

IN THE LABOUR COURT OF JOHANNESBURG
HELD AT JOHANNESBURG

CASE NO: J111/21

In the matter between:

ONICA MARTHA NGOYE	First Applicant
NKOSINATHI ALLEN KHENA	Second Applicant
TIRO HOLELE	Third Applicant

And

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA	First Respondent
LEONARD RAMATLAKANE	Second Respondent
THINAVUYO MPYE	Third Respondent
DINKWANYANE MOHUBA	Fourth Respondent
SMANGA SETHENE	Fifth Respondent
XOLILE GEORGE	Sixth Respondent
NOSIZWE NOKWE-MACAMO	Seventh Respondent
MATODZI MUKHUBA	Eighth Respondent
THEMBA ZULU	Ninth Respondent
MS THANDEKA MABIJA	Tenth Respondent

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DATED AT SANDTON ON THIS 4TH DAY OF FEBRUARY 2021.



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**TO: THE REGISTRAR OF THE LABOUR COURT
JOHANNESBURG**

AND TO: PASSENGER RAIL AGENCY OF SOUTH AFRICA

First Respondent

Mjantshi House
30 Wolmarans Street
Braamfontein
Johannesburg
Gauteng Province

AND TO: LEONARD RAMATLAKANE N.O

Second Respondent

Mjantshi House
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Gauteng Province

AND TO: **THINAVUYO MPYE**
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NOTICE OF MOTION

PLEASE TAKE NOTICE THAT the applicants will apply to this Court on Thursday, **11 February 2021** at 10h00 or so soon thereafter as counsel may be heard for an Order in the following terms:

- 1 Declaring that this application is urgent and, insofar as the applicants might not have complied with the Rules of this Court, their failure to do so is condoned, and the Rules relating to forms and service are dispensed with and the application is dealt with as one of urgency.
- 2 It is declared that the meeting of the Board of Control of the first respondent, insofar as it purported to take the decision to terminate the applicants' contracts of employment, was not properly constituted and is accordingly unlawful.
- 3 The decision of the Board of Control and any consequent resolution, insofar as they purported to terminate the applicants' contracts of employment are invalid and of no force and effect.
- 4 It is declared that the contracts of employment concluded by the applicants and the respondents are extant.
- 5 It is declared that the respondents' termination of the applicants' contracts of employment by letters addressed to the applicants on 29 January 2021 and on 1 February 2021 is unlawful.
- 6 The termination of the contracts of the applicants' contracts of employment is set aside.

- 7 The respondents are ordered to reinstate the applicants with immediate effect and retrospectively from the date of the termination of their contracts of employment.
- 8 The first respondent is ordered to pay any salaries and benefits due to the applicants from the date on which the contracts of employment were terminated to the date of reinstatement.
- 9 The respondents are ordered, jointly and severally to pay the applicants' costs.
- 10 The applicants are afforded further and/or alternative relief as may be just in the circumstances.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **ONICA MARTHA NGOYE**, together with the confirmatory affidavits of the second applicant, **NKOSINATHI ALLEN KHENA** and third applicant, **TIRO HOLELE** shall be used in support of this application.

KINDLY TAKE NOTICE FURTHER THAT if you intend opposing this application, you must notify the applicants' attorneys in writing on or before 10h00 on Friday **5 February 2021**, file your answering affidavit(s), if any, by no later than 10h00 on Monday **8 February 2021**. The applicants shall then file their replying affidavit not later than close of business on Tuesday **9 February 2021**.

DATED AT SANDTON ON THIS 4TH DAY OF FEBRUARY 2021.



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Eighth Respondent

THEMBA ZULU

Ninth Respondent



MS THANDEKA MABIJA

Tenth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

ONICA MARTHA NGOYE


1 

do hereby make oath and say:

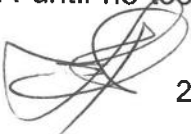

- 1 I am an admitted attorney of 199 Pritchard Street, Olivedale, Randburg.
Save where the context indicates otherwise, the facts stated in this affidavit are within my personal knowledge and are true and correct.
- 2 I was the Group Executive: Legal Risk and Compliance at PRASA before my contract of employment was unlawfully terminated by the second respondent ("**the Acting GCEO**") by way of letter dated 29 January 2021.
I commenced my employment with PRASA on 1 September 2014, having transferred from my previous position as Chief Executive Officer of Intersite Asset Investments SOC Ltd ("**Intersite**"), a wholly owned subsidiary of PRASA, on 22 August 2014.
- 3 I am authorised by the second and third applicants to depose to this affidavit as more fully appears in their affidavits. They confirm the contents of this affidavit insofar as they are affected.

THE PARTIES

- 4 The applicants:

4.1 I am the first applicant in this application.

4.2 The second applicant is **Mr. Nkosinathi Allen Khena** ("**Mr. Khena**"), of 157 Wilton Avenue, Bryanston, Johannesburg. Mr Khena was the Chief Operating Officer of PRASA until he too

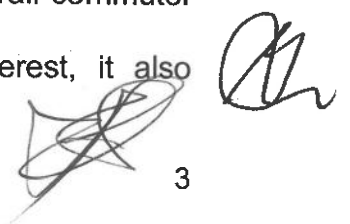
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was unlawfully terminated by the Acting GCEO on 29 January 2021. He started his employment at PRASA at PRASA in 2012.

- 4.3 The third applicant is **Mr. Tiro Holele ("Mr Holele")**, of 142 12th Street, Parkhurst, Johannesburg, Gauteng Province. Mr Holele was General Manager: Strategy at PRASA. His employment with PRASA was unlawfully terminated on the evening of 2 February 2021 in a letter dated 1 February 2021. He started his employment at PRASA during or around June 2007.
- 5 Whilst my employment and that of Mr. Khena were terminated on 29 January 2021, Mr. Holele's employment was terminated on 2 February 2021 for the same reasons given to me and Mr Khena. By the time that Mr. Holele was terminated, Mr Khena and I had already consulted with our legal team and had begun drafting these papers. Mr. Holele expressed his desire to co-join this application on Wednesday 3 February 2021. By then this founding affidavit was near complete. Mr. Holele seeks the same relief as us. His full story is set out in a separate section elsewhere in this founding affidavit.

6 The Respondents:

- 6.1 The first respondent is the **Passenger Rail Agency of South Africa ("PRASA")** established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 9 of 1989 ("Legal Succession Act"). It provides rail commuter services within the Republic in the public interest, it also



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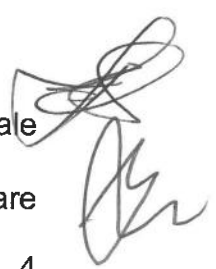
provides for long-haul passenger rail and bus services in terms of the principles set out in section 4 of the National Land Transport Transition Act, 22 of 2000. The balance of its objects and powers are set out in section 23 of the Legal Succession Act. PRASA principal place of business is at Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg, Gauteng.

6.2 The second respondent is **Mr. Leonard Ramatlakane** who is the Chairperson of the Board of Control (“**the Board**”) of PRASA, established in terms of section 24 of the Legal Succession Act. The composition and *modus operandi* of the Board are set out in section 24 of the Legal Succession Act. The second respondent’s address for service is Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg, Gauteng.

6.3 The third respondent is **Ms. Thinavhuyo Mpye**, an adult female and the Chairperson of the Audit and Risk Committee of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg.

6.4 The fourth respondent is **Mr. Dinkwanyane Mohuba**, an adult and who is one of the members of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg.

6.5 The fifth respondent is **Mr. Smanga Sethene**, an adult male admitted advocate whose full and further particulars are



unknown to the applicants and who the Chairperson of the Human Capital Management and Remuneration Committee of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg.

6.6 The sixth respondent is **Mr. Xolile George**, an adult male whose full and further particulars are unknown to the applicants and who is one of the members of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg. Mr. Xolile George is a nominee of the South African Local Government Association ("SALGA") to the Board of PRASA.

6.7 The seventh respondent is **Ms. Nosizwe Nokwe-Macamo**, an adult female whose full and further particulars are unknown to the applicants and who is one of the members of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg.

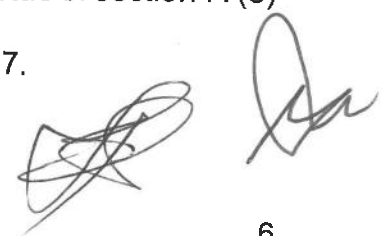
6.8 The eighth respondent is **Mr. Matodzi Mukhuba**, an adult male whose full and further particulars are unknown to the applicants and who is one of the members of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg.



- 6.9 The ninth respondent is **Mr. Themba Zulu**, an adult male whose full and further particulars are unknown to the applicants and who is one of the members of the Board of Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg. Mr. Themba Zulu is a nominee of National Treasury to the Board.
- 6.10 The tenth respondent is **Ms Thandeka Mabija (“Ms. Mabija”) Acting Group Chief Executive (“Acting GCEO”) of PRASA**, who in her capacity as such unlawfully terminated my and Mr Khena’s employment contracts on 29 January 2021. The second respondent’s place of business is Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg, Gauteng.
- 7 Although the termination letters were signed by the Acting GCEO, a media statement issued by the Board states that the termination follows upon a review process undertaken by the Board. Following that review process, a decision was taken to terminate the employment contracts of certain executives of PRASA. It is alleged that this termination of employment contracts is because the norm at PRASA is a five-year fixed term contract extended to all executives. In the circumstances, we (the applicants) have cited the members of the Board as well as the Acting GCEO.

JURISDICTION

- 8 This Court has jurisdiction to hear this application by virtue of section 77(3) of the Basic Conditions of Employment Act, 75 of 1997.



THE PURPOSE OF THIS APPLICATION

9 At the heart of this application lies two issues:

9.1 First, the lawfulness of the decision of the Board of PRASA in so far as it was not properly constituted in terms of section 24(2) of the Legal Succession Act. Amongst others, the Legal Succession Act requires that one of the members of the Board be an officer in the Department of Transport. This is a mandatory requirement. None of the members is such an officer. The proceedings and the decisions of the Board were accordingly unlawful and are of no force and effect as they were taken by the Board, not properly constituted.

9.2 Second, whether the respondents could in law validly terminate the applicants' employment contracts for the grounds set in the termination letters.

10 The respondents have, in the letters of termination and the media releases issued by the Board decided to include matters for which they state they intend to institute legal action against Mr. Khena and I. These issues are not stated as the reasons for the termination of our employment, however, we believe that it is important to take the court into our confidence and briefly state what our response is to these allegations.

THE STATED REASONS FOR OUR UNLAWFUL TERMINATION

11 My termination letter states that:



- “5. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives. In your current position, PRASA relies on you for issues concerning legal, risk and compliance and you out (sic!) to have brought this administrative defect to the attention of PRASA
6. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.”

12 In the case of Mr Khena, he too was told in his termination letter of 29 January 2021 that:

“Having perused PRASA’s records, the only contract of employment PRASA has is that of Chief Operating Officer dated 1 December 2012.


In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives.

Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.”

13 The media release of the Board states:


“PRASA Board of Control has embarked on the review of contracts of executives and other senior managers. Pursuant to the review process, it transpired upon analysis of employment contracts of executives that some of them [executives] ought to have left PRASA years ago. All executives of PRASA are employed for a period not exceeding 5 years with no expectation for extension of the employment contract. The Board also observed that the executives have been aware at all material times that their employment contracts were for five-year period and not more. However it appears the executives capitalized on the instability at the Board level culminating in their extended unlawful stay at PRASA. On 29 January 2021, PRASA has terminated the employment contracts of ... Ms. Martha Ngoye [and] ... Mr. Nkosinathi Khena”

Annexure “OMN1” and “OMN2” respectively are copies of the termination letters addressed to me and Mr Khena.



Annexure “OMN3” is the media release issued by the Board of 30 January 2021.

- 14 This statement that we “*capitalized on the instability at the Board level culminating in [our] extended unlawful stay at PRASA*” is untrue. In any event, the Board did not confront us about their observation that we ought to have left the employ of PRASA years ago. The Board simply did its review, came to its conclusions and caused the Acting GCEO to issue letters of termination dated 29 January 2021 and 1 February 2021 and issued a media release with the outcomes of the review of our employment agreements on 30 January 2021.
- 15 The Acting GCEO served us with termination letters without so much as to afford us an opportunity to make representations on the subject matter.
- 16 PRASA issued a publication dated 2 February 2021 under the hand of the third respondent announcing that it had “*released three executives from their responsibilities as their employment contracts have come to an end due to effluxion of time*”. This publication proceeds to name these executives as “*Mr. Rasheeque Zaman, Group Executive: Internal Audit, Mr. Zwelakhe Mayaba, Group Executive: Strategic Projects and Mr. Holele, Group Executive: CEO’s Office*” The publication concludes by wishing these executives well in their future endeavours.
- 17 I wish to make the following observations about the stated reasons for our unlawful termination:



17.1 Mr. Holele had ceased to be a Group Executive when his contract was unlawfully terminated on 2 February 2021. He had been told during July 2020 by Ms. Mabija and a Mr. Bongisizwe Mpondo (who was appointed as an administrator of PRASA) that his position as Group Executive in the Office of the Group CEO had become redundant. Mr. Holele was offered and he accepted the position of General Manager: Strategy. For this reason alone, the termination of Mr. Holele's employment contract is unlawful.

17.2 If the termination of Mr. Holele's employment is found to be lawful, then all the employment contracts of the following employees who are at the level of General Managers and have been at PRASA for more than 5 years should be terminated:

17.2.1 General Managers of PRASA;

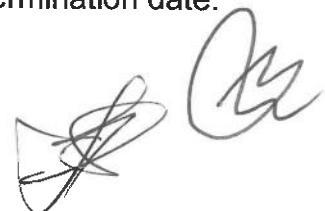
17.2.2 CFO's of PRASA's business divisions and subsidiaries; and

17.2.3 Executive Managers of PRASA's divisions.

THE PROVISIONS OF OUR EMPLOYMENT CONTRACTS AND THE UNLAWFUL TERMINATION THEREOF

18 None of our contracts of employment provide for a termination date.

Mr. Khena's Employment Contract



- 17
- 19 Mr Khena's termination letter only states that his records have been perused by the Acting GCEO and the only contract of employment is that of COO dated 1 December 2012.
- 20 Mr Khena joined PRASA as Chief Operating Officer: Office of Group Chief Executive Officer: PRASA Corporate in December 2012. His appointment is on a fulltime basis (clause 5).
- 21 Clause 9 of his contract deals with termination and it says that the agreement shall terminate without notice on the termination date. I have already said that there is no specified termination date, nor was the so-called five year tenure extended to executives part of his terms and conditions of employment.
- 22 The suggestion from the termination letter that his stay at PRASA has exceeded the "*normal five year fixed-term contract extended to all executives*" is contrary to the express terms of the agreement, in particular clause 9 read with the other provisions that deal with termination.
- 23 Clause 19.2 provides that neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in the contract.
- 24 The contract further states that any addition, variation or agreed cancellation of the agreement shall be of no force and effect unless it is in writing and signed by the parties to the contract.



11

- 25 I ask that the balance of the terms of the contract of employment be incorporated herein by reference.

Annexure "**OMN4**" is a copy of Mr Khena's employment contract.

- 26 The suggestion that his contract was for a fixed term of five years to the extent that it is asserted by PRASA, is contrary to the clear and express terms of the contract, including those that provide that unless recorded by the parties and agreed to, they are not part of the employment contract.

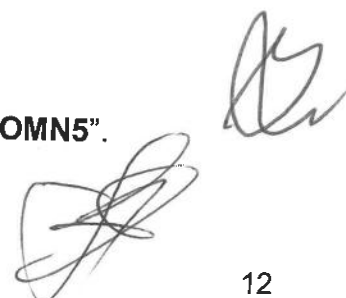
- 27 The Acting GCEO does not state:

- 27.1 The source of this *"normal five year fixed term contract"*;
- 27.2 When this *"normal five year fixed term contract"* was *"extended to all executives"*;
- 27.3 How the executives were notified that this *"normal five year fixed term contract"* was *"extended"* to them; and
- 27.4 Whether and how he agreed to this amendment of their contracts.

My Employment Contract

- 28 On or about 1 September 2012 I was appointed to the position of Chief Executive Officer of Intersite, a subsidiary of PRASA.

A copy of my contract of employment is attached as "**OMN5**".



29 The key provisions of my contract of employment with Intersite were as follows:

- 29.1 I was appointed Chief Executive Officer subject to the terms and conditions in the agreement and its annexures. Notwithstanding the date of signature, the agreement and the appointment commenced on 1 September 2011 and shall endure until terminated as provided in the Contract.
- 29.2 I was appointed as a fulltime employee devoting my time and attention during normal hours to the business and affairs of Intersite and shall not be engaged either directly or indirectly in any other form or business of employment without the prior written consent of the employer (clause 5).
- 29.3 Clause 9 provides that during the currency of this agreement the parties shall have the right to terminate the employment relationship on the following grounds, provided that the parties shall in all respect have complied with the Employer's internal policies and procedure and the provisions of the Labour Relations Act 66 of 1995 ("the LRA") prior to such termination summarily and without notice for any reason on the misconduct of the executive or any other cause recognised by law as sufficient.
- 29.4 In terms of the agreement, the employee will serve a three months' notice (clause 9.2). In lieu of the notice in 9.1.2 the Employer may elect to pay the executive the compensation to

which the executive would have been entitled if the executive had worked during the notice period. The executive may, in lieu of notice elect to forfeit the compensation to which she would have been entitled to if she had worked during the notice period.

29.5 The contract provides in clause 2.3.12 for termination and it is stated that it means the date of termination of employment of the executive specified in item 7 on annexure "A".

29.6 Annexure "A" in turn provides that:

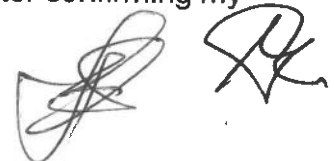
"7. Termination Date: N/A."

30 Annexure "A" item 5 provides that my appointment would be "[p]ermanent".

31 On 11 August 2014, the Board of Directors of Intersite passed a resolution, amongst others, to *approve the transfer and appointment of Ms Martha Ngoye, Chief Executive Officer (CEO): Intersite Asset Investments SOC Ltd, to the position of PRASA Group Executive: Legal, Risk and Compliance, effective 01 September 2014, and on the same terms and conditions of her current employment."*

A copy of the resolution signed by the then Chairperson of Intersite, Mr Tshepo Lucky Montana, is attached as annexure "OMN6".

32 On 22 August 2014, Mr Montana who was also the Group Chief Executive Officer of PRASA, furnished me with a formal internal letter confirming my



transfer from Intersite to PRASA in accordance with the above resolution of Intersite. The letter confirms, amongst others,

"We are pleased to advise that you have been transferred from the position of Chief Executive Officer: Intersite to that of Group Executive: Legal, Risk and Compliance, with effect from 1 September 2014. This transfer is due to operational requirements and restructuring within the organisation. You will report directly to the Group Chief Executive Officer.

Please note that this is a lateral transfer and all other terms and conditions not amended by this transfer shall remain unchanged."

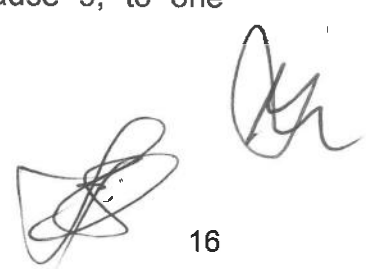
A copy of this letter is an annexure to annexure **OMN1**.

- 33 The resolution provides that my transfer from Intersite to PRASA was on the same terms and conditions of my employment. Properly interpreted, this means that the terms and conditions contained in my contract of employment with Intersite continued to apply in my new position as Group Executive at PRASA save for the obvious changes indicated in paragraph 15 above. This would include, amongst others, the fact that my appointment would be permanent in nature and would have no termination date, subject to the termination clause in the agreement.
- 34 I am advised and submit that our law does not recognise as sufficient the termination of my employment other than in accordance with the contract.
- 35 The reasons given to me by the Acting GCEO that my stay at PRASA has exceeded the *"normal five year fixed term contract extended to all executives and the employment contract"* with PRASA is terminated with immediate effect is not a cause recognised by law as sufficient. It is unlawful, invalid and contrary to a clear stipulation of the contract of

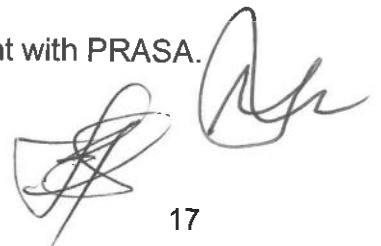


employment, in particular clause 9.1.1 thereof. In any event, the Acting GCEO does not state:

- 35.1 The source of this *"normal five year fixed term contract"*;
 - 35.2 When this *"normal five year fixed term contract"* was *"extended to all executives"*;
 - 35.3 How the executives were notified that this *"normal five year fixed term contract"* was *"extended"* to them; and
 - 35.4 Whether and how I agreed to this amendment of their contracts.
- 36 The alleged termination infringes upon my rights as enshrined in the employment contract.
- 37 I emphasise clause 19.2 of my employment contract which provides that neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 38 The contract further states that no addition to, variation, or agreed cancellation of this agreement and its annexures shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 39 Whether expressly or impliedly from the letter from Mr Montana, nothing suggests that my tenure would be amended from an indefinite employment without a termination date subject to clause 9, to one subjected to a five-year limitation period.



- 40 Because I transferred from Intersite on the same terms and conditions, my employment contract did not reflect PRASA as a counterparty. However, there has never been any doubt about my status as an executive of PRASA. My letter of transfer annexed to my termination letter states that: "[p]lease note this is a lateral transfer and all other terms and conditions not amended by this transfer shall remain unchanged".
- 41 For the avoidance of doubt, the only things that were changed by the transfer letter are the following:
- 41.1 My position was no longer CEO of Intersite, it was now Group Executive: Legal, Risk and Compliance of PRASA; and I no longer report to the Board of Directors of Intersite, I now report to the Group CEO of PRASA.
- 42 The termination has no legal or factual basis. My tenure of employment was never amended either impliedly or expressly. It was not something that was raised with me when I transferred from Intersite on 11 August 2014 to join PRASA as Group Executive with effect from 1 September 2014. It was never raised with me in discussions.
- 43 Accordingly, the respondents' decision purporting to terminate our employment based on the averment that *"In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives"* is unlawful, invalid and of no force and effect. It never constituted any term or condition of our employment with PRASA.



It was never something that PRASA discussed with us. It was never a term and/or a condition of our contracts of employment.

44 The termination was unilateral and is not in accordance with the terms and conditions which were preserved and which formed a core component of my transfer from Intersite to PRASA.

45 The only instances where termination can be effected, in my case, is in terms of clause 9 of the Agreement that provides for termination. That provision says nothing about the so-called *"normal five year fixed term contract extended to all executives"*.

Mr. Holele's contract

46 Mr Holele joined the predecessor of PRASA, the South African Rail Commuter Corporation ("SARCC"), on 1 June 2007 as General Manager in the Office of the CEO. A year later, Mr Holele was appointed as General Manager: Corporate Affairs. A copy of his letter of appointment is attached as **"OMN7"**.

47 Whilst the letter of appointment indicates that Mr Holele was to conclude an employment contract, no such contract was concluded.


48 He became an employee of PRASA in December 2008 when SARCC was renamed PRASA by virtue of the Legal Succession Act. In this regard, he served as PRASA's Head of Corporate Affairs, including marketing and communications.



- 49 On 1 December 2009 Mr Holele became the Executive: in the office of the GCEO. A copy of his letter of appointment is attached as “OMN8”.
- 50 Similarly, whilst the letter of appointment indicates that Mr Holele was to conclude an employment contract, no such contract was concluded.
- 51 He served as the executive in the office of the GCEO and the *de facto* Head of Strategy until he was appointed as the Chief Strategy Officer at the first respondent in 2011.
- 52 On 31 July 2013, the first respondent’s board resolved to transfer Mr Holele to the position of Executive Manager: Third Party Projects at Intersite. A copy of the first respondent’s board resolution is attached as “OMN9”.
- 53 On 1 November 2013, Mr Holele was appointed as Executive Manager for Third Party Projects at Intersite. A copy of the Intersite’s board’s resolution in this regard is attached as “OMN10”.
- 54 In 2015 Mr Holele was transferred to the position of the first respondent’s Corporate Office as Group Executive: office of GCEO.
- 55 Whilst holding the position at Corporate Office as Group Executive: Office of GCEO, Mr Holele was seconded, in December 2019, to the position of Acting CEO of Autopax. The latter is the bus service subsidiary of the first respondent.

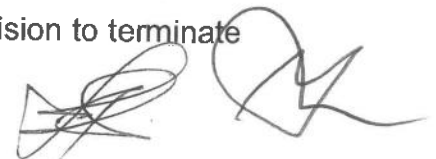


- 56 In March 2020 Mr Holele was recalled from his acting position at Autopax back to the first respondent. He was still holding the position at Corporate Office as Group Executive: Office of GCEO.
- 57 Mr Holele's employment in respect of all the above positions that he has held at SARCC, PRASA, Intersite and Autopax was not fixed for a period of five years.
- 58 Critically, on 31 July 2020 Mr Holele was offered the position of General Manager, Strategy at the first respondent. The offer letter states clearly that the position being offered to Mr Holele is "no longer a Group Executive position". Mr Holele accepted the offer on 3 August 2020. Copies of the offer letter and the letter of acceptance are attached as "OMN11" and "OMN12", respectively.
- 59 Whilst the offer letter indicated that Mr Holele was to conclude an employment contract, no such contract was concluded. Effectively, Mr Holele's position changed from being executive to being managerial however, his remuneration was never changed.
- 60 Importantly, this position of General Manager, Strategy at the first respondent is the position that Mr Holele was occupying prior to his unlawful termination of employment on 1 February 2021.
- 61 The letter of 1 February 2021 terminating Mr Holele's employment with PRASA is attached as Annexure "OMN13"..





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- 62 The letter provides in material terms that the Acting GCEO has perused PRASA's records and she came across a letter of appointment of 1 December 2009 that relates to "your last role as group executive: office of the GCEO".
- 63 It is stated in the letter that
- "For your current position, Group Executive: Office of the GCEO, there is no contract of employment that was signed between yourself and PRASA in our records.*
- In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives.*
- Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect."*
- 64 Mr Holele was at the time of termination not the Group Executive: GCEO's office, but rather occupied the position of General Manager, Strategy. So, to the extent that the letter terminating his employment with PRASA does so on the basis that he is the executive in the office of the GCEO, that is actually incorrect.
- 65 Secondly, his employment was never fixed and is indefinite, subject to legal processes being followed to terminate it. In this instance no process was followed. The termination was without placing the facts before him and without inviting him to make representations thereto.
- 66 To the extent then that the termination of Mr Holele's employment with PRASA, as announced by the Board in its second media statement is grounded upon a decision taken by that Board, the decision to terminate



him is unlawful and of no force and effect for the reasons that I have discussed above:

- 66.1 The Board was not properly constituted.
 - 66.2 Mr Holele in any event does not occupy the position of executive in the office of the GCEO. He is the General Manager of Strategy, an appointment he took in or about July 2020. That appointment is effective from August 2020. In that capacity he is not an executive subject to these purported terminations.
 - 66.3 He is not an executive whose tenure is fixed at five years.
 - 66.4 He has not completed five years in his position as General Manager and is definitely not an executive.
 - 66.5 Even as an executive, his employment with PRASA was not on the terms alleged, i.e. the five year fixed-term contract.
 - 66.6 The Acting GCEO and the Board are not in a position to place before this Court evidence that his contract was subject to the so-called five year duration.
- 67 By summarily terminating our contracts of employment, the Acting GCEO and the Board ignored the applicable termination clauses in our contracts of employment.
- 68 The purported termination is contrary to our contracts of employment. It is unlawful and falls to be set aside. PRASA should be ordered to abide



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the contracts of employment. We should be reinstated to the positions we were in prior to the unlawful termination on 29 January 2021 and 2 February 2021 to continue with our contractual obligations as executives of PRASA.

69 For all these reasons, and the reasons I have discussed, I submit that, like Mr Khena and myself, Mr Holele has established a case and that the relief sought in the notice of motion falls to be granted.

70 The full extent of the relief sought is set out in the notice of motion to which this affidavit is attached.

THE APPLICANTS' RESPONSE TO THE TERMINATION LETTERS

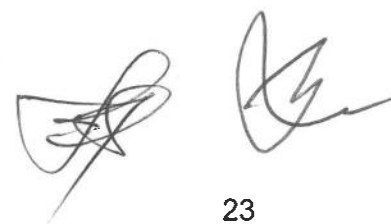
71 In my letter to the Board and the Acting GCEO I responded as follows:

71.1 I acknowledged the letter which I said is unlawful;

71.2 There was no relationship between the conclusion recorded in the termination letter, the media statement and my contract of employment.

71.3 I set out my contractual transfer from Intersite to PRASA and the terms thereof.

71.4 I indicated that the termination letter did not set out the legal basis for the so-called "*normal five years fixed term contract extended to all executives*".



- 71.5 I indicated that the first time I learned about this five year tenure was in the termination letter and I was unaware thereof before then.
- 71.6 I noted that the letter did not set out the legal instrument that informs the *"normal five years fixed term contract extended to all executives"* and that this suggested to me that no such instrument exists. I made enquiries about this but no one at PRASA seems to know of it.
- 71.7 It was not contained in my contract of employment and I set out that there are approximately 20 employees who are in the category of executives and that the overwhelming majority of these employees have been at PRASA for more than five years. As stated above, I have learned that the Board and the Acting Group CEO have dismissed 3 more employees in this category on 2 February 2021 alleging this unknown and non-existent *"normal five year fixed term contract extended to all executives"*.
- 71.8 I called upon the Board to remedy this illegality by close of business on 1 February 2021 and that if this were not resolved I would urgently protect my legal rights and indicated that I would seek a costs order against members of the Board.

Annexure **"OMN14"** is a copy of my letter to the Board and the Acting GCEO.



72 As at close of business on 1 February 2021, no response had been received from PRASA, neither in respect of my letter nor that of Mr Khenani.

73 I only received an acknowledgment of receipt of my letter from Ms Dinkwanyane Mohuba on 2 February 2021 however no response.

Annexure "OMN15" is a copy of my response letter to the termination letter.

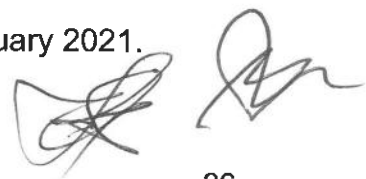
74 Mr Khenani wrote a letter to the AGCEO and the Board. His response to the termination letter was as follows:

74.1 He sets out the history that PRASA has sought to dismiss him unlawfully around July 2020. It started a sham process that it referred to as "retrenchment". By the time the administrator, Mr Bongisizwe Mpondo was working with the Acting GCEO (in her substantive position as Group Executive: Human Capital Management on the sham retrenchment, they would have noticed that his contract does not have the *"normal five year fixed term contract extended to all executives"*.

74.2 He referred to the Acting GCEO's and the administrator's attempt, disguised as a retrenchment, to dismiss three executives, Mr Sebola who at the time was Group Executive: Strategic Asset Development, Mr Tiro Holele and himself. Mr Holele was the Group Executive in the Office of the Group CEO.



- 74.3 He states that all of them had been at PRASA for more than five years, that Mr Sebola left PRASA after he was paid a settlement to leave PRASA and that another person has been appointed to act in his stead, suggesting that the position had, in fact, not become redundant.
- 74.4 Mr Khena launched urgent application in this court in order to challenge the purported retrenchment and PRASA filed opposition papers to the application, but on the eve of the hearing PRASA proposed that the termination will be withdrawn and he will remain employed by PRASA and that PRASA will, following the appointment of a Board, only exercise rights with regards to his employment as are lawfully permitted by the terms of the contract and the law.
- 74.5 Subsequently PRASA through its attorneys, and on the instructions of a lawfully appointed accounting authority disavowed the unlawful steps taken by the administrator and undertook to respect the law and his employment contracts.
- 74.6 There had been no "norm" in PRASA and there was no reference to a five year duration employment in his employment contract.
- 74.7 He called on PRASA not to act in an unlawful manner; that the termination letter be withdrawn and that he be reinstated to his position as Chief Operations Officer by 1 February 2021.



74.8 He asked for the report that concluded that he was unlawfully and without authority charged with approving an amount in excess of R25m. He was unaware of this allegation against him and he only found out about it once it had been published in the media. He indicated that if he did not receive a response that he be reinstated to his position by close of business on 1 February 2021 he will take the necessary steps to protect his interests.

Annexure “OMN16” is a copy of his letter.

75 Mr Holele’s reply to his termination letter was sent by his attorneys, Messrs Crawford & Associates on 3 February 2021. This letter is attached as Annexure “OMN17”.

76 In his letter Mr Holele:

- 76.1 challenges his termination as being unlawful;
- 76.2 contends the existence of the so-called 5-year fixed term contract in respect of his employment at PRASA;
- 76.3 states that he had been at PRASA in various roles for a period spanning some 14 years;
- 76.4 demands that the Board should respond by noon on 4 February 2021.



BOARD IMPROPERLY CONSTITUTED

77 The media releases of the Board on 30 January 2021 and 2 February 2021 state that the review of our contracts of employment was undertaken by the Board which ultimately decided that, on the basis of what they say is a mandatory term of five year tenure for all executives, our employment contracts should be terminated.

78 The decision to terminate our employment contracts was therefore taken by the Board.

Annexure **"OMN18"** and **"OMN19"** are copies of the media releases. .

79 The Board however was not constituted in terms of section 24 of the Legal Succession Act. The provision states that the affairs of PRASA shall be run by a Board of Control of not more than 11 members, including the chairperson who shall be appointed and dismissed by the Minister.

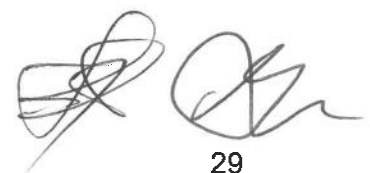
80 Section 24(2) provides that at least one of the members of the Board of Control shall be an officer in the Department of Transport; it also provides for the mandatory membership of officers from the Department of Finance and the Department of State Expenditure. It also provides that one of the members of the Board of Control to be nominated by South African Local Government Association and that three of those members shall have the expertise and experience in the management of a private sector enterprise.




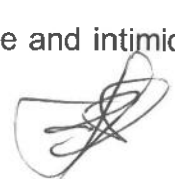
- 81 The decision to terminate our employment contracts was taken by a board that does not have a member who is an officer of the Department of Transport as required by section 24(2) of the Legal Succession Act.
- 82 It follows then that the Board was not properly constituted, and its proceedings and its decisions are unlawful including the decision to terminate our contracts of employment. The purported termination is accordingly null and void.

PRASA'S MANAGEMENT OF EMPLOYEE RELATIONS

- 83 On 25 February 2020 there was a meeting between the Committee of Group Executives of PRASA ("Group EXCO") and the Director-General ("the DG") of the Department of Transport, Mr. Alec Moemi. The meeting was attended by the then administrator of PRASA, Mr. Mpondo, members of Group EXCO and senior officials from the Department of Transport. The second applicant was also present at this meeting and confirms my recollection of same.
- 84 The DG spoke in an unfriendly, aggressive, intimidating and threatening tone. As soon as the meeting was over, I took notes of the things that I could remember from the address of the DG. This is a summary of some of the notes that I took:
- 84.1 That Group EXCO was rogue and should not question the legality of the appointment of an Administrator for PRASA by the Minister of Transport;



- 84.2 That the members of Group EXCO had been employed in PRASA for too long and the Administrator should dismiss members of Group EXCO that were rogue without following any due process so that if these employees challenge their unlawful terminations, they must do so from outside of PRASA;
- 84.3 That PRASA was well-resourced to out-litigate any employee challenging their unlawful terminations and that the Administrator should employ the resources of PRASA to out-litigate any employee challenging their unlawful terminations; and
- 84.4 That no individual employee will be able to succeed using their own personal resources against the resources of the state.
- 85 Importantly, in January 2020 at a meeting of Group EXCO I gave Mr. Mpondo verbal advice relating to the lawfulness of his appointment as an administrator of PRASA and, on his request, had reduced that advice to writing and submitted it to him on 6 February 2020. In the advice we (Mr. Dingiswayo (former General Manager: Group Legal Services) and I) effectively stated *inter alia* that the appointment of an administrator for PRASA was unlawful and such an administrator's decisions would be susceptible to legal challenges.
- 86 It was therefore clear to me from the 25 February 2020 meeting that the opinion that I had co-written had rendered me a target through victimisation and that the meeting was called to humiliate and intimidate



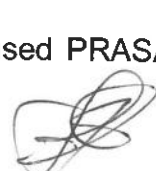
me. The other person who had assisted in writing this opinion was unlawfully suspended by Mr. Mpondo on the 11th February 2020 and reinstated without any disciplinary process in September 2020.

87 Significantly, after the 25 February 2020 meeting Mr. Mpondo dismissed the Group Chief Finance Officer ("Group CFO") who had been in this position for about six (6) months. In addition, Mr. Mpondo took steps to dismiss the Group Chief Procurement Officer ("the Group CPO") that had also been in this position for about 6 months. The Group CPO elected to take Mr. Mpondo's attempt to dismiss her to this court and this court per Connie Prinsloo J (on 9 June 2020) and André van Niekerk J (on 13 July 2020), twice stopped Mr. Mpondo in his tracks. In these judgments, this court mulcted PRASA with costs.

88 The actions of the Board and the Acting GCEO are symptomatic of a pattern that has been unfolding at PRASA for the last four to five years concerning Mr Khena and the counsel of the DG.

89 Mr Khena too has been a target of a witch-hunt by the various acting GCEO's of PRASA, including now, finally, the Acting GCEO who terminated our contracts of employment on 29 January 2021.

89.1 In 2016, Mr. Khena was unlawfully dismissed by the then Acting Group CEO, Mr. Collins Letsoalo. Group Legal Services had advised Mr. Letsoalo that the termination of Mr. Khena would be unlawful. Mr. Khena approached this court on an urgent basis and this court reinstated him. Mr. Letsoalo caused PRASA to

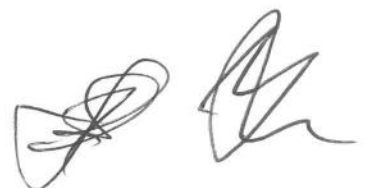


apply for leave to appeal against the judgment of this court and this leave to appeal was refused. Mr. Letsoalo has not been asked to account for the losses suffered by PRASA in this regard.

89.2 The next acting GCEO (Mr. Lindikaya Zide), suspended Mr Khena and charged him on a count of failing to comply with a lawful instruction. Mr Khena had in fact complied fully with the instruction. He then engaged legal assistance, where Mr Khena was represented by a counsel and PRASA was also represented by a senior counsel. On the day of the hearing, PRASA withdrew the charges.

89.3 The retrenchment process that was undertaken and which culminated in his purported retrenchment, was also reversed when PRASA withdrew the case against him and made the undertakings stated above.

89.4 Four months after the court ordered him to return to work, Mr Khena was not given work, despite his constant approach to the tenth respondent, the second respondent and the fifth respondent. Mr Khena stayed at home until the date of his unlawful termination, 29 January 2021.



OTHER ALLEGATIONS MADE IN THE TERMINATION LETTERS

90 As stated above, the allegations dealt with in this section are not core to the reasons for the unlawful termination however, we have decided to take this court into our confidence and deal with them.

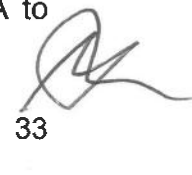
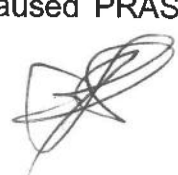
91 In mine and Mr. Khena's termination letters, the tenth respondent indicates that PRASA intends to approach court for necessary relief against us in respect of alleged unauthorised payment of about R58 million for me and R25 million for Mr. Khena. No details are provided in this communication that is meant to be private and confidential. In the media release of 30 January 2021, the Board elected to give the public the details of the thitherto unmentioned alleged irregularities and stated that:

91.1 In my instance this relates to me having unlawfully approved payment of R58 million to SA Fence & Gate (Pty) Limited ("SAFG") when I had no authority to do so;

91.2 In Mr. Khena's instance:

91.2.1 He reinstated the SAFG's contract knowing of the company's breach which breach was brought to this attention by National Treasury in a letter dated 21 April 2016;

91.2.2 When Mr. Khena was the Acting Group CEO he engaged in unlawful conduct that caused PRASA to


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incur financial loss – this conduct and financial losses are not specified;

91.2.3 Mr. Khena reinstated me when I was lawfully suspended by Mr. Lucky Montana for unlawful approval of R58m to SAFG;


91.2.4 At the time of the termination of his employment on 29 January 2021, Mr. Khena was on suspension; and

91.2.5 Mr. Khena's role in unlawfully appointing Werksmans Attorneys will also receive priority.


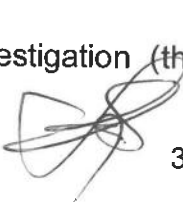
92 The above allegations were never put to us before they were published in the media release. This calls to question the bona fides of the respondents. It appears to have been thrown in gratuitously to cast aspersions on our characters.

93 We deny the allegations of irregularities. The facts about the Contract between SAFG and PRASA and the allegations stated in 91 above are the following:

93.1 PRASA and SAFG concluded an agreement for the fencing and access control of its 8 depots for about R209 million. During the currency of this agreement, the project manager of this project, a Mr. Palello Lebaka, was alleged to have irregularly and without authority increased the contract price by R58m. Mr. Lebaka was disciplined for this and was dismissed around 2013 or 2014.

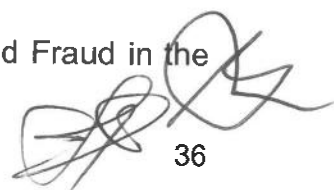


- 93.2 In December 2014 and January 2015, I was appointed to act as Group CEO of PRASA because Mr. Montana had taken leave. During this time, I received a memorandum requesting me to support the condonation of this irregular expenditure of R58m. In this memorandum I was informed that R33 million of this had been paid already and R24 million had already been committed.
- 93.3 I consulted with the then CEO of PRASA Technical, the end-user division, Mr. Saki Zamxaka and the then Group Chief Procurement Officer, the author of the memorandum, Mr. Josephat Phungula to obtain clarity on a number of issues that were not covered by the memorandum and requested them to cover those issues. I received a call from Mr. Montana and he asked me about this matter. I informed him of my discussions with Messrs Zamxaka and Phungula and that I was waiting for a memorandum that is complete. Mr. Montana agreed with my approach to the matter. I was of the view that Mr. Montana was in agreement with the condonation request.
- 93.4 When the memorandum that covered the issues that I had raised was received, I supported this request. This request was later sent to the Board, as the body with the authority to approve the condonation request and the Board condoned the irregularity in April 2016.
- 93.5 Mr. Montana reported this transaction and my involvement in it to the Directorate for Priority Crime and Investigation (the



Hawks). I was informed by the investigation officer that he had closed this matter as, after his investigation and my statement to him, he found no evidence of wrongfulness on my part

- 93.6 I did not approve payment of R58 million to SAFG. I supported a request for condonation in respect of expenditure that I was informed by Messrs Zamxaka and Phungula had been paid and had been committed. This means that other people within PRASA had already approved the payment of the R33 million and had already accepted on behalf of PRASA goods and services valued at R24 million.
- 93.7 Without the benefit of documents which are in PRASA's possession, our recollection is that the reinstatement of the contract between SAFG and PRASA was requested by Mr. Zamxaka after SAFG applied to court and PRASA was ordered to pay it R27 million and to appoint an Engineer to assess the work done by SAFG against the invoices paid by PRASA. This was done and culminated in the litigation that was initiated by PRASA and that I reported to the current Board about. The letter from National Treasury is a request for Mr. Khenkhen to update the then Chief Procurement Officer of the remedial steps taken by PRASA. These remedial steps culminated in the claim instituted by PRASA against SAFG that the Board is aware of.
- 93.8 I have testified under oath at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the



Public Sector including Organs of State that my suspension by Mr. Montana was unlawful and unfair. PRASA alleges that my suspension was lawful. I am not aware of anyone from PRASA having approached the Commission under oath to dispute this evidence. I did not even know that PRASA was investigating the lawfulness or otherwise of a suspension that happened in 2015. I hope that PRASA will come under oath in response to this application to show its basis for stating that this suspension was lawful.

- 93.9 At the time of his termination, Mr. Khena was not on suspension as alleged in the aforesaid media statement.
- 93.10 That Werksmans Attorneys was appointed by the Board to conduct a forensic investigation in PRASA is known to PRASA. Before the Auditor-General found this appointment to be irregular, they invited the then Company Secretary to provide management comments because of understanding that this was a Board appointment.
- 93.11 Mr Khena's involvement with Werksmans appointment was administrative in nature. He signed the engagement letter as part of his daily duties. Werksmans were directly engaged by the Board and Mr Khena had no dealing and is not privy to the work Werksmans did for the Board.
- 93.12 As regards the allegation pertaining to SAFG, Mr Khena's recollection is that this issue arose after he was appointed as

Acting Group CEO. The court had ordered PRASA to pay SAFG an amount approximating R22 million. The court order further stated that, for the disputed work, parties should appoint an engineer to assess and evaluate the disputed work claim. Mr Khena made the payments to SAFG in compliance with the court order. This matter was reported to the then board (led by Dr. Popo Molefe) and the Board was fully appraised in this regard.

URGENCY

- 94 I bear responsibilities as more fully set out in my contract. I am the Group Executive in charge of Group Legal Services, Group Compliance and Group Insurance. These functions are very key to ensuring that PRASA complies with the law and that, to the extent any financial risk is not capable of internal management, such risk is insured. A view of open sources will show that the department that I lead (Legal, Risk and Compliance) has acted as an able line of defence against people who have tried to fleece PRASA.
- 95 I submit that I have demonstrated that the employment contracts do not provide for a five year fixed term period as alleged by PRASA in the termination letters. Termination is thus in clear contravention of the contract. My legal team will argue at the hearing of this matter that the very act of unlawfulness itself grounds urgency.



96 If we are constrained to await this matter to proceed in the ordinary course, we shall suffer prejudice, and will not be afforded substantial redress in due course. I say that because of the following:

96.1 Continuing and abiding lawlessness without cause;

96.2 We would have been deprived of my remuneration for as long as it takes for the matter to be heard in the ordinary course.

96.3 We shall have been rendered unemployed contrary to the clear provisions of the contract and without any legal cause.

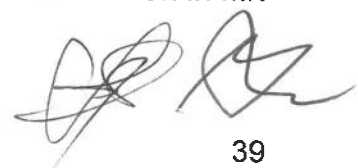
96.4 Our prospects of obtaining employment would have been significantly dented as our characters and reputations have been besmirched by PRASA in its media statement as executives who, amongst other things, have committed the following:

96.4.1 Capitalised on the instability and extended the durations of their contracts of employment;

96.4.2 Unlawfully approved payments to contractors without authorisation;

96.4.3 Assist each other by Mr. Khena lifting my suspension by Mr. Montana which suspension was lawful; and

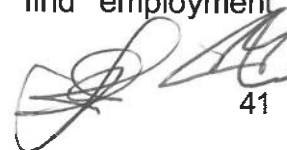
96.4.4 Should be held responsible for losses suffered by PRASA (R58 million in my case and R25 million in Mr. Khena's case).



- 96.5 Naturally, the consequent unemployment, in the midst of the current financial and economic environment in South Africa where jobs are difficult to come by, will expose us to irremediable financial hardship. We cannot be expected to sue PRASA at a later stage because first we do not have the means to sustain an interminable legal battle with PRASA. As stated earlier, the very act of terminating our responsibilities is to out-litigate us and for us to spend money on legal fees fighting for our rights.
- 96.6 To be expected to proceed in the ordinary course would typically, I am advised, take approximately 9 months for the matter to be heard and I need not mention the attendant legal fees which will be unaffordable after our unlawful termination.
- 97 Given the fact that our termination is unlawful, a matter which, with respect, is not complex, we should not have to wait for however long it takes for this matter to be heard in the ordinary course.
- 98 Insofar as my personal circumstances are concerned, I ask that the following be taken into account in assessing urgency and the certain financial hardship that will follow.
- 98.1 I submit on the basis of these considerations that the matter is urgent and should be heard in accordance with Rule 8 of the Rules of this Honourable Court.





- 98.2 There is a clear harm to my reputation and my ability to financially sustain myself. I am a sole bread winner, and with an immediate termination of my employment contract, I will be unable to take care of my immediate family and pay my monthly debts when they become due and payable. I have not been given any termination notice in advance so that I may consider alternative employment. I am therefore hugely disadvantaged by the termination of my employment contract, particularly considering that I am an innocent party in this dispute. There have been several boards and GCEOs that have come and left PRASA and all of them have never raised any issues with my employment contract.
- 98.3 I am a sole breadwinner. I have a daughter who is aged seventeen (17). She is in grade twelve (12) and I pay for her schooling – in an amount of R13 000.00 (thirteen thousand rand) – monthly. She cannot afford to drop out of school at the moment as this will disrupt her prospects of succeeding in her schooling.
- 98.4 I have a mortgage bond for our residential home for an amount of R5 500.00 (five thousand five hundred rand). If I default on the home loan, given that I run the risk of being unemployed, my daughter and I will not have any residential home.
- 98.5 Given the current economic climate, if I start looking for employment, it is uncertain when I will find employment



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equivalent to the position, I held within PRASA. This is also affected by the professional reputation damage which I currently suffer given that the termination of my employment was also published in the media.

- 98.6 I have a vehicle, which is used to conduct my personal affairs, transport my daughter and engage in personal activities. I pay a monthly instalment to the bank, as this vehicle is financed. If I default on the payments, the vehicle will be repossessed and I run the risk of being blacklisted from being granted any credit from the banks.
- 98.7 I have a domestic helper who assists me and my daughter with arranging our domestic lives, if my employment is terminated and I am unemployed, I will be unable to remunerate her monthly. She will then be left without employment in an already jobless economy.
- 98.8 Even if I tried to access my retirement fund, it could take up to three (3) months before I can access those funds – during which time my family and I will be suffering financially, and it would affect all our lives beyond just finances.
- 99 I submit that in the light of the patent illegality that has been perpetrated against me, Mr Khena and Mr Holele, I should not be expected to put up with the illegality and suffer prejudice as a consequence. We should not be expected to await this matter to be heard in the ordinary course. It is


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sufficiently urgent on its facts and justifies, with respect, the discretion of this Honourable Court to deal with it on an expedited basis. By the time the matter is heard in the ordinary course, we will have suffered irreparable prejudice.

Mr Khena's personal circumstances

- 100 Mr Khena supports his wife and step-son. The step-son is in Grade 10 and Mr Khena also pays the son's school fees and his monthly income is critical for both supporting his family and keeping his son in school.
- 101 In addition, Mr Khena is paying two bonded properties, one of which is his residential home in Bryanston. The other home is in Durban. The bond repayment in respect of the Bryanston property is in the amount of R30,755.00 (thirty thousand seven hundred and fifty five rand) and in respect of the Durban property R6,178.00 (six thousand one hundred and seventy eight rand). Without an income, Mr Khena will default on the bond repayments and this would lead to him and his family being rendered homeless.
- 102 Mr Khena owes his legal representatives R190,000 in respect of the unlawful retrenchment matter where PRASA, through the then Administrator (Mr B Mpondo) had unlawfully retrenched him and others. Not earning an income would result in him defaulting on the payments to his legal representatives.



103 Mr Khena, his covered under his medical aid which he pays monthly with Discovery medial aid. The unlawful termination of his employment will result in his inability to pay the monthly premiums for the medical aid. This is critical especially at this stage where the whole world is battling COVID-19.

104 Mr Khena employs a helper (domestic worker) and a gardener who will both be left unemployed if the unlawful termination of his employment is allowed to stand.

105 Considering all the above, awaiting judgment in the ordinary course (including any appeals) would result in an absence of substantial redress.

Mr Holele's personal circumstances

106 Mr Holele is a breadwinner in his household and he has two sons, one is 20 years old and the other is a 17 year old minor child. Both sons are still pursuing their studies and Mr Holele is responsible for paying their fees. In the event that Mr Holele would be unable to pay such fees, his sons' education will be jeopardised.

107 In addition, Mr Holele makes bond repayments for the home he and his family occupies. Should Mr Holele default on the bond repayments, he and his family would be without a home.

108 Mr Holele is responsible for the financial support of his mother and father, who are elderly persons of 80 and 86 years of age, respectively. His father is currently in a frail care centre. The lack of monthly remuneration for Mr

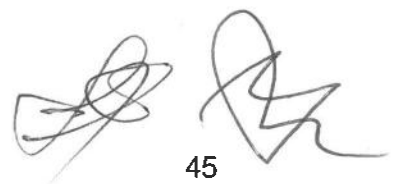
Holele would result in a large and negative impact on the care and well-being of his elderly parents.

109 He is also responsible for paying the medical aid and other insurance policies that cover him and his family. The inability to pay the monthly premiums will result in his family losing the medical and other critical insurance policies.

110 Moreover, PRASA's publications in the media suggests that Mr Khena and I are dishonest in that it alleges that we knew that our employment should have been terminated within five years of employment and that we effectively took advantage of the situation by continuing to stay employed. Not only is this incorrect, it is also damaging to our reputation and severely prejudices our prospects of obtaining new employment, particularly considering that Mr Khena is applying for the position of GCEO within PRASA.

111 I submit that the above, individually and collectively establishes urgency. It also shows that to await our turn in this Court in the ordinary course will expose us to irremediable prejudice. PRASA on the other hand, if we are reinstated as I submit we should, would suffer no prejudice. We would be reinstated in our positions, go to work, discharge our responsibilities in accordance with our contracts. PRASA benefits thereby.

112 There will be no prejudice for PRASA if we are reinstated and continue to discharge our responsibilities.



My responsibilities towards PRASA

113 I mention the following to place it before this Honourable Court the information that, with respect, is also relevant to the matter being disposed of on an urgent basis. I have responsibilities towards PRASA and so does Mr Khena. I mention mine.

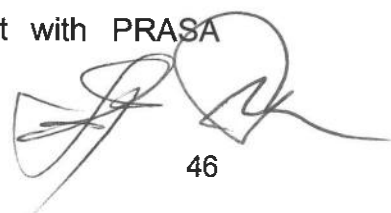
113.1 There are also matters that are outstanding that I have been attending to which impact on the proper administration of PRASA.

113.2 My legal team will argue that in the circumstances and the need to resolve this matter on an urgent basis will be considered against what my absence from PRASA would mean.

113.3 It is a matter of common and widespread knowledge that PRASA has been plagued by seemingly intractable problems in the last short while. I just provide examples to provide context to what I am about to say.

113.4 I have been called to give evidence before the State Capture Commission concerning major litigation between PRASA and Swifambo, Siyangena and Siyaya. PRASA has prevailed in these matters.

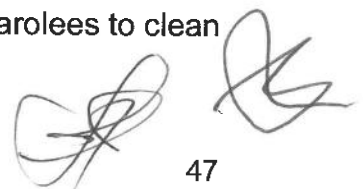
113.5 There are a number of matters that I have been dealing with. I need mention also that the General Manager for Group Legal Services, Mr Fani Dingiswayo's employment with PRASA



ceased on 31 January 2021. As matters stand, there are no legal personnel attending to legal matters at PRASA.

114 I also mention the following matters:

- 114.1 Negotiations between PRASA and Gibela for the payment of an advance payment of R5,4 billion;
- 114.2 The acquisition of more than 20 locomotives from Stadler Rail;
- 114.3 An appeal launched by Siyangena Technologies against PRASA after PRASA successfully applied for the review and setting aside of contract worth about R6 billion. I am the deponent in the review application;
- 114.4 Several applications, appeals and counter-applications relating to security contracts between PRASA and private security contractors. The wholesale destruction of the network of PRASA that led to PRASA having limited operations;
- 114.5 The transfer of the business of Autopax Passenger Services (SOC) Limited ("Autopax") from Autopax to PRASA and the de-registration of Autopax;
- 114.6 The Competition Commission referral to the Competition Tribunal of alleged uncompetitive conduct of PRASA and Autopax in relation to the bus billing facility at Park Station; and
- 114.7 Advising PRASA on whether it should appoint parolees to clean its network.

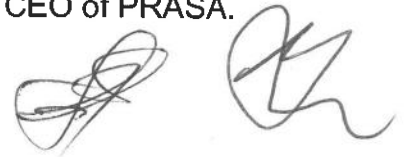


- 114.8 Numerous interlocutory applications meant to derail the liquidation of Swifambo Rail Leasing (Pty) Limited (In Liquidation) and avoid a section 417 inquiry.
- 115 The above projects and litigation are crucial and some, like the desire to appoint parolees will expose PRASA to risk. My absence at PRASA will weaken the Legal Department and may lead to PRASA making decisions that will be detrimental to it in these matters.
- 116 In any event, with the best of intentions, Group Legal Services cannot cope with all these matters. The function was stretched before this unlawful decision was taken particularly that 29 January 2021 was the last working day of the General Manager Group Legal Services who has resigned. At present Group Legal Services whose structure permits for seven (7) legal advisers (excluding my position) has only two legal advisers.
- 117 As demonstrated above, all indications are that the reason for the unlawful termination is so that we can fight PRASA from outside. There is no legal basis for the termination of our contracts.

Mr Khena's responsibilities as COO

- 118 Mr Khena has attended to various responsibilities in the broader PRASA Group, including being seconded during 2013 to Autopax as Acting CEO.

- 118.1 In 2015 he was appointed as Acting Group CEO of PRASA.



118.2 In March 2019 he acted as CEO of PRASA Corporate Real Estate.

119 As the COO of PRASA he was responsible for, amongst other things, ICT, Risk and Insurance, and monitoring and evaluation of group performance.

120 I mention all these to indicate the nature of his responsibilities, the level at which these responsibilities are discharged and to demonstrate the irrationality of the course embarked upon by PRASA in the face of clear contractual provisions.

Mr Holele's responsibilities at PRASA

121 Mr Holele is responsible for the first respondent's strategy department and his duties include the following:

121.1 ensuring effective development and co-ordination of PRASA Corporate Strategy;

121.2 ensuring effective alignment and execution of PRASA Corporate Strategy;

121.3 monitoring and evaluating the implementation of PRASA Corporate Strategy;

121.4 reviewing strategy, reviewing progress in strategy implementation and advising the business accordingly; and

121.5 working with cities and transport authorities regarding Rail Transport Development and the development of Transit

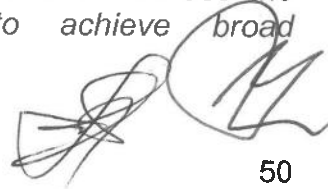
Oriented Developments (ToDs) especially in under-served areas of our cities.

122 PRASA's unlawful conduct must be assessed as against its own regulatory framework. It is a public entity subject to the Constitution and Public Finance Management Act.

123 The unlawful termination of our contracts of employment undermines our responsibilities under section 57 of the Public Finance Management Act which for convenience is reproduced here.

"195. Basic values and principles governing public administration

- 1. Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
 - a. A high standard of professional ethics must be promoted and maintained.*
 - b. Efficient, economic and effective use of resources must be promoted.*
 - c. Public administration must be development-oriented.*
 - d. Services must be provided impartially, fairly, equitably and without bias.*
 - e. People's needs must be responded to, and the public must be encouraged to participate in policy-making.*
 - f. Public administration must be accountable.*
 - g. Transparency must be fostered by providing the public with timely, accessible and accurate information.*
 - h. Good human-resource management and career-development practices, to maximise human potential, must be cultivated.*
 - i. Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.*



2. *The above principles apply to*
 - a. *administration in every sphere of government;*
 - b. *organs of state; and*
 - c. *public enterprises.*
3. *National legislation must ensure the promotion of the values and principles listed in subsection (1).*
4. *The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.*
5. *Legislation regulating public administration may differentiate between different sectors, administrations or institutions.*
6. *The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration."*

124 The unlawful termination of our contracts of employment is in clear contravention of the basic values and principles governing public administration.

125 The language of the provision is peremptory. Public administration must be governed by the democratic values and principles enshrined in the Constitution.

126 The unlawful termination of our contracts of employment goes against the following principles.

126.1 It offends against a high standard of professional ethics.

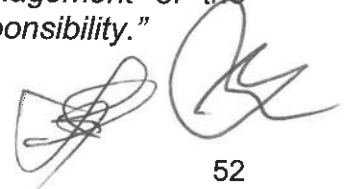
126.2 It undermines the principle of efficient, economic and effective use of resources (we are terminated in circumstances where our contracts provide otherwise and where, given the prospects of success, even if this matter is not resolved on an urgent basis),

we are likely to succeed and by then, if the court is not minded to deal with this matter on an urgent basis, our matter if we do prevail, then PRASA will have to pay us out.

- 126.3 It offends against accountability.
 - 126.4 It offends against transparency given the nature of how the resolution was taken in the light of clear and patent provisions to the contrary.
 - 126.5 It undermines good human resource management.
- 127 The unlawful termination of our employment contracts also precludes us from discharging our responsibilities as set out in section 57 of the Public Finance Management Act, which also for convenience is also reproduced herein:

"57. Responsibilities of other officials. —An official in a public entity—

- (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility."*



No time wasted

128 We have not wasted any time in approaching this Court for urgent relief.

Our contracts of employment were terminated on Friday 29 January 2021.

129 Over the weekend we did our best to consult with our legal team. Although some documents were exchanged, we were only able to hold a consultation on Sunday 31 January 2021.

130 Demand letters were sent, mine on 31 January 2021 and Mr Khena's on 1 February 2021. We afforded PRASA and its Board one day, Monday 1 February 2021, to respond to our demands. By close of business on 1 February 2021 they had not responded to our letters of demand.

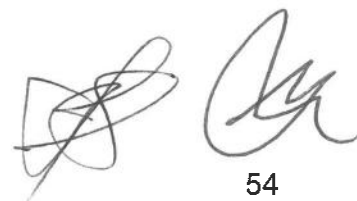
131 The legal team met to draft the application and consulted with us throughout. The application was only finalised on Thursday 4 February 2021.

132 We have moved with the necessary swiftness, first to demand that PRASA retract the letters so that unnecessary litigation is avoided. They did not do so. We consulted with our legal team and the papers were then drafted.

133 The papers are not voluminous. They consist of relevant allegations to the determination of this matter as well as the relevant annexures thereto. The legal issue is very narrow. It concerns the lawfulness of our termination.



- 134 So PRASA will have until Monday, 8 February 2021 which is sufficient time considering the exigencies of this matter. We have fixed the date of 11 February for the hearing of this matter. It will afford the parties an opportunity, in the case of the applicants, to reply and prepare for argument.
- 135 We have therefore approached this Court without wasting any time. We have set out the reasons why this matter should be disposed of on an urgent basis and why to await redress in the ordinary course would not grant us, the applicants, adequate relief. This also explains why the ordinary rules relating to applications could not be complied with.
- 136 We have set out why it is that a shorter period was fixed than would otherwise have been the case.
- 137 We ask that this Court exercises its discretion by condoning the noncompliance with the Rules and the forms as required under Rule 8.
- 138 The respondents will not suffer any prejudice if this matter is heard on the timelines fixed by the applicants. The time afforded to them is adequate to enable them to respond to the challenge put, i.e. that the termination of contracts of employment is unlawful and we should be reinstated.



COSTS

139 We have approached this Court on an urgent basis. We have not wasted any time. We placed PRASA on terms to purge itself of the illegality. We set out the reasons why we say that its conduct is illegal.


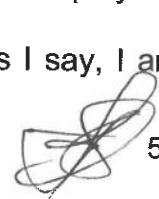
140 We do not have the resources to out litigate PRASA. It is unnecessary to do so given the indefensible illegality perpetrated by PRASA. Legally it is unnecessary. PRASA chose to terminate, and as I say this is a culmination of a pattern of victimisation at PRASA.

141 The application is not frivolous. It is not unmeritorious. If anything, on the contrary, it bears significant prospects of success.

142 In the event that this Court finds that the application is not urgent and should be prosecuted in the normal course, I ask, on account of the following set of circumstances, that each party bear its own costs and that we should not be made to pay in circumstances where we did not launch a frivolous application which is without merit.

142.1 We afforded PRASA an opportunity to purge itself of the illegalities;

142.2 PRASA's position is unsustainable, is not supported by the contracts; the provision that there is a fixed term five year contract offered to executives is simply, at least in our cases, not based in law or on fact. it may be the case with employees that joined subsequent to our employment, but as I say, I am




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unaware except in the case of Dr. Sithole and two or three other employees that I know are subject to the alleged five year tenure. None of the other executives have a five year limit to their employment.

- 142.3 To compel us to pay, in the event of the matter being struck from the roll for lack of urgency, would effectively be crowning PRASA's illegality. I do mean to impute any malice or cast aspersions on the integrity on the Court. I simply make the point that PRASA would have achieved its goal of putting executive employees out of work, constraining them to approach Court and to incur costs and for the matter to be dragged out in the ordinary course.
- 143 It is likely that this matter will have various iterations, whether in this forum or other fora. That will place significant strain on our financial ability to sustain litigation. In fact, it may mean that in some instances we will have to forgo obviously winnable cases (final and interlocutory).
- 144 In the event that this Court is not minded to dispose of the matter on an urgent basis, then each party should pay their own costs.

CONFIRMATORY AFFIDAVITS

- 145 I attach hereto the confirmatory affidavits deposed to by **NKOSINATHI ALLEN KHENA** and **TIRO HOLELE**, marked as annexures "**OMN20**" and "**OMN21**" respectively.



56

CONCLUSION

146 I submit that I have made out a case for the relief set out in the notice of motion and ask that it be granted on the terms.



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on this the 4th day of FEBRUARY 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

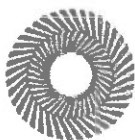
ADDRESS:

CAPACITY:

SETŠHEPHI JEHIEL THEMA

Commissioner of Oaths
Ex-Officio

Practising Attorney RSA
Lawtons Inc. practising as Lawtons Africa
140 West Street,
Sandton, Johannesburg



prasa

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T+2711 013 1667

www.prasa.com

"OMN 1"

64

Dear Ms Ngoye
SAP Number: 20101356

29 January 2020

Re: Termination of Employment

1. You will recall that on 13 January 2021, the Chairperson of HCM & REMCO requested employment contracts of all executives, including yours. In response to the said request, you indicated by way of an email dated 13 January 2021, that there is no contract signed between yourself and PRASA on your current position.
2. Having perused PRASA's records, the only contract of employment PRASA has with you relates to your previous role as Chief Executive Officer: Intersite.
3. For your current position, only the letter of transfer [transferring you from Intersite to Group Executive: Legal, Risk and Compliance] dated 22 August 2014, could be found. For ease of reference, I attach the said letter as annexure "A".
4. According to the letter, your transfer was to commence on 1 September 2014 and the other conditions of service were not amended by the said letter.
5. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives. In your current position, PRASA relies on you for issues concerning legal, risk and compliance and you out to have brought this administrative defect to the attention of PRASA.
6. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.
7. Having said that, PRASA hereby informs you of its intention to approach court for necessary relief against you in respect of various matters including the unauthorised and unlawful approval of R 58 153 296.72 without requisite authority.

Directors L. Ramatlakane [Chairman], Adv. S. Sethene,
M. Mukhuba, DK. Mohuba, X. George,
N. Nokwe-Macamo, TN. Mpye, T. Zulu

Acting Group CEO
T. Mabija

Group Company Secretary
S. Dlamini

8. You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,



Ms Thandeka Mabija
Acting Group Chief Executive
Passenger Rail Agency of South Africa



"A"

20101356

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prasa

PRASA GROUP: 20101356
PRASA: 20101356

PRASA HOUSE
1040 Truett Street
Harbuck
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 744 7000

Ms Martha Ratsiane
Chief Executive Officer: Intersite
SAP No: 20101356

Dear Martha

INTERNAL TRANSFER

We are pleased to advise that you have been transferred from the position of Chief Executive Officer: Intersite to that of Group Executive: Legal, Risk and Compliance with effect from 01 September 2014. This transfer is due to operational requirements and restructuring within the organisation. You will report directly to the Group Chief Executive Officer.

Please note that this is a lateral transfer and all other terms and conditions not amended by this transfer shall remain unchanged.

We wish to congratulate you on this appointment and wish that you may receive the necessary strength to cope with challenges that lie ahead and that you will continue to contribute significantly towards the achievements of PRASA's goals.

Yours sincerely

TSHEPO LUCKY MONTANA

GROUP CHIEF EXECUTIVE OFFICE

DATE: 22 AUGUST 2014

Directors: SN Dlamini (Chairman), TL Montana (Group CEO),
T Gcalahle, X George, M Mavima, N Mavima,
M Satarje, M Vilane

Company Secretary:
L Zide





prasa

This offer is only valid for 2 working days from the date of receipt by the applicant, where after it will automatically and without prior notice, expire, unless you respond to the offer within the specified period.

Please be reminded that all communication to you with regard to your package is strictly confidential

ACCEPTANCE OF TRANSFER:

Ms Martha Ratsiane

INTERNAL TRANSFER

I, Martha Ngope hereby accept/ not accept the transfer from the position of Chief Executive Officer: Intersite to that of Group Executive: Legal, Risk and Compliance: on the basis that it is a PRASA and I will resume duty on _____ 2014.

Signed at HATFIELD this 8 day of SEPTEMBER 2014.

Signature: [Signature]

I do however accept that I am transferring but not laterally

I had discussed my salary review with the GCEO and have indicated same to him

[Signature]

[Signature]
[Signature] 2



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Mr. Khena
SAP Number: 20101983

29 January 2021

Dear Mr Khena

Re: Termination of Employment

1. Having perused PRASA's records, the only contract of employment PRASA has is that of Chief Operating Officer dated 1 December 2012.
2. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives.
3. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.
4. Having said that, PRASA hereby informs you of its intention to approach court for necessary relief against you in respect of various matters including the unauthorised and unlawful approval of an amount in excess of R 25 million without requisite authority.
5. You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,

Ms Thandeka Mabija
Acting Group Chief Executive
Passenger Rail Agency of South Africa

Directors L. Ramatlakane [Chairman], Adv. S. Sethene,
M. Mukhuba, DK. Mohuba, X. George,
N. Nokwe-Macomo, TN. Mpye, T. Zulu

Acting Group CEO
T. Mabija

Group Company Secretary
S. Dlamini



"OMN3"
70

30 January 2021

PRASA Terminates Contracts of Executives

PRASA Board of Control has embarked on the review of contracts of executives and other senior managers. Pursuant to the review process, it transpired upon analysis of employment contracts of executives that some of them (executives) ought to have left PRASA years ago. All executives at PRASA are employed for a period not exceeding 5 years with no expectation for extension of the employment contract. The Board also observed that the executives have been aware at all material times that their employment contracts were for five-year period and not more. However, it appears the executives capitalized on the instability at the Board level culminating in their extended and unlawful stay at PRASA. On 29 January 2021, PRASA has terminated the employment contracts of the following executives with immediate effect:

Ms. Martha Ngoye, Group Executive: Legal, Risk and Compliance was initially employed in 2012 as CEO of Intersite, one of PRASA's subsidiaries. Effective from 1 September 2015, she was transferred to her current position. Ordinarily, Ms. Ngoye's stay at PRASA ought to have terminated on 31 August 2020. PRASA has also resolved to institute legal proceedings against Ms Ngoye for unlawfully approving payment of R58m to SA Fence & Gate when she had no authority to do so.

Mr. Nkosinathi Khena, Chief Operations Office reinstated the SA Fence and Gate's contract knowing of the company's breach (SA Fence & Gate) which breach was also brought to his attention by National Treasury in a letter dated 21 April 2016. An amount of R25m was paid to the said company without requisite authority and/or approval. Mr. Khena was at the time Acting-Group Chief Executive Officer and his unlawful conduct caused PRASA to incur financial loss. Further, Mr. Khena reinstated Ms. Ngoye, who at the time was lawfully suspended by Mr. Lucky Montana (Group CEO as the time) for unlawful approval of R58m to SA Fence and Gate. PRASA will institute legal proceedings against Mr. Khena for financial loss it suffered due to unlawful conduct of Mr. Khena. Mr. Khena has been on suspension and his employment contract was terminated with immediate effect as of 29 January 2021. Mr. Khena's role in unlawfully appointing Werksman firm of attorneys will also receive priority.

Ms. Pearl Munthali, Chief Executive Officer of PRASA Foundation has been on suspension for alleged misconduct. Upon perusal of records, it transpired that Ms. Munthali's contract ought to have been terminated upon the expiry of a five-year term.

Consistent with the recommendations from the Auditor General, this Board will ensure that systems are put in place at PRASA and the core business of running passenger rail is restored. The Auditor General in its report on PRASA noted that there was no culture of consequence management. The Board has assured the AG and Minister of Transport that consequence management would be one of the priorities implemented to clean up PRASA. The Acting Group Chief Executive Officer, Ms. Thandeka Mabija will appoint firms of attorneys to specifically deal with consequence management at PRASA. This process will proceed without delay and should be concluded expeditiously.

Ends

Issued By:

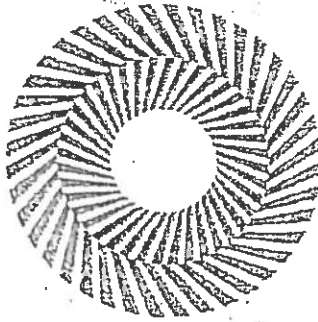
PRASA Board of Control Mr Leonard Ramatlakane



"OMN4"

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Be moved



prasa

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

CONTRACT OF EMPLOYMENT

ENTERED INTO BETWEEN:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

(Hereinafter referred to as "the Employer")

AND

Name and Surname: Nkosinathi Allen Khena

ID No: 6102235676085

(Hereinafter referred to as "the Employee").



CONTRACT OF EMPLOYMENT

This contract of employment shall be used in the appointment of the following positions:
Chief Executive Officer, Group Executives and General Managers of PRASA.

1. PARTIES

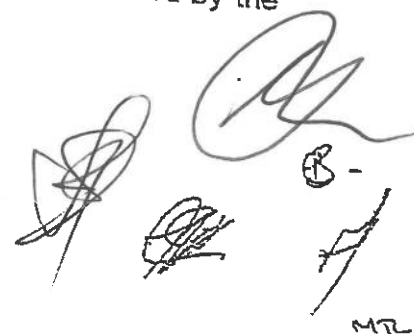
- 1.1 This employment contract is concluded between PRASA, hereinafter referred to as "the Employer" and
- 1.2 Nkosinathi Allen Khena hereinafter referred to as "the employee"
- 1.3 The parties as set out in 1.1 and 1.2 above hereby record their agreement in writing.

2. INTERPRETATION

In this agreement unless the context clearly indicates a contrary intention:

- 2.1 clause headings in this agreement are used for convenience only and shall be ignored in its interpretation;
- 2.2 Unless the context clearly indicate a contrary intention:
 - 2.2.1 the singular shall include the plural and vice versa.
 - 2.2.2 a natural person shall include an artificial person and vice versa; and
 - 2.2.3 any one gender shall include the other genders.
- 2.3 The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
 - 2.3.1 "this agreement" means this executive employment agreement and its annexures and any policies of PRASA which may apply in terms hereof;
 - 2.3.2 "the BCEA" mean the Basic Conditions of Employment Act 75 of 1997, (as amended);

- 2.3.3 "the Code" means Schedule 8 of the Code of Good Practice as contained in the Labour Relations Act;
- 2.3.4 "LRA" means the Labour Relations Act, 66 of 1995 (as amended);
- 2.3.5 "PRASA" means Passenger Rail Agency of South Africa;
- 2.3.6 "commencement date" means not withstanding the signature date, the commencement date specified under item 6 of annexure A to this agreement;
- 2.3.7 "remuneration" means the compensation payable to the Executive/General Manager in terms of this agreement as set out under clause 7 of this agreement read together with Annexure B to this agreement;
- 2.3.8 "Conditions of Service" means the conditions of service of PRASA, established in terms of the Legal Succession Act 89 of 1989;
- 2.3.9 "no fault termination" means any termination based on:
- 2.3.9.1 the capacity of the Executive/General Manager as set out under items 9,10 and 11 of the Code;
 - 2.3.9.2 termination by mutual agreement;
 - 2.3.9.3 "PFMA" means the Public Finance Management Act, 1 of 1990 (as amended);
 - 2.3.9.4 "signature date" means the date of signature of this agreement by the last signing of its signatories;
 - 2.3.9.5 "termination date" means the date of termination of employment of the Executive/General Manager specified as item 7 on annexure A;
- 2.3.10 "Board" means the Board of Control of PRASA duly appointed by the Minister of Transport;

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2.3.11 "Performance Agreement" means the performance agreement concluded between the Group Executive/General Manager and the Employer;

2.3.12 "Board Resolution" means a resolution taken by the Board of Control of PRASA;

2.3.13 "The Constitution" means the Constitution of the Republic of South Africa; Act 108 of 1996, (as amended);

2.3.14 "The Employer" means PRASA.

2.3.15 "The Group Chief Executive Officer" means the Chief Executive Officer of the Employer or any other person designated by the Board in his stead to act on his behalf.

2.3.16 "R" and "Rands" means the currency of the Republic of South Africa free of any exchange rate.

2.3.17 "Resolution" means any resolution passed by PRASA and shall be deemed to be incorporated by reference into this agreement and shall form part of this agreement.

3. APPOINTMENT AND DURATION

3.1 PRASA hereby appoints Nkosinathi Khena to the position of **Chief Operating Officer: Office of Group Chief Executive Officer**; Prasa Corporate and the employee accepts such appointment, subject to the terms and conditions contained in this agreement and its annexures.

3.2 Notwithstanding the date of signature hereof, this agreement and the appointment referred to in 3.1 shall commence and shall in all respects be deemed to have commenced on 01 December 2012 and shall endure until terminated as provided for herein.

4. RESOLUTIVE CONDITION

Notwithstanding anything to the contrary contained in this Agreement, the Employee shall be required to conclude a performance agreement with the Group Chief Executive Officer/Group Executive within 3 (three) months of the appointment of the







employee, failing which this Agreement shall automatically terminate immediately upon the expiry of the period referred to in this clause, or upon expiry of such reasonable extension of the period as may have been agreed to by PRASA.

5. **APPOINTMENT TO BE FULL TIME**

During the subsistence of this agreement, the employee shall devote his/her time and attention during normal working hours to the business and affairs of PRASA and he/she shall not be engaged either directly or indirectly in any other form of business or employment without the prior written consent of PRASA.

6. **HOURS AND PLACE OF WORK**

6.1 The employee agrees to work such hours and on such days as determined by the operational needs and requirements of PRASA from time to time and which shall not be less than 40 (Forty) hours and 5 (Five) days a week.

6.2 The ordinary hours presently worked at PRASA are from 07h30 to 16h00, from Monday to Friday, which may, however, by mutual consent between the parties, be amended from time to time, having regards to the operational needs and requirements of PRASA.

6.3 PRASA may require the employee to work more than the stipulated hours referred to in 6.1 above and on Saturdays, Sundays and/or Public Holidays. The employee shall neither be entitled to nor receive overtime pay for such additional work.

The employee's official place of work shall be PRASA House, 1040 Burnett Street, Hatfield, PRETORIA and/or such other place elsewhere in the Republic of South Africa to which PRASA may in the future relocate to. PRASA may also require the employee to work at such places within the Republic of South Africa whether on a temporary or permanent basis as PRASA may from time to time determine and the employee agrees to comply with any instruction to that effect.

6.4 PRASA may require the employee to travel locally and/or internationally in the performance of his/her duties, and the employee agrees to comply with instructions to that effect. PRASA shall be responsible for the cost of such

travel and the reimbursement of expenses incurred by the employee during such travel in accordance with its subsistence and travel policy or other applicable policy as may be in force from time to time.

7. REMUNERATION

7.1 COMPENSATION

7.1.1 The employee shall receive such compensation and other benefits of employment as may be agreed to between the parties from time to time.

7.1.2 The current compensation of the employee shall be the compensation, allowances and other employment costs set out in annexure B.

7.1.3 The employee's compensation may from time to time by agreement with PRASA be structured in such a manner as may lawfully achieve optimum tax efficiency.

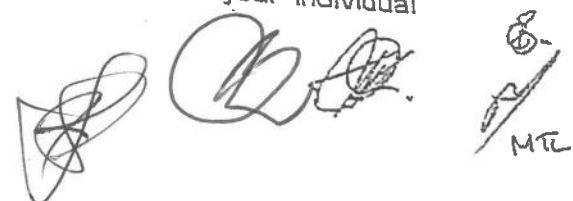
7.1.4 PRASA shall, at its sole discretion, reimburse the employee for all reasonable expenses incurred by the employee in providing the services, on condition that the employee provides PRASA with sufficient documentary proof of such expenses were obtained in accordance with the official policies and approval authorities of PRASA from time to time.

7.1.5 PRASA shall pay the Executive's/General Manager's remuneration monthly in arrears on or before the 27th of each month, with *pro rata* payments for incomplete months of employment.

7.2 PERFORMANCE BONUS

7.2.1 A performance bonus will be paid to the Executive/General Manager annually in accordance with the Executive's/General Manager's performance as further provided for in the PRASA's policies and procedures applicable from time to time.

7.2.2 The Executive/General Manager will qualify for a performance bonus subject to the achievement of the organisational and your individual



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performance targets. This is subject to the Board approving such performance bonus scheme.

7.3 ALLOWANCES AND BENEFITS

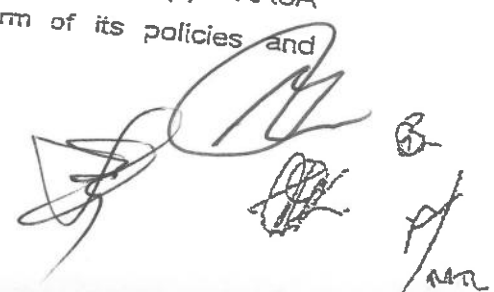
7.3.1 In order for the Executive/General Manager to carry out his duties under this agreement, the Executive/General Manager will be required to use a motor vehicle and consequently will incur expenses in connection with the financing, licensing, insurance, maintenance, upkeep, running and repair of that vehicle. The Executive/General Manager shall structure his remuneration to include travel allowance, to be reviewed annually in accordance with the policies and procedures of PRASA as determined from time to time.

in order for the Executive/General Manager to carry out his duties under this agreement, the Executive/General Manager will be required to travel on business, both locally and internationally. From time to time the Executive/General Manager will have to stay out of town for one or more nights. PRASA shall pay the Executive/General Manager a subsistence allowance to meet these expenses. The amount of the allowance will be advised to the Executive by PRASA in writing, from time to time, and is subject to the policies and procedures as may be determined by PRASA from time to time.

7.4 MEDICAL AID SCHEME AND RETIREMENT FUND

7.4.1 The Executive/General Manager shall, unless he/she is registered as a dependent on the medical aid scheme of his/her spouse, become a member of a PRASA medical aid scheme(s) as are established from time to time and will be subject to the rules and regulations of such Scheme(s).

7.4.2 The Executive/General Manager shall become a member of PRASA Provident Fund and Retirement Fund as established from time to time and will be subject to the rules and regulations of such Fund(s). PRASA shall pay contributions to the Fund(s) in term of its policies and



procedures as determined from time to time. The current contribution rates are set out in Annexure B.

8 LEAVE

- 8.1 The Executive/General Manager shall be entitled to the amount of working days paid annual leave specified under item 4 of Annexure A to this agreement.
- 8.2 The annual leave:
- 8.2.1 shall be regulated by PRASA's leave policy and procedures;
 - 8.2.2 shall be taken at times convenient to PRASA;
 - 8.2.3 may be accumulated by the Executive/General Manager on the basis provided for in PRASA's leave policies from time to time; and
 - 8.2.4 must be applied for in writing to the *Group Chief Executive Officer/Group Executive* or his/her nominee and as such possible notice of the intended leave must be given.
- 8.3 The Executive/General Manager shall be entitled to the amount of sick leave as specified under item 9 of Annexure A to this agreement. All sick leaves shall be taken in accordance with the PRASA's leave policies and procedures.
- 8.4 All other forms of leave due to the Executive/General Manager shall be regulated by PRASA's leave policies and procedures.

9. TERMINATION

- 9.1 This agreement shall terminate without notice on the termination date.
- 9.2 During the currency of this agreement, the parties shall have the right to terminate the employment relationship on the following grounds, provided that the parties shall in all respect have complied with PRASA's internal policies and procedures and the provisions of the LRA prior to such termination.

9.2.1 Summarily and without notice for any reason on the misconduct of the Executive/General Manager or any other cause recognized by law as sufficient.

9.2.2 In terms of this agreement, the employee will serve a three months' notice.

9.3 In lieu of the notice set out in 8.2.2, PRASA may elect to pay the Executive/General Manager the compensation to which the Executive/General Manager would have been entitled if the Executive/General Manager had worked during the notice period. Similarly, the Executive/General Manager may, in lieu of notice, elect to forfeit the compensation to which he/she would have been entitled to if he/she had worked during the notice period.

9.4 Notwithstanding any termination of this agreement for any reason, the provisions of clause 11 shall remain of full force and effect.

10. RESTRAINT OF TRADE

No ex-employee may be granted a tender of any other work with PRASA (its divisions and subsidiaries) for the period of two years after termination of contract.

11. RETURN OF ASSETS

11.1 The Executive/General Manager shall deliver to PRASA whenever PRASA requires her to do so and, upon termination of this agreement for any reason, all assets, books of account, records, information, correspondence and notes (in whatever media they are contained) concerning or contained any reference to the work of operations of PRASA, which belongs to PRASA or are in the possession or under the control, directly or indirectly, of the Executive/General Manager.

12. SUSPENSION OF EMPLOYMENT

12.1 If PRASA:

12.1.1 Reasonably suspects that the Executive/General Manager is guilty of any conduct which may, if proved, justify his/her dismissal; or

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B.
MTL

- 12.1.2 PRASA Group Chief Executive Officer considers it undesirable that he/she remains at work while an investigation is taking place; or
- 12.1.3 he/she has committed a breach of any of the terms of this agreement, it may, pending a duly constituted investigation and enquiry into the alleged conduct in question and after compliance with the requirements as laid down in the LRA, but without prejudice to its right of summary dismissal in terms of clause 8 and without giving rise to any claim for damages or otherwise against it, suspend the Executive/General Manager for the period of the investigation and the inquiry into the alleged misconduct, during which period the Executive/General Manager shall:
- 12.1.4 Not be entitled to attend work at the premises of PRASA .
- 12.1.5 Be entitled to be paid her normal remuneration and employment benefits as set out under clause 6 above.

13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

The Executive/General Manager undertakes to acquaint him/herself with and be bound by the provisions of PRASA's Confidentiality, Intellectual Property and Non-Solicitation Policies and Procedures in place from time to time.

14. CONSENT IN TERMS OF THE REGULATION OF INTERCEPTION OF COMMUNICATION AND PROVISION OF COMMUNICATION RELATED INFORMATION ACT 70 OF 2002

The Executive/General Manager consents to PRASA monitoring and intercepting the communications systems of PRASA used by the Executive/General Manager and this consent constitutes consent in terms of the Regulation of Interception of Communication and Provision of Communication Related Information Act 70 of 2002.

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15. BREACH

Save as otherwise provided in this agreement, should either party commit a breach of any provision of this agreement and fail to remedy such breach within 7 (seven) days after receiving written notice from the aggrieved party requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to the aggrieved party's other rights in law, to cancel this agreement (other than the provisions of 10 which shall notwithstanding any such cancellation continue to be of full force and effect), or to claim immediate specific performance of all the defaulting party's obligations whether or not due for performance, in either event without prejudice to the aggrieved party's rights to claim damages.

16. DISPUTES

16.1 Any dispute arising from or in connection with this agreement shall (with the exception of urgent relief claimed from a Court of competent jurisdiction):

16.1.1 in the first instance be referred to mediation by a mediator acceptable to both parties; and

16.1.2 failing resolution by mediation, shall be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators appointed by the Foundation.

16.2 The costs of mediation and arbitration will be borne by both parties equally, unless otherwise ordered by the arbitrator.

17. DOMICILLIUM AND NOTICES

17.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:

17.1.1 PRASA

Physical -
1040 Burnett Street
Hatfield



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PRETORIA

0083

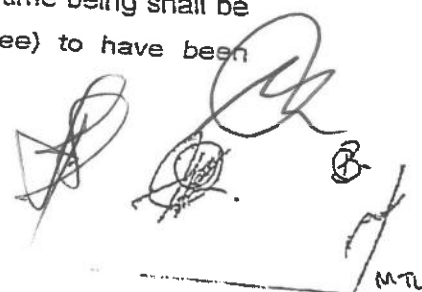
Postal -

Private Bag X101

Braamfontein

2017

- 17.1.2 Executive/General Manager: the address specified under item 8 of Annexure A
- 17.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its:
- 17.2.1 physical domicilium to any other physical address (not being a post office box or poste restante)
 - 17.2.2 to vary its postal domicilium to any other postal address; and
 - 17.2.3 to vary its facsimile domicilium to any other facsimile number.
- 17.3 Any notice given or payment made by either party to the other ("addressee") which is:
- 17.3.1 Delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery;
 - 17.3.2 posted by prepaid registered post to the addressee's postal domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the fourteenth day after the date of posting.
- 17.4 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been



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received by the addressee on the business day immediately succeeding the date of successful transmission thereof.

17.5 This shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to under clauses 12.2 and 12.3 above.

17.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

18. NON-ASSIGNMENT

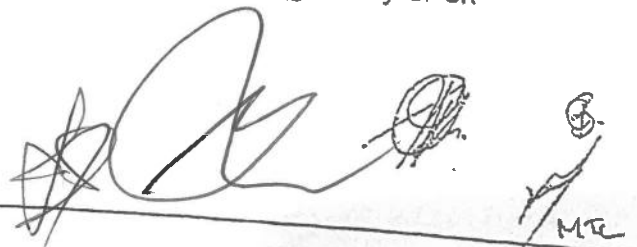
This agreement is personal to the Executive/General Manager and the Executive/General Manager shall not be entitled to assign, transfer, alienate or otherwise dispose of all or any of his rights and/or obligations under this agreement.

19. GENERAL

19.1 This agreement read together with any annexures hereto, and together with PRASA's Human Capital Management Policies and Procedures, and any of PRASA's other policies, procedures, codes, values, regulations, general service conditions and the like, as amended from time to time, constitutes the whole employment agreement between the Executive/General Manager and PRASA. A copy of PRASA's Human Capital Management Policies and Procedures is available from PRASA's Human Capital Management or the Company's intranet and the Executive/General Manager undertakes to immediately acquaint himself with the contents of such policies and procedures.

19.2 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

19.3 No addition to, variation, or agreed cancellation of this agreement and its annexures shall be of any force or effect unless in writing and signed by or on behalf of the parties.

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19.4. No indulgence which either party ("grantor") may grant to the other ("grantee") shall constitute a waiver of any of the rights of the grantor, which shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.

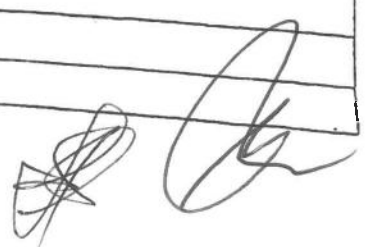
19.5. Should any provision hereof be held to be illegal, invalid or unenforceable for any reason, then such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.


19.6. The termination of the Executive's/General Manager's employment for any reason whatsoever shall not affect the operation of any provisions of this agreement to the extent to which they confer rights or impose obligations upon the parties which are exercisable or enforceable after the termination date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's/General Manager's employment shall furthermore not prejudice any rights which have accrued to the parties as at the termination date.

20. GOOD FAITH

In the implementation of this agreement, the parties undertake to observe the utmost good faith, and they warrant in their dealings with each other that they will not do anything nor refrain from doing anything which might prejudice or detract from their rights, assets or interests.

Done and signed at <u>Hatfield</u> on this the <u>30</u> day of <u>November</u> 2012	
Witness	For and on behalf of PRASA, he being duly authorised thereto:
8 M.T. Little	9 
10	Designation of the signatory:



Done and signed at _____ on this the ____ day of _____ 2012	
11	
Witness	The Executive/General Manager:
12	13
M.T. Lihova	
14	Designation of the signatory:
	CHIEF OPERATING OFFICER (CCOO)

ANNEXURE A – SALIENT DETAILS OF EMPLOYMENT

1. Full Name: Nkosinathi Khena
2. Identity Number: 6102235616085
3. Capacity: Chief Operating Officer, PRASA
4. Annual Leave Entitlement: 22 (twenty two) paid working days per annum
5. Duration: Full time
6. Commencement Date: 01 December 2012
7. Termination Date:
8. Physical Address, postal address and telefacsimile:
Physical – 157 Wilton Avenue
Bryanston
JOHANNESBURG



 MTL
 AB

Postal -

Sick Leave entitlement: 40 working days per leave cycle.

ANNEXURE B – COMPENSATION PACKAGE

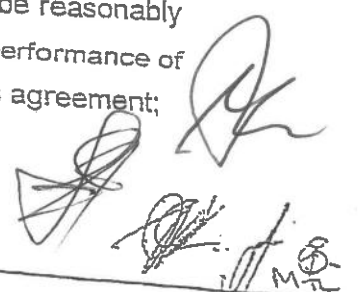
1. An annualised salary package of R2,200 000.00- total cost to PRASA per annum , inclusive of contributions i.e. 15% Provident Fund and Medical Aid, payable on the 27th of each month;
2. The Executive/General Manager is eligible for a performance-based bonus , dependent on the Executive's/General Manager's performance rating and payable subject to signature of a performance agreement detailing key performance objectives as agreed between the Executive/General Manager and PRASA Executive Committee;
3. The Executive/General Manager is eligible to participate in PRASA's approved long term incentive scheme, dependent on the Executive's/General Manager's performance rating and payable.
4. The Executive/General Manager may exchange components of the package between benefits and cash, subject to the range of benefits offered by PRASA. The Executive/General Manager may do this annually at salary review time or at a time of material adjustments to the total package. The Executive's/General Manager's salary review will be conducted annually in accordance to the policies of PRASA.

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ANNEXURE C – PERFORMANCE CONTRACT

1. GENERAL DUTIES

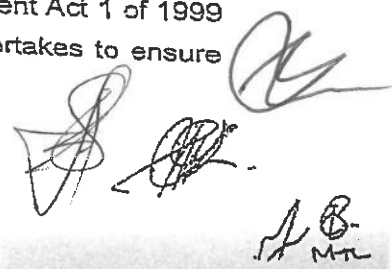
- 1.1 The Executive/General Manager shall report to the *Executive Committee/Group Executive* and/or its nominee(s) and shall report on such matters and furnish such information as the *Executive Committee/Group Executive* and/or its nominee(s) may, from time to time, require.
- 1.2 The Executive/General Manager shall be responsible for the general management of the day to day business and operations of PRASA, subject to the general and specific directions and instructions, if any, that the Executive Committee may have from time to time;
- 1.3 Keep the Executive Committee or any person nominated by PRASA promptly and fully informed (in writing if so requested) of the conduct of the operations and provide such explanations they may require;
- 1.4 Submit to the Executive Committee or any person nominated by PRASA, such information and reports as may be reasonably required of him/she in connection with the performance of his/her duties and the operations of PRASA;
- 1.5 Ensuring that the functions of PRASA in terms of the Act are complied with;
- 1.6 Exercising all the powers and perform all the duties conferred or imposed on the accounting officer by:
- 1.6.1 the Public Finance Management Act or any other relevant law and the Executive Committee.
- 1.7 Maximising the interests and objectives PRASA with due cognisance of its stakeholders;
- 1.8 Devote the whole his/her time and attention during normal business hours, and such reasonable amount of additional time as may be necessary having regard to the exigencies of the operations of PRASA, as may from time-to-time be reasonably necessary for the good conduct of the operations of PRASA and the performance of the Executive's/General Manager's functions and duties in terms of this agreement;



- 1.9 Be true and faithful to PRASA in all dealings and transactions relating to PRASA's operations;
- 1.10 Use his/her best endeavours to promote and extend the operations of PRASA ;
- 1.11 Not at any time any untrue or misleading statements relating to PRASA ;
- 1.12 Preserve and promote the goodwill of PRASA ;
- 1.13 Use the assets of PRASA with the utmost care in furtherance of the operations of PRASA ;
- 1.14 Perform such work of PRASA or any of its existing or future divisions/subsidiaries at such place as the Executive/General Manager is required by PRASA ;
- 1.15 Abide by the practices, policies, values and procedures and security procedures as may be introduced or amended by PRASA from time to time;
- 1.16 At all times adhere to the highest standards of integrity;
- 1.17 Submit his/her person and personal belongings to a search by any person designated by PRASA whenever PRASA deems it necessary, and the Executive/General Manager acknowledges that his/her failure to submit to the above shall constitute a serious disciplinary transgression;
- 1.18 The Executive/General Manager shall not, without prior written consent of PRASA Group Chief Executive Officer and whether for reward or not, be directly or indirectly interested or engaged in or concerned with or employed by any business, trade, undertaking or concern whether as proprietor, partner, director, member, Executive, General Manager, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise.

2. OBJECTIVES OF PRASA

The Executive/General Manager acknowledges that he/she knows and understands the objectives of PRASA as set out in the Act, the Public Finance Management Act 1 of 1999 ("the PFMA") and all other relevant legislation and documents and undertakes to ensure that PRASA achieves these objectives.



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3. DUTIES AND POWERS OF THE EXECUTIVE COMMITTEE

The Executive/General Manager acknowledges that he/she knows and understands the duties and powers of the Executive Committee as set out in the Act, PFMA and all other relevant legislation and documents and undertakes to ensure that he/she complies with such duties and powers.

4. SPECIFIC DUTIES

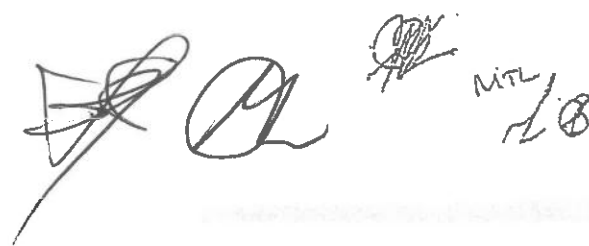
4.1 Objectives

The Executive/General Manager shall via the structures of PRASA promote an appropriate and sustainable partnership between Government and civil society organisations in order to eradicate poverty and its causes. Furthermore the Executive/General Manager must manage the performance of employees of PRASA in a consultative, supportive and non-discriminatory manner. In addition, the Executive/General Manager is required, as the most senior employee of the organisation, to enhance efficiency and to improve service delivery so that the various PRASA policies and strategies could result in the attainment of its key objectives.

4.2 Guiding Values and Principles

The Executive/General Manager shall ensure that PRASA, its various structures, administrative systems, Human Capital Management policies and the entire organisation in the areas of her jurisdiction, shall be professionally managed in terms of the following principles:

- 4.2.1 A high standard of professional ethics must be promoted and maintained;
- 4.2.2 Efficient economic and effective use of resources must be promoted;
- 4.2.3 Services must be provided impartially, fairly, equitably and without bias;
- 4.2.4 The affairs of PRASA must be arranged in an accountable and transparent manner;



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- 4.2.5 Access to relevant information must be provided in a manner which strengthens the democratic values of PRASA and the society it serves;
- 4.2.6 The human potential of the employees of PRASA must be maximised by the formulation of effective human capital management policies and the application of excellent career development strategies in line with the Skills Development Act and other relevant statutes and guidelines;
- 4.2.7 The nature of PRASA requires the Executive/General Manager to follow stringent policies and practices with regards to financial management, and in particular, compliance with the PFMA, the Regulations of National Treasury of South Africa, GN R225 GG 27388 dated 15 March 2005 and GN R556 GG 21249 dated 31 May 2000 and all other relevant legislation and documents.
- 4.3 The Executive/General Manager as the Accounting Officer
- 4.3.1 The Executive shall ensure that PRASA maintains:
- 4.3.1.1 effective, efficient and transparent systems of financial and risk management and internal control;
 - 4.3.1.2 a system of internal audit under the control and direction of an Audit Committee;
 - 4.3.1.3 an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - 4.3.1.4 an effective financial and accounting system for properly evaluating all major projects and programmes prior to a final decision being taken on such projects and programmes.
- 4.3.2 Is responsible for the effective, efficient, economical and transparent use of the resources of PRASA.
- 4.3.3 Must take effective and appropriate steps to:
- 4.3.3.1 collect all funds due to PRASA ;



4.3.3.2 prevent unauthorised, irregular, fruitless and wasteful expenditure and losses resulting from criminal conduct;

4.3.3.3 manage working capital efficiently and economically.

4.3.4 Is responsible for the management, safeguarding and maintenance of the assets of PRASA.

4.3.5 Must comply with tax, levy, duty, pension and audit commitments as may be required by legislation.

4.3.6 Must settle all contractual obligations and pay all money owing, within the prescribed or agreed period.

Upon discovery of any unauthorised, irregular, fruitless and/or wasteful expenditure, and in the case of irregular expenditure involving the procurement of goods or services, immediately report, in writing, particulars of the said expenditure to the Audit Committee.

4.3.7 Must take effective and appropriate action against any person who:

4.3.7.1 acts in any manner which can be deemed to be corrupt and/or fraudulent;

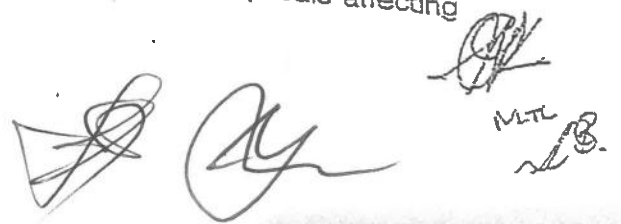
4.3.7.2 commits an act which undermines the financial management and internal control system of PRASA ;

4.3.7.3 makes or permits an unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure;

4.3.8 Must ensure that the auditing provisions of PRASA are complied with when transferring funds in terms of any agreement, business or operational requirement;

4.3.9 Must enforce compliance with any prescribed conditions set by PRASA if PRASA gives financial assistance to any entity or person;

4.3.10 Must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting



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the accounting officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the responsible and relevant structures of PRASA.

4.4 Employment Equity

The Executive/General Manager must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice which may exist at PRASA. An Employment Equity Plan as contemplated by the Employment Equity Plan must be established and adopted.

4.5 Skills Development

The Executive/General Manager must strive to improve the quality of life of the employees by using the workplace as an active learning environment to provide employees with opportunities to acquire new skills. The various skills development laws and regulations which have relevance must be implemented.

4.6 Employee Relations

The Executive/General Manager shall take steps to ensure that the Human Capital Management System of PRASA is in line with the various labour laws and best practice.

4.7 Strategic Implementation of the goals of PRASA

4.7.1 The Executive/General Manager shall implement the strategic goals of PRASA to provide financial support to programmes and projects that will directly contribute to the enhancement of the asset base of the poor.


4.7.2 The Executive/General Manager shall implement the strategic objectives of PRASA, which objectives include:

4.7.2.1 providing historically disadvantaged persons with the opportunity of, directly or indirectly, acquiring shares or interest in State Owned Commercial Enterprises that are being restructured or in private business enterprises;



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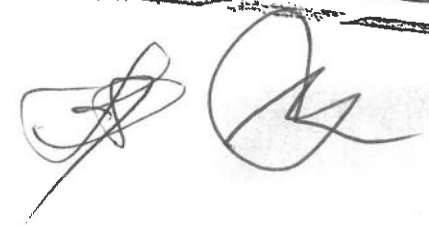
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File Ref:	HRER004	
Approved Date:		
Title:	DISCIPLINARY CODE AND GRIEVANCE PROCEDURE	

EMPLOYEE RELATIONS POLICY

DISCIPLINARY CODE AND GRIEVANCE PROCEDURE

Doc. No & Version:	37155 V1	<div>Page 1 of 15</div> <div>Last Printed: 2008/03/19 10:18</div> <div>Last Edited: 2007/09/07</div>
Author:	Human Resources	
Approved by:	Lucky T Montana - CEO	



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1950年12月27日

1. The first part of the document discusses the importance of maintaining accurate records of all transactions, both incoming and outgoing, to ensure transparency and accountability. It emphasizes the need for regular audits and reconciliations to identify any discrepancies or errors early on.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

Mr. Nkosinathi Khena
157 Wilton Avenue
Bryanston
2191

30 November 2012

Dear Nkosinathi

OFFER: CHIEF OPERATING OFFICER (COO): PRASA

We are pleased to offer you the position of Chief Operating Officer (COO), PRASA with effect from 01 December 2012. You will report directly to the Group Chief Executive Officer.

Your remuneration will be R2 200 000.00 total cost to company per annum.

We wish to congratulate you on this offer of appointment and wish that you may enjoy job satisfaction and growth within the PRASA Family and also contribute significantly towards the achievements of PRASA's goals.

Yours sincerely

TSHEPO LUCKY MONTANA
GROUP CHIEF EXECUTIVE OFFICER

DATE: 30/11/2012

1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.



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INTERSITE
INVESTMENTS

CONTRACT OF EMPLOYMENT

ENTERED INTO BETWEEN:

INTERSITE ASSET INVESTMENTS SOC LTD

(Hereinafter referred to as "the Employer")

AND

MARTHA ONICA NGOYE

ID No: 6912190445080

(Hereinafter referred to as "the Employee/the Executive").



CONTRACT OF EMPLOYMENT

This contract of employment shall be used in the appointment of the following positions:
Chief Executive Officer and Executives of INTERSITE ASSET INVESTMENTS SOC LTD

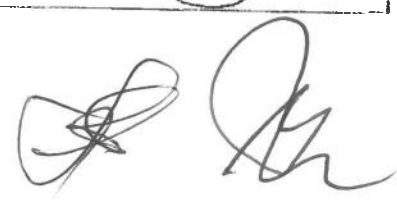
1. PARTIES

- 1.1 This employment contract is concluded between Intersite Asset Investments, hereinafter referred to as "the Employer" and
- 1.2 Martha Onica Ngoye hereinafter referred to as "the Employee"/Executive
- 1.3 The parties as set out in 1.1 and 1.2 above hereby record their agreement in writing.

2. INTERPRETATION

In this agreement unless the context clearly indicates a contrary intention:

- 2.1 Clause headings in this agreement are used for convenience only and shall be ignored in its interpretation;
- 2.2 Unless the context clearly indicate a contrary intention:
 - 2.2.1 the singular shall include the plural and vice versa.
 - 2.2.2 a natural person shall include an artificial person and vice versa; and
 - 2.2.3 any one gender shall include the other genders.
- 2.3 The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
 - 2.3.1 "this agreement" means this executive employment agreement and its annexures and any policies of the Employer which may apply in terms hereof;
 - 2.3.2 "the BCEA" mean the Basic Conditions of Employment Act 75 of 1997, (as amended);
 - 2.3.3 "Board" means the Board of Directors of the Employer.
 - 2.3.4 "Board Resolution" means a resolution taken by the Board.

- 2.3.5 "the Code" means Schedule 8 of the Code of Good Practice as contained in the Labour Relations Act;
- 2.3.6 "commencement date" means notwithstanding the signature date, the commencement date specified under Item 6 of annexure A to this agreement;
- 2.3.7 "Conditions of Service" means the conditions of service of the Employer, established in terms of the Legal Succession Act 89 of 1989;
- 2.3.8 "The Constitution" means the Constitution of the Republic of South Africa, Act 108 of 1996, (as amended);
- 2.3.9 "The Employer" means Intersite Asset Investments SOC Ltd.
- 2.3.10 "PFMA" means the Public Finance Management Act, 1 of 1990 (as amended);
- 2.3.11 "signature date" means the date of signature of this agreement by the last signing of its signatories;
- 2.3.12 "termination date" means the date of termination of employment of the Executive specified as item 7 on annexure A;
- 2.3.13 "LRA" means the Labour Relations Act, 66 of 1995 (as amended);
- 2.4 "no fault termination" means any termination based on:
- 2.4.1 the capacity of the Executive as set out under items 9,10 and 11 of the Code;
- 2.4.2 termination by mutual agreement;
- 2.5 "PFMA" means the Public Finance Management Act, 1 of 1990 (as amended);
- 2.6 "Performance Agreement" means the performance agreement concluded between the Group Executive and the Employer;
- 2.7 "R" and "Rands" means the currency of the Republic of South Africa free of any exchange rate.

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2.8 "remuneration" means the compensation payable to the Executive in terms of this agreement as set out under clause 7 of this agreement read together with Annexure B to this agreement;

2.9 "Resolution" means any resolution passed by the Employer and shall be deemed to be incorporated by reference into this agreement and shall form part of this agreement.

2.10 "signature date" means the date of signature of this agreement by the last signing of its signatories;

2.11 "termination date" means the date of termination of employment of the Executive specified as item 7 on annexure A;

3. APPOINTMENT AND DURATION

3.1 The Employer hereby appoints Martha Onica Ngoye to the position of Chief Executive Officer and the Employee accepts such appointment, subject to the terms and conditions contained in this agreement and its annexures.

3.2 Notwithstanding the date of signature hereof, this agreement and the appointment referred to in 3.1 shall commence and shall in all respects be deemed to have commenced on 01 September 2011 and shall endure until terminated as provided for herein.

4. RESOLUTIVE CONDITION

Notwithstanding anything to the contrary contained in this agreement, the Employee shall be required to conclude a performance agreement with the Board within 3 (three) months of the appointment of the Employee, failing which this agreement shall automatically terminate immediately upon the expiry of the period referred to in this clause, or upon expiry of such reasonable extension of the period as may have been agreed to by the Employer.

5. APPOINTMENT TO BE FULL TIME

During the subsistence of this agreement, the Employee shall devote her time and attention during normal working hours to the business and affairs of the Employer and she shall not be



engaged either directly or indirectly in any other form of business or employment without the prior written consent of the Employer.

6. HOURS AND PLACE OF WORK

- 6.1 The Employee agrees to work such hours and on such days as determined by the operational needs and requirements of the Employer from time to time and which shall not be less than 40 (Forty) hours and 5 (Five) days a week.
- 6.2 The ordinary hours presently worked at Intersite are from 09h00 to 17h00, from Monday to Friday, which may, however, by mutual consent between the parties, be amended from time to time, having regards to the operational needs and requirements of the Employer.
- 6.3 The Employer may require the Employee to work more than the stipulated hours referred to in 6.1 above and on Saturdays, Sundays and/or Public Holidays. The Employee shall neither be entitled to nor receive overtime pay for such additional work.

The Employee's official place of work shall be Boundary Place, 18 Rivonia Road Illovo, Gauteng, and/or such other place elsewhere in the Republic of South Africa to which the Employer may in the future relocate to. The Employer may also require the Employee to work at such places within the Republic of South Africa whether on a temporary or permanent basis as the Employer may from time to time determine and the Employee agrees to comply with any instruction to that effect.

- 6.4 The Employer may require the Employee to travel locally and/or internationally in the performance of her duties, and the Employee agrees to comply with instructions to that effect. The Employer shall be responsible for the cost of such travel and the reimbursement of expenses incurred by the Employee during such travel in accordance with its subsistence and travel policy or other applicable policy as may be in force from time to time.



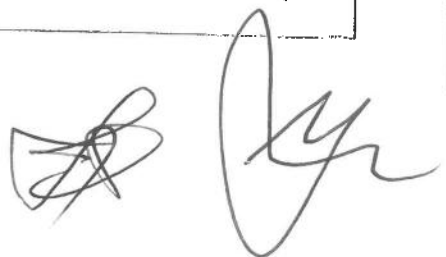
7. REMUNERATION

7.1 COMPENSATION

- 7.1.1 The Employee shall receive such compensation and other benefits of employment as may be agreed to between the parties from time to time.
- 7.1.2 The current compensation of the Employee shall be the compensation, allowances and other employment costs set out in annexure B.
- 7.1.3 The Employee's compensation may from time to time by agreement with the Employer be structured in such a manner as may lawfully achieve optimum tax efficiency.
- 7.1.4 The Employer shall, at its sole discretion, reimburse the Employee for all reasonable expenses incurred by the Employee in providing the services, on condition that the Employee provides the Employer with sufficient documentary proof of such expenses, and that the expenses were obtained in accordance with the official policies and approval authorities of the Employer from time to time.
- 7.1.5 The Employer shall pay the Executive's remuneration monthly in arrears on or before the 27th of each month, with *pro rata* payments for incomplete months of employment.

7.2 PERFORMANCE BONUS

- 7.2.1 A performance bonus will be paid to the Executive annually in accordance with the Executive's performance as further provided for in the Employer's policies and procedures applicable from time to time.
- 7.2.2 The Executive will qualify for a performance bonus subject to the achievement of the organisational and her individual performance targets. This is subject to the Board approving such performance bonus scheme.



7.3 ALLOWANCES AND BENEFITS

- 7.3.1 In order for the Executive to carry out her duties under this agreement, the Executive will be required to use a motor vehicle and consequently will incur expenses in connection with the financing, licensing, insurance, maintenance, upkeep, running and repair of that vehicle. The Executive shall structure her remuneration to include travel allowance, to be reviewed annually in accordance with the policies and procedures of the Employer as determined from time to time.

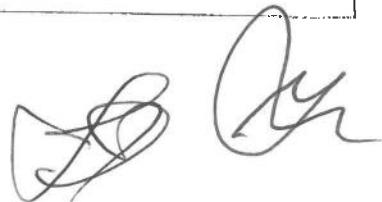
In order for the Executive to carry out her duties under this agreement, the Executive will be required to travel on business, both locally and internationally. From time to time the Executive will have to stay out of town for one or more nights. The Employer shall pay the Executive a subsistence allowance to meet these expenses. The amount of the allowance will be advised to the Executive by the Employer in writing, from time to time, and is subject to the policies and procedures as may be determined by the Employer from time to time.

7.4 MEDICAL AID SCHEME AND RETIREMENT FUND

- 7.4.1 The Executive shall, unless she is registered as a dependent on the medical aid scheme of her spouse, become a member of a medical aid scheme(s) of her choice and will be subject to the rules and regulations of such scheme(s).
- 7.4.2 The Executive shall become a member of the Employer Provident Fund and Retirement Fund as established from time to time and will be subject to the rules and regulations of such Fund(s). The Employer shall pay contributions to the Fund(s) in terms of its policies and procedures as determined from time to time. The current contribution rates are set out in Annexure B.

8 LEAVE

- 8.1 The Executive shall be entitled to the amount of working days paid annual leave specified under Item 4 of Annexure A to this agreement.



8.2 The annual leave:

- 8.2.1 shall be regulated by the Employer's leave policy and procedures;
- 8.2.2 shall be taken at times convenient to the Employer;
- 8.2.3 may be accumulated by the Executive on the basis provided for in the Employer's leave policies from time to time; and
- 8.2.4 must be applied for in writing to the Board Chairman or his/her nominee and as such possible notice of the intended leave must be given.

8.3 The Executive shall be entitled to the amount of sick leave as specified under item 9 of Annexure A to this agreement. All sick leave shall be taken in accordance with the Employer's leave policies and procedures.

8.4 All other forms of leave due to the Executive shall be regulated by the Employer leave policies and procedures.


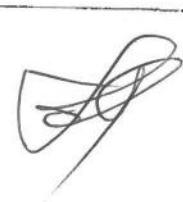
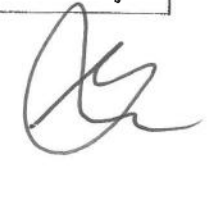
9. TERMINATION

9.1 During the currency of this agreement, the parties shall have the right to terminate the employment relationship on the following grounds, provided that the parties shall in all respect have complied with the Employer's internal policies and procedures and the provisions of the LRA prior to such termination.

9.1.1 Summarily and without notice for any reason on the misconduct of the Executive or any other cause recognized by law as sufficient.

9.1.2 In terms of this agreement, the Employee will serve a three months' notice.

9.2 In lieu of the notice set out in 9.1.2, the Employer may elect to pay the Executive the compensation to which the Executive would have been entitled if the Executive had worked during the notice period. Similarly, the Executive may, in lieu of notice; elect to forfeit the compensation to which she would have been entitled to if she had worked during the notice period.

9.3 Notwithstanding any termination of this agreement for any reason, the provisions of clause 10 shall remain of full force and effect.

10. RESTRAINT OF TRADE

No ex-Employee may be granted a tender of any other work with Intersite (its holding company) for the period of two years after termination of the agreement.

11. RETURN OF ASSETS

The Executive shall deliver to the Employer whenever the Employer requires her to do so and, upon termination of this agreement for any reason, all assets, books of account, records, information, correspondence and notes (in whatever media they are contained) concerning or contained any reference to the work of operations of the Employer, which belongs to the Employer or are in the possession or under the control, directly or indirectly, of the Executive.

12. SUSPENSION OF EMPLOYMENT

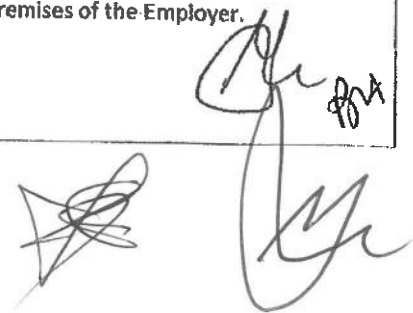
12.1 If The Employer:

12.1.1 Reasonably suspects that the Executive is guilty of any conduct which may, if proved, justify her dismissal; or

12.1.2 The Board considers it undesirable that she remains at work while an investigation is taking place; or

12.1.3 She has committed a breach of any of the terms of this agreement, it may, pending a duly constituted investigation and enquiry into the alleged conduct in question and after compliance with the requirements as laid down in the LRA, but without prejudice to its right of summary dismissal in terms of clause 9 and without giving rise to any claim for damages or otherwise against it, suspend the Executive for the period of the investigation and the inquiry into the alleged misconduct, during which period the Executive shall:

12.1.3.1 Not be entitled to attend work at the premises of the Employer.



12.1.3.2 Be entitled to be paid her normal remuneration and employment benefits as set out under clause 7 above.

13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

The Executive undertakes to acquaint herself with and be bound by the provisions of the Employer's Confidentiality, Intellectual Property and Non-Solicitation Policies and Procedures in place from time to time.

14. CONSENT IN TERMS OF THE REGULATION OF INTERCEPTION OF COMMUNICATION AND PROVISION OF COMMUNICATION RELATED INFORMATION ACT 70 OF 2002

The Executive consents to the Employer monitoring and intercepting its communications systems of the Employer used by the Executive and this consent constitutes consent in terms of the Regulation of Interception of Communication and Provision of Communication Related Information Act 70 of 2002.

15. BREACH

Save as otherwise provided in this agreement, should either party commit a breach of any provision of this agreement and fail to remedy such breach within 7 (seven) days after receiving written notice from the aggrieved party requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to the aggrieved party's other rights in law, to cancel this agreement (other than the provisions of 10 which shall notwithstanding any such cancellation continue to be of full force and effect) or to claim immediate specific performance of all the defaulting party's obligations whether or not due for performance, in either event without prejudice to the aggrieved party's rights to claim damages.

16. DISPUTES

16.1 Any dispute arising from or in connection with this agreement shall (with the exception of urgent relief claimed from a Court of competent jurisdiction):

16.1.1 in the first instance be referred to mediation by a mediator acceptable to both parties; and

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16.1.2 failing resolution by mediation, shall be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators appointed by the Foundation.

16.2 The costs of mediation and arbitration will be borne by both parties equally, unless otherwise ordered by the arbitrator.

17. DOMICILIUM AND NOTICES

17.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:

17.1.1 The Employer Physical -

18 Rivonia Road
Boundary Place
Illovo
GAUTENG
2157

Postal - P O Box 999
Sunninghill
2157

17.1.2 Executive : the address specified under item 8 of Annexure A

17.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its:

17.2.1 physical domicilium to any other physical address (not being a post office box or poste restante)

17.2.2 to vary its postal domicilium to any other postal address; and

17.2.3 to vary its facsimile domicilium to any other facsimile number.



17.3 Any notice given or payment made by either party to the other ("addressee") which is:

17.3.1 Delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicile for the time being shall be deemed to have been received by the addressee at the time of delivery;

17.3.2 posted by prepaid registered post to the addressee's postal domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the fourteenth day after the date of posting.

17.4 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the business day immediately succeeding the date of successful transmission thereof.

17.5 This shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to under clauses 17.2 and 17.3 above.

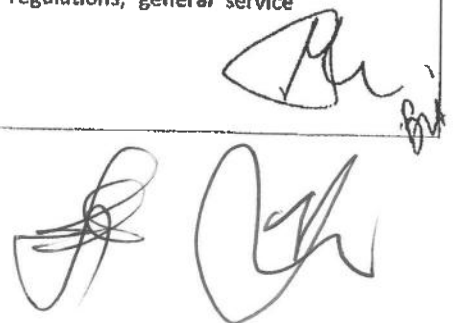
17.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

18. NON-ASSIGNMENT

This agreement is personal to the Executive and the Executive shall not be entitled to assign, transfer, alienate or otherwise dispose of all or any of her rights and/or obligations under this agreement.

19. GENERAL

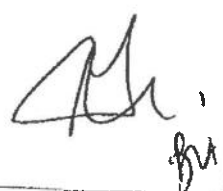
19.1 This agreement read together with any annexures hereto, and together with the Employer's Human Capital Management Policies and Procedures, and any of the Employer's other policies, procedures, codes, values, regulations, general service



conditions and the like, as amended from time to time, constitutes the whole employment agreement between the Executive and the Employer.

A copy of the Employer's Human Capital Management Policies and Procedures is available from the Employer's Human Capital Management or the company's intranet and the Executive undertakes to immediately acquaint herself with the contents of such policies and procedures.

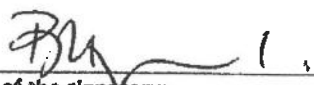
- 19.2 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 19.3 No addition to, variation, or agreed cancellation of this agreement and its annexures shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 19.4 No indulgence which either party ("grantor") may grant to the other ("grantee") shall constitute a waiver of any of the rights of the grantor, which shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.
- 19.5 Should any provision hereof be held to be illegal, invalid or unenforceable for any reason, then such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.
- 19.6 The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this agreement to the extent to which they confer rights or impose obligations upon the parties which are exercisable or enforceable after the termination date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall furthermore not prejudice any rights which have accrued to the parties as at the termination date.




20. GOOD FAITH

In the implementation of this agreement, the parties undertake to observe the utmost good faith, and they warrant in their dealings with each other that they will not do anything nor refrain from doing anything which might prejudice or detract from their rights, assets or interests.

Done and signed at Illovo on the 31 day of October 2012

Witness	For and on behalf of Intersite Asset Investments SOC Ltd , he being duly authorised thereto:
	
	Designation of the signatory:
	CHAIRPERSON: HR COMMITTEE

Done and signed at Illovo on the 26th day of October 2012

Witness	The Executive:
	
	Designation of the signatory:
	CHIEF EXECUTIVE OFFICER



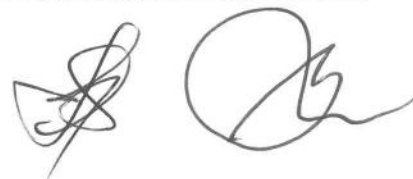
ANNEXURE A – SALIENT DETAILS OF EMPLOYMENT

1. **Full Name:** Martha Onica Ngoye
2. **Identity Number:** 6912190445080
3. **Capacity:** Chief Executive Officer
4. **Annual Leave Entitlement:** 22 Days per annum
5. **Duration:** Permanent
6. **Commencement Date:** 01/09/2011
7. **Termination Date:** N/A
8. **Physical Address, postal address and telefacsimile:**

Physical – 41 Cashane
 199 Pritchard Street
 Johannesburg North
 2153

Postal - Postnet Suite 291
 Private Bag X1
 Jukskei Park
 2153

9. **Sick Leave entitlement:** 40 working days per leave cycle.

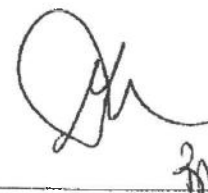


ANNEXURE B – COMPENSATION PACKAGE

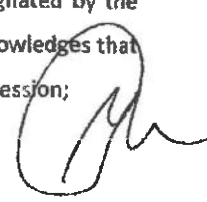
1. An annualised salary package of R2 200 000.00 total cost to the Employer per annum , inclusive of contributions i.e. 11% Provident Fund and Medical Aid, payable on the 27th of each month.
2. The Executive is eligible for a performance-based bonus, dependent on the Executive's performance and payable subject to signature of a performance agreement detailing key performance objectives as agreed between the Executive and the Employer.
3. The Executive is eligible to participate in Intersite's approved long term Incentive scheme, dependent on the Executive's performance rating and payable as stipulated in Intersite's Policy.
4. The Executive may exchange components of the package between benefits and cash, subject to the range of benefits offered by the Employer. The Executive may do this annually at salary review time or at a time of material adjustments to the total package. The Executive's salary review will be conducted annually in accordance to the policies of the Employer.

ANNEXURE C – PERFORMANCE CONTRACT**1. GENERAL DUTIES**

- 1.1 The Executive shall report to the Board and shall report on such matters and furnish such information as the Board and/or its nominee(s) may, from time to time, require;
- 1.2 The Executive shall be responsible for the general management of the day to day business and operations of the Employer, subject to the general and specific directions and instructions, if any, that the Executive Committee may have from time to time;
- 1.3 Keep the Executive Committee or any person nominated by the Employer promptly and fully informed (in writing if so requested) of the conduct of the operations and provide such explanations they may require;
- 1.4 Submit to the Board or any person nominated by the Employer, such information and reports as may be reasonably required of her in connection with the performance of her duties and the operations of the Employer;
- 1.5 Ensuring that the functions of the Employer in terms of the Act are complied with;



- 1.6 Exercising all the powers and perform all the duties conferred or imposed on the accounting officer by: the Public Finance Management Act or any other relevant law and the Executive Committee.
- 1.7 Maximising the interests and objectives of the Employer with due cognisance of its stakeholders;
- 1.8 Devote the whole of her time and attention during normal business hours, and such reasonable amount of additional time as may be necessary having regard to the exigencies of the operations of the Employer, as may from time-to-time be reasonably necessary for the good conduct of the operations of the Employer and the performance of the Executive's functions and duties in terms of this agreement;
- 1.9 Be true and faithful to the Employer in all dealings and transactions relating to the Employer's operations;
- 1.10 Use her best endeavours to promote and extend the operations of the Employer;
- 1.11 Not make at any time any untrue or misleading statements relating to the Employer;
- 1.12 Preserve and promote the goodwill of the Employer;
- 1.13 Use the assets of the Employer with the utmost care in furtherance of the operations of the Employer;
- 1.14 Perform such work of the Employer or any of its existing or future divisions/subsidiaries at such place as the Executive is required by the Employer;
- 1.15 Abide by the practices, policies, values and procedures and security procedures as may be introduced or amended by the Employer from time to time;
- 1.16 At all times adhere to the highest standards of integrity;
- 1.17 Submit her person and personal belongings to a search by any person designated by the Employer whenever the Employer deems it necessary, and the Executive acknowledges that her failure to submit to the above shall constitute a serious disciplinary transgression;



1.18 The Executive shall not, without prior written consent of the Board and whether for reward or not, be directly or indirectly interested or engaged in or concerned with or employed by any business, trade, undertaking or concern whether as proprietor, partner, director, member, Executive, General Manager, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise.

2. OBJECTIVES OF THE EMPLOYER

The Executive acknowledges that she knows and understands the objectives of the Employer as set out in the Act, the Public Finance Management Act 1 of 1999 ("the PFMA") and all other relevant legislation and documents and undertakes to ensure that the Employer achieves these objectives.

3. DUTIES AND POWERS OF THE EXECUTIVE COMMITTEE

The Executive acknowledges that she knows and understands the duties and powers of the Executive Committee as set out in the Act, PFMA and all other relevant legislation and documents and undertakes to ensure that she complies with such duties and powers.

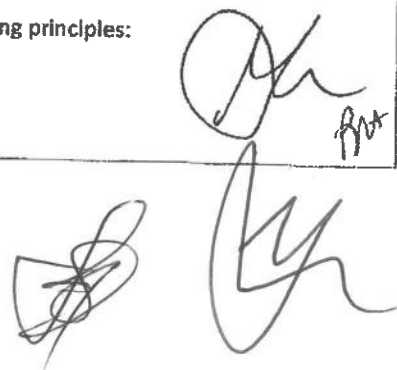
4. SPECIFIC DUTIES

4.1 Objectives

The Executive shall via the structures of Intersite promote an appropriate and sustainable partnership between Government and civil society organisations in order to eradicate poverty and its causes. Furthermore the Executive must manage the performance of Employees of Intersite in a consultative, supportive and non-discriminatory manner. In addition, the Executive is required, as the most senior Employee of the organisation, to enhance efficiency and to improve service delivery so that the various Intersite policies and strategies could result in the attainment of its key objectives.

4.2 Guiding Values and Principles

The Executive shall ensure that Intersite, its various structures, administrative systems, Human Capital Management policies and the entire organisation in the areas of her jurisdiction, shall be professionally managed in terms of the following principles:

The block contains several handwritten signatures and initials. At the top right, there is a large, stylized signature. Below it, to the left, are the initials 'BNA'. Further down and to the left, there is another signature. At the bottom left, there is a signature that appears to be 'S' with a large loop. To the right of this, there is a large, flowing signature.

- 4.2.1 A high standard of professional ethics must be promoted and maintained;
- 4.2.2 Efficient economic and effective use of resources must be promoted;
- 4.2.3 Services must be provided impartially, fairly, equitably and without bias;
- 4.2.4 The affairs of Intersite must be arranged in an accountable and transparent manner;
- 4.2.5 Access to relevant information must be provided in a manner which strengthens the democratic values of Intersite and the society it serves;
- 4.2.6 The human potential of the Employees of Intersite must be maximised by the formulation of effective human capital management policies and the application of excellent career development strategies in line with the Skills Development Act and other relevant statutes and guidelines;
- 4.2.7 The nature of Intersite requires the Executive to follow stringent policies and practices with regards to financial management, and in particular, compliance with the PFMA, the Regulations of National Treasury of South Africa, GN R225 GG 27388 dated 15 March 2005 and GN R556 GG 21249 dated 31 May 2000 and all other relevant legislation and documents.

4.3 The Executive as the Accounting Officer

- 4.3.1 The Executive shall ensure that Intersite maintains:
 - 4.3.1.1 effective, efficient and transparent systems of financial and risk management and internal control;
 - 4.3.1.2 a system of internal audit under the control and direction of an Audit Committee;
 - 4.3.1.3 an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;


RM

4.3.1.4 an effective financial and accounting system for properly evaluating all major projects and programmes prior to a final decision being taken on such projects and programmes.

4.3.2 Is responsible for the effective, efficient, economical and transparent use of the resources of Intersite.

4.3.3 Must take effective and appropriate steps to:

4.3.3.1 collect all funds due to Intersite;

4.3.3.2 prevent unauthorised, irregular, fruitless and wasteful expenditure and losses resulting from criminal conduct;

4.3.3.3 manage working capital efficiently and economically.

4.3.4 Is responsible for the management, safeguarding and maintenance of the assets of Intersite.

4.3.5 Must comply with tax, levy, duty, pension and audit commitments as may be required by legislation.

4.3.6 Must settle all contractual obligations and pay all money owing, within the prescribed or agreed period.

Upon discovery of any unauthorised, irregular, fruitless and/or wasteful expenditure, and in the case of irregular expenditure involving the procurement of goods or services, immediately report, in writing, particulars of the said expenditure to the Audit Committee.

4.3.7 Must take effective and appropriate action against any person who:

4.3.7.1 acts in any manner which can be deemed to be corrupt and/or fraudulent;

4.3.7.2 commits an act which undermines the financial management and internal control system of Intersite ;



4.3.7.3 makes or permits an unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure;

4.3.8 Must ensure that the auditing provisions of Intersite are complied with when transferring funds in terms of any agreement, business or operational requirement;

4.3.9 Must enforce compliance with any prescribed conditions set by Intersite if Intersite gives financial assistance to any entity or person;

4.3.10 Must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the responsible and relevant structures of Intersite.

4.4 Employment Equity

The Executive must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice which may exist at Intersite. An Employment Equity Plan as contemplated by the Employment Equity must be established and adopted.

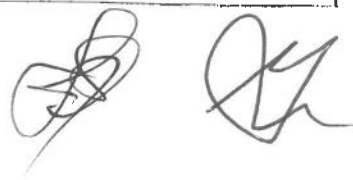
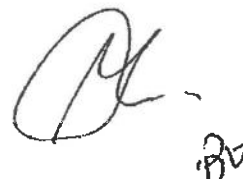
4.5 Skills Development

The Executive must strive to improve the quality of life of the Employees by using the workplace as an active learning environment to provide Employees with opportunities to acquire new skills. The various skills development laws and regulations which have relevance must be implemented.

4.6 Employee Relations

The Executive shall take steps to ensure that the Human Capital Management System of Intersite is in line with the various labour laws and best practice.

4.7 Strategic Implementation of the goals of Intersite



4.7.1 The Executive shall implement the strategic goals of Intersite to provide financial support to programmes and projects that will directly contribute to the enhancement of the asset base of the poor.

4.7.2 The Executive shall implement the strategic objectives of Intersite, which objectives include:

4.7.2.1 providing historically disadvantaged persons with the opportunity of, directly or indirectly, acquiring shares or interest in State Owned Commercial Enterprises that are being restructured or in private business enterprises;

4.7.2.2 encouraging and promoting savings, investments and meaningful economic participation by historically disadvantaged persons;

4.7.2.3 promoting and supporting business ventures pioneered and run by historically disadvantaged persons;

4.7.2.4 promoting the universal understanding of equity ownership among historically disadvantaged persons;

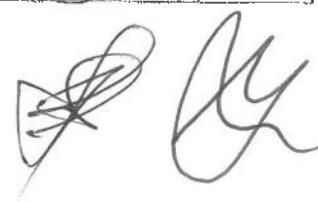
4.7.2.5 encouraging the development of competitive and effective equities market inclusive of all persons in the Republic;

4.7.2.6 contributing to the creation of employment opportunities; and

4.7.2.7 generally employing such schemes, business and enterprises as may be necessary to achieve the objects of this Act.

4.8 General Strategic Implementation of Intersite operational and business needs

The Executive shall proactively ensure the strategic implementation of the policies, mandates, standing instructions and ad hoc instructions issued. The Executive is responsible for the operationalisation of the goals, objectives and mandate of Intersite in line with the directives of financial accountability and professional ethics. The Executive is responsible for ensuring that various action plans are implemented and that the various



instruments of Intersite are activated to ensure that the strategic organisational needs and goals of Intersite are achieved.

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**RESOLUTION OF THE BOARD OF DIRECTORS OF INTERSITE ASSET INVESTMENTS
SOC LTD REG. NO: 1992/002160/07("the Company") HELD AT INTERSITE HEAD
OFFICE, FIRST FLOOR BOUNDARY PLACE, 18 RIVONIA ROAD,ILLOVO ON 11
AUGUST 2014.**

1. To consider and approve the Resolution taken by the PRASA Board on Group Executive Team Streamlining

1.1 Resolution on Group Executive Team Streamlining: Transfer and Appointment of Ms. Martha Ngoye, Chief Executive Officer(CEO) of Intersite Asset Investments SOC Ltd, to the position of Group Executive: Legal, Risk and Compliance

The Board having considered the background and presentation of the resolution of the PRASA Board on Group Executive Team Streamlining resolved:


- 1.1.1 To approve the transfer and appointment of Ms. Martha Ngoye, Chief Executive Officer(CEO), Intersite Asset Investments SOC Ltd, to the position of PRASA Group Executive: Legal, Risk and Compliance, effective 01 September 2014, and on the same terms and conditions of her current employment.
- 1.1.2 To approve the appointment of Mr. Patrick Gombert, currently Executive Manager: Property and Investments, Intersite Asset Investments SOC Ltd, to the position of Acting Chief Executive Officer(ACEO), Intersite Asset Investments SOC Ltd, effective 01 September 2014, until the recruitment process for the appointment of the Chief Executive Officer(CEO) has been finalised and a new CEO appointed.
- 1.1.3 To authorise and mandate a Team and/or Committee comprising of the Chairman of the Intersite Asset Investments SOC Ltd. Board, Mr. T.L. Montana, the Lead Independent Director, Mr. B. Boshielo, and the Chairperson of the HR and REM Committee, Ms.H.Luphuwana, assisted by the Acting Company Secretary, to Headhunt (through Spencer Stuart) a suitable candidate that will be recruited for appointment to the vacant position of Chief Executive Officer. Furthermore, the Board resolved to authorise and mandated the above said Team and/or Committee assisted by the Acting Company Secretary to headhunt (through Spencer Stuart and the Institute of Directors South Africa (IODSA)) a suitable candidate that



**RESOLUTION OF THE BOARD OF DIRECTORS OF INTERSITE ASSET INVESTMENTS
SOC LTD REG. NO: 1992/002160/07 ("the Company") HELD AT INTERSITE HEAD
OFFICE, FIRST FLOOR BOUNDARY PLACE, 18 RIVONIA ROAD, ILLOVO ON 11
AUGUST 2014.**

will be recruited for appointment to the vacant position of Company Secretary.

- 1.1.4 To authorise and mandate the Team and/or Committee tasked by the Board to recruit suitable candidates for the respective vacant Positions of Chief Executive Officer and Company Secretary, to advertise internally (and within the PRASA Group) the two (2) vacant positions simultaneously with the Headhunt recruitment process stated in 1.1.3 above.


MR TSHEPO LUCKY-MONTANA

CHAIRMAN OF THE INTERSITE ASSET INVESTMENTS BOARD

DATE: 12/08/2014



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SOUTH AFRICAN
RAIL COMMUTER
CORPORATION LTD

Mr. T Holele

30 May 2008

Dear Tiro

OFFER: GENERAL MANAGER: CORPORATE AFFAIRS

I have pleasure in advising you that it has been decided to offer you the position of General Manager: Corporate Affairs within the SARCC with effect from 01 June 2008. You will be reporting to the Chief Executive Officer.

You will be appointed on a salary scale of R1,381,250 total cost to company per annum. The particulars of your remuneration package will be communicated to you by the salaries office.

Other details of your conditions of employment shall be contained in a separate employment contract, which you shall be expected to sign when you assume your new position.

In congratulating you on this appointment, it is my wish that you will experience joy and job satisfaction in your new position.

Yours sincerely

LUCKY T MONTANA
CEO

This offer is only valid for 2 working days from the date of receipt by the applicant, where after it will automatically and without prior notice, expire, unless you respond to the offer within the specified period.

Please be reminded that all communication to you with regard to your package is strictly confidential.

HEAD OFFICE

86 Jorissen Place, Jorissen Street, Braamfontein, Johannesburg
Private Bag X101, Braamfontein, 2017
Telephone: +2711 773 1600
Facsimile: +2711 774 6288

DIRECTORS:

Z Nomvete (Chairperson),
TL Montane (CEO), B Boshelo,
SN Buthelazi, V Twala, P Mofosi,
N Tshombe (Ms), ZB Gasa (Ms),
MM Sorobe (Ms), T Momo (Ms),
M Pakir (K Pity),
T Mofube (Corporate Secretary)

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ACCEPTANCE OF OFFER:

Mr. Tiro Holele

APPOINTMENT: GENERAL MANAGER: CORPORATE AFFAIRS

I, TIRO Holele hereby accept the above position with effect
from 01 June 2008.

SIGNED: Holele ON 30 May 2008.

A large, stylized handwritten signature in dark ink, located in the bottom right corner of the page. The signature appears to be a combination of initials and a surname, possibly 'J. K.' or similar, written in a cursive style.



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PASSENGER RAIL AGENCY
OF SOUTH AFRICA

66 Jorissen Street
Jorissen Place
Braamfontein
Johannesburg

Private Bag X101
Braamfontein, 2017
T +2711 773 1600
F +2711 774 6299

Mr Tiro Holele
C/O PRASA
Head Office

01 December 2009

Dear Tiro

OFFER: GROUP EXECUTIVE: OFFICE OF THE GROUP CEO: PRASA

It is my pleasure to offer you the Position of Group Executive: Office of the Group Chief Executive Officer: PRASA with effect from 01 December 2009. You will report directly to the Group CEO: PRASA.

Your remuneration will be R 1 800 000 per annum, total cost to company.

The terms and conditions of your employment will be contained in a Contract of Employment to be concluded between you and the Company within three (3) months from the date of assumption of duty. In addition to the Contract of Employment, you will be required to enter into a Performance Agreement with the Company within the same period and serve a **six (6) months probation period.**

I trust that your stay with PRASA will be a fulfilling one and contribute to your development

Yours sincerely

TSHEPO LUCKY MONTANA
GROUP CHIEF EXECUTIVE OFFICER
DATE: 01/12/2009

This offer is only valid for 2 working days from the date of receipt by the applicant, where after it will automatically and without prior notice, expire, unless you respond to the offer within the specified period.

Please be reminded that all communication to you with regard to your package is strictly confidential.

Directors SN Buthelezi (Chairman), TL Montana (CEO),
P Molisoa, B Boshlelo, ZB Gasa, V Twala, M Fakir,
MM Serobe, H Lupumana, L Letlape

Company Secretary:
T Mahube

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PROGRESSIVE RAIL AGENCY
OF SOUTH AFRICA

ACCEPTANCE OF OFFER:

Mr Tiro Holele

OFFER: GROUP EXECUTIVE: OFFICE OF THE GROUP CEO: PRASA

I, TIRO Holele hereby accept/ ~~not accept~~ the
position of Group Executive: Office of the Group CEO: PRASA and will resume
duty on 1 December 2009

SIGNED: Holele ON 08/12/09 2009.



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PUBLIC INFORMATION
PUBLICITY

**BOARD OF CONTROL MEETING HELD AT PRASA HOUSE 1040 BURNETT
STREET HATFIELD
ON WEDNESDAY 31ST JULY 2013
AT 09H00 FOR THE FOLLOWING PURPOSE:**

1. To consider and approve the Restructuring of the Executive team at Prasa Corporate.

1.1 RESOLUTION

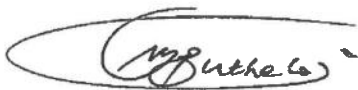
- 1.1.1 The Human Resources and Remuneration Committee has considered the submission from Management on the Restructuring of the Executive team informed by business requirements and experience as follows:

- 1.1.1.1. Ms. Ntebo Nkoenyane is appointed as Group Executive: Legal and Compliance, (and Her Curriculum Vitae is attached hereto)
- 1.1.1.2. Mr. Zwelakhe Mayaba is appointed as Group Executive: Chief Strategy Officer in the office of the GCEO. (and His Curriculum Vitae is attached hereto)
- 1.1.1.3. Mr. Tiro Holele is transferred to Intersite Investments as Executive Manager: Third Party Projects.
- 1.1.1.4. Consolidation of Supply Chain Management under Group Finance.

- 1.1.2 The Human Resources and Remuneration Committee informed the Board that Management submitted the memorandum in compliance with the delegation of authority which determine that the Board to give approval of the appointments of executive and restructuring of executive team.

1.2 THE BOARD APPROVES:**1.2.1 The Restructuring of the Executive team as follows:**

- 1.2.1.1 Ms. Ntebo Nkoenyane is appointed as Group Executive: Legal and Compliance.
- 1.2.1.2 Mr. Zwelakhe Mayaba is appointed as Group Executive: Chief Strategy Officer in the office of the GCEO.
- 1.2.1.3 Mr. Tiro Holele is transferred as Executive Manager: Third Party Projects, Intersite Investment, subject to the Intersite Investment Board approving the transfer and appointment of Mr. Holele as Executive Manager: Third Party Projects.
- 1.2.1.4 Consolidation of Supply Chain Management under Group Finance.



MR SFISO BUTHELEZI
CHAIRMAN OF THE BOARD OF CONTROL

21. 08. 2013

DATE



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INTERSITE
ASSET INVESTMENTS

EXTRACT OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF
INTERSITE ASSET INVESTMENTS SOC LTD REG. NO: 1992/002160/07 ("the Company")
HELD AT INTERSITE HEAD OFFICE, FIRST FLOOR BOUNDARY PLACE, 18 RIVONIA
ROAD, ILLOVO ON 4 DECEMBER 2013

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Appointment of Executive Manager: Third Party Projects

The Board **RESOLVED** to appoint Mr Tiro Holele as Executive Manager for Third Party Projects with effect from 1 November 2013 subject to the Group CEO and Group HCM finalising his person-to-holder remuneration.

CERTIFIED A TRUE COPY OF THE EXTRACT OF THE MINUTES

COMPANY SECRETARY

11 Feb - 14

DATE

Payroll data sent to CFO

INTER SITE IS A SUBSIDIARY OF PRASA

Boundary Place
1st Floor, East Wing
18 Rivonia Rd, Rivonia
Gauteng, South Africa
www.intersite.co.za

P.O. Box 999
Sunninghill, 2127
South Africa
T +27 21 502 8300
F +27 21 502 8322

Intersite Asset Investments SOC Ltd
Reg. No. 1992/002160/07
VAT No. 4220154947

Directors:
T. L. Montano (Chairman);
B. Doshlele; M. Mokoale;
P. Mokoale; L. Zide;
H. Luthemane; J.A. Daggempe;
N. Nkomo (CEO); L. Luthemane (CFO);
F. Seta (Company Secretary)



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PASSENGER RAIL AGENCY
OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7000

"OMNII"

www.prasa.com

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Dear Mr Holele

Via email: tholele@intersite.co.za

RE: SUBMISSION ON STRATEGY FUNCTION

Dear Mr Holele,

SECTION 189 CONSULTATIONS

1. I acknowledge receive of your submission to be considered for the Strategy function dated 27 July 2020, received on 30 July 2020.
2. Your submission refers to the position of Chief Strategy Officer (CSO), which was previously a Group Executive position.
3. During the meeting held on 22 July 2020, I indicated to yourself that the position of Group Chief Strategy that existed on the PRASA Group EXCO structure in 2014 has now been recreated as General Manager Strategy and is no longer a Group Executive position.

Administrator
B. Mpondo

Group Company Secretary
S. Dlamini

Bm



4. Please confirm in writing on or before 17h00 on 3 August 2020 your willingness to be appointed in the position of General Manager Strategy, based on your current remuneration on a Personal to Holder Basis. A new employment contract and performance agreement, reflecting your new position, duties and responsibilities, will then be concluded with you.
5. However, it is intended that should you be willing to consider the appointment, your appointment will be with effect from a date to be discussed with you.

Yours sincerely

MR. BONGISIZWE MPONDO

ADMINISTRATOR: PRASA

DATE: 31/07/2020



CRAWFORD & ASSOCIATES

10 Bolton Road
(Cnr Sussex Str)
Parkwood
Johannesburg

Postnet Suit 64
Private Bag x7
Parkview
Johannesburg, 2122

Tel: +2711 447 3980
Fax to e-mail: 0866 809 512
Email: info@crawfordlaw.co.za
Web: <http://www.crawfordlaw.co.za>

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Our Ref: JD Crawford

03 August 2020

THE ADMINISTRATOR - PRASA

ATT: MR BONGISIZWE MPONDO

BY E-MAIL: Bongisizwe.Mpondo@prasa.com

Dear Sir,

RE: TIRO HOLELE

1. Your letter dated 31st July 2020 has reference.
2. On the understanding that you have unilaterally extinguished our client Mr Holele's role of Group Executive in the Office of the Group CEO and have rejected his proposal to have his position merged with the position of Group Chief Strategy Officer (in terms of which he has offered and proposed to performed both roles), he accepts the new post of General Manager: Strategy (the precise nomenclature and KPI to be agreed).
3. Our client records that:
 - 3.1. You have refused or failed to respond to all the substantive issues raised in our client's and this offices' correspondences with you.
 - 3.2. Our client reserves his right to raise those substantive issues with a lawfully and duly constituted Accounting Authority for PRASA in due course.
 - 3.3. Given the many calamitous appointments and decisions of the past four years it is important for our client for the PRASA Family to pick up the pieces and he trusts and hopes he will be allowed and enabled to develop the Strategy Function to its full potential for the long term benefit of PRASA.

Regards

J D CRAWFORD



prasa

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

Umjantshi House
30 Wolmarans Str.
BRAAMFONTEIN
2001

Private Bag X101
Braamfontein, 2107
T +2711 013 1667

www.prasa.com

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130

Mr Tiro Holele
SAP: 20000417

01 February 2021

Re: Termination of Employment

1. Having perused PRASA's records, a letter of appointment dated 01 December 2009 relates to your last role as Group Executive: Office of the GCEO, I attach the letter as **annexure A**.
2. For your current position, Group Executive: Office of the GCEO, there is no contract of employment that was signed between yourself and PRASA in our records.
3. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives.
4. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.
5. You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,

Ms Thandeka Mabija
Acting Group Chief Executive Officer
Passenger Rail Agency of South Africa

Directors
L. Ramatlakane (Chairman), Adv. S. Sethene,
M. Mukhuba, DK. Mohuba, X. George,
N. Nokwe-Macamo, TN. Mpye, T. Zulu

Acting Group CEO
T. Mabija

Group Company Secretary
S. Dlamini

"OMN 14"

Martha Ngoye
malebethengoye@gmail.com
082 336 6812

131

31 January 2021

The Members of the Board of Control ("the Board") of PRASA and Acting Group CEO
Mjantshi House
30 Wolmarans Street,
Braamfontein
Johannesburg

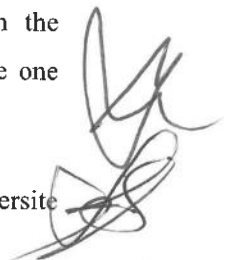
per e-mail

Dear Members of the Board of PRASA and the Acting Group CEO

CC: Group Executive: Human Capital Management

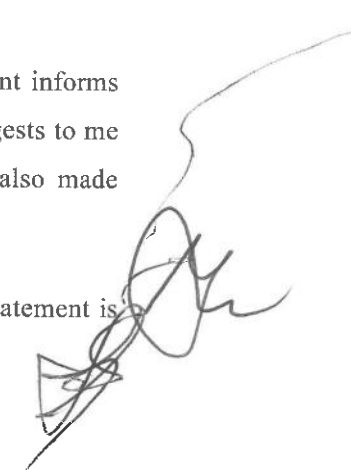
Termination of my Employment

1. I received the letter attached hereto and dated 29 January 2020 on the evening of the 29th January 2021 (characterized as a "termination letter", which in fact is unlawful, as I shall in a moment demonstrate).
2. Reference to 2020 in the date is wrong. I received a media statement issued by PRASA on 30 January 2021 and which was published on PRASA's twitter account and which contained numerous references to work done by the Board in relation to the unlawful termination of my employment.
3. This is my response to the alleged termination of my employment with PRASA and key aspects of the media statement.
4. I do not know what documents the Board was provided with when it did the review of my contract of employment at PRASA. There is no relationship between the conclusions recorded in my termination letter and the media statement, on the one hand, and my contract of employment, on the other.
5. I therefore attach for the benefit of the Board, my contract of employment at Intersite



whose terms and conditions remain extant and effective notwithstanding my transfer to PRASA.

6. The letter confirming my internal transfer that is attached to the termination letter clearly states the transfer *"is a lateral transfer and all other terms and conditions not amended by this transfer ... remain unchanged"*. This position is consistent with paragraph 1.1.1 of the board resolution of Intersite dated 11 August 2014. This is repeated in paragraph 4 of my termination letter. The letter confirming my internal transfer, which is only one page, does not amend the duration of my appointment at all. It only amended my position: from CEO of Intersite to Group Executive: Legal, Risk & Compliance of PRASA. Nothing else.
7. The termination letter does not refer to any other amendment of my contract by any legal instrument. It clutches at straws; *"the normal five years fixed-term contract extended to all executives"*. The letter is silent on what the legal basis is for the so-called *"normal five years fixed-term contract extended to all executives"*.
8. Although the letter under reply purports to impose an obligation on me to have *"brought this administrative defect to the attention of PRASA"*; fact is, the first time I heard of this, is in the termination letter.
9. According to the media statement, the analysis by the Board of *"employment contracts of executives [showed] that some ... executives ought to have left PRASA years ago"*. The statement further states that *"[a]ll executives at PRASA are employed for a period not exceeding 5 years with no expectation for extension of the employment contract" [sic]*.
10. I note that there is a discrepancy around the date of my transfer to PRASA between my termination letter and the media statement. The termination letter states that I was transferred on 1 September 2014 and the media statement says that I was transferred on 1 September 2015. The termination letter is correct in this regard.
11. That the termination letter under reply does not state what legal instrument informs this *"normal five years fixed-term contract extended to all executives"* suggests to me that there is no legal instrument relied upon for this statement. I have also made enquiries about this supposed 'norm' and no one else seems to know of it.
12. The five-year duration of the employment contracts stated in the media statement is

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is written over the end of the 12th list item.

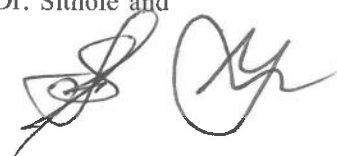
not contained in my contract of employment. In relation to fixed-term contracts of executives I have been informed that:

- 12.1. According the organisational structure of PRASA, the following employees are regarded as executives:
 - 12.1.1. Group Executives – these include divisional and subsidiary CEOs;
 - 12.1.2. the Chief Finance Officers of the business Divisions of PRASA;
 - 12.1.3. General Managers at the Corporate Office;
 - 12.1.4. Executive Managers at Divisions and Subsidiaries of PRASA; and
 - 12.1.5. Regional Managers of the PRASA regions.

There are about 20 PRASA employees who fall under this category. If the review of the Board showed that “[a]ll executives at PRASA are employed for a period not exceeding 5 years with no expectation for extension of the employment contract”, this would not have affected only 3 executives because the overwhelming majority of the executives have been at PRASA for more than 5 years.

- 12.2. Furthermore, PRASA’s Information Technology system is set up to ensure that employees with fixed term contracts are loaded onto the system as such, that the duration of their contracts is loaded onto the system and there are notifications that are sent to the employee concerned before the end of the duration of the contract. The systems are set up to ensure that, notwithstanding any leadership instability, employment contracts that reach their termination date are duly terminated. That is what happened in the case of Dr. Sipho Sithole (“Dr Sithole”).

- 12.3. Very few executives had fixed-term contracts. My information is that the former Group Chief Executive Officer of PRASA, Mr. Lucky Montana and possibly Mr. Fenton Gastin who was the Group Chief Finance Officer of PRASA had fixed-term contracts. The other Group Executive that I know to have had a fixed term employment contract in PRASA was Dr. Sithole and



this was done at his request and not because of some 'norm' in PRASA. The norm at PRASA is permanent contracts for executives – this may not be preferred but it is factual and there are lawful ways to change this norm.

- 12.4. The first time that the matter of fixed-term employment contracts for all Group Executives was raised by the Board was raised by the Board that was led by Ms. Khanyisile Kweyama. This Board decided to implement this regime in respect of all the new Group Executives that they appointed and amended the standard contract concluded with Group Executives. The employment contracts for Group Executives that were appointed for an indefinite period were not amended.
- 12.5. Therefore the correct records of PRASA correctly construed will show that, save for Dr. Sithole who requested a fixed-term contract, all Group Executives that were employed before the decision by the Kweyama Board were employed as permanent employees and all the Group Executives that were appointed by the Kweyama Board were appointed as fixed-term employees; and
- 12.6. No Board or relevant legal instrument amended the indefinite employment status of the few Group Executives that were appointed before 2019 and were employed on an indefinite basis; all indications are that the Board elected that this new regime will be changed by the natural attrition of executives.
13. I am certain that the Board is aware of the trite law that no party to a contract may unilaterally change the terms of any contract. The Board appears to have been misled to the existence of some "*normal five years fixed-term contract extended to all executives*". The Board will be well advised to ask for:
- 13.1. the legal instrument that provided for this 'norm' as it is not in my contract,
- 13.2. the process that was undertaken to change permanent employment contracts to fixed-term employment contracts;
- 13.3. and written evidence that the parties to the permanent employment contracts agreed to this change; and



13.4. the duration of the fixed-term contracts.

14. On Monday, 18 January 2021, the members of the Board, Ms. Mabija and I are amongst the people that received an exit letter from Mr. Dingiswayo. In this letter, Mr. Dingiswayo details several instances of what he referred to as Human Capital Management “gaffes” for which Ms. Mabija should account for in her substantive position as Group Executive: Human Capital Management. If the Board allows for the unlawful termination letter to stand, the Board will, in my respectful view, be party to the maladministration of human capital management at PRASA.

15. In my report to the Board meeting of 28 January 2021 on the Public Protector Report entitled “Derailed”, I reported that:

“3.2.2. Unlawful suspension of employees and a general irregular management of human resources. In this regard, the Public Protector essentially found that discipline was selective, people were dismissed and, at a later stage, they were paid settlement amounts which evinced that their dismissal was unfair. This was contrasted with instances where managers who had allegations against them were not subjected to discipline. This, we believe, may have informed the recommendation for an investigation aimed at finding managers implicated in wrongdoing and disciplining them”.

[emphasis added]

16. I sought to extrapolate lessons from this report and stated that:

“6.4. It also appears that ‘discipline’ was being used to further a culture of maladministration by ensuring impunity for one set of managers and an iron-fist for another set of managers.”

[emphasis added]

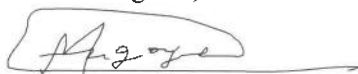
Little did I know that exactly a day my report was supposed to be presented to the Board, I would be a victim of this conduct that I reported to the Board.

17. I have carefully taken the Board through all of the above as I believe that the Board can save PRASA from being seen to be a repeat offender in relation to offences that

were pointedly flagged by the Public Protector as far back as 2015. I implore the Board to correct this latest gaffe by close of business on 1 February 2021.

18. Naturally, if this is not resolved, I will have to resort to urgently protect my legal rights and ask for those who are responsible for making this decision and permitting it to stand personally liable for the consequences of this decision. It will be unfair for PRASA to incur costs in relation to patently unlawful decisions taken by its officers.
19. I will appreciate a response by close of business on 1 February 2021.

Kind regards,



Martha Ngoye

PS: In respect of the tired old allegation whose sole zealous apostle to date is the discredited Mr. Lucky Montana relating to the R58 million, the Board has approved the condonation of the irregular contract in 2016 and the person who committed this irregularity was dismissed after a disciplinary process around 2014. Twice have I submitted a list of claims instituted by PRASA which contains a claim against SA Fence and Gate (Pty) Limited ("SAFG") for an amount of R78 million being the difference between the amount paid by PRASA to SAFG and the amounts certified by an independent engineer to be the value of the work by SAFG. I have carefully tracked this matter and testified at the hearing in this matter and can assure the Board any litigation against me in this regard will be a waste of time and money for PRASA. I find it very unfortunate and grossly unfair that, in its media statement, the Board elected to publish that I unlawfully approved payment of R58m to SAFG when I had no authority to do so. This statement was published before the Board presented this allegation to me. This statement is defamatory.



From: Martha Ngoye <malebethengoye@gmail.com>
Sent: Wednesday, 03 February 2021 13:42
To: Ngcebo Mfusi; Nokulunga Mthembu
Subject: Fwd: TERMINATION OF MY EMPLOYMENT - MARTHA NGOYE
Attachments: Letter to Board and AGCEO_31 January 2021_signature version-signed.pdf; RESOLUTION OF THE BOARD 11 AUGUST 2014 Martha Ngoye transfer from Intersite to PRASA.pdf; Martha Onica Ngoye Contract of Employment Intersite.pdf

Begin forwarded message:

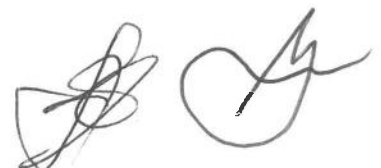
From: Martha Ngoye <malebethe.ngoye@gmail.com>
Subject: TERMINATION OF MY EMPLOYMENT - MARTHA NGOYE
Date: 31 January 2021 at 18:44:14 SAST
To: lenie12@gmail.com, Dinkwanyane.Mohuba@ul.ac.za, matodzi.mukhuba@prasa.com, smanga@lawsethene.com, nosizwe.macamo@gmail.com, ndidi@mpyeconsulting.co.za, Mr Xolile George <xgeorge@salga.org.za>, thandeka.mabija@prasa.com
Cc: Martha Ngoye <malebethengoye@gmail.com>

Dear Members of the PRASA Board of Control, AGCEO

Find attached the documents below for your attention. The documents are self explanatory.

Regards

Martha Ngoye





INTERSITE
ASSET INVESTMENTS

**RESOLUTION OF THE BOARD OF DIRECTORS OF INTERSITE ASSET INVESTMENTS
SOC LTD REG. NO: 1992/002160/07("the Company") HELD AT INTERSITE HEAD
OFFICE, FIRST FLOOR BOUNDARY PLACE, 18 RIVONIA ROAD,ILLOVO ON 11
AUGUST 2014.**

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1. To consider and approve the Resolution taken by the PRASA Board on Group Executive Team Streamlining

1.1 Resolution on Group Executive Team Streamlining: Transfer and Appointment of Ms. Martha Ngoye, Chief Executive Officer(CEO) of Intersite Asset Investments SOC Ltd, to the position of Group Executive: Legal, Risk and Compliance

The Board having considered the background and presentation of the resolution of the PRASA Board on Group Executive Team Streamlining resolved:

- 1.1.1 To approve the transfer and appointment of Ms. Martha Ngoye, Chief Executive Officer(CEO), Intersite Asset Investments SOC Ltd, to the position of PRASA Group Executive: Legal, Risk and Compliance, effective 01 September 2014, and on the same terms and conditions of her current employment.
- 1.1.2 To approve the appointment of Mr. Patrick Gombert, currently Executive Manager: Property and Investments, Intersite Asset Investments SOC Ltd, to the position of Acting Chief Executive Officer(ACEO), Intersite Asset Investments SOC Ltd, effective 01 September 2014, until the recruitment process for the appointment of the Chief Executive Officer(CEO) has been finalised and a new CEO appointed.
- 1.1.3 To authorise and mandate a Team and/or Committee comprising of the Chairman of the Intersite Asset Investments SOC Ltd. Board, Mr. T.L. Montana, the Lead Independent Director, Mr. B. Boshielo, and the Chairperson of the HR and REM Committee, Ms.H.Luphuwana, assisted by the Acting Company Secretary, to Headhunt (through Spencer Stuart) a suitable candidate that will be recruited for appointment to the vacant position of Chief Executive Officer. Furthermore, the Board resolved to authorise and mandated the above said Team and/or Committee assisted by the Acting Company Secretary to headhunt (through Spencer Stuart and the Institute of Directors South Africa (IODSA)) a suitable candidate that




Mr. T.L. Montana (Chairman)
Mr. Boshielo (Lead Independent Director)
Ms. H. Luphuwana (Chairperson of the HR and REM Committee)
The Acting Company Secretary
Mr. N. Nkomo (Chief Executive Officer)
Mr. N. Nkomo (Chief Executive Officer)



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DATE: 12/08/2014



INTERSITE
INVESTMENTS**CONTRACT OF EMPLOYMENT****ENTERED INTO BETWEEN:****INTERSITE ASSET INVESTMENTS SOC LTD***(Hereinafter referred to as "the Employer")***AND****MARTHA ONICA NGOYE****ID No: 6912190445080***(Hereinafter referred to as "the Employee/the Executive").*

CONTRACT OF EMPLOYMENT

This contract of employment shall be used in the appointment of the following positions:
Chief Executive Officer and Executives of INTERSITE ASSET INVESTMENTS SOC LTD

1. PARTIES

- 1.1 This employment contract is concluded between Intersite Asset Investments, hereinafter referred to as "the Employer" and
- 1.2 Martha Onica Ngoye hereinafter referred to as "the Employee"/Executive
- 1.3 The parties as set out in 1.1 and 1.2 above hereby record their agreement in writing.

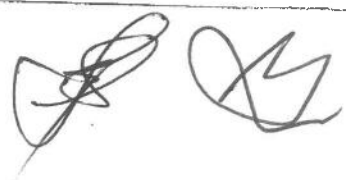
2. INTERPRETATION

In this agreement unless the context clearly indicates a contrary intention:

- 2.1 Clause headings in this agreement are used for convenience only and shall be ignored in its interpretation;
- 2.2 Unless the context clearly indicate a contrary intention:
 - 2.2.1 the singular shall include the plural and vice versa.
 - 2.2.2 a natural person shall include an artificial person and vice versa; and
 - 2.2.3 any one gender shall include the other genders.
- 2.3 The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
 - 2.3.1 "this agreement" means this executive employment agreement and its annexures and any policies of the Employer which may apply in terms hereof;
 - 2.3.2 "the BCEA" mean the Basic Conditions of Employment Act 75 of 1997, (as amended);
 - 2.3.3 "Board" means the Board of Directors of the Employer.
 - 2.3.4 "Board Resolution" means a resolution taken by the Board.



- 2.3.5 "the Code" means Schedule 8 of the Code of Good Practice as contained in the Labour Relations Act;
- 2.3.6 "commencement date" means notwithstanding the signature date, the commencement date specified under Item 6 of annexure A to this agreement;
- 2.3.7 "Conditions of Service" means the conditions of service of the Employer, established in terms of the Legal Succession Act 89 of 1989;
- 2.3.8 "The Constitution" means the Constitution of the Republic of South Africa, Act 108 of 1996, (as amended);
- 2.3.9 "The Employer" means Intersite Asset Investments SOC Ltd.
- 2.3.10 "PFMA" means the Public Finance Management Act, 1 of 1990 (as amended);
- 2.3.11 "signature date" means the date of signature of this agreement by the last signing of its signatories;
- 2.3.12 "termination date" means the date of termination of employment of the Executive specified as item 7 on annexure A;
- 2.3.13 "LRA" means the Labour Relations Act, 66 of 1995 (as amended);
- 2.4 "no fault termination" means any termination based on:
- 2.4.1 the capacity of the Executive as set out under items 9,10 and 11 of the Code;
- 2.4.2 termination by mutual agreement;
- 2.5 "PFMA" means the Public Finance Management Act, 1 of 1990 (as amended);
- 2.6 "Performance Agreement" means the performance agreement concluded between the Group Executive and the Employer;
- 2.7 "R" and "Rands" means the currency of the Republic of South Africa free of any exchange rate.



2.8 "remuneration" means the compensation payable to the Executive in terms of this agreement as set out under clause 7 of this agreement read together with Annexure B to this agreement;

2.9 "Resolution" means any resolution passed by the Employer and shall be deemed to be incorporated by reference into this agreement and shall form part of this agreement.

2.10 "signature date" means the date of signature of this agreement by the last signing of its signatories;

2.11 "termination date" means the date of termination of employment of the Executive specified as item 7 on annexure A;

3. APPOINTMENT AND DURATION

3.1 The Employer hereby appoints Martha Onica Ngoye to the position of Chief Executive Officer and the Employee accepts such appointment, subject to the terms and conditions contained in this agreement and its annexures.

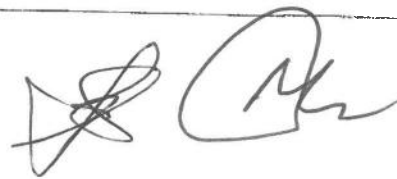

3.2 Notwithstanding the date of signature hereof, this agreement and the appointment referred to in 3.1 shall commence and shall in all respects be deemed to have commenced on 01 September 2011 and shall endure until terminated as provided for herein.

4. RESOLUTIVE CONDITION

Notwithstanding anything to the contrary contained in this agreement, the Employee shall be required to conclude a performance agreement with the Board within 3 (three) months of the appointment of the Employee, failing which this agreement shall automatically terminate immediately upon the expiry of the period referred to in this clause, or upon expiry of such reasonable extension of the period as may have been agreed to by the Employer.

5. APPOINTMENT TO BE FULL TIME

During the subsistence of this agreement, the Employee shall devote her time and attention during normal working hours to the business and affairs of the Employer and she shall not be



engaged either directly or indirectly in any other form of business or employment without the prior written consent of the Employer.

6. HOURS AND PLACE OF WORK

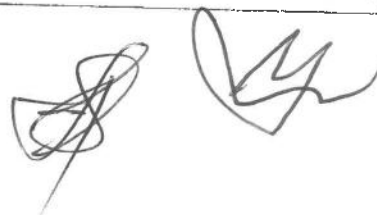
6.1 The Employee agrees to work such hours and on such days as determined by the operational needs and requirements of the Employer from time to time and which shall not be less than 40 (Forty) hours and 5 (Five) days a week.

6.2 The ordinary hours presently worked at Intersite are from 09h00 to 17h00, from Monday to Friday, which may, however, by mutual consent between the parties, be amended from time to time, having regards to the operational needs and requirements of the Employer.

6.3 The Employer may require the Employee to work more than the stipulated hours referred to in 6.1 above and on Saturdays, Sundays and/or Public Holidays. The Employee shall neither be entitled to nor receive overtime pay for such additional work.

The Employee's official place of work shall be Boundary Place, 18 Rivonia Road Illovo, Gauteng, and/or such other place elsewhere in the Republic of South Africa to which the Employer may in the future relocate to. The Employer may also require the Employee to work at such places within the Republic of South Africa whether on a temporary or permanent basis as the Employer may from time to time determine and the Employee agrees to comply with any instruction to that effect.

6.4 The Employer may require the Employee to travel locally and/or internationally in the performance of her duties, and the Employee agrees to comply with instructions to that effect. The Employer shall be responsible for the cost of such travel and the reimbursement of expenses incurred by the Employee during such travel in accordance with its subsistence and travel policy or other applicable policy as may be in force from time to time.



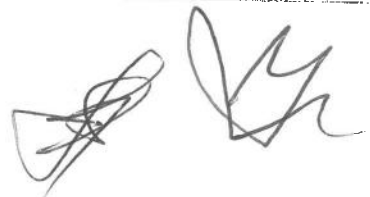
7. REMUNERATION

7.1 COMPENSATION

- 7.1.1 The Employee shall receive such compensation and other benefits of employment as may be agreed to between the parties from time to time.
- 7.1.2 The current compensation of the Employee shall be the compensation, allowances and other employment costs set out in annexure B.
- 7.1.3 The Employee's compensation may from time to time by agreement with the Employer be structured in such a manner as may lawfully achieve optimum tax efficiency.
- 7.1.4 The Employer shall, at its sole discretion, reimburse the Employee for all reasonable expenses incurred by the Employee in providing the services, on condition that the Employee provides the Employer with sufficient documentary proof of such expenses, and that the expenses were obtained in accordance with the official policies and approval authorities of the Employer from time to time.
- 7.1.5 The Employer shall pay the Executive's remuneration monthly in arrears on or before the 27th of each month, with *pro rata* payments for incomplete months of employment.

7.2 PERFORMANCE BONUS

- 7.2.1 A performance bonus will be paid to the Executive annually in accordance with the Executive's performance as further provided for in the Employer's policies and procedures applicable from time to time.
- 7.2.2 The Executive will qualify for a performance bonus subject to the achievement of the organisational and her individual performance targets. This is subject to the Board approving such performance bonus scheme.



7.3 ALLOWANCES AND BENEFITS

- 7.3.1 In order for the Executive to carry out her duties under this agreement, the Executive will be required to use a motor vehicle and consequently will incur expenses in connection with the financing, licensing, insurance, maintenance, upkeep, running and repair of that vehicle. The Executive shall structure her remuneration to include travel allowance, to be reviewed annually in accordance with the policies and procedures of the Employer as determined from time to time.

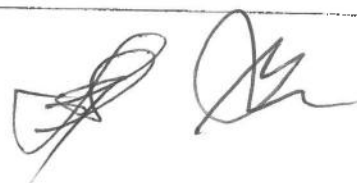
In order for the Executive to carry out her duties under this agreement, the Executive will be required to travel on business, both locally and internationally. From time to time the Executive will have to stay out of town for one or more nights. The Employer shall pay the Executive a subsistence allowance to meet these expenses. The amount of the allowance will be advised to the Executive by the Employer in writing, from time to time, and is subject to the policies and procedures as may be determined by the Employer from time to time.

7.4 MEDICAL AID SCHEME AND RETIREMENT FUND

- 7.4.1 The Executive shall, unless she is registered as a dependent on the medical aid scheme of her spouse, become a member of a medical aid scheme(s) of her choice and will be subject to the rules and regulations of such scheme(s).
- 7.4.2 The Executive shall become a member of the Employer Provident Fund and Retirement Fund as established from time to time and will be subject to the rules and regulations of such Fund(s). The Employer shall pay contributions to the Fund(s) in terms of its policies and procedures as determined from time to time. The current contribution rates are set out in Annexure B.

8 LEAVE

- 8.1 The Executive shall be entitled to the amount of working days paid annual leave specified under item 4 of Annexure A to this agreement.



8.2 The annual leave:

- 8.2.1 shall be regulated by the Employer's leave policy and procedures;
- 8.2.2 shall be taken at times convenient to the Employer ;
- 8.2.3 may be accumulated by the Executive on the basis provided for in the Employer's leave policies from time to time; and
- 8.2.4 must be applied for in writing to the Board Chairman or his/her nominee and as such possible notice of the intended leave must be given.

8.3 The Executive shall be entitled to the amount of sick leave as specified under Item 9 of Annexure A to this agreement. All sick leave shall be taken in accordance with the Employer's leave policies and procedures.

8.4 All other forms of leave due to the Executive shall be regulated by the Employer leave policies and procedures.



9. TERMINATION

9.1 During the currency of this agreement, the parties shall have the right to terminate the employment relationship on the following grounds, provided that the parties shall in all respect have complied with the Employer's Internal policies and procedures and the provisions of the LRA prior to such termination.

9.1.1 Summarily and without notice for any reason on the misconduct of the Executive or any other cause recognized by law as sufficient.

9.1.2 In terms of this agreement, the Employee will serve a three months' notice.

9.2 In lieu of the notice set out in 9.1.2, the Employer may elect to pay the Executive the compensation to which the Executive would have been entitled if the Executive had worked during the notice period. Similarly, the Executive may, in lieu of notice; elect to forfeit the compensation to which she would have been entitled to if she had worked during the notice period.

9.3 Notwithstanding any termination of this agreement for any reason, the provisions of clause 10 shall remain of full force and effect.

10. RESTRAINT OF TRADE

No ex-Employee may be granted a tender of any other work with Intersite (its holding company) for the period of two years after termination of the agreement.

11. RETURN OF ASSETS

The Executive shall deliver to the Employer whenever the Employer requires her to do so and, upon termination of this agreement for any reason, all assets, books of account, records, information, correspondence and notes (in whatever media they are contained) concerning or contained any reference to the work of operations of the Employer, which belongs to the Employer or are in the possession or under the control, directly or indirectly, of the Executive.

12. SUSPENSION OF EMPLOYMENT

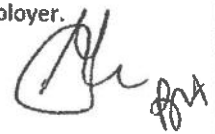
12.1 If The Employer:

12.1.1 Reasonably suspects that the Executive is guilty of any conduct which may, if proved, justify her dismissal; or

12.1.2 The Board considers it undesirable that she remains at work while an investigation is taking place; or

12.1.3 She has committed a breach of any of the terms of this agreement, it may, pending a duly constituted investigation and enquiry into the alleged conduct in question and after compliance with the requirements as laid down in the LRA, but without prejudice to its right of summary dismissal in terms of clause 9 and without giving rise to any claim for damages or otherwise against it, suspend the Executive for the period of the investigation and the inquiry into the alleged misconduct, during which period the Executive shall:

12.1.3.1 Not be entitled to attend work at the premises of the Employer.



- 12.1.3.2 Be entitled to be paid her normal remuneration and employment benefits as set out under clause 7 above.

13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

The Executive undertakes to acquaint herself with and be bound by the provisions of the Employer's Confidentiality, Intellectual Property and Non-Solicitation Policies and Procedures in place from time to time.

14. CONSENT IN TERMS OF THE REGULATION OF INTERCEPTION OF COMMUNICATION AND PROVISION OF COMMUNICATION RELATED INFORMATION ACT 70 OF 2002

The Executive consents to the Employer monitoring and intercepting its communications systems of the Employer used by the Executive and this consent constitutes consent in terms of the Regulation of Interception of Communication and Provision of Communication Related Information Act 70 of 2002.

15. BREACH

Save as otherwise provided in this agreement, should either party commit a breach of any provision of this agreement and fail to remedy such breach within 7 (seven) days after receiving written notice from the aggrieved party requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to the aggrieved party's other rights in law, to cancel this agreement (other than the provisions of 10 which shall notwithstanding any such cancellation continue to be of full force and effect) or to claim immediate specific performance of all the defaulting party's obligations whether or not due for performance, in either event without prejudice to the aggrieved party's rights to claim damages.

16. DISPUTES

16.1 Any dispute arising from or in connection with this agreement shall (with the exception of urgent relief claimed from a Court of competent jurisdiction):

16.1.1 in the first instance be referred to mediation by a mediator acceptable to both parties; and



16.1.2 failing resolution by mediation, shall be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators appointed by the Foundation.

16.2 The costs of mediation and arbitration will be borne by both parties equally, unless otherwise ordered by the arbitrator.

17. DOMICILIUM AND NOTICES

17.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:

17.1.1 The Employer Physical -

18 Rivonia Road
Boundary Place
Illovo
GAUTENG
2157

Postal -

P O Box 999
Sunninghill
2157

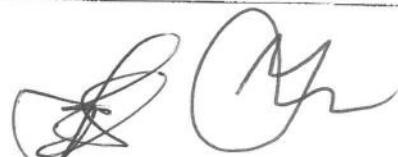
17.1.2 Executive : the address specified under item 8 of Annexure A

17.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its:

17.2.1 physical domicilium to any other physical address (not being a post office box or poste restante)

17.2.2 to vary its postal domicilium to any other postal address; and

17.2.3 to vary its facsimile domicilium to any other facsimile number.



17.3 Any notice given or payment made by either party to the other ("addressee") which is:

17.3.1 Delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicile for the time being shall be deemed to have been received by the addressee at the time of delivery;

17.3.2 posted by prepaid registered post to the addressee's postal domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the fourteenth day after the date of posting.

17.4 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the business day immediately succeeding the date of successfully transmission thereof.

17.5 This shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to under clauses 17.2 and 17.3 above.

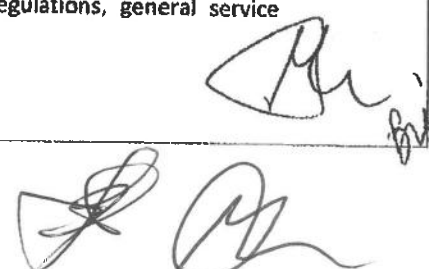
17.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

18. NON-ASSIGNMENT

This agreement is personal to the Executive and the Executive shall not be entitled to assign, transfer, alienate or otherwise dispose of all or any of her rights and/or obligations under this agreement.

19. GENERAL

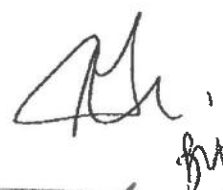
19.1 This agreement read together with any annexures hereto, and together with the Employer's Human Capital Management Policies and Procedures, and any of the Employer's other policies, procedures, codes, values, regulations, general service



conditions and the like, as amended from time to time, constitutes the whole employment agreement between the Executive and the Employer.

A copy of the Employer's Human Capital Management Policies and Procedures is available from the Employer's Human Capital Management or the company's intranet and the Executive undertakes to immediately acquaint herself with the contents of such policies and procedures.

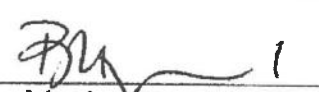
- 19.2 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 19.3 No addition to, variation, or agreed cancellation of this agreement and its annexures shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 19.4 No indulgence which either party ("grantor") may grant to the other ("grantee") shall constitute a waiver of any of the rights of the grantor, which shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.
- 19.5 Should any provision hereof be held to be illegal, invalid or unenforceable for any reason, then such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.
- 19.6 The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this agreement to the extent to which they confer rights or impose obligations upon the parties which are exercisable or enforceable after the termination date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall furthermore not prejudice any rights which have accrued to the parties as at the termination date.



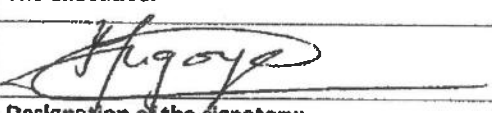
20. GOOD FAITH

In the implementation of this agreement, the parties undertake to observe the utmost good faith, and they warrant in their dealings with each other that they will not do anything nor refrain from doing anything which might prejudice or detract from their rights, assets or interests.

Done and signed at Illovo on the 31 day of October 2012

Witness	For and on behalf of Intersite Asset Investments SOC Ltd , he being duly authorised thereto:
	
	Designation of the signatory:
	CHAIRPERSON: HR COMMITTEE

Done and signed at Illovo on the 26th day of October 2012

Witness	The Executive:
	
	Designation of the signatory:
	CHIEF EXECUTIVE OFFICER



ANNEXURE A – SALIENT DETAILS OF EMPLOYMENT

1. **Full Name:** Martha Onica Ngoye
2. **Identity Number:** 6912190445080
3. **Capacity:** Chief Executive Officer
4. **Annual Leave Entitlement:** 22 Days per annum
5. **Duration:** Permanent
6. **Commencement Date:** 01/09/2011
7. **Termination Date:** N/A
8. **Physical Address, postal address and telefacsimile:**

Physical – 41 Cashane
 199 Pritchard Street
 Johannesburg North
 2153

Postal - Postnet Suite 291
 Private Bag X1
 Jukskei Park
 2153

9. **Sick Leave entitlement:** 40 working days per leave cycle.

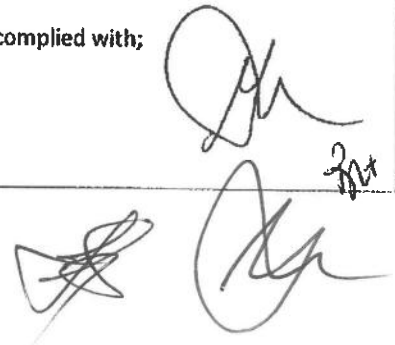
 

ANNEXURE B – COMPENSATION PACKAGE

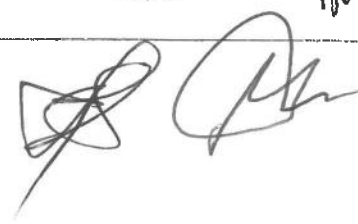
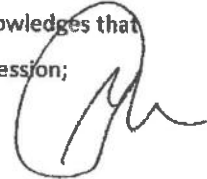
1. An annualised salary package of R2 200 000.00 total cost to the Employer per annum , inclusive of contributions i.e. 11% Provident Fund and Medical Aid, payable on the 27th of each month.
2. The Executive is eligible for a performance-based bonus, dependent on the Executive's performance and payable subject to signature of a performance agreement detailing key performance objectives as agreed between the Executive and the Employer.
3. The Executive is eligible to participate in Intersite's approved long term Incentive scheme, dependent on the Executive's performance rating and payable as stipulated in Intersite's Policy.
4. The Executive may exchange components of the package between benefits and cash, subject to the range of benefits offered by the Employer. The Executive may do this annually at salary review time or at a time of material adjustments to the total package. The Executive's salary review will be conducted annually in accordance to the policies of the Employer.

ANNEXURE C – PERFORMANCE CONTRACT**1. GENERAL DUTIES**

- 1.1 The Executive shall report to the Board and shall report on such matters and furnish such information as the Board and/or its nominee(s) may, from time to time, require;
- 1.2 The Executive shall be responsible for the general management of the day to day business and operations of the Employer, subject to the general and specific directions and instructions, if any, that the Executive Committee may have from time to time;
- 1.3 Keep the Executive Committee or any person nominated by the Employer promptly and fully informed (in writing if so requested) of the conduct of the operations and provide such explanations they may require;
- 1.4 Submit to the Board or any person nominated by the Employer, such information and reports as may be reasonably required of her in connection with the performance of her duties and the operations of the Employer;
- 1.5 Ensuring that the functions of the Employer in terms of the Act are complied with;

The bottom right of the page contains several handwritten signatures and initials. There is a large, stylized signature that appears to be 'Jh' or 'Jh' with a flourish. Below it, there are smaller initials, possibly 'Jh' or 'Jh' with a flourish. To the left of these, there is a signature that looks like 'Jh' with a flourish. There are also some other smaller marks and initials scattered around.

- 1.6 Exercising all the powers and perform all the duties conferred or imposed on the accounting officer by: the Public Finance Management Act or any other relevant law and the Executive Committee.
- 1.7 Maximising the interests and objectives of the Employer with due cognisance of its stakeholders;
- 1.8 Devote the whole of her time and attention during normal business hours, and such reasonable amount of additional time as may be necessary having regard to the exigencies of the operations of the Employer, as may from time-to-time be reasonably necessary for the good conduct of the operations of the Employer and the performance of the Executive's functions and duties in terms of this agreement;
- 1.9 Be true and faithful to the Employer in all dealings and transactions relating to the Employer's operations;
- 1.10 Use her best endeavours to promote and extend the operations of the Employer;
- 1.11 Not make at any time any untrue or misleading statements relating to the Employer;
- 1.12 Preserve and promote the goodwill of the Employer;
- 1.13 Use the assets of the Employer with the utmost care in furtherance of the operations of the Employer;
- 1.14 Perform such work of the Employer or any of its existing or future divisions/subsidiaries at such place as the Executive is required by the Employer;
- 1.15 Abide by the practices, policies, values and procedures and security procedures as may be introduced or amended by the Employer from time to time;
- 1.16 At all times adhere to the highest standards of integrity;
- 1.17 Submit her person and personal belongings to a search by any person designated by the Employer whenever the Employer deems it necessary, and the Executive acknowledges that her failure to submit to the above shall constitute a serious disciplinary transgression;



1.18 The Executive shall not, without prior written consent of the Board and whether for reward or not, be directly or indirectly interested or engaged in or concerned with or employed by any business, trade, undertaking or concern whether as proprietor, partner, director, member, Executive, General Manager, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise.

2. OBJECTIVES OF THE EMPLOYER

The Executive acknowledges that she knows and understands the objectives of the Employer as set out in the Act, the Public Finance Management Act 1 of 1999 ("the PFMA") and all other relevant legislation and documents and undertakes to ensure that the Employer achieves these objectives.

3. DUTIES AND POWERS OF THE EXECUTIVE COMMITTEE

The Executive acknowledges that she knows and understands the duties and powers of the Executive Committee as set out in the Act, PFMA and all other relevant legislation and documents and undertakes to ensure that she complies with such duties and powers.

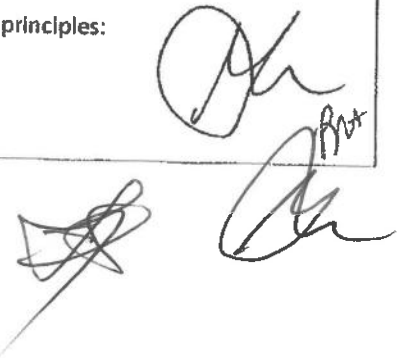
4. SPECIFIC DUTIES

4.1 Objectives

The Executive shall via the structures of Intersite promote an appropriate and sustainable partnership between Government and civil society organisations in order to eradicate poverty and its causes. Furthermore the Executive must manage the performance of Employees of Intersite in a consultative, supportive and non-discriminatory manner. In addition, the Executive is required, as the most senior Employee of the organisation, to enhance efficiency and to improve service delivery so that the various Intersite policies and strategies could result in the attainment of its key objectives.

4.2 Guiding Values and Principles

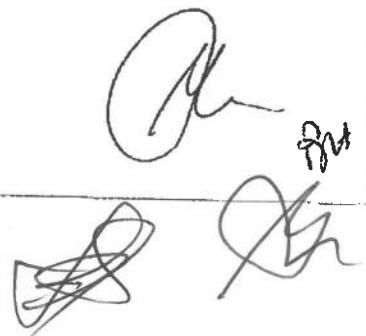
The Executive shall ensure that Intersite, its various structures, administrative systems, Human Capital Management policies and the entire organisation in the areas of her jurisdiction, shall be professionally managed in terms of the following principles:

The bottom right corner of the page contains several handwritten signatures and initials. There is a large, stylized signature that appears to be 'Ph' or 'Pb'. Below it, there are smaller initials, possibly 'Rat'. To the left of these, there is a signature that looks like 'S' or 'Z'. The handwriting is in dark ink and is somewhat cursive.

- 4.2.1 A high standard of professional ethics must be promoted and maintained;
- 4.2.2 Efficient economic and effective use of resources must be promoted;
- 4.2.3 Services must be provided impartially, fairly, equitably and without bias;
- 4.2.4 The affairs of Intersite must be arranged in an accountable and transparent manner;
- 4.2.5 Access to relevant information must be provided in a manner which strengthens the democratic values of Intersite and the society it serves;
- 4.2.6 The human potential of the Employees of Intersite must be maximised by the formulation of effective human capital management policies and the application of excellent career development strategies in line with the Skills Development Act and other relevant statutes and guidelines;
- 4.2.7 The nature of Intersite requires the Executive to follow stringent policies and practices with regards to financial management, and in particular, compliance with the PFMA, the Regulations of National Treasury of South Africa, GN R225 GG 27388 dated 15 March 2005 and GN R556 GG 21249 dated 31 May 2000 and all other relevant legislation and documents.

4.3 The Executive as the Accounting Officer

- 4.3.1 The Executive shall ensure that Intersite maintains:
 - 4.3.1.1 effective, efficient and transparent systems of financial and risk management and internal control;
 - 4.3.1.2 a system of internal audit under the control and direction of an Audit Committee;
 - 4.3.1.3 an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;

The bottom right corner of the page contains several handwritten signatures and initials. There is a large, stylized signature that appears to be 'P' or 'R'. Below it, there are smaller initials, possibly 'SM' and 'LH'. To the left of these, there is a signature that looks like 'S' or 'Z'. The handwriting is in dark ink and is somewhat cursive.

- 4.3.1.4 an effective financial and accounting system for properly evaluating all major projects and programmes prior to a final decision being taken on such projects and programmes.
 - 4.3.2 Is responsible for the effective, efficient, economical and transparent use of the resources of Intersite.
 - 4.3.3 Must take effective and appropriate steps to:
 - 4.3.3.1 collect all funds due to Intersite;
 - 4.3.3.2 prevent unauthorised, irregular, fruitless and wasteful expenditure and losses resulting from criminal conduct;
 - 4.3.3.3 manage working capital efficiently and economically.
 - 4.3.4 Is responsible for the management, safeguarding and maintenance of the assets of Intersite.
 - 4.3.5 Must comply with tax, levy, duty, pension and audit commitments as may be required by legislation.
 - 4.3.6 Must settle all contractual obligations and pay all money owing, within the prescribed or agreed period.
- Upon discovery of any unauthorised, irregular, fruitless and/or wasteful expenditure, and in the case of irregular expenditure involving the procurement of goods or services, immediately report, in writing, particulars of the said expenditure to the Audit Committee.
- 4.3.7 Must take effective and appropriate action against any person who:
 - 4.3.7.1 acts in any manner which can be deemed to be corrupt and/or fraudulent;
 - 4.3.7.2 commits an act which undermines the financial management and internal control system of Intersite ;



4.3.7.3 makes or permits an unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure;

4.3.8 Must ensure that the auditing provisions of Intersite are complied with when transferring funds in terms of any agreement, business or operational requirement;

4.3.9 Must enforce compliance with any prescribed conditions set by Intersite if Intersite gives financial assistance to any entity or person;

4.3.10 Must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the responsible and relevant structures of Intersite.

4.4 Employment Equity

The Executive must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice which may exist at Intersite. An Employment Equity Plan as contemplated by the Employment Equity must be established and adopted.

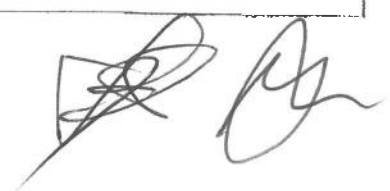
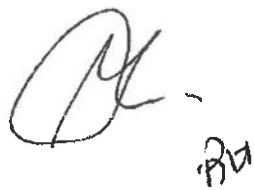
4.5 Skills Development

The Executive must strive to improve the quality of life of the Employees by using the workplace as an active learning environment to provide Employees with opportunities to acquire new skills. The various skills development laws and regulations which have relevance must be implemented.

4.6 Employee Relations

The Executive shall take steps to ensure that the Human Capital Management System of Intersite is in line with the various labour laws and best practice.

4.7 Strategic Implementation of the goals of Intersite



4.7.1 The Executive shall implement the strategic goals of Intersite to provide financial support to programmes and projects that will directly contribute to the enhancement of the asset base of the poor.

4.7.2 The Executive shall implement the strategic objectives of Intersite, which objectives include:

4.7.2.1 providing historically disadvantaged persons with the opportunity of, directly or indirectly, acquiring shares or interest in State Owned Commercial Enterprises that are being restructured or in private business enterprises;

4.7.2.2 encouraging and promoting savings, investments and meaningful economic participation by historically disadvantaged persons;

4.7.2.3 promoting and supporting business ventures pioneered and run by historically disadvantaged persons;

4.7.2.4 promoting the universal understanding of equity ownership among historically disadvantaged persons;

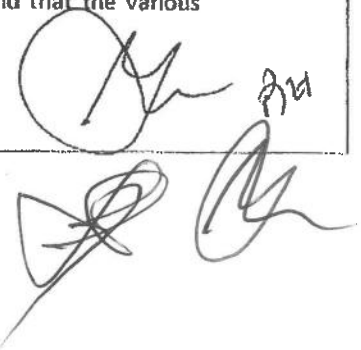
4.7.2.5 encouraging the development of competitive and effective equities market inclusive of all persons in the Republic;

4.7.2.6 contributing to the creation of employment opportunities; and

4.7.2.7 generally employing such schemes, business and enterprises as may be necessary to achieve the objects of this Act.

4.8 General Strategic Implementation of Intersite operational and business needs

The Executive shall proactively ensure the strategic implementation of the policies, mandates, standing instructions and ad hoc instructions issued. The Executive is responsible for the operationalisation of the goals, objectives and mandate of Intersite in line with the directives of financial accountability and professional ethics. The Executive is responsible for ensuring that various action plans are implemented and that the various

The block contains several handwritten signatures and initials. At the top right of this section is a large, circular signature. Below it, there are two more signatures, one of which appears to be a stylized 'A' or 'B' with a cross through it, and another to its right. There are also some smaller, less distinct marks and initials scattered around these signatures.

instruments of Intersite are activated to ensure that the strategic organisational needs and goals of Intersite are achieved.

[Signature] 824

[Signature]

Nokulunga Mthembu

"OM N15"

163

From: Martha Ngoye <malebethengoye@gmail.com>
Sent: Thursday, 04 February 2021 14:52
To: Nokulunga Mthembu; Kase Mahlaku
Subject: Fwd: TERMINATION OF MY EMPLOYMENT - MARTHA NGOYE

f.y.i

Begin forwarded message:

From: Dinkwanyane Mohuba <dkmohuba@gmail.com>
Subject: Re: TERMINATION OF MY EMPLOYMENT - MARTHA NGOYE
Date: 02 February 2021 at 09:13:39 SAST
To: Martha Ngoye <malebethengoye@gmail.com>
Cc: themba.zulu@treasury.gov.za

Received and acknowledged with thanks

DK Mohuba, CPRP, M.Ins.Dir
Director: SPA(Pty)Ltd
[Email: spamanagement74@yahoo.com](mailto:spamanagement74@yahoo.com)
kgalemamohuba@icloud.com
Website: www.strategicpartnerafrica.co.za
Mobile: 0822005423

On 02 Feb 2021, at 08:42, Martha Ngoye <malebethengoye@gmail.com> wrote:

Dear Directors

I hope you are well. Please find attached the mail below. I had sent it on Sunday. Just received non delivery notification for Director Mohuba this morning.

Director Zulu I am not certain you had received it, but am sending it again

Regards

Martha Ngoye

Sent from my iPhone

Begin forwarded message:

From: Martha Ngoye <malebethengoye@gmail.com>
Date: 2. February 2021 at 08:27:31 GMT+2
To: Mapula Thebethe <mapula.thebethe@prasa.com>
Subject: Fwd: TERMINATION OF MY EMPLOYMENT - MARTHA NGOYE

Dear Mapula



Please can you forward this email to Director Mohuba. It came back undelivered. The email was sent on Sunday

164

Kind regards

Martha

Sent from my iPhone

Begin forwarded message:

From: Martha Ngoye
<malebethengoye@gmail.com>
Date: 2. February 2021 at 07:16:03 GMT+2
To: Kase Mahlaku
<mahlakuk@gwinaattorneys.co.za>, Benny Makola
<benny.makola@group621.co.za>, Obakeng
Mokgotho <o.mokgotho@group621.co.za>
Cc: Martha Ngoye <malebethengoye@gmail.com>
Subject: Fwd: TERMINATION OF MY EMPLOYMENT
- MARTHA NGOYE

Dear Kase and Counsel

Find attached email sent to PRASA on Sunday. I did not receive a response thereto.

Regards

Martha

Sent from my iPhone

Begin forwarded message:

From: Martha Ngoye
<malebethengoye@gmail.com>
Date: 31. January 2021 at 18:44:26
GMT+2
To: lenie12@gmail.com,
Dinkwanyane.Mohuba@ul.ac.za,
matodzi.mukhuba@prasa.com,
smanga@lawsethene.com,
nosizwe.macamo@gmail.com,
ndidi@mpyeconsulting.co.za, Mr
Xolile George
<xgeorge@salga.org.za>,
thandeka.mabija@prasa.com
Cc: Martha Ngoye
<malebethengoye@gmail.com>
Subject: TERMINATION OF MY
EMPLOYMENT - MARTHA NGOYE

Dear Members of the PRASA Board
of Control, AGCEO

Find attached the documents below

Two handwritten signatures in black ink, one on the left and one on the right, both appearing to be stylized and possibly representing the same person or different individuals.

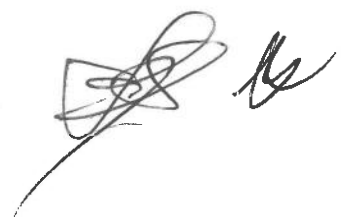
for your attention. The documents
are self explanatory.

165

<Letter to Board and AGCEO_31 January 2021_signature version-signed.pdf>
<RESOLUTION OF THE BOARD 11 AUGUST 2014 Martha Ngoye transfer from
Intersite to PRASA.pdf>
<Martha Onica Ngoye Contract of Employment Intersite.pdf>

Regards

Martha Ngoye

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be 'M. Ngoye'.

"OMNIB"

166

Nkosinathi Khena

nathik@live.co.za

081 030 8309

01 February 2021

To:

The Board of Control of PRASA

The Acting Group CEO

I refer to the letter under the hand of the Acting Group CEO of PRASA dated 29 January 2021 as well as the media release that was issued by PRASA on 30 January 2021 confirming the contents of the letter of 29 January 2021.

The attempts to unlawfully dismiss me started around July 2020 when the Administrator of PRASA started a sham of a process that he referred to as a retrenchment process. In this process, the Administrator was working with Ms. Thandeka Mabija. I doubt that Ms. Mabija and Mr. Bongisizwe Mpondo would have engaged in this process without having a look at my employment contract. I also doubt that they would have bothered to go through the sham of a retrenchment process that they went through which was, correctly, abandoned in the end if their perusal of my employment contract showed them that my stay at PRASA had exceeded its duration and/or that I ought to have left PRASA years ago. I confirm that if there was a **"normal five years fixed term contract extended to all executives"**, such contract was not extended to me. I am also not aware of such **"normal five years fixed term contract that was extended to all executives"**.

I am aware that Ms. Mabija and Mr. Mpondo tried without success to dismiss under the guise of a retrenchment, three executives in July 2020, being Mr. Piet Sebola, Mr. Tiro Holele and I. All of us had been at PRASA for more than 5 years. Mr. Sebola was paid out and left the employment of PRASA. Mr. Sorin Baltac is currently acting in his stead, showing that his position was not redundant. Mr. Tiro Holele is still in the employ of PRASA. After I was retrenched, I launched an urgent application challenging the purported retrenchment. PRASA filed opposition papers to my urgent application and on the eve of the hearing proposed the following to my lawyers which we agreed to:



- ***“the termination of your client’s employment contract will be withdrawn and he will remain employed by” PRASA;***
- PRASA ***“will, following the appointment of a Board of Control, only exercise such rights with regards to [my] employment as [are] lawfully permitted by the terms of the employment contract and the law”;***

PRASA, through its lawyer and on the instructions of a lawfully appointed Accounting Authority disavowed the unlawful steps taken by the unlawfully appointed Administrator and undertook to respect the law and my employment contract. This undertaking was made on behalf of a Board of Control to be appointed lawfully by the Minister of Transport. In line with this undertaking, PRASA cannot seek to invoke what it calls a **“normal five years fixed term contract extended to all executives”**. PRASA can only (and has undertaken to) invoke the law and the provisions of my employment contract. I place on record that there is no such norm in PRASA and there is no reference to a 5-years duration of employment in my employment contract. For ease of reference, I attach my employment contract to this letter.

I must state that PRASA was ably assisted by Mr. Puke Maserumule in this urgent application. According to his biographical information, Mr. Maserumule:

- Has practiced as an attorney for 30 years;
- Holds a BA and LLB from the University of Cape Town and a Post-graduate Diploma in Labour Law from the University of Johannesburg;
- Specializes in all aspects of labour and employment law and general litigation;
- Periodically acts as a Labour Court judge since 1997 (for about 23 years);
- Has a number of judgments under his belt that are reported in labour law journals;
- In his capacity as an acting Judge of the Labour Court, he has been involved in interpreting labour legislation and building the new labour jurisprudence;
- He completed his articles at Webber Wentzel and worked at Cheadle Thompson & Haysom as a professional assistant; and
- Was a member of the legal team that drafted amendments to the Labour Relations Act, Basic Conditions of Employment Act and the Insolvency Act in June 2000.



It is, in my respectful view, very unlikely that such a decorated labour lawyer can miss that there was no need to retrench me as my contract of employment had lapsed years ago.

I therefore implore the Board not to act in the unlawful manner that it has acted in by permitting the issue of the letter of 29 January 2021 and publishing the media release of 30 January 2021. With respect, I demand that the letter of 29 January 2021 be withdrawn and I be reinstated to my position of Chief Operations Officer by close of business on 1 February 2021. I have also noted that, according to the media statement, I was on suspension. This is untrue.

Please favour me with the report that concluded that I unlawfully and without authority approved an amount in excess of R25 million. I find it very unfortunate that I found out about this allegation against me at the same time as it is published to the world. Even if I may have been as guilty as sin in this respect, which I deny, with respect, I expected the Board to treat this with common decency. I will also deal with the allegations that relate to Werksmans as and when I receive them. Common decency would have required that these to be addressed with me before they are published to the world.

If I do not receive your response that I am reinstated in my position by close of business on 1 February 2021 I will take the necessary steps to protect my rights. All my rights remain strictly reserved.

Yours faithfully,

Nkosinathi Khena



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From: Nathi Khena <nathikhena@icloud.com>
Sent: Tuesday, 02 February 2021 11:09
To: Nokulunga Mthembu
Subject: Fwd: Letter to BoC and AGCEO - 01.02.2021.pdf
Attachments: Letter to BoC and AGCEO - 01.02.2021.pdf

Sent from my iPhone

Begin forwarded message:

From: Nathi Khena <nathikhena@icloud.com>
Date: 01 February 2021 at 14:14:06 SAST
To: thandeka.mabija@prasa.com, smanga.sethene@prasa.com
Subject: Letter to BoC and AGCEO - 01.02.2021.pdf

Dear Ms Mabija

Please find my response to my termination letter. May I further request that you circulate it to the rest of the Board Members

Regards Nathi Khena

Sent from my iPhone

Two handwritten signatures in black ink, one on the left and one on the right, both appearing to be stylized initials or names.



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Our Ref: JD Crawford

03 February 2021

TO: ACTING GCEO

THANDEKA MABIJA

Email: thandeka.mabiya@prasa.com

Chairman of the Board (of Control)

LEONARD RAMATLAKANE

Email: leonard.ramatlakane@prasa.com

CC: Dinkwanyane.mohuba@prasa.com; themba.zulu@treasury.gov.za

Matodzi.mukhuba@prasa.com; Nosizwe.macamo@gmail.com

Xolile.George@prasa.com; Ndidi@mpyeconsulting.co.za

URGENT

Dear Madam and Sir,

RE: LETTER OF DEMAND FOR REINSTATEMENT OF MR. TIRO HOLELE

1. We continue to act for Mr. Tiro Holele, hereinafter our client.
2. Our client's employment was unlawfully terminated on 1 February 2021 in terms of a generic letter that was also used to terminate the employment of his colleagues the previous Friday the 29th of January 2021 being Ms Onica Martha Ngoye and Mr. Nkosinathi Allen Khenani. Our client has been severed from the PRASA email and intranet network.
3. Both these colleagues (they are not the only other victims of this latest purge) have demanded their reinstatement and our client herewith does the same, failing which he



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will approach the Labour Court on an urgent basis to order his reinstatement together with a punitive cost order against the Acting CEO, the Chairman of the Board and any other board member that opposes the relief.

4. Amongst other things, it is patently obvious that there is no 5-year contract nor has our client over stayed his welcome as alleged or at all but over nearly 14 years he has occupied a number of substantive positions with Prasa including Group Executive in the Office of the CEO, Acting CEO of Auto Pax, Head of Projects at Intersite and Group Executive Strategy.
5. In his second letter of appointment (the first with Prasa as the successor in title of its predecessor SARCC) there is no fixed term and although reference is made to an attached agreement containing additional terms and conditions of employment, such additional agreement never existed and our client advises that the standard letter of appointment is appointment the one that he signed in which the subject line is "OFFER: GROUP EXECUTIVE; OFFICE OF THE GROUP CEO: PRASA" which is not his current role and which also renders the termination unlawful.
6. On other occasions and to record his transfer into other roles including acting roles he would receive a letter to that effect, including acting stints at subsidiaries, but in none of those instances was he ever offered not did he ever accept informed, a fixed employment term, either for the 5-years opportunistically now alleged by the Acting GCEO and/or the Board (as per the media reports since Friday the 29th of January 2021) or at all.
7. We await your urgent written response by noon on Thursday 04 February 2021 that our client has been reinstated without loss of benefits failing which we shall proceed without further notice to you.

Regards

J D CRAWFORD

"OMNIB"
172

30 Jan 2021

PRASA terminates contracts of three execs fin24



PRETORIA, SOUTH AFRICA ? JULY 13: The new Prasa trains on July 13, 2015 in Pretoria, South Africa. PRASA insists that the media reports on its new locomotives were incorrect and misleading and that the gap between the contact wire and the roof of the locomotives exceeded the 150mm prescribed in safety regulations. (Photo by Gallo Images / Beeld / Alet Pretorius)

- The Passenger Rail Agency of South Africa announced that it terminated the employment contracts of Martha Ngoye, Nkosinathi Khenani and Pearl Munthali.
- PRASA said it would pursue legal remedies to the irregularities related to a contract awarded to SA Fence & Gate.
- PRASA said the executives whose contracts were terminated should have left the company years ago.

The Passenger Rail Agency of South Africa announced that it terminated the employment contracts of group chief executive for legal, risk and compliance Martha

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be official approvals or signatures.

Ngoye, chief operating officer Nkosinathi Khena and PRASA Foundation chief executive officer Pearl Munthali.

PRASA said in a statement released on Saturday that it would pursue legal remedies to the irregularities related to a contract and payment awarded to a company which National Treasury found to be irregular.

The announcement comes as the company said that the executives occupied their relative offices well beyond their allotted period and as the company continues to get to grips with allegations of other past irregularities.

"PRASA Board of Control has embarked on the review of contracts of executives and other senior managers. Pursuant to the review process, it transpired upon analysis of employment contracts of executives that some of them ought to have left PRASA years ago," the statement said.

The statement said all executives at PRASA are employed for a period not exceeding five years and that there is no expectation for extension of the term of duration of this employment contract.

"The Board also observed that the executives have been aware at all material times that their employment contracts were for five-year period and not more. However, it appears the executives capitalized on the instability at the Board level culminating in their extended and unlawful stay at PRASA," the statement added.

- **READ | [Auditor General calls state-owned rail operator, Prasa's financials unreliable](#)**

The statement said PRASA would go ahead with legal proceedings against Ngoye for unlawfully approving payment of R58m to SA Fence & Gate when she had no authority to do so.

It said Khena, reinstated the SA Fence and Gate's contract knowing of the company's breach which was brought to his attention by National Treasury in 2016.

The statement said Munthali has been on suspension for alleged misconduct after it became apparent that that her contract at PRASA was meant to have been terminated once its five-year term had expired.

Compiled by Khulekani Magubane.



Executive who saved PRASA billions has been fired

Dismissal of three executives on spurious grounds is a setback against the fight against corruption

2 February 2021 By [James StentAnalysis](#) | [South Africa](#)



South Africa's commuter train service looks even less likely come right after the latest PRASA shenanigans. Archive photo: Ashraf Hendricks

The head of the Passenger Rail Agency of SA's legal division, Martha Ngoye, who probably saved PRASA billions, has been fired, according to [a statement by the chairman of the board of control](#), Leonard Ramatlakane. Two other executives have also been dismissed, on what look like spurious grounds.

On Saturday 30 January, Ramatlakane announced that three PRASA executives had overstayed the five-year terms of their contracts and had their employment terminated. The three are Ngoye, Nkosinathi Khena and Pearl Munthali. Ngoye was group head of legal, risk, and compliance. The other two were on suspension.

[Handwritten signatures]

Ramatlakane also announced that, "PRASA has also resolved to institute legal proceedings against Ms Ngoye for unlawfully approving payment of R58 million to SA Fence & Gate when she had no authority to do so," and against Khena for, "financial loss it suffered due to unlawful conduct of Mr Khena".

Ngoye has been the central figure at the rail agency in its fight against corruption. She has helped PRASA win court victories against [Swifambo](#), [Siyangena](#), and [Siyaya](#). It was Ngoye's [defiance](#) that rebuffed Judge Tintswalo Makhubele's attempt to improperly settle with Siyaya. Further, Ngoye's [testimony](#) at the State Capture Commission revealed the depths of former CEO Lucky Montana's corrupt leadership of PRASA.

Without her interventions, PRASA would have lost many billions of rands.

Ramatlakane said that during a review of executive contracts, "it transpired upon analysis of employment contracts of executives that some of them ought to have left PRASA years ago. All executives at PRASA are employed for a period not exceeding five years with no expectation for extension of the employment contract."

This policy, unannounced in the press at the time, was seemingly instituted in 2019 during the tenure of former Chair of the Interim Board, Khanyisile Kweyama. That board did not have a quorum at the time, and so any decisions that it made were subject to review. Further, the current board is not quorate either, lacking a representative from the Department of Transport, at least. This means that any decisions that this board makes are subject to review, and that Minister of Transport Fikile Mbalula is in [contempt of a ruling of the Western Cape High Court](#).

Ramatlakane also said that the executives "have been aware at all material times that their employment contracts were for a five-year period and not more".

However, he said, "it appears the executives capitalized on the instability at the Board level culminating in their extended and unlawful stay at PRASA. On 29 January 2021, PRASA has terminated the employment contracts of the following executives with immediate effect".

It is open to question that it is the responsibility of the employee, and not the employer, to ensure that they are not staying on beyond the term of their contract.

He said Ngoye had initially been employed in 2012 as CEO of Intersite, one of PRASA's subsidiaries. "Effective from 1 September 2015, she was transferred to her current position. Ordinarily, Ms. Ngoye's stay at PRASA ought to have terminated on 31 August 2020."

After a hearing in September last year, in October, PRASA, led by Ngoye's legal team, won a resounding victory in the Siyangena matter, in a judgment by a full bench of the North Gauteng High Court. Siyangena is appealing the judgment, but the appeal is unlikely to succeed. Given Ngoye's many successes as head of legal, one might reasonably expect PRASA to want to retain her services. On the contrary Ramatlakane said, "PRASA has also resolved to institute legal proceedings against Ms Ngoye for unlawfully approving payment of R58 million to SA Fence & Gate when she had no authority to do so".

GroundUp [reported](#) on the SA Fence and Gate issue, in 2018. Ngoye was not one of the key figures involved. In fact, [the report from Nexus](#), commissioned by National Treasury following the Public Protector's Derailed report makes no mention of Ngoye.

In the [Werksmans Attorneys investigation](#), Ngoye is mentioned in regard to the extension of the contract. But she is peripheral at best - the key player in this story is Palello Lebaka. According to Werksmans' report, in January 2015, Ngoye was acting as Group CEO while Lucky Montana was on holiday. Ngoye was presented with a recommendation report from Josephat Phungula on behalf of the Bid Advisory Committee. Lebaka had been fired after his corrupt dealings were

uncovered. Nevertheless, according to the BAC, PRASA still required lights that were included in the contract, and they recommended to Ngoye that an outstanding amount of R23 million be paid to complete this transaction.

According to the internal policy of the time, Group CEOs of PRASA have the authority to sign off on contracts below the value of R100 million. The extension would have been presented to the board after Ngoye's signature was attached, and the board would have approved this transaction.

In his affidavit, SA Fence and Gate executive Chris Greyling, alleged (from [page 20 of this pdf](#)) that his company's troubles at PRASA were orchestrated by a competitor - Siyangena.

Turning to the decision to fire Khena, Ramatlakane said when Khena was acting group chief executive, he had reinstated the SA Fence and Gate contract "knowing of the company's breach" and that this breach was also "brought to his attention by National Treasury in a letter dated 21 April 2016".

"An amount of R25m was paid to the said company without requisite authority and/or approval," said Ramatlakane. "Mr. Khena was at the time Acting-Group Chief Executive Officer and his unlawful conduct caused PRASA to incur financial loss."

However [the record of the Standing Committee on Public Accounts \(SCOPA\) from February 2016](#), shows that Khena had little choice in this decision, as the company had won a court order to reinstate the contract.

Further, said Ramatlakane, "Mr. Khena reinstated Ms Ngoye, who at the time was lawfully suspended by Mr. Lucky Montana (Group CEO as the time) for unlawful approval of R58 million to SA Fence and Gate".

But in fact, Montana was forced to backtrack. [As recounted before the State Capture Commission](#), in May 2015, Ngoye's subordinate Fani Dingiswayo had refused to sign-off on a Montana-engineered deal worth more than R80 million, with a company called Prodigy. Dingiswayo had discovered irregularities in that deal, and when he challenged Montana, Montana fired Dingiswayo on the spot - illegally.

The next day, when Ngoye went to find out from Montana what had happened, she too was illegally fired by Montana. A week later, after the intervention by the board (chaired at the time by Popo Molefe), Montana was forced to commute the terminations of their contracts into suspensions. Then, after Montana resigned in disgrace from PRASA, Ngoye and Dingiswayo were reinstated by Khena after being cleared of misconduct.

Ramatlakane said PRASA would "institute legal proceedings against Mr. Khena for financial loss it suffered due to unlawful conduct of Mr. Khena".

As regards Munthali, the suspended CEO of the PRASA Foundation, who has also been fired, Ramatlakane said she "has been on suspension for alleged misconduct. Upon perusal of records, it transpired that Ms. Munthali's contract ought to have been terminated upon the expiry of a five-year term."

He does not mention that all charges against Munthali were dropped by PRASA.

GroundUp sent PRASA spokesperson Bane Ndlovu detailed questions, but he had not responded by the time of publication. His response will be added if/when it is received.

More about [Metrorail](#)

"OMN20"

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**IN THE LABOUR COURT OF JOHANNESBURG
HELD AT JOHANNESBURG**

CASE NO: J111/21

In the matter between:

ONICA MARTHA NGOYE

First Applicant

NKOSINATHI ALLEN KHENA

Second Applicant

TIRO HOLELE

Third Applicant

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

First Respondent

LEONARD RAMATLAKANE

Second Respondent

THINAVUYO MPYE

Third Respondent

DINKWANYANE MOHUBA

Fourth Respondent

SMANGA SETHENE

Fifth Respondent

XOLILE GEORGE

Sixth Respondent



NOSIZWE NOKWE-MACAMO

Seventh Respondent

MATODZI MUKHUBA

Eighth Respondent

THEMBA ZULU

Ninth Respondent

MS THANDEKA MABIJA

Tenth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

NKOSINATHI ALLEN KHENA

do hereby make an oath and state the following:

1. I am an adult male currently residing at 157 Wilton Avenue, Bryanston, Johannesburg, Gauteng Province.
2. The facts contained herein are within my personal knowledge, and to the best of my knowledge and belief, both true and correct.

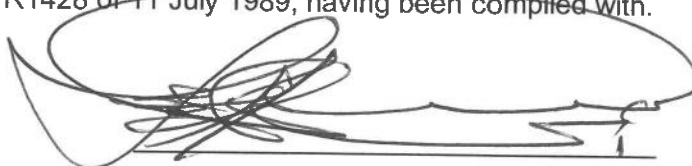


3. I confirm that I have read and understood the founding affidavit of **ONICA MARTHA NGOYE** in this matter together with annexures thereto and confirm the correctness of the allegations made therein in as far as they relate to me.



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on this the 4th day of February 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

FULL NAMES: SETŠHEPHI JEHIEL THEMA

ADDRESS:

CAPACITY:

Commissioner of Oaths

Ex-Officio

Practising Attorney RSA

Lawtons Inc. practising as Lawtons Africa

140 West Street,
Sandton, Johannesburg

"OMN21"
180

IN THE LABOUR COURT OF JOHANNESBURG
HELD AT JOHANNESBURG

CASE NO: J111/21

In the matter between:

ONICA MARTHA NGOYE

First Applicant

NKOSINATHI ALLEN KHENA

Second Applicant

TIRO HOLELE

Third Applicant

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

First Respondent

LEONARD RAMATLAKANE

Second Respondent

THINAVUYO MPYE

Third Respondent

DINKWANYANE MOHUBA

Fourth Respondent

SMANGA SETHENE

Fifth Respondent

XOLILE GEORGE

Sixth Respondent

NOSIZWE NOKWE-MACAMO

Seventh Respondent



MATODZI MUKHUBA

Eighth Respondent

THEMBA ZULU

Ninth Respondent

MS THANDEKA MABIJA

Tenth Respondent

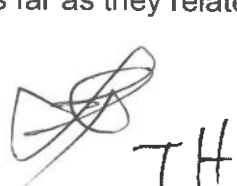
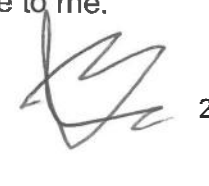
CONFIRMATORY AFFIDAVIT

I, the undersigned,

TIRO HOLELE

do hereby make an oath and state the following:

1. I am an adult male currently residing at 142 12th Street, Parkhurst, Johannesburg, Gauteng Province.
2. The facts contained herein are within my personal knowledge, and to the best of my knowledge and belief, both true and correct.
3. I confirm that I have read and understood the founding affidavit of **ONICA MARTHA NGOYE** in this matter together with annexures thereto and confirm the correctness of the allegations made therein in as far as they relate to me.

 TH  2



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on this the 4th day of February 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

FULL NAMES: **SETŠHEPHI JEHIEL THEMA**
 Commissioner of Oaths
 Ex-Officio
 Practising Attorney RSA
 ADDRESS: Lawtons Inc. practising as Lawtons Africa
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 CAPACITY:

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 Practising Attorney RSA
 Lawtons Inc. practising as Lawtons Africa
 140 West Street,
 Sandton, Johannesburg

IN THE LABOUR COURT OF JOHANNESBURG

HELD AT JOHANNESBURG

CASE NO: J111/21

On _____

BEFORE THE HONOURABLE _____

In the matter between:

ONICA MARTHA NGOYE

First Applicant

NKOSINATHI ALLEN KHENA

Second Applicant

TIRO HOLELE

Third Applicant

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

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Sixth Respondent

NOSIZWE NOKWE-MACAMO

Seventh Respondent

MATODZI MUKHUBA

Eighth Respondent

THEMBA ZULU

Ninth Respondent

MS THANDEKA MABIJA

Tenth Respondent

DRAFT ORDER

Having read the documents filed of record and having considered the matter: -

IT IS ORDERED THAT:

- 1 Declaring that this application is urgent and, insofar as the applicants might not have complied with the Rules of this Court, their failure to do so is condoned, and the Rules relating to forms and service are dispensed with and the application is dealt with as one of urgency.
- 2 It is declared that the meeting of the Board of Control of the first respondent, insofar as it purported to take the decision to terminate the applicants' contracts of employment, was not properly constituted and is accordingly unlawful.
- 3 The decision of the Board of Control and any consequent resolution, insofar as they purported to terminate the applicants' contracts of employment are invalid and of no force and effect.
- 4 It is declared that the contracts of employment concluded by the applicants and the respondents are extant.
- 5 It is declared that the respondents' termination of the applicants' contracts of employment by letters addressed to the applicants on 29 January 2021 and on 1 February 2021 is unlawful.

- 6 The termination of the contracts of the applicants' contracts of employment is set aside.
- 7 The respondents are ordered to reinstate the applicants with immediate effect and retrospectively from the date of the termination of their contracts of employment.
- 8 The first respondent is ordered to pay any salaries and benefits due to the applicants from the date on which the contracts of employment were terminated to the date of reinstatement.
- 9 The respondents are ordered, jointly and severally to pay the applicants' costs.
- 10 The applicants are afforded further and/or alternative relief as may be just in the circumstances.

BY ORDER

REGISTRAR

186

IN THE LABOUR COURT OF JOHANNESBURG

HELD AT JOHANNESBURG

CASE NO: 5111/21

On _____

BEFORE THE HONOURABLE _____

In the matter between:

ONICA MARTHA NGOYE	First Applicant
NKOSINATHI ALLEN KHENA	Second Applicant
TIRO HOLELE	Third Applicant

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA	First Respondent
LEONARD RAMATLAKANE	Second Respondent
THINAVUYO MPYE	Third Respondent
DINKWANYANE MOHUBA	Fourth Respondent
SMANGA SETHENE	Fifth Respondent
XOLILE GEORGE	Sixth Respondent
NOSIZWE NOKWE-MACAMO	Seventh Respondent
MATODZI MUKHUBA	Eighth Respondent
THEMBA ZULU	Ninth Respondent
MS THANDEKA MABIJA	Tenth Respondent

DRAFT ORDER

Having read the documents filed of record and having considered the matter: -

IT IS ORDERED THAT:

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- 2 It is declared that the meeting of the Board of Control of the first respondent, insofar as it purported to take the decision to terminate the applicants' contracts of employment, was not properly constituted and is accordingly unlawful.
- 3 The decision of the Board of Control and any consequent resolution, insofar as they purported to terminate the applicants' contracts of employment are invalid and of no force and effect.
- 4 It is declared that the contracts of employment concluded by the applicants and the respondents are extant.
- 5 It is declared that the respondents' termination of the applicants' contracts of employment by letters addressed to the applicants on 29 January 2021 and on 1 February 2021 is unlawful.

- 6 The termination of the contracts of the applicants' contracts of employment is set aside.
- 7 The respondents are ordered to reinstate the applicants with immediate effect and retrospectively from the date of the termination of their contracts of employment.
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- 9 The respondents are ordered, jointly and severally to pay the applicants' costs.
- 10 The applicants are afforded further and/or alternative relief as may be just in the circumstances.

BY ORDER

REGISTRAR

IN THE LABOUR COURT OF JOHANNESBURG

HELD AT JOHANNESBURG

CASE NO: J111/21

On _____

BEFORE THE HONOURABLE _____

In the matter between:

ONICA MARTHA NGOYE

First Applicant

NKOSINATHI ALLEN KHENA

Second Applicant

TIRO HOLELE

Third Applicant

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

First Respondent

LEONARD RAMATLAKANE

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Seventh Respondent

MATODZI MUKHUBA

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Ninth Respondent

MS THANDEKA MABIJA

Tenth Respondent

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IT IS ORDERED THAT:

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- 3 The decision of the Board of Control and any consequent resolution, insofar as they purported to terminate the applicants' contracts of employment are invalid and of no force and effect.
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- 9 The respondents are ordered, jointly and severally to pay the applicants' costs.
- 10 The applicants are afforded further and/or alternative relief as may be just in the circumstances.

BY ORDER

REGISTRAR