there is a, again I must emphasize, that we do not have the source documents. The source documents reside with Eskom as the employer, we've had, we've agreed that this is the information that Eskom needs to provide to us. So when we are checking, we are checking for accuracy and we are checking that information that we expect to be there is there and when checking that information that we expect to be there is there.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h41: 04]

You know, I also want to just highlight the fact that you know as I fund we expect that Eskom knows the rules, you know, these reasons why would expect Eskom to know the rules; because we have regular updates with Eskom where we interact with various stakeholders through various interactions, we do presentations to Eskom, we also have got what is called a member guideline that summarises the rules that Eskom is well aware of. Everyone at Eskom has got access to the information. When the fund goes through rule amendments we actually before we submit the rules to the FSB for approval, we submit those rules to Eskom and give Eskom those rules and says 'this is what you are proposing to change' and Eskom has got an obligation in as well as there may be a potential impact in terms of what we are proposing as a fund to amend. And also historically, Eskom has also requested information from the fund relevant to calculations under various rules, and they've also applied various rules in the past so which then makes us know that they actually know the rules. Eskom has also got what we call Eskom pensions office, which is resourced by Eskom individuals. This office acts as a liaison between Eskom and the fund and I did allude earlier on that roundabout 2012- 2013 we had extensive discussions with Eskom in terms of making sure that they understand what it is that their supposed to incorporate in the file. And also Eskom themselves have issued various internal memos and documents to their own staff members articulating the rules; that these are the rules of the pension fund and this is how you exit a pension fund. So we are very comfortable as a fund that Eskom knows the rules, they know how the rules should be applied and, you know, and we rely on them to make sure that the rules are applied because they have the source documentation which we as a fund unfortunately do not have.

[00h43:30]

So I think I've taken you through as well the process that we on board a new member in terms of the various files and the various forms that we then rely on. And also when we exit a member as well, we also do the same where we place reliance on Eskom to make sure that the information that Eskom provides is actually correct and accurate for the reason that the member is exiting the fund. In terms of the forms that the fund has that are applicable the forms have got, you know, various rules that you have to tick that this is the reason why the member is exiting also the member has to sign on a particular form to confirm that that is correct, as well as Eskom as the employer when we get an exit form, they have to sign that this form has been reviewed and is correct and the applicable rule has been applied. And this has been consistent with what has happened in the past. I think there was a question as well or a comment that came around what are the available rules that can exit a member. There is various rules that a member can exit through, you know, we've got rule 18, rule 23, rule 24, rule 25 and rule 28. Those are various forms under which a member can be exited from the fund. As part of our submission we have included the fund rules. So if reference is required we can then go to the fund rules and make reference in terms of what each of those rules and entail. I just want to focus a little bit on one particular rule out of the rules that I've mentioned. And again I just want to explain the principle around the rule when we again get to the Molefe specific circumstance, we

will then come back to the rule, but at least you will then have context. I want to focus on rule 28. Rule 28; before rule 28 there is a heading in the rules that says retrenchment. I think this issue was much subject of media attention that rule 28 had been utilised, but the heading says retrenchment. If the heading does say retrenchment but if you look at the rules itself and the substance of the rule, really this is a rule that deals with the retirement of a member who has not reached the age of 65. It then has got certain conditions that need to be satisfied for this rule to be applied. It says that, you know, a member who has not reached the age of 65 can be retired from service owing to a reduction in or reorganisation of staff, or to the abolition of his

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h46:35]

office or post, or in order to facilitate improvements in efficiency or organisation, or to retrenchment generally. I think we need to just note that because we will come back to that rule when we deal with the issue of Mr Molefe. Then the rule has got subsections; it's got subsection 1 up to 4. When we deal with the Molefe issue we will focus on the rule itself and we will focus more closely on subsection 3. Subsection 3 of the rule deals with the issue of a member who has attained the age of 50. Again we will then come back to that it also goes on to say a member who has attained the age of 50 or had attained the age of 45 years and who is listed, there's a particular appendix that was attached to the rules, and has not less than 10 years pensionable service becomes entitled to a benefit in terms of this rule. I think it's important that we just note that rule because again when we deal with the Molefe issue we will come back to that rule. So that is generally how the fund itself operates and that is the issue I think still on rule 28; there is the reissue when you read rule 28 it goes on further to talk about the issue of the discretion that needs to be applied by the employer that at the discretion of the board, again we will cover that issue more in more detail when we get to the Molefe issue. So there is also another rule that I want to touch on which again we will come back to later, this is a rule 21(4). Rule 21 (4) specifically deals with the ability of the employer to be able to purchase additional service for an employee. I think we need to just note that rule again, and note that it's not unusual for an employer, especially in a defined benefit fund, to be permitted to purchase additional service because again this will become relevant when we deal with the issue of Molefe. And again maybe for purposes of record that rule reads that an employer may make a special payment to the fund in order to add to the pensionable service of a member in his employ, such period of past service as the board after consulting the actuary determines. So I think it is also important just to deal with that. It's important also to note that over the years Eskom has applied these rules to a number of its employees; it has purchased additional service for other employees before and it has retired other employees using rule 28 which will be the subject of the discussion. I also want to highlight that the fund has got regular interactions with the (00h50:08) employees as well. As a fund we have a responsibility that we need to engage with our employees, inform them of...especially those that are new to the fund, even those that are not new to the fund; you find that issues of pension fund are issues that they are not dealing with on a day-to-day. And some issues around a pension fund our complex issues, so we to engage with our members on a regular basis.

[00h50:33]

When it comes to executive Eskom employees, what we do we actually go a step further where we can even have what we call a more personal and intimate service to those members, where we go and sit with them on a one-on-one. Given the number of Eskom employees it will be difficult to do that for all 46000 employees, so generally make presentations on a wider audience. Some of the presentations are initiated by the fund but we do have instances where, you know, a small group of members call the fund and say, 'we are sitting somewhere in Cape Town, we would like the fund to come and address because there is this issue that we do not understand.' And then the fund as part of its member communication initiatives does accede to

those requests. I hope that gives a good indication in terms of the background of the fund, in terms of how the fund operates, and also I've drawn attention to some of the rules of focus as we move forward. I'd like now to move specifically to the issue of Mr Molefe.

**Advocate Vanara** - Just before you get there can you just take the committee through the different forms of exiting the fund, your fund?

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h52:00]

**Mr Sibusiso Luthuli** - In order to exit the fund you can exit the fun in various ways. You can wait...you can resign from the employer whereby you then choose that you want to take your benefit; you can have a transfer it to another fund or a preservation fund or you can withdraw it and take it as cash, that is one form of withdrawal. If you want to take it as cash or if you want to withdraw it we do a calculation where we compare what is called an MIR, member individual reserve, and that will tell us whether your investment, you know, using actuarial factors; what's the value of that investment vis-à-vis your contributions plus interest up to that point. Then the higher of the two amounts is what you will then take out. You can die, be deceased, to exit the fund as an active member. If you die, there is again a rule that deals with death. In terms of the act there is also what is called section 37C, where then the board that has to allocate your benefit. We calculate the benefits based on twice your pensionable salary and that gets distributed to your beneficiaries. We also then calculate a spousal pension that we then pay to your spouse. If you have children that are under the age of 21 then there's also a pension for those children up to the age 21. You can retire normally from the fund, you either...if you are 50 years we can use rule 28, the employer has to agree to that; it's initiated by the employer, not the fund. Or if you are age 55 you can retire on your own, you don't need permission from your employer but there would be penalties that will be applicable which will then reduce your benefit. Or you can get to age 63; when you get to age 63 the penalties are no longer applicable, you can retire. Then the fourth retirement age is age 65. So once we get to 65 you then have to retire from the fund. You cannot continue being an active contributing member. There's also ill health benefit. Generally other funds ensure ill health outside. Given the size of the fund we are self-insured for ill health benefit, so, or if you are unfit for duty there's a process that we go through where you're assessed medically and then you are medically boarded. The fund has got a benefit which we call an ill health benefit that you will then be entitled to which will exit you from the fund. So those are the means and forms of exiting the fund.

[00h54:53]

**Advocate Vanara** - We can then get to where you wanted to get us.

**Mr Sibusiso Luthuli** - I'll start with at the inception when Mr Molefe was appointed at Eskom. I think it is common knowledge that Mr Molefe had worked at Transnet before he then went to Eskom and acted at Eskom for a period of...for a number of months and then was appointed to Eskom as the group chief executive of Eskom. So according to our records as the fund we have Mr Molefe having joined the fund on the 14th of September 2015. I think...I'm mentioning that date because you will note that as we move along there are some discrepancies in terms of the dates. We had never had sight of his employment contract, but later on when there were court cases that were ongoing, it's only then that we had sight of his employment contract. I will come back to the court case and how it affects the fund. At that point I think we then realised that actually the effective employment date that was cited on the employment contract was one October which is different from the 14th October. When Mr Molefe exited the fund he signed his forms and recorded

his exit date as 25 September. So there's three dates now in terms of when he's...sorry, he cited his employment date as 25th September. So the fund according to his record, I think I explained earlier on that the fund receives information from Eskom, it received the leg file which contains information and in that leg file it highlighted 14th September. We then received contributions for September; so we then tied that date to the contributions that we received. When he exited, when he signed his form he said his employment date was 25 September, his contract cited 1 October. Maybe let me deal with the issue of exiting him then I'll come back and tell a chronological story because when we exited him we had to now decide which date; at the time we had two dates, we didn't know about the one October,

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h57:34]

we knew 14th September and 25th September. Given that the fund had received money dating back to 14th September we then used that as our date of his employment or his membership to the fund. Looking at the difference between 14 September and 25th September from a financial point of view given that we had received payment for those days, it was (00h58:06) negligible and nothing turned out of that for the fund, so the fund utilised the first date. So I think this is just the first issue because in the documentation that we've submitted these dates do come up, so I think it's important that we just deal with them upfront that there was this variance. So again when Mr Molefe was... then became a member of the fund we received a leg file, I've explained in terms of the information on the leg file and one important thing that was on the leg file which is a file that contains membership data, was a code. This code says PPX and in our agreement with Eskom according to us, PPX means that you are permanent, and you are an executive, at an f-band level at Eskom. So when we didn't...when he first came in in September and we did our recons we checked that; to say is he permanent, he's on permanent fix term, he is an executive? So, we can tick the box to say that we've satisfied ourselves that what Eskom is giving us they are confirming that this member is an eligible member, because the issue of permanent and non-permanency talks to eligibility; so that was done. And then Molefe became a member of the fund and contributed on a monthly basis from there on. I think the first month there was a bit of a delay in terms of his contribution and because we'd received the leg file, but his name was not on, I think, the pay file, we then enquired to say, you know, there's a discrepancy here. They then, I think, processed immediately payment for the contribution for that month. And then going forward they then edit his name in the normal, you know, pay file that we received, and we continued to receive contributions from Mr Molefe from that point on until the point that he exited as a member. What happened just before he was on boarded as a member, I did highlight that in terms of executives when you onboard executives, we do have, you know, we do offer a VIP treatment to those executives where we go and sit down with them. Again in this instance we then received a request from a specific Mr Anton Minnaar. Anton Minnaar is an employee of Eskom, I believe that he is the general manager HR remuneration at Eskom.

[01h00:50]

Our understanding as the fund is that he's the one who deals with remuneration, pension fund issues, for executives at Eskom. He then contacted the fund and contacted particularly Mr Nzibande from the fund. Mr Nzibande is the client liaison manager of the fund so he would be the one that will be expected to go and engage with executives at Eskom and advise them about the pension fund and how the pension fund works. So this took place and there was a meeting that was held, I think the first meeting was held on the 29th of September 2015, where Mr Nzibande went to meet with Mr Molefe. In meeting with Mr Molefe Mr Minnaar was present as well at that meeting. The subject of discussion was that Mr Molefe wanted to understand that he had benefits, pension benefits at Transnet that he wanted to bring over to the fund. So he wanted to understand how that would work and whether the fund could accommodate taking over those benefits that

he had at Eskom. There was a discussion around that; he was informed that in terms of the rules of the fund, the fund is actually able to on take those benefits. We then categorised those benefits as additional voluntary benefits. They become additional, they do not form part of your basic pension that you would contribute to the fund. The rules allow for that and...excuse me... there's various other members in the fund that have brought in their benefits. Or what you can do as well is, I did allude earlier to the fact that there's a calculation that is used where there is a 7.3% plus 20.5% if a member chooses to also contribute more they can contribute, the rules allow for that, and again that does not form part of your basic pension but it goes into what we call an additional voluntary scheme.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h02:52]

So he was advised that this could happen, then he was advised that he would have to inform Transnet pension fund. Transnet would have to go through particular steps up to a point where they would have to apply for a tax directive, and then once that was approved they would come to the fund with something that's called an ROT. An ROT is short for what we call a recognition of transfer. Which then means that the fund can then accept those funds from Eskom. This benefit was in the region of about 4.2 million that he wanted to transfer from Eskom from Transnet to Eskom. That process unfolded and I think Transnet went through...I can't speak for Transnet, but we then eventually got the correct documentation and the money was transferred over to the fund. Then there was various other meetings that were requested by Mr Anton Minnaar. I'll probably just try and go through some of the meetings and very high level highlight what would have been the discussion. So I think round about November there was again another... some of these were emails, in our submissions we have attached all of the correspondence, some of these were meetings. So there was various correspondence where Mr Minnaar I think as early as November 2015 was requesting the fund to do calculations in respect of Molefe's overall pension payments and any early retirement costs in the event that Mr Molefe where to retire 5 years later when he was aged 54 and what will be the cost implications if the penalties were waived. We calculated those benefits, you know, then at different days and different times there were these requests that came through via email to say now calculate what happens from the age of 55, what happens at the age of 63, and all of this took place around about November 2015 where we then calculated, did various calculations. And I think in one of the emails that was sent to us we were put under pressure as the fund to say, you know, we need this information urgently because it was saying that calculate these numbers as information is required to finalize the issue with the minister. So we don't know what minister they were referring to because it didn't say what minister, but it just said we need this information to finalize the issue with the minister.

[01h05:43]

And again, as the fund we provide a service to the employer, where did the various calculations and sent those calculations over to Eskom. Then Molefe became a member, you know, there were no further interactions, he then contributed all the way until about August 2016. I think specifically on the 18th of August 2016 we received again a request from Minnaar, Anton Minnaar, at Eskom now requiring the fund to do early calculation for early retirement costs if Molefe were to be retired at the age of 50, with penalties being waived and additional years of service being bought up to the age of 63. Again the fund calculated those benefits and then gave the information back to Mr Minnaar. I think at the time, the cost of the benefit we had calculated it in August to be around 25.9 million; that if you were to get retired at age 50 and they were to buy him additional service up to age 63, what would it cost? It was around 25.9 million at the time. You know, which is different from what actually the 30 million eventually, that the cost of this benefit became at the end. The difference is really as a result of the fact that there are certain variables that at the

time we did not have, for example, number one, this calculation is based on the actual... on the cost so at that time when we did the calculation I think his salary not been adjusted upwards. Also when we do the assumption we have to factor in the issue of a spouse. We make assumptions that the spouse will be about 5 years younger than the member, so if the spouse turns out to be much younger that also affects the cost of the benefit. So when we did the initial cost of 25 million those two issues in the main we had made assumptions, used the existing salary, as well as a spouse who was 5 years younger. When the final calculation was actually done we now had actual numbers where the salary had increased as well as I think,

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h08:20]

Mr Molefe had married a spouse at that point in time who was much younger than 5 years, so there was a much bigger gap between the 5 years we had used as an estimation as well as the actual...

[laughter]...

**Ms Daphne Rantho** - ...he was aware of the rules so...

**Mr Sibusiso Luthuli** - Madam Chair, as I indicated earlier on that it is our expectation that Eskom knows the rules, Eskom have applied these rules on numerous occasions. So there was that exchange, we then gave the numbers to them. And then later on I think this was now sometime in November again we kept on getting request to do different calculations, and around about December, I think early December, we then received a request for a meeting again from Eskom. And I think in this instance now, the meeting I think it was about the 19th of December. The meeting was now requesting for the collection of documents at Eskom. So again Mr Nzibande went to Eskom and met with Ms Marinda Botha who works in Anton Minnaar's office, and collected documents. Now these were the documents that we're dealing now with the exit of Mr Molefe. In the documents that were collected there was firstly a letter... ok maybe let me start with the form... there was a form that had been completed by both Mr Molefe as well as Eskom itself, and in this form they ticked the relevant boxes to say Mr Molefe is being retired using early retirement. Then that was accompanied by a letter. This letter was signed by the then Dr Ben Ngubane who was the chairperson at the time. And the letter was very clear; you know, Mr Molefe, your application for early retirement has been approved and we are invoking rule 28 as well as rule 21 (4). So there was no ambiguity in terms of which rules Eskom wanted the fund to apply, in terms of rule 28 and rule 21(4). And then it further stated that any penalties would be waived. It further stated that they would, you know, purchase additional service for Mr Molefe of 13 years, which then took him to age 63 because he was turning age 50 in December.

[01h11:37]

So it was very clear from the fund that, you know, Eskom understands the rules; this is what they've given us, ours is to test that, you know, if they say rule 28 is a 50 years are they going to pay additional cost, and you know we will have to recover those additional cost and everything according to the fund, you know, had been ticked. So, when the fund received this information it went through the normal processes. I had explained earlier on that we've got, you know, various delegations. Normal processing is something that myself I would not generally have sight of because there's processes that had been agreed that this is how the delegation works, you know. I'll deal with the issue of when I myself, I first became aware of the issue. I think the first time I became aware of it was around probably, I think, it was about August or September when they were now saying we must calculate, this was in 2016. As part of normal discussions with my team, I think the issue

did come up that Eskom had asked the fund to calculate these benefits for Mr Molefe, there may be a possible exit of Mr Molefe. And I noted the issue, you know, and the discussion was along the lines that it must just be done in terms of the rules and then I never heard about the issue until much later. So when we got the claim forms, the claim forms were processed in the normal manner where they went through the processing department. The processing department as part of rule 28 have to check the age; age 50, yes, Mr Molefe will be age 50 effective one July which was...sorry...one January which was the date that he was going to go on retirement, He was going on 31 December, but was going to become a member on one January 2017, he admit that. The employer had actually submitted a letter which then confirms that they applied rule 28, again we were satisfied ourselves that rule 28 is applicable.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h13:55]

He did not have the 10-year required service, and this is where the employee invoked rule 21(4) which rule 21(4) enables the employer to actually buy additional service. He then also... the employee was very clear that the penalties must be waived and they will foot the bill, take up the cost for those penalties. So it then got processed, it went through the normal delegations, it was signed off, we checked the calculations, we applied for a tax directive. Mr Molefe opted to take one third of his benefit in cash and left two thirds to buy him a monthly pension that he would then earn until the end of his life, and then the spouse will assume pension as well. That's why it's important for the fund to understand the age of the spouse, because if the member is no more than the spouse, in terms of the rules, then assumes the pension. So that affects the cost if the spouse is much younger. So this was then processed accordingly and come one January, Mr Molefe became a pensioner of the fund; he was exited. I think in terms of paying his benefits there was a bit of a delay because it was firstly the December and January season where things were closed, but then we applied for a tax directive, we received a tax directive and I, if I'm correct, I believe round about February sometime is that we were able to pay him... back pay him in his pensions from one January 2017. And then at some point as well round about February we paid him his one third less the tax, and then he was on our payroll and started receiving pension on a monthly basis. Until the point where he...when we received correspondence from Eskom that we should suspend paying his pension. But I'll deal with that in a chronological manner.

**Ms Daphne Rantho** - Sorry Mr Luthuli, can you be specific on how much did he get after you were given out there in your chronological manner.

[01h16:19]

**Mr Sibusiso Luthuli** - I can deal with that. Ok, maybe let me deal with how the 30.1 million was calculated. It is quite a complex calculation but I'll try. In the documents that was submitted we've put details, you know, but I'll try and simplify it to the best that I can. So what Eskom had said we must do is that we must actually calculate... they will buy him additional service, they will waive penalties. So to do that you then have to take his last salary that he was earning; he was earning around about 5.6 million rands as a salary. On that you then have to add the additional months to take him to age 63, which in this instance is about 156 months that you have to add. So you then get...he had worked 16 months + 100...he had work 16 months + 156 months you then have 172 months. You then have to calculate the penalties using rule 24 on his actual benefit which is; he has worked for 16 months, he earned 5.6 million, if he were to retire now what would be the penalties that will apply and there's an amount. Then you have to deduct the two amounts; the grossed up amount which has been grossed up to age 63 from this amount and the difference between the two that is an actuarial calculation of 30.1 million.

[Inaudible off mike]

**Ms Daphne Rantho** - Advocate Vanara, if you want to ask something you can ask if you want to get into what he's just said...or there's a request that he repeats it, but slowly.

[Inaudible]

**Mr Sibusiso Luthuli** - So, let me try and do it slowly. I think that you had asked earlier on why we have an entourage of people; there people that do the actual calculation that we've brought that if my explanation is still not proper English we can request them to Englishise it. You take his last...

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h19:07]

**Ms Daphne Rantho** - We do not want English we want to understand the calculations; the amounts, how did they get to that amount. The English part of it we do not want it, we want just the understanding of the amounts.

**Mr Sibusiso Luthuli** - Thank you Madam Chair. So, you take his last salary, he was earning 5.6 million, to that you then add the number of...he was earning 5.6 million he had worked for 16 months, so it is the first part of the calculation. I think it's important that you get an answer to that he was earning 5.6 times the number of months then you bank that.

**[Unidentified speaker]** ...Is that 5.6 million a month?

**Mr Sibusiso Luthuli** - No, 5.6 million rands per annum. You then do a secondary calculation which then says; the employer wants to take him to age 63, so to take him to age 63 when he is 50 you need to add more months to then have a theoretical service that he did not have which is going to cost money. So you then gross this up the number of months to get to 172 months to say the total number of months that you would have worked. So he worked 16 + 156 months which is what you are purchasing theoretically. You then get to an answer of 172 months. You then look at the difference between the two to say this is the cost...this is the actual that he's worked...there's an amount; this is the theoretical that they've bought him, what is the difference between the two. You then have to factor his spouse into the calculation as well. As I indicated that if there is a spouse we assume the spouse is 5 years younger, if the spouse is more than 5 years younger, the cost of that benefit goes up. So in this instance the spouse was more than 5 years, we had to use the actual number of years that the spouse was. We shot up the benefit...the cost of that benefit...so that's how you then get to the 30.1. I'm trying to simplify it as I can, there's a detailed calculation that we've included as part of the submission. But I'm just trying to make it as simple as it can be.

[01h21:43]

**Advocate Vanara** - Ok, we must be fair to the individuals or individual concerned. At this stage, my understanding is that he is... Mr Molefe is not involved personally in this transaction and that this is an interaction taking place between Eskom represented by the board and the pension fund. Is that correct?

**Mr Sibusiso Luthuli** - At this point when these were calculated the process was triggered by Eskom as an employer. Firstly Eskom asked us; do these calculations. When we did them we used assumptions. We used the actual salary of 5...or I think it was slightly less than 5.6 at the time; I think in between that he got a salary increase which then when we had to do the actual calculation, we had to use that. But this was triggered now to do the actual calculation; it was triggered by letter that came from Eskom. So from the funds point of view,

we don't know what decisions or what informed the approvals from Eskom. All we received was a letter. And then we followed a process in terms of; is he 50 years, you know, has the employer confirmed that these are the rules that they want. So this means that we must then do this calculation. And the letter was clear; it said apply rule 28 and apply rule 21(4). Rule 21(4) is important because the rule 28 specifies that you must have at least 10 years service, so if you don't have that 10 years service you can qualify for rule 28. To then overcome that you must apply a rule 21 (4) which rule 21(4) then bought him 13 years additional service. So he then could meet rule 28 because he now had more than 10 years additional service that they'd bought him.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h23:45]

**Advocate Vanara** - Ok, but the question that I'm asking is that the letter that bought Mr Molefe in this instance he's the subject matter, but he is not the one writing to the fund saying I'm buying for myself 156 months, that letter comes from Dr Ngubane.

**Mr Sibusiso Luthuli** - That is correct. The letter came from Dr Ngubane, it was signed by Dr Ngubane.

**Advocate Vanara** - Can you then move to the subsequent developments?

**Mr Sibusiso Luthuli** - Ok, I've concluded the first part of the calculation. I think I need to move to the second part before I proceed. So once we've established the cost of the benefit, to retire him we then do a separate calculation. Now we've said to retire him it's going to cost this much, Eskom you must pay us this 30.1 million, which Eskom did pay to the fund. They didn't pay it to Molefe because I think later on when the media reports came it was purported as if the money was paid to Molefe. It was never paid to Molefe, it was paid to the fund to actually cover the cost that the fund had calculated, to say, if you want us to do this we are a DB fund, we cannot prejudice other members, so you must pay this amount. They then paid it. We then did a separate calculation, in this calculation now we are calculating his pension. So we then took his 5.6 million, we then added the 172 months to that, we multiplies it x 172 months, because they're bought him now the 172 months...they've bought him the additional 156 so he now has that... you then multiply it by a factor which is a factor that is actually calculated of 2.17%. That then gives you a gross amount of his pension benefit. So his pension benefit was, his statutory pension was 20...round about 29 million, was the amount.

[01h26:08]

He then opted to take a third of that amount as a cash lump sum. We then calculated a third; 29 million plus...divided by 3, a third is about 7.9 million. That 7.9 million was paid to him subject to tax. We applied for a tax directive, they deducted tax, and we paid the balance to him after tax. I think you must recall that earlier on I had mentioned that he had brought in money from Transnet. He had brought in about 4.2 million. Again he opted, when he retired, again he is entitled to take a third of that amount. So we took the 4.2 million and we added interest to it. With interest it was at that point in time round about 5.2 million. Again, we took a third of that which was about 1.7 million; again we applied for a tax directive. The receiver then issued a tax directive. So he got a combination amount of you know the 7.9 plus the 1.7 which was round about 9.7 million less tax. I think the amount that he actually took out in cash after tax what about 7.9 million if I'm not mistaken. I'll come back to that because at a later stage there were tax issues that arose. Then the two thirds that he left behind at the fund bought him a monthly pension. So he had a monthly pension from the statutory amount which was round about 95000. He then also had an additional pension of 15000...15.7

thousand. So if you add those two amounts so his gross pension was about 111 000 that we paid him on a monthly basis until...yes.

[Inaudible audience commentary]

**Advocate Vanara** - Can you proceed?

**Mr Sibusiso Luthuli** - I think maybe I should start when...so now he's a pensioner, now we've paid him this amount. So we paid all these amounts towards the end of February. So once we've calculated all these amounts, I think you must recall that we'd been working with estimates, so now we had actual numbers, so we paid the amounts and then calculated the actual numbers.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h29:02]

We then went to Eskom and said; Eskom you owe us 30.1 million, can you please play the 30.1 million; we invoiced them. They paid over the 30.1 million to the fund; I think it was on the 23rd of March 2017. So this money hit the funds bank account and from the funds point of view we've covered our costs, we've done the calculations and we've recovered the money so no member is prejudiced. Round about April, I think it was on the 19th of April if I'm not mistaken, it was a Sunday. There was a newspaper article...sorry, it was not the 19<sup>th</sup> it was actually the 16<sup>th</sup> ... Sunday was the 16<sup>th</sup>. There was a newspaper article in the Sunday Times and in this newspaper article it then said that, you know, there was this amount that it been paid to Molefe of 30.1 million and so when I read this I actually got very concerned, because I was where is this 30.1 million coming from? I recall that I had had a discussion around 26 million. So the first thing I did I actually phoned Joey Sanca, who is the manager responsible for operations, and I said look up reading a Sunday Times here and there is two things that are of concern to me, one, I hear there's a 30 million that was paid pension that was paid to Mr Molefe, can you first confirm that the pension fund has never paid 30 million to Mr Molefe, which he confirmed. He then took me through what had transpired to say, do you recall I'd mentioned a figure of 25 - 26 million. When we did the actual calculation, we had to factor in the actual salary, factor in the actual spouse. So the number moved from the 25 - 26 million to 30.1 million. So the 30.1 million that is reported is factually correct but this is money that was actually paid into the fund not paid to Molefe. And we had done all these calculations and we had retired Molefe and he was earning a pension, and this is the amount of money that he had taken as a third. I was then satisfied that, I then followed that up by phoning the chairperson of the board to alert the chairperson, you know, because I was concerned that now there may be reputational issues for the fund, with the pension fund being mentioned in the media. Again indicated to the chairperson that there is this article in the paper, in the Sunday Times, let me correct the facts. I corrected the facts with the chairperson that, you know, the 30.1 million was actually paid into the fund. This transaction had gone through the normal processes of the fund. The chairperson asked why it had not been raised with the board. I explained that; chairperson there is the delegations that are in place which delegate management to deal with these issues on a day-to-day basis, so that is why it had been dealt with on the day-to-day basis and had never been escalated to the board. I think after that I later that day spoke to the chairperson of the audit and risk Committee of the fund again alerting him to the issue that there was this issue that had been mentioned in the newspaper article. And again corrected the facts with him and again spoke about the issue of delegation that this issue has been delegated to management hence it had not been a necessary to find its way to the board. Even myself, it was not necessary for me to sign it off as the chief executive because there were proper delegations that were in place.

[01h33:00]

**Mr Sibusiso Luthuli** - ... necessary to find its way to the board and myself. It was not necessary for me to sign it off as the chief executive because there were proper delegations that were in place. Then we, I think, a few days later we then had a, I think on the 20<sup>th</sup> of April we, ... and Mr Nzibande from the fund got a call from Mr Minnaar for a meeting, an urgent meeting that Mr Minnaar wanted to have with Mr Nzibande. Then they had this meeting, Mr Nzibande attended this meeting and I think what, after the meeting he actually wrote an email to myself and to Joey, Mr Nzibande report to Mr Sankar expressing concern that he had been called into a meeting whereby he believed that was meeting with Anton Minnaar but when he arrived at the meeting there were two other people at that meeting and I think the meeting was somewhere in Midrand not in the Eskom offices. He said that there was a Mr Adil Partel who had indicated that he was from Cliffe Dekker Hofmeyr and there was a Ms Venete Klein from Eskom who indicated that she was the chairperson of the People

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h34:18]

and Governance Committee at Eskom and he was familiar with her because we had, I had been present as well when we done a presentation to the same community some months earlier. And his concern was that he had attended the meeting understanding that was meeting Anton Minnaar and then there was these other individuals, so he got very concerned. So he then explained that he was asked around the correctness of the calculation of the 30.1 million which he reconfirmed that the fund had done this calculation correctly and he was asked as to whether, you know, there was the fund was comfortable that these amounts were proper and corrected and I think again we've attached all those correspondence and all that detail into our submission. We, then there were various other things and correspondence that happened from that point on between Eskom and the fund where we then got, you know, emails from Eskom requesting the fund to meet with I think the first one was to meet with Sizwe Ntsaluba Gobodo, who our auditors appointed by Eskom and the purpose of that meeting was that, these auditors wanted to recalculate this 30.1 million because I think at that point now, you know, they were trying to question the found as to correctness of the 30.1 million and the fund took them through the calculation and our belief because they never came back to the fund was that they were satisfied that the calculation was correct. Subsequent to that we also got another request from Eskom now to meet with Ernst and Young, EY, and I was myself present at that meeting and really the purpose of that was they now, EY was investigating who had leaked this information to the media. They wanted to establish from the fund whether the link to the media was from the fund. And again we participated in that and we explained to them the processes that the fund follows and I think when they left the meeting they were satisfied that, you know, the fund had nothing to do with leaking information. Because what was being cited in the media was reports from an SAP system which the fund does not use, so Eskom is the one that uses a SAP system.

[01h36:48]

This was reportedly the documentation that had been leaked to the media about the payment of this 30.1 million. So when they left there, they were satisfied that the fund had not, could not, this could never have come from the fund. Round about the 8<sup>th</sup> of May, we then, you know, we are we received all of this correspondence and this requests and then the, on the 12<sup>th</sup> of May, I received a letter addressed to me from a Ms Susan Daniels, in an email requesting the fund to stop paying Mr Molefe pension. I think this was on the 12<sup>th</sup> of May. Two weeks later on we then responded to, you know, Eskom asking to understand on which bases are they saying we must stop the pension payment because in terms of the rules you can't start and stop a pension there are legal implications for us as a fund if we just suspend pension without understanding the reason why we would be suspending that pension. And then there were various other correspondences

as well where then subsequently I think Mr Molefe was reinstated at Eskom. Again we then got a letter telling us that he had been re-employed at Eskom and then indicating that the period that he had left up to the period of re-employment would be taken as unpaid leave and then we must stop paying the pension. We then confirmed that we had suspended the pension at this point but then asked Eskom to clarify to the fund what is the position of Mr Molefe so that we can look at our rules and see whether you know how to treat this issue because we'd never had a situation like this. You know, similar to this Mr Molefe issue. So once all of this was happening on the site from a governance point of view from the Fund, the first article had been in the media on the 16<sup>th</sup> of April. Then Came the 19<sup>th</sup> of April, we had a board committee meeting, a benefits Committee of the board and at this meeting this was the first time that the issue then came up immediately after it had been in the in the media and again at this meeting the board committee asked management to explain what had transpired around this issue.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h39:34]

And management explained that these are the circumstances, this is what had transpired and presented all the facts. I think then later on there was another meeting as well of the investment committee of the board and again similar questions were asked by the board committee and again management explain what had transpired. Then on the 16<sup>th</sup> of May we had, the fund has got a Legal and Governance Committee of the board again we had a meeting at this committee. Now at this committee we presented, we did a presentation to this committee dealing with on-boarding Mr Molefe, you know, and all the issues and correspondence and also how we got to pay the benefit. And then explained that as far as management was concerned this had followed all the rules and there were indications that were in place. It was at this committee that the board committee requested that we sort we seek independent legal advice. To just make sure that from a fund's point of view, we followed all the processes and the rules accordingly that we were supposed to have followed. We immediately after that meeting instructed our legal advisors, Norton Rose, to then formulate, look through what the fund had done, look through whether, because there were now media reports that were questioning the applicability of rule 28. Whether rule 28 was applicable or not, so this was, I think, round about the 16<sup>th</sup> of May when we then requested and Norton Rose to do this. Then the board decided to have a special board meeting so that this the board of the fund had a special board meeting where now the attorneys of the fund could come and present their opinions in terms of whether the correct rules have been applicable or not. This was done again in May and I think the legal advice or the legal opinion that the fund received was that actually rule 28 (1) read with rule 28 (3) qualified Molefe to be retired from the fund. So the fund had correctly retired Mr Molefe in terms of those roles and also looking at rule 21 (4) which permitted the employer to buy additional service. So in as far as that was concerned the fund had correctly had acted correctly. What they then raised was if you read rule 28, especially route 28 (3), it does indicate that this should be done at the discretion of the board. So they then indicated that this should have actually been presented to the pension fund board to apply its discretion. So by virtue of it not having been presented to the pension fund board, it then meant that this retirement was actually ultra-virus, those were the words that were used in the opinion. At that point in time we had not dealt with the issue of dedication, so subsequent to that we then presented the delegations to the attorney's to then consider them in light of what they had indicated. There was a specific delegation that had been long standing where the board had delegated even issues of discretion to management. Again they looked at that when they came back they said yes it's well and good that when you effected this transaction you will you rightfully believed that this was delegated to management because here is a proper delegation from the board.

[01h43:22]

But the board in the first place, you know, this was an old standing delegation, should have never delegated delegation to management you can't...

[Off mike inaudible]

**Mr Sibusiso Luthuli** - ... sorry, sorry, discretion, you should have never delegated discretion to management. You can't delegate discretion. The discretion should have been exercised by the board. Then the next question was can this transaction be undone? And the advice from the attorney's was that it can't be undone because it's already been done, to undo it you need a court order to actually undo the transaction. So in response to that then the board immediately corrected the situation by saying that all issues that have to do with discretion in the rules that have been delegated to management must now from that point on be presented to the board. Is, there was a lot of media attention and we were getting a lot of media requests.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h44:18]

There was concerned to respond to those media requests because we still have confidentiality issues. Mr Molefe was a member of the fund and we were in a difficult position as to but how do we attend and address these media requests without breaching that confidentiality issue. But then the fund, you know, during the course of May did release some media statements, I think particularly two media statements where it was explaining that actually the fund had correctly applied the rules and it actually followed the rules and Mr Molefe qualified in terms of the rules to be retired using rule 28. And also we then issued, we also again communication to our members again explaining what has happened because also members were concerned that the fund was being financially disadvantaged because you did pay 30 million rands to Mr Molefe and again we assured them that, that was not the case. Subsequent media reports also came out of interest, two issues arose out of those media reports. The first issue that arose was an issue where the media was questioning the eligibility of Mr Molefe, to say that 'but Mr Molefe was on a 5-year fixed term contract', so according to the rules of the fund he should not have been a member of the fund in the first instance. When we then discovered this we then sought legal advice. I think they were two issues, there was that issue and secondly the issue around tax. Where again they were looking at the amount of tax that SARS when they gave a tax directive had deducted. We again sort legal advice on those two issues and legal advice that came back indicated that actually given the fact that they are eligibility rules which say that you must become unemployed, if Mr Molefe was a 5-year fixed term contract he should have never been a member of the Pension Fund in the first place. You know, and the fund, go on to explaining that the fund relies on information that it received from Eskom. In the past, all other CEOs as far as the fund was concerned had always been permanent employees so even in this instance when the Eskom indicated that Molefe was a permanent employee, the fund had no reason not to trust the information that it had received from Eskom. So now there was this issue that there is a legal opinion now saying that in the first instance Mr Molefe should have never been a member of the fund. We then followed again up on the issue of tax and when we had completed the application for tax for Mr Molefe, in the tax form itself there is a space where you have to tick and put a number if there's additional contributions that the member has made. I think you'll recalled that there was that amount of 4.2 million that I had indicated earlier on which had come from Transnet, so according to our rules that amount was categorised as an additional voluntary contribution. So if you are applying for a tax directive for a member who does not have additional voluntary contributions you do it electronically. But where member has additional voluntary contribution, you must complete a manual form, send it to SARS.

[01h47:59]

I propose, I suppose that SARS has to do their own checks to make sure that these amounts were taxed or not taxed before. So we then had done that but what the advise again that we received was that if you look at the form, there was no other way where we could have disclosed the amount other than where we are disclosed it and it was interpreted as if they are not had already been taxed before where is it turns out the amount was not taxed so Mr Molefe ended up getting a tax reduction in what he had then in what receiver deducted from the 4.2 million, you know, but you know, the again the advice went further to say that when he completes his annual return, you these issues...

**Honourable Nobanda** - Sorry, sorry Chair. Can I ask something? [Off mike inaudible]... No, no, no. If I wait, I'm going to miss all these amounts. I'm very interested in these amounts [Sound interference]..... [Non-English]... Can you rewind a little bit? [Laughter]... Especially on the amount he got from Transnet and the calculation of the tax.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[01h49:33]

**Mr Sibusiso Luthuli** - Ja, so when the amount came to the fund, according to the rules of the fund it is categorised as an additional voluntary contribution. When you then submit for a tax directive to the SARS, you have, if a member has an additional voluntary contribution, you have to do a manual submission which the fund did. It did a manual submission, in the box there, in the form itself; there is somewhere where you need to complete where if there's any additional voluntary contributions. So the fund completed that form and indicated that there was this money which was categorised as an additional voluntary contributions. When SARS did the directive they then did not deduct tax from that amount... [Off mike inaudible]... So again the fund sought advice and I think we are in a process of engaging with SARS as well so that going forward we can then have clarity in terms of how to disclose these amounts going forward so that they are properly categorised. Parallel to all of this happening then there was also a court case or there is a court case that is ongoing. I think the court case is a court case that was instituted by solidarity. The fund was cited I think there's about 22 respondents the fund was cited as one of the respondents. Initially there was nothing really that was being asked from the fund because the issue was around solidarity saying these whole reinstatement and these amounts must be reversed. What the fund then, based on legal advice did was it filled an answering affidavit in that process where at the time we did not deal with the issue of eligibility, we were still under the view that Mr Molefe had been eligible. We then filed an answering affidavit and in this affidavit we then requested to the court to decide on the matter. And if the court decided that, you know, the transaction must be reversed, we then indicated that the court need to also give an order that Molefe must pay back to the fund whatever amounts he had received. And we also asked the court to give an order because Eskom had in their, in one of their letters also requested that the fund must pay back the 30 million that they had paid to the fund. To which the fund indicated that in terms of the rules there is no rule that allows the fund to actually pay back the money to Eskom. So again it's part of the court action. We then requested that the court also gives an order that if this transaction is reversed, the fund can then pay back the moneys to Eskom. Pay back the 30 million after recovering what had been paid to Molefe. Subsequent to that, the issue of eligibility then came along and the fund was then advised legally that it, Molefe should not have been a member in the first instance. Then the fund filed a subsequent answering affidavit where it than indicated this position that, you know, the Molefe should have never been a member in the first instance in court papers. Thus this whole transaction it should be null and void.

[01h53:22]

We also, as I indicated earlier on, that we do report to the FSB we've proactively as a fund engaged to with the FSP when these matters came to light and updated the FSP in terms of what had transpired. The FSP did ask for documents and evidence which we presented to the FSB and we've kept the FSP up to date and informed in terms of the development around this issue.

**Ms Daphne Rantho** - Are you done? Do, is there anyone who wants to add something? No one, can we take a 10 minutes break? The information was too much and it, sometimes distressing. Can we stressing, can we just take, is the 10 minutes too much? 5 minutes? [Overtalking] 5, 5 minutes break. Thank you very much.

[01h54:20 - BREAK]

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h12:14]

**Ms Daphne Rantho** - Honourable members, the presentation has been put in front of us, it is... It is a lot of information that we got. I think we have a lot of questions that we want to ask. I just, for now, will give over to the evidence leader to say a few comments or to ask a few questions. After him, then we will take over as members of parliament... I have noted you Mr Marais... [Laughter]... Advocate.

**Advocate Vanara** - No thanks Chair. Mr Luthuli did you as the EPPF receive any correspondence from Eskom board or any official from Eskom, subsequent to the initiation of these proceedings here in Parliament, regarding an offer of legal representation?

**Mr Sibusiso Luthuli** - Yes. Eskom did write to the fund when initially the whole process of this enquiry came up, indicating that the fund had been cited as a witness and part of the letter they then indicated that Eskom would be willing to pay legal fees if there were any legal fees that would be incurred by the Fund in preparing its evidence.

**Advocate Vanara** - Was there any condition attached to the provision of legal assistance?

**Mr Sibusiso Luthuli** - If I recall I think they...I'm trying to find the document itself. But the...it said that it should be reasonable legal fees and what the Fund discussed the issue and the chairperson responded back indicating that the Fund would not be taking up the offer from Eskom because it was concerned around issues of conflict of interest.

**Ms Daphne Rantho** - Advocate can we be provided with the letter? Is there a possibility that we can get the letter? Is it lawful Advocate for us as members of parliament to get that letter?

**Advocate Vanara** - Yes it is. I'm not sure if the EPPF has submitted the letter?

**Mr Sibusiso Luthuli** - Yes the letter is included as part of our bundle of evidence that we did submit. I can...I'll reference it.

[02h16:00]

**Advocate Vanara** - While still you're looking...I think they found that... [Overtalk]

**Ms Daphne Rantho** - You don't have to look for it. We will check in our files. Wena... just respond to the question by the evidence leader

**Mr Sibusiso Luthuli** - Thank you.

**Advocate Vanara** - Did you find the letter?

**Mr Sibusiso Luthuli** - Yes we have found the letter.

**Advocate Vanara** - Read the letter for the record please.

**Mr Sibusiso Luthuli** - The letter is dated 12th September 2007. It is addressed to myself and it is from the interim chairperson of the board of Eskom, care of Ms Susan Daniels. The heading of the letter says: "re: Follow-up letter Parliamentary Enquiry. We refer to your letter dated 25<sup>th</sup> July 2017 in which you made the following offer..." Oh this is our response to the letter. ..."in which you made the following offer..." Sorry. Can I...let me read the letter first and then read the response.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h17:23]

Sorry. Okay. It says:

"Dear Sir – Follow-up Letter - Parliamentary Enquiry

Pursuant to Eskom's letter dated 12th July 2017, Eskom wishes to update you on the progress of the matter. On 14th July 2017 Eskom requested clarity from the community in relation to its terms of reference in order that it may make the appropriate preparations for the enquiry. A copy of Eskom's letter is attached as appendix A.

Eskom has not received a response to its request for clarity. In its letter of 7th July, the Committee requested Eskom to submit certain documents by Sunday 16th July 2017. Eskom duly complied with the request. As the documents were to be submitted on the Sunday, the Committee informed Eskom that it may deliver the documents on Monday 17th July 2017. The documents were submitted on 17th July 2017. A copy of the cover letter to the documents with an indices thereto are attached as annexure B and C respectively. You are reminded that you have a right to your own legal counsel during this process. Eskom is agreeable to paying your reasonable legal fees connected with the enquiry. However, this is subject to Eskom

obtaining the necessary written consent from its insurers in this regard. You should also note that in terms of Eskom's management liability insurance policy, the insurer who will be paying your legal fees connected with the Parliamentary enquiry, is entitled to recover those costs...those fees from you in the event that it is finally established in the due course by judicial or arbitral Tribunal, that you have either gained a profit or advantage to which you were not legally entitled to, and, or that you committed a deliberately dishonest or fraudulent act. We note correspondence from certain witnesses

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h19:25]

and will be addressing your request with urgency. Should you require access to Eskom documents that pertain to you, for purposes of Molefe's membership as from January 2017, the schedule provided by Eskom on 8th June 2017, indicates that such contribution since January 2017 have not been made. We appreciate your..."

Sorry this is...this is...Oh the last part that I was reading was not part of the letter. It ends where it says: "for pertaining to Eskom for this purposes". Sorry. So that was the part of the response.

**Advocate Vanara** - Sorry I'm a bit confused the last time I was listening you were reading a letter from Eskom to the Fund?

**Mr Sibusiso Luthuli** - This is...the letter that I've just read is a letter from Eskom to the Fund. I'm saying sorry - the last part, the last paragraph where it talks about member...Molefe's membership, that's another letter, a separate letter. It was just attached at the back.

**Advocate Vanara** - And you responded to that letter what was your response?

**Mr Sibusiso Luthuli** - The Chairperson responded to the letter. Can I allow her to...?

**Ms Mantuka Maisela** - Would you like me to read the response or just give you the gist of the response?

**Advocate Vanara** - Just read the response Ma'am please.

**Ms Mantuka Maisela** - Read the response. Okay.

[02h20:51]

"We refer to your letter dated the 25th of July in which you made the

following offer to the fund and 'You are reminded that you have a right to your own legal counsel during this process. Eskom is agreeable to paying your reasonable legal fees connected with the enquiry. However, this is subject to Eskom obtaining the necessary written consent from its insurers in that regard.' "

And then I said:

"We appreciate your consideration regarding the payment of the Fund's legal fees, especially in the light of the fund being in the difficult position of incurring such fees in an instance which is not of

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h21:33]

its making. At the current time the Fund is not in a position to accept such offer as it does not wish to be placed in a position of a potential conflict of interest."

**Advocate Vanara** - Thank you.

**Ms Daphne Rantho** - You done Advocate?

**Advocate Vanara** - No

**Ms Daphne Rantho** - Oh

**Advocate Vanara** - Your response seems to suggest that you saw a potential inappropriate conduct if you were to accept that offer from Eskom. Correct?

**Ms Mantuka Maisela** - Yes

**Advocate Vanara** - Eligibility. This morning we got almost a two hour presentation of all that has happened. Are we agreeable that all that was said in that two hours would not have happened to the first issue of eligibility was sorted out correctly? In other words, if the Fund knew from day one that Mr Molefe was on a contract, disqualifying him to become a member of the Fund, none of the painful exercises you went through would have happened?

[02h22:47]

**Mr Sibusiso Luthuli** - As indicated that we do place reliance on the information that Eskom provides us. It is our understanding that Eskom is well aware of the rules. We've had various interactions with Eskom indicating what should be in the information that they provide to us. And I also indicated that we do not have access to information pertaining to the contract itself. So had this issue been brought to the attention of the Fund at inception, I think we would have avoided this entire process.

**Advocate Vanara** - Do I understand your entire presentation to be saying if Eskom did not give you a form and 'PPX' in the leg file, there's a 'ppx' code and that code suggested to you that Mr Molefe was a permanent employee, was an executive at an 'f-band'...that is what you got from Eskom?

**Mr Sibusiso Luthuli** - That is correct.

**Advocate Vanara** - In other words you acted, in your own words actually, you 'acted on good faith' after an impression was created to you by Eskom that Mr Molefe was a permanent employee, correct?

**Mr Sibusiso Luthuli** - That is correct.

**Advocate Vanara** - And we know now today that such representations were not correct. You've now factually told the committee that such representations were not correct.

**Mr Sibusiso Luthuli** - The Fund has subsequently received a legal opinion to the issue. The legal opinion suggests that Mr Molefe should not have been a member of the fund in the first instance.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h25:14]

There is a court process that I mentioned earlier on, that the Fund has submitted an answering affidavit to, presenting that position. We can only wait for the outcome of that court process to then confirm that legal view that has been presented to the Fund and the Fund has accepted, is hundred percent correct.

**Advocate Vanara** - Now Mr Luthuli I'm asking a very simple question. Somebody came to the pension fund and said Mr Molefe is a permanent employee. That is your testimony before this committee. You have said the facts have revealed that he had a 5-year contract of employment. And you came to the conclusion that had you known that before, he would never been a member of your fund. There's nothing that requires a court order in that regard.

**Mr Sibusiso Luthuli** - Yes that is correct.

**Advocate Vanara** - In your words Eskom misrepresented the facts to your pension fund.

**Mr Sibusiso Luthuli** - I'm not sure about misrepresented. But they provided us with information and we acted on that information, which information was not correct. They had indicated that according to how they categorised him, he was a permanent employee. And subsequent to that, because we never had sight of his contract, we then learned that actually he was on a 5-year fixed term contract.

[02h27:24]

**Advocate Vanara** - And because of that transaction somebody stood to benefit 30.1 million.

**Mr Sibusiso Luthuli** - By categorising him as a member and also applying for the particular rules invoking the particular rules there was a course of 30.1 million that then was payable for the cost of Mr Molefe.

**Advocate Vanara** - Understanding Eskom you spoke about when you got to the Sunday article on the 16th of April, when you read the article the first thing that came to mind was reputational risk to the Fund. Do you still remember that?

**Mr Sibusiso Luthuli** - That is correct.

**Advocate Vanara** - I'm not going to bother you about decisions that were made by Eskom. Eskom will get an opportunity to respond to the decisions they've made. But I'm interested in the reputational risk for your own pension fund. I accept your rules do allow that the employer, the contributing employer could purchase additional service for its members. But how do you...you will also equally be concerned that your pension fund does not become a conduit of paying moneys to individuals that have been stolen. Is that a correct assessment?

**Mr Sibusiso Luthuli** - From the Fund's point of view we have to work on facts. So we received an application from the employer and Mr Molefe. In that application it indicated which rules needed to be applied to that he was being retired. It was attached by an official document, being a letter from Dr Ngubane. And Eskom had applied these rules before. So from the Fund's point of view, at that point in time, there was no reason for us to question the bona fides of the employer. So we acted based on factual information. We checked the rules, made sure that the rules are applicable and we followed the rules. Had any of this not been in line with the rules, then we would not have processed the transaction. We would have then gone back and said this does not comply with the Fund rules.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h30:32]

**Advocate Vanara** - My question Mt Luthuli is a very simple one. It's about reputational risk to the Fund. Forget about Eskom. Do you agree with me that you can't allow your pension fund to be a conduit? In other words, to be used as an instrument of siphoning monies from somewhere and they're channelled through your pension fund to certain individuals? That you must accept.

**Mr Sibusiso Luthuli** - That is correct that we would never allow the Fund to be used as a conduit.

**Advocate Vanara** - Now an individual gets to be employed for two months by one of your contributing employers and you get a letter from that pension fund...I mean from that employer, who purchases hundred and fifty-six months of years not worked, Does that ring...does that not send shocking waves to your fund?

**Mr Sibusiso Luthuli** - I think as explained before that you know from the Fund's point of view we have to look at the rules and compliance with the rules. So according to the rules, the rules do allow the employer to actually purchase that service...additional service. And also it was not for the first time that Eskom had invoked such a rule. They'd invoked both rule 28 as well as rule 21(4) in the past. So from the Fund's point of view there was no reason for the Fund to be concerned at that point because this complied with the rules.

**Advocate Vanara** - And your rules do they have any cap on the amount of years of service to be purchased? Is an open-ended purchase of additional service years?

**Mr Sibusiso Luthuli** - The rules do not cap. They do not have a cup so the employer can purchase additional service.

**Advocate Vanara** - So if I get a job tomorrow at Eskom and the Board loves me. I work for three months - they can buy me 30 years of service?

[02h33:37]

**Mr Sibusiso Luthuli** - The rules do allow for it. I think as indicated there is the age 65 issue that you know you have to retire at age 65. So if they do buy the...additional service for a member it would go up to age 65.

**Advocate Vanara** - I am a 30-year old recently employed by Eskom. I work for less than a year. In terms of your rules – Eskom love me so much - I want to leave in a year. They buy me 30 years of additional service. In terms of your rules that is permissible and you see nothing wrong with that?

**Mr Sibusiso Luthuli** - It is permissible.

**Advocate Vanara** - I understand that's what the rule says. The question is - do you see anything wrong with that?

**Mr Sibusiso Luthuli** - From the Fund's point of view, we would look at the cost of that. We do not know what informs the decisions of the employer. We do not know the relationship or the agreements that the employer and employee have formulated because the Fund does not involve itself in that. So we would act based on instruction. We would make sure that from a financial point of view we calculate, according to the rules, what the cost of those benefits would be. And the employer would have to pay the cost of those benefits to make sure that the Fund, financially, is protected.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h35:21]

**Advocate Vanara** - In hindsight, do you think that you perhaps need to amend your rules to put a cap to this rule that allows a...I mean a free-for-all?

**Mr Sibusiso Luthuli** - I think in hindsight probably there are certain learnings from this entire process. I indicated earlier on that as soon as certain information became available to the Board, the Board immediately took corrective action. One of the things that the Board is actually looking at now, is also revisiting the rules. Because these rules, whilst they've been updated, but the base of the rules were crafted some many, many years ago. So out of this whole process, the Fund is revisiting the rules. Obviously that process is a negotiated process that has to be negotiated with all stakeholders. So it's difficult to indicate what the outcome of that process is. But we will definitely take the learnings out of this process and make sure that we look at all the rules that we have and see whether there's an improvement that can be factored into the rules.

**Advocate Vanara** - So you sitting there today, you don't see anything wrong with the rule that allows for this unlimited purchase of additional service?

**Mr Sibusiso Luthuli** - I can...the rules are binding. So as a Fund we can only act in terms of what the rules say. And as indicated I think there are some learnings out of this process that we are going to look into as a fund and engage with the relevant stakeholders.

[02h37:11]

**Advocate Vanara** - The tax directive. Was it the first time that you ever dealt with a similar instance where you appear to have had confusion in determining whether or not the money transferred from Transnet could have been taxed before or not? Seems to be a simple exercise. Why were there complications?

**Mr Sibusiso Luthuli** - This was not the first time that we were dealing with monies transferred from another pension fund. I think I need to just put context to that. I think almost 2 years or so, two-and-a-half years ago, you could file tax directives electronically. Then SARS changed the process and required that where someone

has an additional voluntary contribution, you can't do it electronically. It must be done manually- you have to submit a manual form. So we then started changing and submitting a manual form. And the way that Mr Molefe's tax annual form was completed, is consistent with how we have completed all other additional voluntary contribution retiring employees.

**Advocate Vanara** - The last question from myself is...see I'm worried about this open-ended rule of yours. And you don't seem to be committed as the Fund to fix the leaking hole. You...it is correct that you acting in terms of the rules, but those rules can equally be amended. Is that not so?

**Ms Mantuka Maisela** - Can I answer? Mr Vanara I do recognise your concern. This situation is a unique situation. In the past the Fund had applied the rules where people were over 50 and they had done...they had 10 years experience. It was a straightforward thing. And the delegation that we indicated earlier on, they delegated the administration together with the discretion to the... [Mike technical problems] I have... switch off? It's on... The delegation was delegated to management... Is it mine? [Mike technical problems] Oh. That was okay or maybe it's this.... Perhaps if that...if that delegation of authority was not given to management and the Board had sight of this particular instance, which is unique, which is unusual, the board would have applied its mind in interrogating whether the rules that are uncapped can be applied.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h40:43]

But, as Mr Luthuli says, they worked in line with the rules and they cannot violate the rules. Because the rules are...the rules are approved, they are monitored by the FSB - their application. And we are occasionally audited as to whether we comply with the rules. Now, going forward, no such transaction will be implemented, unless the discretion of the board has been taken into consideration. So, as a Board, we decided that we are going to revisit the rules. We are also going to ensure that discretion is not delegated. All such decisions come back to us as a Board and we'll make a ruling. We would have probably have asked the questions why? Why is such a short period or whatever? Unfortunately we admit that we did not ask those questions and also the discretion...our discretion...we could not exercise our discretion at that point. As a new board things had been happening and many executives had been paid in the past, following the same rules. So I think we are going to ensure that their discretions are...I mean management brings such request to us - if they don't comply, if they're not 50 and 10. And we are going to revisit the rules and see where can they be tightened.

**Advocate Vanara** - No further questions Chair.

**Ms Daphne Rantho** - Thank you very much. Can I make a humble request to everyone inside here, who is seated, who has a mike in front of him or her. Please move...move your gadget away from the front part of the mike. Because that's what made the mikes to react when somebody is speaking. Thank you very much for adhering. Members I am now going to give over to you to ask the questions. The rules still apply. Our rule is very democratic. It abides with the Constitution of the country. So Mr Marais could you put your questions. After you it would be Luyenge, after Luyenge it would be Mazzone, after Mazzone it would be Swart, after Swart it would be Shivambu, and then Nobanda.

**Honourable Marais** - Thank you Chairperson. Actually I was...my questions was also around what the Advocate had asked. But I want two clarity questions. When you get information from Eskom in the case of if it's a permanent person will it correct for me to say that that information come from humans...human resources department of Eskom. So it should be a very senior person that signs off information getting through to you as the Fund to declare the code that should be filled in on such information given to you?

[02h44:15]

**Mr Sibusiso Luthuli** - It's a bit difficult to maybe speak on who signs off information at Eskom. But we would expect that you know there's a thorough process that they go through. The information does come to the Fund electronically. And we had engaged with Eskom around the codes and to make sure that they understand exactly what information should be contained in the file. But it's difficult for me to then confirm you know as to who and what process Eskom signs to make sure that their information is correct.

[Technical mike interference]

**Ms Daphne Rantho** - Can somebody help us...from the officials. Can somebody help us to speak to the people who are working on these things. Now switch...It's not them...Please uSound and Vision...Can Sound and Vision come to the...for...to our rescue please? Sound and Vision - wherever you are?

**Honourable Mazzone** - Jesus! National Intelligence must calm down!

**Honourable Marais** - Shall I try again? Seems that way. I have a follow up question on that.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h46:19]

In this particular case when the information was sent to you and you say its electronically. Somebody have to send it electronically to you. So either it's a email or something, but there must be a name attached to who sent this information to you. Who is the name that sent the information to you as a fund, that this is a permanent employer?

**Mr Sibusiso Luthuli** - I could go...we could go and check out. I do not have that specific name as to who sent that. But if the name is required, we could go back and look at the records and then to a further submission identifying, if we can identify the individual.

**Honourable Marais** - Thank you. I would love you to actually give that to us. Then you actually referred to...just to make sure that I've got the surname correct - was it Mr Minnaar that you have previous engagements when the first letters come that there must now be calculations must be done? Is that true?

**Mr Sibusiso Luthuli** - It is true. It's Mr Anton Minnaar. at this position

**Honourable Marais** - And his position is at Eskom what?

**Mr Sibusiso Luthuli** - He's the manager HR executive...is the manager HR remuneration. But he is in the HR department. I think we can...I've got the information. I can look for the specific title...He's the Executive Remuneration Manager at Eskom.

**Honourable Marais** - Okay so he's is also on executive level. So he should know from his position that the CEO, Mr Molefe, was either a permanent employee - he should know - or a contract for 5 years. So I'm correct?

**Mr Sibusiso Luthuli** - It is correct that he should have known that he was either a permanent employee or he was on a contract.

**Honourable Marais** - So when the negotiations started first with this now calculations to be done, at that point already, it should have come alight that here is a problem that the person is not a permanent employee and the whole thing would have stopped there I suppose?

**Mr Sibusiso Luthuli** - Yeah...had we been aware at that point that he was not a permanent employee we would have then indicated to them that he cannot be a member of the fund.

[02h49:09]

**Honourable Marais** - Ok then I will ask this question to him when they come here, then he should have known at that point in time. I just want to make a remark that is very disturbing for me that a Board can make a decision to pay 30.1 million on behalf. On what basis can a...the board make that call? And if they make that call they could make that call on behalf of other executive that apply for early retirement! And that's also strange for me that letter that have come and say: "Mr Molefe is on unpaid leave." I'm sure he was here in this Parliament with me! I've seen him! He's been swear in as a Member of Parliament! How could you be employed in two places simultaneously? That's impossible as well! But I just want to make the remark - it is not applicable to you Sir. So just the last one is that 4.2 million that's been transferred from Transnet. It's two T's – transferred from Transnet. But that wasn't...there wasn't tax paid on that. You can actually pay the full amount over to the next pension fund if you don't take anything.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h50:20]

It could be in full amount but was it the implication when you fill in that form that there could have been paid tax or subtracted tax already from that amount or not?

**Mr Sibusiso Luthuli** - When we received the 4.2 million, we...as a fund we do not know whether tax had been paid or not, because we get what is called an R.O.T, which is a recognition of transfer. The transferring fund, being Transnet in this instance, is the...has the responsibility to submit to SARS and make sure that they get tax clearance. So when we receive the money we have no idea whether there is amounts that have already been deducted of tax or whether these were additional voluntary contributions which were paid after tax. Hence, in our completing of the form, we have to highlight this amount to SARS because SARS has got more records than us. We don't have those records for SARS to be able to assess whether there was any tax or not that had been paid in the amount.

**Honourable Marais** - Can I just ask this question? Do you know what was the years of service from Mr Molefe at Transnet? Do you know maybe?

**Mr Sibusiso Luthuli** - No I do not know.

**Honourable Marais** - The point I want to make is if 4.2 million was transferred and the years of service was like 11 or 8 or 7 then some bells should've ring when it comes to buying service back and this was the amount that's been transferred. But I think it is very expensive lesson the Fund is learning in this case. So...I won't stop there thank you.

**Ms Daphne Rantho** - Thank you Mr Marais. You were just on time... [Overtalk]

[02h52:15]

**Honourable Marais** - Always Sir... [Overtalk & off-mike]

**Ms Daphne Rantho** - Honourable Luyenge.

**Honourable Luyenge** - Nkosi [non-English] Can you understand Xhosa. Not necessary Pondo? You don't? [Non-English] Since when did you become a CEO in your institution?

**Mr Sibusiso Luthuli** - I became the CEO in April 2010.

**Honourable Luyenge** - April 2010?

**Mr Sibusiso Luthuli** - Yes.

**Honourable Luyenge** - How long have you been managing the Eskom fund?

**Mr Sibusiso Luthuli** - When I became the CEO in 2010. So it's almost, almost 8 years - just under 8 years.

**Honourable Luyenge** - Do you have any other big companies like Eskom whose funds are managed by you?

**Mr Sibusiso Luthuli** - I had explained when I gave background about the Fund... [Overtalk]

**Honourable Luyenge** - [overtalk] I'm asking you... [Non-English] A answer me now!

**Mr Sibusiso Luthuli** - No.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h53:33]

**Honourable Luyenge** - Did you ever come across a similar nature where someone with a service of a year or two like it has happened to Mr...Mr Molefe?

**Mr Sibusiso Luthuli** - I do not know the rules...the specific rules and workings of other funds. I'm not aware. You know the fact that I'm not aware does not mean that it has not happened. I do not know.

**Honourable Luyenge** - In your institution do you have a unit that deals with quality assurance?

**Mr Sibusiso Luthuli** - We have a risk and compliance department. We also have internal audit.

**Honourable Luyenge** - Did they ever go through similar kind of applications for people to leave? Leave other on...I don't know whether is severance package this one, is temporal leave, or it's a waya waya kind of or retirement. Whatever you believed in did you ever have such an application that is similar to this one and you think you took a resolution and counted monies at this level and you are now experiencing in front of you such a huge amount of money that is being spent on something that you should have detected or you should have actually discovered on...on its arrival in your offices?

**Mr Sibusiso Luthuli** - Can I request clarity? Are you asking within the fund itself?

**Honourable Luyenge** - Yes.

[02h55:30]

**Mr Sibusiso Luthuli** - I think when I presented I did allude to the fact that it's not the first time that Eskom has actually exercised these rules where they've purchased additional service for other ...either Eskom executives or other members. What is important to note is that the calculation that is used, has got different variables to it, which influence the actual cost of the benefits itself. I think when I explained how the 30 million was

calculated, I did try to explain that this is a forward-looking calculation that takes into account the number of years that they are actually buying into the future. Plus also the issue around spouse which also influence the cost. So each case, whilst applying the rules, will have different variables to it.

**Honourable Luyenge** - So since when did you establish that there is... illegitimate kind of reality in as far as Mr Molefe is concerned in the membership of your...of the fund you're managing?

**Mr Sibusiso Luthuli** - We...discovered...this first came to the Fund's attention I...if I recall correctly I think it was about August this year. July / August and I can get the exact dates. I've got the dates. Then immediately when we were alerted to that, we then sought legal advice.

**Honourable Luyenge** - After having realised that, what now is your perception about Eskom? If such kind of information, which is very critical in relation to whether one is permanent or temporary, and then you are now in an expense like this one, and you have to redo what was actually done - what is your view about Eskom in terms of honesty?

**Mr Sibusiso Luthuli** - It's difficult to assume that there was not honesty on Eskom's part. I don't know. I think they will be best-positioned to actually answer that question. But from the Fund's perspective it would have been very helpful if you know the true facts were presented to the Fund, because it would have avoided this whole situation.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[02h58:16]

**Honourable Luyenge** - You realise that we're all in this quagmire as a direct result that Mr Brian Molefe had be paid this 30 million? Can you realise that? Because that is the main problem. If the 30 million was paid or if the 30 million was not made part of the employment of uMr Molefe we will have not been here today. [Non-English]

**Mr Sibusiso Luthuli** - One thing that I probably would like to highlight is that the thirty million was an outcome of a process and a calculation. So maybe what should be, for me is...the issue is, had the employer not purchased additional service, we would not be here. But there is not that there was a...they didn't come and say we want to pay 30 million for Mr Molefe. They came to the Fund and said: "We want to buy these additional benefits for Mr Molefe." The Fund then calculated the cost of those benefits and said: "If you want to buy these benefits here is what it would cost you to make sure that the Fund can afford to fund these benefits."

**Honourable Luyenge** - I rest my case Chair.

**Ms Daphne Rantho** - Thank you honourable Luyenge. Honourable Mazzone.

**Honourable Mazzone** - Thank you Chairperson. Chair I'm going to pick up exactly where Honourable Luyenge...Dr Luyenge just left off. So someone approaches the Fund and says we're going to purchase 13 years of service for Mr Molefe because he is just under 50 and he has to be 63. At that point is that not when the first alarm bell goes off?

[03:00:18]

**Mr Sibusiso Luthuli** - At that point it's when we check the rules. We check that there is compliance to the rules. Can this be done? If it can be done you know, as a fund we can't involve ourselves in the decision-

making and the governance of the employer. It is Eskom that, if we then calculate and say this is the cost, we don't know what governance processes they go through to satisfy themselves that they are comfortable to actually pay that cost. Our responsibility is to maintain that there is compliance with the rules.

**Honourable Mazzone** - In your governance of the pension fund do you have an ethical code of conduct to which you subscribe?

**Mr Sibusiso Luthuli** - Yes we do.

**Honourable Mazzone** - And you don't think that your ethical code of conduct requires that you look at issues such as paying the pay-out, well the buy in, of 13 years to an amount of almost 30 million rand? To require further investigation from yourself and certainly from, you know, considering your board has discretion; you don't think your ethical code of conduct required you to raise an alarm at that point?

**Mr Sibusiso Luthuli** - I think again it's important to highlight that this was not the first time that Eskom was exercising these rules.

**Honourable Mazzone** - Chair can I stop, can I stop Mr Luthuli right there. How many times in the past has Eskom bought years for their executives, if this is not the first time? Because it now sounds like this is completely commonplace which makes me, my second part to this question is, certainly then if this is becoming commonplace even more reason for your ethical code to make you sound an alarm.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h02:08]

**Mr Sibusiso Luthuli** - I think we can get the details in terms of, you know, how many times, their exact numbers. But you know, there are other executives that they've bought this kind of service for, there are other employees, in general, as well where they have applied the same rules for other employees were they had operational issues and needed to, you know, retire. Certain employees they would come to the fund and ask that we calculate the information and we can calculate it. We can certainly, you know, look at the numbers and submit the numbers. I don't have the exact numbers off hand.

**Honourable Mazzone** - Chairperson, can I place on record... [Overtalking]

**Ms Daphne Rantho** - Honourable Mazzone, can, I just want to add on what you have said. Also you should be giving us the years of those executive members, the years that they have worked in Eskom. So that information must be must encompass the years because I take it if everybody comes to Eskom and come and work for a year and then Eskom buys that person. It means Eskom is [Speaking in Xhosa]... in Xhosa, I'm not sure, I'm guessing it's [Speaking in Xhosa] but it sort of is a stokvel, if that is happening. Ja, sort of a stokvel if that is happening and you contributing and on your ethical code of conduct, you are contributing to that. Thank you very much, you can... You don't have to respond to me.

**Honourable Mazzone** - Thank you Chair, I'm sure you'll make up my minutes there. [Laughter] Chair, if you'll indulge me, section 34 of the combating and prevention of corrupt activities was specifically put in place when South Africa took the collective responsibility to stop corruption and prevent corruption at any possible point in which it became obvious. And Chair, one of the things that section 34 says is that, "a duty arises when the relevant individual knows or should reasonably have known or suspects that a person has committed offense of corruption involving 100 000 rand or more. Failure to report this is a criminal offence and carries the penalty of the imposition of a fine or imprisonment for up to 10 years." It then goes on to describe who these people are that should have ought, should reasonably be expected to know when they

saying something corrupt. And one of them is a, “manager in a senior position of a service of a public body. Any head, director or a principal of a tertiary insti- blah, blah, blah... the manager, company or secretary or director of a company.

[03h04:41]

The executive manager or bank or any other financial institution.” Chair, the list is long. Chair I have to say that I find it very difficult to believe that a group of actuaries who are known worldwide to be a grouping of people that should have the highest IQs in the world don't reasonably foresee that a corrupt activity is possibly taking place when various letters are sent to them. Starting with the initial request for calculation, constantly being changed, members of your team are privy to public information, just like all South Africans are. You see what's happening in parliament, you yourselves saw Mr Brian Molefe being sworn in. You can't say you didn't know it was happening. It was public knowledge and it was the trending story for weeks. It is, it is not possible that anyone on your board did not reasonably foresee that somewhere somehow someone was trying to milk the system.

**Mr Sibusiso Luthuli** - Can I first deal with the issue of the, I just want to go back to the information requested. I need to just note that the details, in terms of the information about other members, is a subject of rule 35 in the court action that I did highlight. So in terms of what we can, we are able to submit, we would have to seek legal counsel in terms of how it impacts on the ongoing case. So I just wanted to highlight that point first. Then the second issue, again you know, from a fund point of view we have to comply with the rules.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h06:36]

We have to follow what the rules of the fund says, the rules are binding. And in this instance if the employer comes and says these are the rules that they want to utilise, it's very difficult for us without any tangible, you know, reason to refuse the employer to say we can't act on these rules because the rules are binding on the fund and the fund has to follow the rules.

**Honourable Mazzone** - Chairperson, and it's yes or no answer. Were you or any of your board members threatened in any way? By either any Eskom executives or any political figures known in our country?

**Ms Mantuka Maisela** - I have never been intimidated and I'm not aware of any of the board members having being intimidated or threatened.

**Honourable Mazzone** - The conflict of interest that you saw the letter that Eskom wrote to you. If you are so confident in your rules and the fact that you continuously refer back to the fact that you are operated within the rules and the ambiance of your rules and you don't question Eskom. Why then did you not accept Eskom's offer of legal guidance in this?

**Ms Mantuka Maisela** - Well my ethical beliefs do not allow me to take money from somebody else to pay for the actions that I'm taking as a board chairperson. We are not Eskom, we don't work for Eskom, there's no reason why we should be- our legal fees should be paid by them. We are a fund that looks after the interest of the fund and the interest of the members and the pensioners of the fund. Therefore why would they want to pay for us? So from that point of view, I thought it was not ethically correct to accept money from them without understanding the motive behind it because we've always paid our own legal fees.

**Honourable Mazzone** - I'm very glad to hear that you have such a strong ethical standing. My question then to you, madam chairperson of the board. Ethically, do you think that it was knowing that Eskom is a state

owned entity? Knowing that the money for the buy in for the 13 years for Mr Brian Molefe was going to come from a company, state owned entity that belongs to all South Africans, a massive amount of money that will enrich one South African as opposed to being used to electrify and provide electricity for thousands in fact millions of South Africans across the country?

[03h09:14]

You still given what you've told me about your ethical standing maintain, that you did not see an ethical obligation to report that there might be something corrupt about this activity?

**Ms Mantuka Maisela** - As a board chairperson and as a board, we did indicate that the board never knew about this until it came out of the newspapers. And when it came out of the newspapers, I informed the board and we asked all the relevant questions, why, why, why was the board not told? That is when the delegation that was given to management in 20, I mean in 1999 was brought to the board. We further said that, we further went on to say 'but this doesn't make sense, a delegation given to management for such a big issue?' And then that's when we went back to the rules and highlighted that the discretion, the issue of discretion. And we asked for legal opinion on, 'can a discretion be delegated?' And we were told that a discretion cannot be delegated, hence we took action and said, 'in future, such delegation cannot be delegated to anybody else because it's subject to misinterpretation or such things can happen without being questioned'.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h10:31]

I'm still repeats that, had it come to the board, the board as a collective would have interrogated this thing and questioned why in such a, I mean, why the calculation came to that amount, calculation coming to that amount we know because we have the calculation but how come?

**Honourable Mazzone** - Right, ok, great. My last question then, has any disciplinary action been taken against this grouping of management? Who took it upon themselves to take this decision knowing full well that the description lay with the board? Because they took this decision on their own and you as a board only found out about it, as you say in the media. So clearly there was a massive failure in corporate governance within your own structures. And has disciplinary action been taken against that management team?

**Ms Mantuka Maisela** - To answer your question, management did not deliberately make the decision. They made the decision on the basis of the delegation of authority given to them. So as a board we did not discipline anybody because there was a whole full paper trail of why management did that and they had done it in the past based on the delegation of authority that was given to them. [Overtalking inaudible]

**Honourable Mazzone** - My, I'm sorry, I'm running out of time. So I'm going to stop you short. My final question, who delegated that management team to act in this way?

**Ms Mantuka Maisela** - It was the board in 1999.

**Ms Daphne Rantho** - Thank you Honourable Mazzone, Honourable Swart.

**Honourable Swart** - Thank you Chairman. Chairman, I do understand that much of what we've been presented today and the decisions that were taken was on the basis of information that Eskom furnished

you. Now you've also said you've learnt a lot of lessons out of this process. So it starts with information you got in the leg file relating to the employment contract which appears to be incorrect because it was a fixed term contract and not a full contract of employment. So it seems that going forward you gonna have to recheck and research every bit of information you get from Eskom as the Eskom pension fund. You can't rely on the information that you getting because had you've just asked for the contract you would have seen the contract, I've got it here it says is a 'fixed term contract' and that would have been the end of the matter. So I think one can learn lessons but to me it's a straight forward issue that you should get the contracts of employment, as a pension fund.

[03h13:10]

But I do want to also state that, the pension fund industry in general what your, what is happening there is where people buy back pension. I mean we are faced with this in parliament with other matters, I'm on the Justice Portfolio Committee, where we saw the golden handshakes that are being paid to people such as Mr Nkisanane, the previous NDPP and there's a lot of questions around these issues. So in those cases it's golden handshakes, in this case it seems to have been, those cases to get rid of people, here it seems to benefit a specific issue. So this is an issue that we need to be aware of, there are rules that apply for that and you rely on rules. But at the heart of your problem is the governmental issues relating to 28 (5) and that is your, sorry 28 (3), and that's the delegation of a discretion. Now I'm astounded that you should have, as a board and management, have allowed a discretion to be delegated because you've got specifics here, 28 rule 28 that allows for a deviation, an early retirement and massive funds. But the caveat, the check on balance is there. The board may apply, so it must be taken at a board level.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h14:29]

So whilst that decision, the delegation that went down earlier, prior to your time, but surely it should have been questioned? Why only right at this September of this year is it for the first time that the legal opinion is obtained on that issue? Which to me is so straight forward, a discretion cannot be delegated. Have you got any explanation for that?

**Mr Sibusiso Luthuli** - I think as indicated that obviously out of this whole issue, we've learnt as well. So we have to accept that there was a delegation that was in place, I think there was no reason to question the delegation, it has been applied, it had been applied successfully in the past. I think now with all these issues that have emerged it was only proper to really now, you know. Firstly sort legal opinion because these issues, not all of us are legal, you know, expertise. Hence why the board insisted that we need to get legal opinion to understand whether it was correct in the first place to delegate discretion and we now know better, that they should not have happened. And importantly the board took immediate corrective action to actually then revoke that delegation that in all the rules anything that has to do with discretion needs to now be the present it to the board from that point onwards. I think you also raised an issue around the contracts of employment. I think it's actually going to be, it may be a challenge because this is something we have to engage with Eskom, in terms of what information we can access. I think you need to recall there's about 46 000 active employees and every month there's movement, there's people that leave Eskom there's people that join Eskom. So the fund is not capacitated to be able to now interrogate each document. I think there needs to be more closer cooperation between what happens at Eskom and the information that they give to the fund. Again we've started processes and then one of the steps that we've already taken, is to go back to Eskom and write to them to say to them, "Look there is this issue around the eligibility of Molefe. Can you go through your records and check whether there is any other fixed term contractors or fixed term contract

employees which you've categorised as permanent employees?" And Eskom is currently going through a process of actually checking that. So I think going forward we need to establish more closer cooperation and more, you know, closer interaction in terms of making sure that these errors do not, ok.

[03h17:15]

**Honourable Swart** - Thank you. You know, you make the assumption that the previous ones were correctly done, but we don't know that and your board won't know it's because the discretion was delegated down. One assumes that, but you see the board might be interested in that regard as well. But the other point is you might limit your contracts that you ask for the top level executives where there's a high turnover and where there's a lot of pension money involved, but that is just a suggestion. What I wanted to ask you, had the Sunday Times on the 16th of April not disclosed this issue and had the other newspapers, Daily Maverick you refer to them 17th of July, had they not disclosed this issue would it have gone ahead because it seems that what you've told us is that the rules were complied with as far as you're concerned correctly, you got information and the payment was continuing. So had it not been in the media it would have continued? Is that might correct understanding.

**Mr Sibusiso Luthuli** - It is correct because we would have not had access to that information and we would not have known better.

**Honourable Swart** - And had the minister... did the Minister at any time liaise with you?

**Mr Sibusiso Luthuli** - No.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h18:40]

**Mr Sibusiso Luthuli** - So at the time the Minister issued her objection to the...that was besides the media it was also when she indicated she was objecting to that pay out; is that correct as well,... the 30 million.

**Mr Sibusiso Luthuli** - I can only comment from what I read in the media. I do not...we as a fund have no direct communication with the Minister so we only read what was being cited in the media as well.

**Honourable Swart** - So from what you've learnt so far and we've got a lengthy document from you, but just the figure, I just wanted to get an understanding. Is it correct it's around 9 million that was paid to Mr Molefe and he's repaying that and is he paying it to the pension fund or to Eskom? And if so, what is the arrangement for that repayment. The figure might not... it's not important, but just the principle of the matter.

**Mr Sibusiso Luthuli** - Maybe let me just go back a little bit. When Mr Molefe was reinstated to Eskom, we received correspondence from Eskom reiterating that we should suspend paying him pension. Attached to that we were advised that he is now been reinstated. We were also advised that he was on unpaid leave. Attached to that there was also, you know, a statement, I can't remember it was a separate agreement or it was included in that letter, where they indicated that they had agreed with him that he will pay back the monies by November 2017. Then there was this court process that started. So everything is now stopped subject to the outcome of the Court process. So as it stands now, Mr Molefe has not paid back any money, the fund has not paid Eskom its money. So the fund received 30.1 million, it paid out about 9 million... 9.7 million to Molefe as a one third lump sum, it also paid him monthly pensions. So we are holding back in the region of about 20 million of this amount that is being held in the fund until this whole Court process is

complete and there's an outcome. And based on that outcome if we have to seek legal advice in terms of how to process the matter; we will do that.

[03h21:03]

**Honourable Swart** - And I am grateful for the information that you finished bearing in mind that it is subject to court process as well. Chair those are my questions for my side, thank you.

**Ms Daphne Rantho** - Thank you very much. Honourable Shivambu.

**Honourable Shivambu** - Thank you very much Chairperson. You started by giving us the broad overview of what the fund. What is the actual size of the Eskom pension and provident fund in terms of rand value.

**Mr Sibusiso Luthuli** - As we stand now we are in the region of about 143 billion rands.

**Honourable Shivambu** - 143 billion rands and then you said some of the assets are internally managed. Who manages externally some of the assets; who are the major asset managers of the Eskom pension fund.

**Mr Sibusiso Luthuli** - The list is endless we do disclose the list in our annual report. I can provide the list in terms of who are the external managers if that is required. That information is available we can make it available.

**Honourable Shivambu** - I'm interested Chair in who are the external managers of the Eskom pension and provident fund because we wrote a letter to Transnet, it's a separate issue, about who are the external managers of the Transnet Fund, it's got a long name, and then the principal officer there responded that part

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h22:54]

of the money they give to Regiment Capital, which then transfer the money to Trillian Capital and a company called Albatime, I think about 228 million rands of that. And which they realised there was illegality in that the transfers of those monies which they trying to reclaim. As part of those external fund managers do you have Regiments or Trillian or Albatime Capital, from the Eskom pension fund.

**Mr Sibusiso Luthuli** - I can confirm that none of those manage our assets externally.

**Honourable Shivambu** - But you'll later on give us the list of who are the external managers of the Eskom pension fund.

**Mr Sibusiso Luthuli** - Yes we will submit a list.

**Honourable Shivambu** - I think that will be adequate. You said that you have been working at the Eskom pension fund since 2010

**Mr Sibusiso Luthuli** - That is correct.

**Honourable Shivambu** - And then when you were telling us about the commencement date of Brian Molefe's employment you said that the documents either indicate that it's either the 14th of September or 24<sup>th</sup> September or 1st October, is that correct?

**Mr Sibusiso Luthuli** - Yes that is correct that the information that we received with the leg file indicated a date of 14 September as the start date. So which is the date he became a member of the fund. Further on

when he then submitted his forms, he indicated a date of 25 September as a starting date. Then later on when we eventually caught sight of court papers where his employment contract was contained, when we look at the date....

[03h25:05]

**Ms Daphne Rantho** - Sound and Vision can you come back again.

**Mr Sibusiso Luthuli** - Sorry, I was just completing that further on when we got access to the contract we noted that there was a date of 1 October as a start date.

**Honourable Shivambu** - I suspects these disruptions are those microphones of ANN7, we might have to remove them here, and then there'll be a little bit peace...

**Ms Daphne Rantho** - Order...order

**Honourable Shivambu** - And when he received the 7 million which you said was a third of the amount, when was that? It was in February 2016?

**Mr Sibusiso Luthuli** - Yes it was sometime in February 2016...sorry... 2017.

**Honourable Shivambu** - So that was from October 2015 to February 2017, how many months is that?

**Mr Sibusiso Luthuli** - I think we need to count the months he had worked. He had worked about 16 months which ended on the 31st of December.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h26:27]

Then after that when he submitted an application there's an administrative process which involves applying for the tax directive. So when he was paid in February we had to back pay him from the 1st of January, so the delay was an administrative delay.

**Honourable Shivambu** - And then you said that you then were requested to use section 28 or rule 28 to then buy the additional services of the years up until his retirement, but then section 28 was not applicable because he had not served for more than 10 years, is that correct?

**Mr Sibusiso Luthuli** - It is correct, which is why they then evoked rule 21(4) to buy the additional service.

**Honourable Shivambu** - What does rule 21(4) say?

**Mr Sibusiso Luthuli** - Sorry, I'll find it now and read it.

**Honourable Shivambu** - But the essence of rule 21(4), what is it?

**Mr Sibusiso Luthuli** - The essence of it is that it allows the employer to buy additional future service...sorry...additional service for a member. That is the essence.

[03h27:40]

**Honourable Shivambu** – Has rule 21(4) been used before?

**Mr Sibusiso Luthuli** - Yes it has been used before.

**Honourable Shivambu** - In what circumstances, what were the years of service of the people where rule 21(4) was utilised before?

**Mr Sibusiso Luthuli** - The years of service would vary from each individual, so it's a little bit difficult to...

**Honourable Shivambu** - But has it been like 16 months or 24 months or 60 months, what is the illustration?

**Mr Sibusiso Luthuli** - I would have to go and check the records to then be able to give an answer. I think this issue also relates to the rule 35 issue that I had raised concern around that there is a court process where this rule 35 has been applied, and we would need to seek legal advice in terms of how much we can disclose before the court process is finalized.

**Honourable Shivambu** - But as the principal officer I'm sure you will know that the 16 months could have been the highest number or the lowest number of service that had been served by a person to apply rule 21 (4). Was that the lowest amount of service where that has been utilised where you ended up paying huge pension to a person because you had to buy them out through rule 21(4). I'm sure you'd recall that if you had paid someone at the senior executive level millions of rands, I'm sure that will ring in your head, do you recall any specific event where you had utilised rule 21(4) to buy anyone out of service.

**Mr Sibusiso Luthuli** - Where specifically...I think your question is...

**Honourable Shivambu** - Where specifically rule 21(4) was utilised.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h29:29]

**Mr Sibusiso Luthuli** - You're trying to ask the minimum number of years?

**Honourable Shivambu** -Particular in relation to the number of years that a person had served.

**Mr Sibusiso Luthuli** - I think it is a little bit difficult for me to speculate as indicated, I think, that information we can definitely go and check in terms of what would have been the minimum number other than Mr Molefe, and then submit that information.

**Honourable Shivambu** - but still, here's a situation that it applies...doesn't rule 28 apply to the executives like mostly? I thought it does. And where the board takes a...or Eskom, the employer takes a specific resolution to say that we are not going to utilise rule 28 because this person has not served 10 years; we are using 21(4) as a special circumstance. I'm sure that could ring in your head where ended up having to pay tens of millions of rands to an individual. Has that happened before Brian Molefe was an employee of Eskom?

**Mr Sibusiso Luthuli** - The rule 28 has not only been used for Executives. Eskom is also invoked rule 28 for other employees. Hence, I'm suggesting and proposing that we will go and look at the records of all the employees and we can indicate what the minimum number other than Mr Molefe's number of years is.

[03h31:00]

**Honourable Shivambu** - That's fine. And then you said later on there was a letter from a Ben Ngubane? What was the letter about? After Brian Molefe left parliament. What was the letter saying? It said he was in a long

leave? Can you please give me the context of that letter that you spoke about? About leave from Mr Ben Ngubane.

**Mr Sibusiso Luthuli** - [Off mike talking inaudible]... We'll look for the letter and then we can read the contents of the letter... [Off mike talking inaudible]

**Honourable Shivambu** - I'm interested in that because I'm interested also in your... your reaction to a letter that suggested that actually you must stop paying pension to this person because what they are, the monthly pension to this person because he had taken a long unpaid leave.... What became your reaction when you were informed that he took a long unpaid leave?

**Mr Sibusiso Luthuli** - We will get the exact letters. But I think we wrote back to them trying to establish, in terms of, what is actually the status of Mr Molefe because at that point we were very confused.

**Ms Mantuka Maisela** - Which part of the letter do you want to know?

**Honourable Shivambu** - I'm interested on leave component after Brian Molefe had come to parliament and then he resigned and then Dr Ngubane wrote you a letter. What was the letter saying?

**Ms Mantuka Maisela** - It says here...

**Mr Sibusiso Luthuli** - Ok I've got the document shall...

**Honourable Shivambu** - Yes.

**Mr Sibusiso Luthuli** - ... go through... In fact the document is an agreement. It says, "reinstatement agreement between Eskom Holdings soc and Brian Molefe".

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h32:52]

**Honourable Shivambu** - ok...

**Mr Sibusiso Luthuli** - Then the letter goes on, I'll focus only on the relevant...

**Honourable Shivambu** - Yes.

**Mr Sibusiso Luthuli** - ... aspects of it. It first talks about resumption of duties it says, "Molefe shall resume his duties in terms of the principal agreement on 15<sup>th</sup> May 2017. Eskom shall take all administrative steps necessary to give effect to this agreement." Then it talks about repayment of monies by Molefe to the fund, "Molefe agrees to pay to the fund all monies due to the fund which were paid to him pursuant to the retirement agreement by no later than 30 November 2017." It then talks about the period between 1 January 2017 to 15<sup>th</sup> May 2017. It says, "The period between 1 January 2017 and May, 15<sup>th</sup> May 2017 will be regarded as unpaid leave."

**Honourable Shivambu** - And then what became your response to that?

**Ms Daphne Rantho** - Honourable member your time is up.

**Honourable Shivambu** - Can I ask two more questions Chair?

**Ms Daphne Rantho** - Just give the others first.

**Honourable Shivambu** - I'll come back to that.

**Ms Daphne Rantho** - It depends, maybe.

[03h34:03]

**Honourable Shivambu** - Please because I want them to understand that I also, I would want the principal officer to respond on Anoj Singh, who is the CFO of Eskom. Who is employment more or less in the same conditions as Brian Molefe because it looks like as a member of the pension fund what are the circumstances and what's happening with regard to that?

**Ms Daphne Rantho** - Thank you for that. [Overtalking inaudible]... Honourable Nobanda.

**Honourable Nobanda** - Thank you Chairperson. According to your presentation, Mr Molefe joined Eskom on 14-9-2014?

**Mr Sibusiso Luthuli** - That is correct.

**Honourable Nobanda** - 2015

**Mr Sibusiso Luthuli** - No. it was 14<sup>th</sup> September 2015

**Honourable Nobanda** - 2015

**Mr Sibusiso Luthuli** - Yes

**Honourable Nobanda** - And then [Whispering inaudible] 25<sup>th</sup> September, is the one cited as employment date?

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h35:18]

**Mr Sibusiso Luthuli** - That was cited as employment date on his exit form [overtalking]...

**Honourable Nobanda** - On the exit form

**Mr Sibusiso Luthuli** - ... because the form, there is a space where you need to indicate when you were employed.

**Honourable Nobanda** - Ok and then the 1<sup>st</sup> October one?

**Mr Sibusiso Luthuli** - The 1<sup>st</sup> October we learned of it subsequently when we had cite much later of his employment contract. That it indicated that he was employed on the 1<sup>st</sup> of October.

**Honourable Nobanda** - So the 1<sup>st</sup> of October is the one?

[03h35:48]

**Mr Sibusiso Luthuli** - It's the one in his employment contract.

**Honourable Nobanda** - Contract?

**Mr Sibusiso Luthuli** - Yes

**Honourable Nobanda** - Ok, and then according to your scheme, he was supposed to have been what 50-55 eligible for pension? Is it 55 or....?

**Mr Sibusiso Luthuli** - There is various rules that are applicable for exit. So there is a rule that allows a member to exit at the age of 55 but there's a rule 28 which allows the member to exit at age 50, subject to the employer agreeing to certain things which is the rule that was involved for Mr Molefe.

**Honourable Nobanda** - For Mr Molefe

**Mr Sibusiso Luthuli** - Yes

**Honourable Nobanda** - So they use rule 21 (4)?

**Mr Sibusiso Luthuli** - They used a combination of rule 28 and rule 21 (4), yes.

**Honourable Nobanda** - For 50 years, not for over 50?

**Mr Sibusiso Luthuli** - 28 (3) specifically deals with the issue of age of 50 years. It further on deals with the issue that he must have at least a minimum of 10 years' service, in order to overcome that, that is when rule 21 (4) was invoked to buy him additional service.

**Honourable Nobanda** - Ok. Now this spousal, I'm very interested in this spousal, I don't know what you call this spousal what, what, where your spouse is younger the money goes up, older it goes down. Is that what you're saying?

**Mr Sibusiso Luthuli** - Yes. When we do the calculations we make assumptions that you would have a spouse that is 5 years younger than yourself.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h37:35]

So those calculations and the actuarial factors that are used, assume that. When we then, so when we do the estimates, when we do the actual calculation we then have to go and look at the specific spouse, look at the situation itself.

**Honourable Nobanda** - Ok

**Mr Sibusiso Luthuli** - In this case where the spouse is more than 5 years younger than the member, that increases the cost because part of the benefit is that you will receive your pension as a member when you pass away the rules allow the spouse to then receive a pension. So if the spouse is much younger it means the fund needs to reserve more money to be able to afford to pay the spouse for more years that she would live because she's younger.

**Honourable Nobanda** - If the spouse is older? Does it, same apply? And does this apply to both females and males? If I were to get an older spouse, if I were to get married now to one of the Eskom executives, who is older, I'm weighing my options as we speak now, [laughter] does that mean, does it go up or down?

[03h38:55]

**Mr Sibusiso Luthuli** - If you are more than 5 years younger, then the cost will be more.

**Honourable Nobanda** - To me or to...?

**Mr Sibusiso Luthuli** - No, no if the member... [Overtalking]

**Honourable Nobanda** - ... what I'm saying is if my potential husband at Eskom is an executive and he's older than me, it's the same situation as Mr Molefe. But if it happens that he's younger than me, if I were to get a Ben 10 from Eskom myself and I'm not working at Eskom but my Ben 10 is at Eskom, does that mean? What does that mean? For me as the spouse?

**Mr Sibusiso Luthuli** - The actuarial factors that will be used will be different which will, again, there is, it becomes a bit difficult to generalize because it's not only the spouse but the spouse is one component. There's a number of other components that differ from each individual so for me to give a blanket answer, is very difficult but I can say that if the age is, for the spouse, is older a different factor will be used which will have a different outcome and the cost will come down. But there are other issues that you have to factor in mind that each situation is different from the other.

**Honourable Nobanda** - So I must get an older one. Now according to your calculations, Mr Molefe came with the 4 million from Transnet. Now if he didn't have this 4 million, there was no calculation of the spouse, say it was just him. How the pension look? What would be your rough estimate?

**Mr Sibusiso Luthuli** - Sjoh. I don't know, we would have to calculate it, you know, we have not calculated it. If you'd like us to?...

**Honourable Nobanda** - [Laughter]... Yes. Can you speculate whether it was less, would it have been less or more? Without them Transnet money, without the spouse.

**Mr Sibusiso Luthuli** - I think the Transnet money does not feature into, yes, it's a separate calculation.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h41:18]

**Honourable Nobanda** - So when you calculated it was only Eskom's pensions? You did not factor in Transnet?

**Mr Sibusiso Luthuli** - Yes, I think you remember when I talk you through the calculation. I splited it twice, firstly there was the cost of the 30 million, how we came to that, which is the cost of the benefit. Then there was the calculation of the pension, I split the pension into two and I said there's a statutory pension where you use certain factors and there was an amount that came out of that. I then said we did a secondary calculation which was now the amounts that it comes from Transnet. So those amounts stand independently of the statutory pension.

**Honourable Nobanda** - Now you paid him, what the 9 point something million? That one, that money was paid to him?

**Mr Sibusiso Luthuli** - Yes, that amount was paid to him... before tax.

**Honourable Nobanda** - Was he ever required after all these letters to pay it back? And has he paid anything? We're talking about strict only this 9 million, not calculating the 30's and the what, what.

[03h42:34]

**Mr Sibusiso Luthuli** - I think there was an agreement I read aspects of now.

**Honourable Nobanda** - That agreement does it factor the 9 point something million?

**Mr Sibusiso Luthuli** - Yes, that agreement was referring to that 9.7 million but, you know, what was problematic about the agreement was that it was an agreement between Eskom and Molefe. The fund was...

**Honourable Nobanda** - Not part of it.

**Mr Sibusiso Luthuli** - ... not party to it.

**Honourable Nobanda** - Now, the 111 000 pension per month, it's correct neh? I'm not mixing the amounts? It's 111 per month?

**Mr Sibusiso Luthuli** - Yes, I'm rounding the amount of it 111 and some rands.

**Honourable Nobanda** - Yes, per month?

**Mr Sibusiso Luthuli** - Per month, yes.

**Honourable Nobanda** - For his pension?

**Mr Sibusiso Luthuli** - Yes

**Honourable Nobanda** - Which, according to your presentation, he must have gotten it from the 1<sup>st</sup> of January 2017?

**Mr Sibusiso Luthuli** - That is correct.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h43:30]

**Honourable Nobanda** - And on the 12<sup>th</sup> of May, Mrs Daniels said you should stop the transactions? The pay outs, the pension pay outs.

**Mr Sibusiso Luthuli** - It is correct but what I'm trying to check is it exactly the 12<sup>th</sup>. It sounds correct.

**Honourable Nobanda** - Now you just said you received a letter from Ms Daniels on the 12<sup>th</sup> of May.

**Mr Sibusiso Luthuli** - It is correct.

**Honourable Nobanda** - Ok, now Mr Molefe received pension then, let's assume he received the pension from the 1<sup>st</sup> of January up until May and according, you are saying... he became a pensioner in January. I've written all these dates.

**Mr Sibusiso Luthuli** - Yes he became a pensioner on the 1<sup>st</sup> of January.

**Honourable Nobanda** - On the 24<sup>th</sup> of January, there was an acceptance letter of early retirement request, right? Was it not to you or was it to Eskom? On the 24<sup>th</sup> of January.

**Mr Sibusiso Luthuli** - The information we received it in December from Molefe. I think there was somewhere in December where Mr Sibanda went to collect documents.

[03h45:00]

**Honourable Nobanda** - Ok

**Mr Sibusiso Luthuli** - Yes.

**Honourable Nobanda** - So, on the 1<sup>st</sup>, on the 11<sup>th</sup> of November 2016 that's when Mr Molefe step down, resigned, all that thing? Correct?

**Mr Sibusiso Luthuli** - I'm not, I'm not sure of the date as to when he stepped down.

**Honourable Nobanda** - Ok, it's fine. According to my records, I'm very good with dates and writing them down. On the 11<sup>th</sup> of November, that is when he submitted a statement of stepping down or was it resignation whatever, but afterwards there was a letter or statement that said, 'effective 1st of January 2017'. Now, wena you are saying between August, ja, between August 2016, August, September, October, November, December you are receiving all this correspondences of calculations, correct? Your first letter was from Mr Anton Minaar to calculate early retirement with penalties waved on the 18<sup>th</sup> of August 2016?

**Mr Sibusiso Luthuli** - That is correct. We did receive a request via email.

**Honourable Nobanda** - Now from all these dates, wasn't there any red lights going? That we are calculating, we are getting this request to calculate pensions and all that, in the August. November we are stepping down and on December, 19<sup>th</sup> December we get the exit documents, on the 1<sup>st</sup> of January we become pensioners and start getting pay outs of all this money and 25 May this is when we are told to stop payment of the pensions. 15<sup>th</sup> May we get reinstatement and on the same 12<sup>th</sup>, does it say 12<sup>th</sup> of May or no man, when, on, yes, on the 12<sup>th</sup> of May is the same month and same day when Mr Molefe resigns as Member of Parliament. To me if I'm sitting here and I'm looking at all these dates as we are putting them and it says there's something wrong here.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h47:54]

All these dates leads me to something else that I don't want to say in front of TV but the dates are not, they tell a story, in a very different story than what we are getting. Now if, my last question Chair, is if somebody's been paid pension and at the same time is receiving government salary what are the legal implications? Because if you were paying him pension on the 1<sup>st</sup> of January, and he came to Parliament when? February [off mike] and he's been getting all this 111, this is even more than what I'm being paid... So... [Off mike inaudible] No I'm saying what we are being paid in parliament. We get a salary and then we have a salary at Eskom. So that means I'm getting two salaries. What are the legal implications on that?

**Mr Sibusiso Luthuli** - I do not know.

**Honourable Nobanda** - But, but, ay Chair. Ok. From the fund's point of view, perspective and all that, if your member is...

[03h49:43 - DISK 01 ENDS]

[00h00:08 - DISK 02 STARTS]

**Honourable Nobanda** - You only report to...what is that F...FN...

**Mr Sibusiso Luthuli** - FSB

**Honourable Nobanda** - ... only FSB. Is that where you take only your reports? There's nothing that you say maybe you must report monthly, quarterly, whatever, either to Eskom or to the Minister or to whoever; apart from FSB.

**Mr Sibusiso Luthuli** - We are supervised by the FSB and we do report to the FSB; we submit the regulated reports in terms of the law. What we do do as well, because Eskom has got a financial interest in the fund as a contributing employer, on a month basis we send out our financial performance; which is, these are the assets that we have, this is how the assets have performed because that is important to Eskom as well. Because they are a contributing member they would like to know that the fund is in a healthy financial status. So, on a monthly basis we do send them; the information is limited to the investments that these are investments we have these are the returns that we've made. We will give them a summary of the returns. That's all that we submit to Eskom on a monthly basis. On an annual basis we do share the valuation report, we value the fund annually. And the financial statements we do send them to Eskom.

**Honourable Nobanda** - Do these rules of the fund apply to the lower employees not just executives? Are these the same rules that would apply even to just your normal general worker.

**Mr Sibusiso Luthuli** - Yes.

**Honourable Nobanda** - Thank you.

**Ms Daphne Rantho** - Thank you very much Honourable members. Mr Luthuli when you look at your ethical conduct as a fund and your governance issues, do you really see that the governance of this fund is still intact? Because I see it, your governance in the fund it's going down it's collapsing because some of the general ethical conducts, I mean, you've heard over the radio Mr Molefe was either retrenched, retired re...re...what...re what... the re...the re...that has been announced according to Mr .... Didn't you as a fund that has an ethical conduct thought of, 'there's a game that's being played here,' and you then become part

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h03:06]

of the game that is being played because really in what was coming out of the media and out of everywhere, anybody could have been suspicious. Besides being a manager in the fund wouldn't you be held accountable for corporate governance within the funding that has collapsed?

**Mr Sibusiso Luthuli** - Honourable Chair, I do not believe that the governance at the fund has collapsed. I believe the fund has very strong corporate governance principles, very strong corporate governance policies that it follows. In this instance and in every other instance, the fund cannot operate based on media reports. The fund has to receive factual documents. When we received factual documents there was an application that was very specific it cited particular rules that Eskom has applied before, it indicated that Eskom was going to carry the costs and this was signed by the chairperson of the board at Eskom. So, on our part we checked that does this comply with the rules. And there was nothing at that point in time that indicated to us that, you know, there is a problem here. We followed all the processes and checks and balances that we would follow as a fund in processing the benefits and making sure that the interest of the fund are protected. It's very difficult for us to comment on the governance processes of Eskom because we do not know the governance processes of Eskom, and I think probably they would be able to then respond accordingly as to what process they followed and what governance they looked at in terms of them approving this. But from

our side we do believe that, you know, the governance was followed. Having said that I think even the chairperson highlighted that I think there is learning's out of all of this process and we have taken corrective action where we can, but there's also a process to even revisit the rules and look at how we can update the rules, such that the rules can be more up-to-date and be more talk to the real issues of today.

**Ms Daphne Rantho** - Chair, the first letter you have received from Eskom, what did it say? Did it say Mr Molefe has retired; Mr Molefe has resigned, therefore in his resignation you have to do this and that. The first, first letter that you have received.

**Ms Mantuka Maisela** - Myself or the fund?

**Ms Daphne Rantho** - The fund, I take it you are part of the fund.

[00h06:06]

**Ms Mantuka Maisela** -The letter that was received from the fund, it was a letter that Mr Luthuli alluded to earlier on, that indicated that they are retiring Mr Molefe and they're applying rule 28 in conjunction with rule 21(4). So that was the letter that was sent to Molefe...to the fund by Dr Ngubane and also supported by the termination letter that was signed by Mr Molefe. It said it was, they were retiring him and they buying back the pension up to age 63 and also waiving the penalties that could have been instituted to him had he just retired without them buying. So that's the gist of the letter.

**Ms Daphne Rantho** - So you have never come up or maybe you are working on papers because the minister when she heard of the stepping down of Mr Molefe she publicly said we 'welcome the resignation of Mr Molefe' then after that you received a letter from Eskom that says Mr Molefe has retired. Didn't that alone raise a red light that says 'is this person according to the Minister he has resigned, according to what you have received it says he has retired', so didn't that raise any questions; you just went to your papers and then you did the calculations according to what is in front of you?

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[03h07:54]

**Ms Mantuka Maisela** - Madam Chair, as you remember what Mr Luthuli indicated earlier on was the fact that the board is not operational number one; the board does not know...has delegated the day-to-day functioning of the fund to management, right? Having done so when these letters are...the transactions of the letters of termination, resignation, whatever, they go to management and management, based on the delegation that they were given, processes them. It only came to the attention of the fund, was it 16th April? When I received a call from Mr Luthuli indicating that there is this issue in the bank. So the board only got to know about it when the media... after Mr Molefe had received his pension from January until April that's when it came to the attention of the board. So we did not even know the terms of his termination, we just received the information after the fact, and that is why we said let us interrogate whether, why the board did not know. And that's when we got to realise that there was a delegation but I our lawyers told us that you cannot delegate discretion. You can only delegate the activities to management. So that delegation was an old delegation prior to our time which was done in 1999. And as a result as the board we went through the entire governance framework, we looked at everything crossed every 't', we looked at the delegation of authority for the fund, and we have revisited everything and whatever was done wrong we indicated that it will never be delegated again. Now coming back to when we received the letter; when the letter was

received, we were not privy to the letter because it was an operational matter. But it became a board issue when it came out in the media and then the board had to ask the relevant questions asked.

**Ms Daphne Rantho** - When Mr Luthuli responded to one of the questions that was raised by members, he said 'that you cannot as the fund, the fund cannot rely on what is on the media', that's what he said when he responded in one of the questions; I just cannot remember the questions. Then now you are coming back you are responding to what you see in the media or what you heard about the media, responding to the very relevant situation that has been taking place in Eskom, that it's a little bit confusing. But you don't have to respond to that. My question is Mr Anoj Singh, is he part of the funding?

[00h12:00]

**Ms Mantuka Maisela** - Mr Anoj Singh is a member of the fund. We have written a letter to Eskom subsequent to us understanding that or knowing that Mr Molefe was in a...had a limited duration contract. We have written to Eskom requesting them to give us names of people who are members of the fund, but they're not eligible members. We have specifically asked for Mr Anoj Singh as to whether he is a legit, a permanent employee. The answer that we got was not satisfactory to us; we subsequently have requested Eskom to give us a contract...his contract of employment. They haven't yet given us his contract of employment. So we are trying to dig down to find out are there any other people who are on a limited duration contract whose files we were given as if they were permanent employees. So to answer your question Mr Singh is a member of the fund. I'm correct Mr Luthuli.

**Mr Luthuli** - Yes.

**Ms Daphne Rantho** -... know if you have a strategy in your in your institution that would help you to be able...because I'm worried of this institution of yours. Because if the fund relies only on what...because it looks like in everybody's' that Eskom has actually misled you. Do you have a strategy that is in place that will make the fund to do the correct payment to the correct person, because if you keep on relying... I am just thinking I was a teacher before I become a member of parliament, it's coming to my mind what if there's a pension fund that paid my pension off in the education system just took what was given to them by the

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h13:09]

Sterkspruit District office and not make any other research about me. What if that person wrote that I must get the 30 million or whatever, what would have happened to that institution? I think what I want to check with you is that, is the funding relying only on the information that they get from Eskom and they don't have any plan to look for the correctness? Or has come to your attention now that you need to have to look for further information if this has happened to you and you did not know anything about it.

**Ms Mantuka Maisela** - Madam Chair, if you remember when Mr Luthuli was explaining. Mr Luthuli indicated that prior to 2012 the fund used to receive a leg file or information from Eskom that included people who were limited duration...who are on limited duration contract. The fund had technical problems because the system used to kick out those people. The fund then agreed with Eskom in 2013; they agreed on the codes, on all the relevant codes to try and eliminate a possibility of including people who are not eligible to the fund with the understanding that both parties understood that; now from 2013 onwards we're not going to receive any files that have got people who are limited duration and if you remember, Mr Luthuli said we operate on a level of trust with the employer. Remember we are called Eskom pension and provident fund; we could have been Alexander Forbes, we could have been Sanlam, we could have been any other

administrator in the case of your government employer, you could have been Japa for instance. You have an agreement with the employer to provide you with the right information, and from a certain date onwards you have a meeting you agree from now onwards everything is gonna be done properly. And then suddenly you receive leg files; you have to rely if you are operating on the basis of trust that what you are given is correct. You cannot operate without that. Now that we know, as you know, we have gone back to them and ask them do you have any other people that you have given to us today who are members of our fund and yet they're on a limited duration contract. That's the corrective action we've taken.

**Ms Daphne Rantho** - Members, I just want to make a comment. I am very worried about Mr Luthuli might say their governance is up to scratch and it's up to date; I'm worried about the Eskom pension fund because it will work for the executive but I'm worried about a sweeper or a cleaner at Eskom who worked one year or two years in Eskom, if there is anything that Eskom would ever be able to work out with the pension fund for that lay person who does not have anything. Because Mr Molefe was an honourable member in parliament and he was getting a salary or a pension payout of a hundred and something thousand and a payment from Parliament. I am really worried about the situation that we find ourselves in because we've got a constitution in South Africa that we need to respect. We have policies of the government that we need to do respect. Eskom is a state owned company which gets money from the state or from the government, if there is this mismanagement or misappropriations of funds that are getting this way. I'm really worried honourable members; I have only 15 minutes left but I will allow you honourable members to have one short question one very, very, short question up to 1:55 o'clock. At 2 o'clock I'm adjourning the meeting. Mr Swart, Mr Shivambu, and Mr Luyenge. One straight forward question please. If it's answered not to your satisfaction then it's answered and Mr Swart after you it's going to be Ms Nobanda. Thank you.

[00h19:13]

**Honourable Swart** - Thank you Chair. Are you aware of any criminal investigation against Eskom for the misrepresentation that they made to you? Remember last year Mr Gordhan was charged for the early retirement of Mr Ivan Pillay. Now he was a 56-year-old, he was a Government Employees Pension Fund member, and the amount in dispute was less than 1.1 million. And we know that there was a charges laid, spurious charges.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h19:24]

But they were...were withdrawn. From the information you giving us, it would appear that there is a serious misrepresentation that was made to you. And we know that misrepresentation forms the basis of a fraud charge because you acted on the basis of that misrepresentation to the detriment of the pension fund. So are you aware of any criminal action that has been instituted or that is being investigated, and if so would you co-operate with such an investigation? Thank you.

**Mr Sibusiso Luthuli** - We have been contacted by the Hawks where they indicated that they would like to engage with us to gain more information around the circumstances of Mr Molefe's pension payout. We indicated to the Hawks that the fund is more than willing to participate in that process. We have not heard from them yet. They are suppose...they were supposed to come back to us to finalize a meeting date. We have not heard from them as yet.

**Honourable Swart** - FBI will phone you as well

**Ms Daphne Rantho** - Can you give me....Honourable Nobanda.

**Honourable Nobanda** - Thank you Chair. Mine is not a question it's more of...to note. I didn't hear you mentioning it on your remarks. The information we request of any other executives if they've been paid out. Remember you suppose...you've asked them to give to us...

**Ms Daphne Rantho** - Not only that. Everything that has been asked by the Committee Members. I'm not sure if there is anyone who noted them. But there should be someone who is noting them and should give us that information. Thank you. Honourable Shivambu

[00h21:26]

**Honourable Shivambu** - No I'd agree with observation that the Eskom pension fund is somehow being used as a platform to either launder money or to move money illegally to individuals. Like even if the rules permits, I mean how do you agree to give someone thirty million like...even if they've deposited into your account, how do you willingly co-operate on commission of crime? And I think that is one thing that we should note as part of analysing of this report, that something should have...like a red alarm...a red flag should have been raised immediately you are told that no: "Transfer 30 million rand as pension funds." And even if your calculation permits you that, like section 28, 21.4 and everything else - it was decidedly wrong. And I think it speaks to the ethical conduct and standing of the leadership of the pension fund in terms of those that got to implement that. The question which I want to ask which is not maybe directly related to this is, when you introduce people – you said the person sitting behind you is Advocate Maenetje? The person behind you....Yes. Is he the same one who was nominated by Matshela Koko to be the chairperson of the disciplinary hearing of Eskom now in his disciplinary hearing? Maybe you can check that and what is his role in the pension fund? And why did Matshela Koko choose him to preside over his DC? Maybe these conflictual issues are part of this problem that we are dealing with.

**Ms Mantuka Maisela** - Can we allow him to answer?...

**Advocate Maenetje** - Thanks chairperson for the opportunity. I didn't anticipate that I'd be asked a question like this, but I'm happy that I'm asked. Like I'm a member of the Johannesburg bar, practices as a member in the courts in this country, and if I'm called and asked whether I'm available to provide legal services, if I'm not conflicted and I'm available, I accept. I have acted for many people and many institutions.

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h24:00]

I was called to ask whether I'm available to be appointed as a chairperson of a disciplinary enquiry for Eskom, which accepted. And because I was not conflicted and I had availability, and I gave the dates when I was available. In the week before the hearing could start I received information that it was going to start earlier, but it was at a time when I would not have been available to be the chairperson. And it was on that basis that I became unavailable. I don't know how I got nominated; I was called by an attorney Mr Mchunu of Mchuna Attorneys who asked whether I was available. I wasn't asked by Mr Koko or by any particular individual at Eskom. I have no interests in Eskom. I have no interest in Eskom pension funds. I'm acting in this matter on the instructions of Norton Rose and instructed by Miss Michelle David because also I was available both because I am not conflicted and I have the time to do the work; and that is the professional bases on which I render services. I've rendered services for the National Assembly and other people on the same bases.

Thank you Chair.

**Honourable Luyenge** -...Luthuli, what would your conscience tell you about the situation you are leading, having committed such a glaring kind of a mistake which might be taken as if it is deliberate, if you don't declare your full kind of emotion as it relates to this kind of a mistake?

**Mr Sibusiso Luthuli** - I think firstly I would have to differ with the fact that there was any deliberate mistake. As I fund we followed the rules of the fund. And that is a framework, the legal framework that we can operate within. We did not make the decisions, the decisions were made by the employer rightfully so, and they approached the fund saying these are the decisions that they've made. And our responsibility's to make sure that the fund is a financially sustainable and viable entity that members of the fund are protected. And I think by us saying to the employer here is the cost of what you want to achieve, you know, we were fulfilling that responsibility. It becomes difficult to do then put myself or put ourselves as a fund in the shoes of the employer because we do not know up to this day what informed their decisions, what governance processes they went through, we can only reflect upon what we did and I think we've been very transparent in terms of our submission, we've been very detailed, we've been very transparent. We've also highlighted where there have been short comings on us as a fund, for example, the issue of the delegation of discretion, when that was highlighted immediately there was corrective steps that were taking that such matters must go to the board.

[00h27:46]

We've addressed Eskom to try and make sure that going forward we get the correct information and we've asked in terms of other members including specifically Mr Singh, as to his status of employment so that we can correct...take corrective action. And we are looking at the rules with the aim of saying 'how can we make sure that these rules are robust enough to deal with the issues'. So I sincerely believe that, you know, we have not deliberately gone out to do something that is not correct, that is not appropriate. I do not believe that our governance has failed us, I do not believe that our ethics in anyway have been compromised, you know. The fund has got very ethical employees that work at the fund, dedicate themselves to the fund to make sure that on a daily basis we provide pensioners and members with a service that they require. But we are taking lessons from all of this that has happened and corrective action has already started.

**Ms Daphne Rantho** - Honourable Mazzone.

**Honourable Mazzone** - Chair, thank you. Given what has just been said and you are very confident of the ethical level that your company operates within, I'm therefore left with no other reasonable way of seeing it

20<sup>th</sup> October 2017 – Parliament RSA

Morning Session

[00h29:10]

other than the fact that Eskom acted in an ethical fashion because you were given the incorrect information. Do you share my opinion that Eskom in their interactions with you behaved unethically? And if not why not?

**Mr Sibusiso Luthuli** - Again, I would indicate that it becomes difficult to speculate around what happened and what did not happen at Eskom. I, you know, I think probably Eskom would be better... in a better position to do to indicate that. But from our side you know where we picked up discrepancies in terms of information that Eskom has given us we've taken it up, we've gone back to them and we do hope that going forward, you know, there's going to be corrective action to make sure that information flow that is coming to the fund is correct and appropriate.

**Ms Daphne Rantho** - Thank you very much Honourable members and thank you for the response and the presentation from the Eskom pension fund. We might not have understood some of the information or we might not have agreed on the information, but we have the information then we will work on that information when we get to call Eskom itself. But I just want to caution the members or the board to just look again at your rules and check what we have learnt out of this process and out of the process that you were involved in with Eskom and maybe there are things that you need to change. Honourable members, to the media, our friends or best friends, to the officials that are inside this room, thank you very much for being with us on this road, thank you very much from the pension fund of Eskom and our officials. This has brought us to the end of our meeting but what I want to say here is that week we will be looking at our work as a committee. This is part of our work but we will look out at our daily work as a committee next week. We will not have any inquiry next week; we will just look at what we have to do and present in parliament before the end of the year. Thank you very much to everybody the meeting stands adjourned.

[00h33:33 - END OF DISK 02]

