

CHAPTER 23

THEFT OF PRISONERS' FOOD

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CHAPTER 22

THEFT OF PRISONERS' FOOD

1. INTRODUCTION

This Commission has repeatedly stressed the fact that prisoners should not be deprived of the basic rights they are entitled to while in prison. The right to adequate nutrition is one such fundamental right. The right to be treated with reasonable dignity is another. At no time should inmates be used as personal servants or food preparers of members of the Department.

Despite this, in many of the Management Areas investigated, the Commission has found that the consumption and theft of prisoners' food by members is widespread. Prisoners are also being ordered to cook food on behalf of members of the Department. This improper conduct often results in food shortages with some prisoners not receiving food when such theft or consumption occurs.

These problems were also encountered by the Commission in the Pretoria Management Area as will be shown in this Chapter, which deals with the following two sets of allegations:

- 1.1 that two warders, Mr Kgalane and Mr Motsepe, used prisoners to cook food for them out of prisoners' supplies and that Mr Motsepe stole chicken from the prisoners' meat supply. This is in contravention of Department policy that does not allow members to eat or use prisoners' food.
- 1.2 that Mrs van Niekerk, a member of the Department, instructed prisoners to take items from the prison kitchen for her. It will be shown that her

conduct was in breach of prison security and in violation of the policy prohibiting use of prisoners' labour.

2. EVIDENCE LED

The evidence against these members and its evaluation is set out below.

2.1 Mr Alfred Mans

Mr Mans, a Correctional Officer employed by the Department since 1979, testified that he is the Head of the Kitchen at Pretoria Central Prison.

One of his responsibilities as Head of the section is to see to it that all members are on duty and performing their duties. He is also responsible for the prisoners' food and the discipline of members working under him.

Mr Mans explained to the Commission how the prison kitchen operated. Food for the prisoners is normally requested from the Logistics section, which purchases it upon request. The monthly budget for food at Pretoria Central Prison is four hundred and ninety thousand rands (R490 000). The Head of the Prison determines the menu for a 12-day cycle based on order lists from Logistics.

The kitchen staff at Pretoria Central Prison is made up of forty five (45) food handlers selected from the inmates. The kitchen staff is housed in three (3) community cells housing of fifteen (15) food handlers each. These inmates receive a gratuity of between nine rand (R9) and eighty four rand (R84) per month, depending their experience in the kitchen. The inmates work on a three-month rotation basis and are given duties ranging from floor cleaner to teamleader.

Of the forty five (45), a total of thirty seven (37) food handlers are let out of their cells at about 5H45 to begin their daily duties. They are placed on a duty list,

which is changed every three (3) months or as soon as an inmate is removed from the kitchen. These food handlers return to their cells as soon as their duties are completed. They work an average of six (6) hours per day. Of the remaining eight (8) food handlers, five (5) are employed as caterers and three (3) as custodians.

Of the members, Mr Motsepe is a kitchen supervisor who sees to it that food is delivered. Mr Snyman is responsible for the preparation of the food. Mr Kgalane is a custodial officer and shares the same office as Mr Motsepe. Custodial officers have nothing to do with the preparation of food and may not taste it. They only open and close gates.

In terms of Departmental policy, only the Head of the Prison, the Assistant Head and medical personnel may taste prisoners' food after preparation. In a circular¹ officials are warned that they are not allowed to eat any food from the kitchen. Members are, however, allowed to bring their own food into the prison but they have never been allowed to eat prison food for the 20 years that the current Head of the Prison, Mr Hlalethoa, has been with the Department.

There are two storerooms in the kitchen section, one large and one small. The small one stores food for use on a particular day. If food is stolen it leads to a shortage for prisoners. The Head of the Prison, Mr Motsepe, Mr Kgalane, Mrs van Niekerk and Mr Nyalunga have keys to the storerooms.

Mr Mans testified that he was aware that on 5 August 2003, Mr Bright Shabalala, an investigator from the Jali Commission, carried out an inspection in the kitchen but he was not aware of any complaints lodged by prisoners against Mr Kgalane and Mr Motsepe. These complaints should have been brought to his attention and he was surprised that they had not been as it would have been his duty to discipline members guilty of any wrongdoing.

¹ See Annexure "C" to Pretoria Exhibit "A".

2.2 Mr Winson Naidoo

Mr Naidoo, a Senior Correctional Officer stationed at Pretoria Management Area, testified that on the 1 December 2002, he was appointed Head of the Medium A Section. Upon assumption of duty, he realised that there were numerous problems and that prisoners were complaining of ill-treatment and not being given their full rations.

He approached Mr Mans to discuss the matter with him and specifically informed him that prisoners were not getting sufficient rations. Some prisoners, in certain instances, did not get any food. After this intervention bread and milk powder were given to inmates who were not receiving any food. The Head of Prison, Mr Hlalethoa, was not aware of this problem as prisoners who had been to see him to raise problems had never mentioned it.

Mr Naidoo pointed out that the shortages of food was due to the large-scale theft of prisoners' rations, primarily meat. Mr Naidoo had personally caught a prisoner known as Mr Grant Mashego taking a 25-litre bucket of chicken out of the kitchen for Mr Motsepe to take home.²

2.3 Mr Grant Bassie Mashego

Mr Mashego is an inmate who works in the Pretoria Central Prison kitchen as a team leader. He testified that his duties include cleaning, cutting vegetables and washing dishes. He also cooks food and supplies food to other prisoners. From August 2001 to December 2002, when Mr Naidoo caught him, he would carry a bucket from the kitchen to the main gate at Mr Motsepe's request every second day. The bucket was heavy and it was closed so he did not know what was inside it. When Mr Naidoo stopped him he asked Mr Mashego to open the

² The prisoner who used to carry the bucket of meat for Mr Kgalane is known as Cry, who was caught by Mr Snyman and no longer works in the kitchen.

bucket and found cooked chicken inside. There was a meat shortage in the section on that particular day.

Mr Naidoo asked Mr Mashego to take the bucket back to the kitchen. He told Mr Motsepe that Mr Naidoo had asked him to return the bucket. Mr Motsepe then summoned another prisoner, Geoff, who also worked in the kitchen, to carry the bucket to his car. Mr Motsepe never asked him to carry the bucket again.

Mr Mashego stated that Mr Motsepe and Mr Kgalane eat more food than any of the prisoners and he has seen them eat prisoners' food. Both Mr Kgalane and Mr Motsepe like fillet steak, and Mr Mashego has seen fillet steak being cut from a carcass for Mr Kgalane.

He confirmed that Mr Bright Shabalala from the Commission visited the kitchen after he and other prisoners had made statements that Mr Kgalane and Mr Motsepe were eating prisoners' food. When Mr Shabalala visited the kitchen, Mr Mashego had just served Mr Kgalane and Mr Motsepe beef prepared from prisoners' food. The menu for that day was fish and pork but they did not like that type of meat.

2.4 Mr Adolf Hendrick Erasmus

Mr Erasmus is employed by the Department in the Area Manager's office at Pretoria Central Prison. He testified that from the 1 April 2002 to 31 March 2003, he had the tender to remove all the waste food from Pretoria Central and Maximum Prison. The waste was collected in drums brought by him and filled by kitchen staff who then put out the full drums for Mr Erasmus to collect. There was generally no security between the kitchen and the exit and food drums were not usually checked. The delivery entrance was mostly unguarded.

As soon as he started carrying out the tender, Mr Erasmus granted authority to collect meat shavings and bones to Mrs van Niekerk in a letter dated 2 April 2002.

When Mr Erasmus's tender expired, he was prevented from reapplying as prison officials were not allowed to tender in terms of the tender procedures. He had previously been unaware of the regulations.

The new tender was awarded to Mr Janse van Vuuren, who Mr Erasmus had thought was retired. He had originally met Mr Janse van Vuuren in the prison during April or May 2002. In a letter dated 15 May 2003,³ Mr Erasmus writes that Mr Janse van Vuuren had authorised him to remove food waste and that he, Mr Erasmus, had authorised Mrs van Niekerk to remove food waste.

Mr Erasmus knew that as of 15 May 2003 he could not have a tender as an employee of the Department. He denied that he by-passed the tender procedures because Mr Janse van Vuuren approached him and said there was too much food waste for him to handle and then gave him permission to remove the excess. Nobody had told him that what he was doing was wrong. He had no written authority from Mr Janse van Vuuren to remove food waste. Mr Janse van Vuuren had just asked him to do so because it was too much for him. The authority from Mr Janse van Vuuren to remove the food was not the same as the tender he had previously because Mr Janse van Vuuren could stop him from doing so at any time. He did not pay Mr Janse van Vuuren anything to remove the waste.

Mrs van Niekerk approached Mr Erasmus during 2003 for permission to remove meat shavings and bones for pigs, which he had no use for. He granted her this permission after consulting Mr Janse van Vuuren. Mrs van Niekerk had to separate the meat shavings and bones herself from the other food waste in the drums.

³ See Pretoria Exhibit L.

2.5 Mrs Lynette van Niekerk

Ms van Niekerk worked for the Department at the Registration Section in Pretoria since 15 February 1994.

She testified that when they cut meat in the kitchen, the shavings of meat and bone were collected and stored for her in the cool room. She also told people in the stores to keep breadcrumbs for her. She removed the waste in buckets.

Mr Mans is aware that she removes the waste and has walked with her many times to her car. He once opened the lid of the bucket and saw that it contained breadcrumbs mixed with meat shavings.

Mr Mans had asked her if she had permission and she told him that she had obtained permission from Mr Erasmus. She had asked the prisoners not to mix the meat shavings with other foodstuffs. She never went through any security checks with the drums she used. She denied that she took any plastic bags or frozen meat from the kitchen. The items in the drums were merely shavings from cut meat, and not frozen meat.

2.6 Mr Daniel Moweng

Mr Moweng is a prisoner serving six years' imprisonment for housebreaking. He used to work in the Pretoria Central kitchen as a cleaner until he was transferred to Pretoria Local Prison. On different occasions, he was accosted by Mrs van Niekerk and asked to assist her in taking 25-litre drums out of the fridge containing meat wrapped in plastic bags, which he would then load into her car. This frozen meat was part of the rations for prisoners.

On instruction from Mr Motsepe, he also loaded steel gates, timber and metal doors onto a truck that delivered rations. The material was taken to Mr

Motsepe's home for his personal use. Rasta, a fellow prisoner, helped Mr Moweng to load the goods.

In cross-examination, Mr Moweng stated that once, when a bucket had fallen and burst open, he had seen inside it plastic wrapped around something that looked like red meat. He was with Mrs van Niekerk when the bucket fell. He did not know whether the contents of the bucket were meat but he saw blood in the plastic. He did not see meat shavings in the bucket.

2.7 Mr Andries Nkuna

Mr Nkuna is a prisoner at Pretoria Central Prison. He has been the head cook in the prison kitchen for many years.

His main duty as head cook is to see that food is prepared adequately for prisoners in all the sections. Prisoners working in his section complained to him, as the head of the section, that they are being ill treated by Mr Kgalane and Mr Motsepe.

Since he came to prison in 2000, he has been cooking food for Mr Motsepe and Mr Kgalane from storeroom supplies. Mr Motsepe and Mr Kgalane also eat breakfast of between six (6) and eight (8) eggs each daily from the prison rations.

Neither of them has brought food to the prison kitchen from their homes to be cooked. Mr Motsepe eats food prepared for him in his office and Mr Kgalane eats at his table next to Mr Motsepe's office. They would dish up onto their own plates and not use prison plates.

Mr Nkuna did not know that it was prohibited for warders to eat prisoners' food until he saw a notice on the notice board that said so.

They, as prisoners, had raised their complaints with members before but had been ignored until they approached the Jali Commission. They arranged with Mr Shabalala of the Commission to come and meet them on 5 August 2003.

On that date, Mr Nkuna had cooked beef-steak and mashed potato with sauce from the prisoners' supplies for both Mr Motsepe and Mr Kgalane. He had already dished up for them when Mr Shabalala arrived. Mr Nkuna directed Mr Shabalala to where Mr Kgalane was eating his food. Mr Shabalala then spoke to Mr Kgalane but Mr Nkuna could not hear the content of their conversation.

When Mr Shabalala left, Mr Kgalane called Mr Nkuna into Mr Motsepe's office and asked him why he had not prepared the day's food for them. Mr Kgalane instructed the butcher to cut a piece of meat and gave it to Mr Nkuna to cook for them.

During the Jali Commission hearings, Mr Motsepe, Mr Kgalane and one David, came to Mr Nkuna in the waiting room and Mr Motsepe told him that after the case, they would put him right. He understood this to mean that he would pay for the consequences of the case. He felt bad because the warders were threatening him.

Mr Nkuna testified that the prisoners had complained to him and they had tried to speak to Mr Motsepe and Mr Kgalane. The prisoners' problems, however, were never solved. He sent a memorandum to Mr Motsepe about the prisoners' complaints two (2) months before the Commission visited the prison.

2.8 Advocate Bright Shabalala

Advocate Shabalala is an investigator with the Jali Commission of Inquiry. The Commission had established an office at the Pretoria Central Prison. The prisoners went to him and complained that Mr Kgalane and Mr Motsepe were eating prisoners' food despite the notice prohibiting warders from doing so. He agreed with the prisoners that when a meal was served to the warders, they

should contact him to witness the incident. He received a call from a prisoner on 5 August 2003 asking him to come to the prison. When he got there, Mr Makgatho escorted him to the prison kitchen.

When Mr Shabalala arrived at the kitchen, the prisoner who telephoned him was waiting for him outside the kitchen and asked him to wait while he prepared to let him in. A few minutes later, a warder emerged from the kitchen door and stood at the door.

The warder accompanying him approached the warder standing at the door and he overheard him say that he was an investigator from the Jali Commission on a mission against some of the members in the kitchen. Mr Shabalala asked why he had given the warder that information and suggested that they return as he had deliberately scuppered the whole operation.

Thereafter a prisoner emerged from the kitchen door and let him into the kitchen. As he walked towards the kitchen office, his escort followed and started shouting at him and telling him he didn't like his attitude. The escort was inciting the prisoners and other warders to attack Mr Shabalala who felt intimidated and threatened. The escort belittled him in the presence of other warders and prisoners and it was clear that he was trying to obstruct the Commission's operations. He later confronted this warder and asked him for his name but he refused to give it. He asked the other warders and prisoners what the warder's name was but the escort told them not to furnish the name.

At the kitchen office he met two warders who showed him the desk where Mr Kgalane sits. It appeared that Mr Kgalane had been eating food, as he could see food remains in his mouth, although he did not see any food in front of him. He did, however, notice something covered by a tablecloth in front of him. He asked Mr Kgalane to remove the cloth and underneath the cloth, there was a plateful of pap and two slices of fried beef. He asked Mr Kgalane where the food had come from and he said he got it from the prison rations.

He then called him to the kitchen office where he met Mr Motsepe, who told him that Mr Kgalane was tasting food, as it was the policy for warders to taste the food before the prisoners ate it. He then inquired from the kitchen prisoners about the menu for the day and they told him that it was pap and pork but Mr Kgalane was tasting beef.

On 7 August 2003 he met Mr Kgalane and had a long meeting with the kitchen staff and discussed, amongst other things, the rights of prisoners working in the kitchen. The meeting was fruitful as it resolved some of the prisoners' concerns. After the meeting, he had discussions with Mr Kgalane who apologised for eating the prisoners' food. He then asked to resolve the matter amicably and said he would not do it again.

Mr Shabalala then asked Mr Kgalane to put what he was saying in writing.

Mr Kgalane made a written statement,⁴ dated 7 July 2003 although Mr Shabalala visited the prison kitchen on 5 August 2003. In his written report, Mr Kgalane sets out his duties and amongst these is tasting the food. He, however, states that on 5 August 2003, he was not delegated to taste the food as other staff members were available to do it. In his evidence, however, he denies that the food had to be tasted by him. The written statement differs from what Mr Kgalane told Mr Shabalala verbally.

The entire matter was reported to the Head of the Prison who launched a Departmental investigation. The investigation report⁵ recommended that disciplinary action be taken against Mr Kgalane for refusal to obey a reasonable request from Mr Shabalala.

⁴ See Pretoria Exhibit QQ1.

⁵ See Pretoria Exhibit QQ2.

2.9 Mr Paul Johannes van der Berg

Mr van der Berg is a Disciplinary Supervisor and checks that everybody is doing their job. He also carries out instructions received from the Head or Assistant Head of Prison and the Area Commissioner.

On 6 August 2003 he was ordered in a letter⁶ by the acting Head of the Prison, Mr Rakoma, to investigate the allegations of misconduct against Mr Kgalane, including that he had eaten prisoners' food. Mr Hlalethoa was suspended as Head of the Prison at the time.

Among the findings in his investigation report⁷ are the following:

- a) Mr Motsepe lied to Mr Shabalala when he said that Mr Kgalane was testing food.
- b) Mr Kgalane lied in his statement by saying that he did not know about the food on the table. In paragraph 16 of Mr Shabalala's affidavit, he said that Mr Kgalane apologised to him for eating the prisoners' food.

After making the above findings, he made the following recommendations:

- (i) That disciplinary steps be taken against Mr Motsepe and Mr Kgalane for furnishing false statements in terms of disciplinary code sections A4.1 corruption and A4.3.
- (ii) The intentional giving of false statements or any attempt to make a false or misleading statement.
- (iii) That both Mr Motsepe and Mr Kgalane be withdrawn from the kitchen with immediate effect and used elsewhere.

⁶ See Pretoria Exhibit QQ3.

⁷ See Pretoria Exhibit QQ4.

Mr Van der Berg does not know if the recommendations were accepted.

2.10 Mr Maolusi Rakoma

Mr Rakoma is an Assistant Head of Prison at Pretoria Central Prison. He was Acting Head of Prison when Mr Hlalethoa was suspended. He commissioned the investigation into Mr Kgalane after a report from Mr Shabalala alleged that some warders were eating prisoners' food. He ordered Mr van der Berg to conduct the investigations. His report on the investigation has not been acted upon by the Department as Mr Rakoma was informed that they should wait for the Commission to finish its work first.

The warders implicated in this matter elected to give the following evidence:

2.11 Mr Clive Motsepe

Mr Motsepe joined the Department on 4 April 1980 and started at Pretoria Local Prison as a Correctional Officer. He is now a Correctional Officer Grade One (1). He held various positions until 1987 when he was transferred to Pretoria Central Prison by the supervisor of the prison kitchen.

He was shocked to hear the allegations made by prisoners against him. Mr Shabalala informed him that inmates had made allegations that they carried a bucket full of meat to his car and that they found him eating prisoners' food. These allegations against him were entirely untrue. He also denied threatening any prisoners who gave evidence before the Commission.

He specifically denied that a prisoner who was confronted carrying a bucket of meat by Mr Naidoo was taking it to his car. He had no knowledge of such a bucket. The procedure of the Department is that if a prisoner is found with something unlawful in his possession and if he says that the property belongs

to somebody else and names him, that particular person should be called and be confronted.

He denied that he was found by Mr Shabalala eating prisoners' food or that he did anything contrary to Departmental policy. The allegations were made to have him removed from the kitchen because he was too strict.

He accepted that he was a Pedi speaking person but denied that he favoured Pedi speaking prisoners.

He has been working at the Pretoria Central Prison kitchen since 1996 and has passed matric. He did catering training in 1990 for about three (3) months, which entailed the preparation and serving of food to inmates. He was put in charge of the kitchen as a supervisor after he passed the course.

His main duties include supervision of the preparation and processing of food, the training of inmates, the tasting of food. Any person preparing the food has a duty to taste it. The Departmental policy is that the Head of the Prison or a medical officer tests food on the tasting plate. He is not authorised to taste the food on the tasting plate.

The purpose of tasting food is to determine whether the food is tasty, sufficient and fit for human consumption.

His function as a supervisor is to check if the males and females are given proper diets in accordance with the prescribed scales. He also checks if each prisoner gets the 25g of protein required in terms of the policy.

He normally gets complaints that food is not properly dished out to prisoners as officials who dish up do not do their work properly. This normally results in other prisoners not getting their rations.

Food from the kitchen goes to the sections where prisoners dish it up. He cannot therefore say that each prisoner gets his due because he is not at the sections where food is dished out to prisoners.

It is not the responsibility of the kitchen staff to see to it that prisoners get their proper rations. It is his responsibility to see that adequate amounts of food leave the kitchen to the sections. He acknowledged that food is being stolen, and that there are no checks to see if prisoners get their prescribed rations.

Prisoners are not given prison plates but they come with their own plastic containers to get their food. This, however, depends on the Head of the Prison. Prisoners get their containers from their relatives when they are visited. He found this system in place when he arrived at the Pretoria Central Prison. However, at Pretoria Local Prison, prisoners use prison plates, which are normally washed in the kitchen. There is even a dining hall in the Pretoria Local Prison.

In Pretoria Central Prison, they do not have a dining hall. Prisoners are expected to come with their containers to fetch their food. Inspectors have queried the main use of the dining hall in Pretoria Central Prison but he does not know what the outcome of this query was.

The Department has a budget to purchase utensils, which is handled by Mr Mans. He investigates complaints from prisoners who do not get any food. However, the distribution of food to prisoners is not within his control as he does not go to the sections where food is being distributed.

Members and prisoners alike tell Mr Motsepe that he is strict. Prisoners who steal food from the kitchen are disciplined and therefore they do not like him. All the prisoners who testified before the Commission do not like him because he is strict when it comes to the implementation of the Department's policy. He said the witnesses who testified before the Commission conspired against him and lied.

It has always been the policy of the Department that members do not eat prisoners' food. He does not know why the prisoner, Mr Mashego, who was caught with the bucket of meat, implicated him. He also could not give any reason why Mr Naidoo lied about him in this regard.

He is aware that Mrs van Niekerk was removing meat shavings from the kitchen with the permission of Mr Erasmus.

He does not have a difficulty with the prisoner, Mr Moweng, and does not know why he went to the Commission and gave false evidence against him. He denied instructing any prisoner to load steel and other materials into his truck and also denied that he took the material home. The items that were loaded into the truck were taken out from an old building and he became involved in their removal because they were next to the kitchen. As he was in charge of the kitchen, he got permission from the Head of the Prison to have those items removed. They were loaded into the truck by three (3) prisoners including Mr Moweng. They were instructed to take the items to the dumping site. The truck was driven by one David. He also denied that there were steel gates and doors. No documents were filed when the State property was being disposed of.

Mr Motsepe went with the driver to show him the dump site while all the other prisoners remained behind.

He recalled the day when Mr Shabalala visited the prison. When he arrived at the prison, he told him that he was looking for Mr Kgalane and Mr Motsepe showed him where Mr Kgalane was and he went to him.

There was no food in front of Mr Kgalane and he had a newspaper with him. Mr Kgalane is allowed to taste the food, as he does the catering duties in the kitchen. He conceded that Mr Kgalane's job description does not allow him to taste the prisoners' food. It is part of his own job description to taste the food.

On this particular day, he did not delegate the power to taste the food to Mr Kgalane.

He did not check if there was food on Mr Kgalane's table but he did not deny that there was a tablecloth on the table. He had no reason to take off the tablecloth to see if there was food underneath.

2.12 Mr Lesetja Eric Kgalane

Mr Kgalane denied that he ate prisoners' food on a daily basis. He was appointed to work in the kitchen as a trainee caterer. Sometimes Mr Motsepe used him if he ran short of caterers. His duties included the supervision of prisoners when preparing and dishing out food to sections. He recalled when Mr Shabalala came to prison on 5 August 2003. When he arrived, he was sitting at his desk reading a newspaper. There was something on the table covered with a cloth. He did not look under the tablecloth and he did not know who had put it there or why.

He does not know the prisoner Mr Mashego. He has no grudge against him. He cannot say why he said he prepared food for him and Mr Motsepe. When he was instructed by Mr Shabalala to lift the cloth on the table, there was a plate of pap, soup and two slices of beef. They thereafter went to Mr Motsepe's office and Mr Shabalala wanted to know from Mr Motsepe if Mr Kgalane was allowed to taste the food. Mr Motsepe said that he was allowed to taste the food if he had delegated that authority to him. He denies that when Mr Shabalala arrived, he was eating food or that there were food remains in his mouth.

He had not met Mr Shabalala before and he did not know why he would lie about him. He also denied that he apologised to Mr Shabalala for eating prisoners' food. On 5 August 2003, he did not taste the food. He also observed the misunderstanding between Mr Makgatha and Mr Shabalala and confirmed that Mr Makgatha had told him that they should not give Mr Shabalala his name. He also has no problem with the prisoner, Mr Nkuna, and he does not

know why he implicated him. Mr Nkuna, gave false evidence against him because he is strict.

2.13 Mr Reuben Marumo Makgatha

Mr Makgatha has been in the employment of the Department since 10 August 1999. He is based at Pretoria Central Prison, attached to the investigations section. On 5 August 2003, he was at the registration office when a lady came in with Mr Shabalala and asked him to take Mr Shabalala to the kitchen. They went to Medium A where they met Mr Andrews and he told him that he was taking Mr Shabalala to the kitchen. Mr Shabalala told him that he wanted to use the back entrance but he told him that he could not because there were prisoners there. Mr Andrews told them that they should wait but the situation was tense. He wanted to introduce Mr Shabalala to Mr Caiphas Malupi another member and hand him over to Mr Malupi as required. The only thing he could do at that stage was to mention to Mr Malupi that this is a member of the Jali Commission.

Mr Shabalala then told him that he was ruining his investigations and told him that he would report him to the Judge.

Thereafter Mr Nkuna re-appeared and pointed towards the kitchen. He did not know what mission Mr Shabalala was talking about.

They went into the kitchen and he saw Mr Shabalala with Mr Motsepe and Mr Kgalane where Mr Kgalane was reading the newspaper. Mr Shabalala instructed him to give him his name and he refused and told others not to tell him either. He admitted that he was found guilty of misconduct after the matter between him and Mr Shabalala was investigated. He was given a verbal warning.

3. EVALUATION OF EVIDENCE

3.1 Mr Reuben Marumo Makgatha

The evidence against Mr Makgatha that he obstructed an investigator of the Jali Commission, Mr Shabalala, is overwhelming. There does not appear to be any reason why Mr Shabalala would falsely implicate Mr Makgatha in this regard. However, the Department has adequately investigated this matter and there is no reason why the Commission should make recommendations in this regard. The full investigation report on the behaviour of Mr Makgatha on the day in question is fully set out in Exhibit QQ2. On perusal of the investigation report, it is clear that the Department fully investigated the matter and findings were made against him and he has been subjected to a disciplinary inquiry and received a verbal warning.

3.2 Mrs Lynette van Niekerk

The allegations against Mrs van Niekerk are supported by the evidence of Mr Naidoo, a Senior Correctional Officer employed by the Department at the Pretoria Management Area and by a prisoner, Mr Moweng. Mr Naidoo's evidence is mainly that he saw a prisoner, whose name he could not recall, loading packets as well as a 25-litre drum into a White Toyota Corolla belonging to Mrs van Niekerk.

On the other hand, the evidence of Mrs van Niekerk is that she had permission from Mr Erasmus to remove meat shavings and bones from the kitchen. It also appears from the evidence that Mr Erasmus himself had received permission from a certain Mr Janse van Vuuren, who had a tender to remove food waste from the kitchen. Mr Motsepe himself confirmed in his evidence that he was aware that Mrs van Niekerk had permission to remove meat shavings and bones from the kitchen. Mr Moweng's evidence also revealed that the other plastic bag contained meat shavings.

The evidence against Mrs van Niekerk that she removed meat from the prison kitchen is insufficient to justify the conclusion that she did so as alleged by witnesses. It would not be safe to rely on this evidence to prove the allegation against Mrs van Niekerk. The Commission will not make any recommendation in this regard.

However, in her own evidence, Mrs van Niekerk testified that she used the prisoners to help her transport the meat shavings from the kitchen to her motor vehicle. Her evidence also reveals that she used the kitchen back door to take drums to her motor vehicle. The use of prison labour is prohibited in terms of Departmental policy. Her conduct also amounts to a breach of security in that she used the back door of the kitchen for this purpose.

3.3 Mr Claas Masela Motsepe

The first allegation against Mr Motsepe is that he attempted unlawfully to remove a bucket full of cooked chicken from the prison kitchen. The evidence of a prisoner, Mr Mashego, and a member, Mr Naidoo support this allegation.

Mr Mashego testified that during August 2001, he was instructed by Mr Motsepe to carry a bucket for him from the kitchen to the main gate. He also testified that he had done that on a number of occasions until Mr Naidoo stopped him. He did not know the contents of the bucket until Mr Naidoo asked him to open it and found it full of chicken portions. Mr Naidoo instructed him to take the bucket back to the kitchen and warned him. Mr Motsepe then instructed another prisoner to take the bucket to the main gate.

The evidence of Mr Mashego is corroborated by the evidence of Mr Naidoo, who confirmed that had confronted a prisoner, whose name he could not recall, taking a bucket full of meat to the main gate on the instructions of Mr Motsepe.

Mr Motsepe denied this allegation when he gave evidence. He, however, could not give any reason why both Mr Mashego and Mr Naidoo would falsely

implicate him. Both witnesses appeared to be honest and reliable and there is no reason why the Commission should reject their evidence.

The second allegation against Mr Motsepe is that he instructed a prisoner, Mr Moweng to load steel gates, timber and metal doors into a truck for delivery to his home. The truck was driven by one David. He testified that he was assisted by a fellow prisoner. However, neither the prisoner nor David, was called to give evidence. These two (2) men could have corroborated the evidence of Mr Moweng had they been called.

On the other hand, Mr Motsepe testified that he had had received permission from the Head of the Prison to remove the items to the dump site. He denied that these items were taken to his home for his personal use. The evidence in support of the allegations that these items were taken to Mr Motsepe's home is unconvincing and is insufficient to sustain an allegation that Mr Motsepe intended to steal these items belonging to the Department. There is also no evidence to suggest that the Department was deprived of these items nor was any investigation conducted to show that these items were indeed taken by Mr Motsepe for his own personal use.

The Commission will therefore not make any recommendation against Mr Motsepe in this regard.

The next allegation against Mr Motsepe is that he, together with Mr Kgalane, ate prisoners' food. This allegation is supported by the evidence of Mr Mashego and Mr Nkuna. Both these witnesses testified that they were instructed by both Mr Kgalane and Mr Motsepe to prepare food for them from prisoners' rations. They have seen both men eat prisoners' food.

In terms of Departmental policy, members are not allowed to eat prisoners' food. There was also a notice pinned to the notice board prohibiting members from eating prisoners' food, yet despite this notice Mr Kgalane and Mr Motsepe instructed prisoners to cook food from the kitchen and ate it. Although Mr

Motsepe denied eating prisoners' food, the evidence is overwhelming that he did in fact do so in contravention of Departmental policy. There is no reason why these two (2) prisoners would falsely implicate Mr Kgalane and Mr Motsepe.

The conduct of Mr Motsepe also constituted a breach of security in prison in that he used the kitchen back door to transport the bucket of meat to his car.

3.4 Mr Lesetja Eric Kgalane

The allegation against Mr Kgalane is that he used prisoners to prepare food for him and also ate prisoners' rations. This allegation is supported by the evidence of Mr Mashego, Mr Nkuna and Mr Shabalala. There is no reason why the prisoners would falsely implicate Mr Kgalane. There is also no reason why an investigator of the Commission, who went into the prison himself and found a plate full of prison food on Mr Kgalane's table on the day in question, should falsely implicate Mr Kgalane.

The evidence reveals that this food was prepared by the prisoners, who then called upon Mr Shabalala to come and witness for himself that Mr Kgalane was eating prisoners' food. Mr Nkuna testified that he had been instructed by Mr Kgalane to dish up the food shortly before he called Mr Shabalala. Save for stating that the prisoners made false allegations against him because he is strict, there appears to be no other reason why both Mr Mashego and Mr Nkuna would falsely implicate Mr Kgalane.

In his evidence, Mr Kgalane did not say that the food that was on his table was brought by him to the prison. It is highly improbable that he did not know who brought the food that was on his table. The evidence against Mr Kgalane was so overwhelming that his version could not be true and it ought to be rejected. His conduct therefore amounts to a breach of Departmental policy.

4. RECOMMENDATIONS

4.1 Mr Reuben Marumo Makgatha

The allegation against Mr Makgatha that he obstructed Mr Shabalala in the performance of his duties has been investigated and dealt with by the Department.

Accordingly, the Commission makes no recommendation against him.

4.2 Mrs Lynette van Nierkerk

There is insufficient evidence to justify a conclusion that Mrs van Nierkerk stole meat from the prison kitchen.

There is however, sufficient proof that she used prison labour to take meat shavings and bones from the kitchen to her motor vehicle. The use of prison labour is prohibited in terms of Departmental policy. There is also sufficient proof that she used the back door of the kitchen to transport her meat shavings and bones from the kitchen to the motor vehicle in breach of security in prison.

Accordingly, the Commission recommends that:

4.2.1 She be charged with contravening:

- (a) Clause 4.6 column A of the Department's Disciplinary Code - Use of prison labour for personal purposes.
- (b) Clause 5.10 column A of the Department's Disciplinary Code – Breaching of internal security arrangements.

4.3 Mr Claas Masele Motsepe

There is sufficient proof that Mr Motsepe stole a bucket of chicken portions from the prison kitchen. He also used prison labour to take the meat to his car. His conduct in this regard amounts to a breach of Departmental policy.

However, there is insufficient proof that Mr Motsepe stole or unlawfully removed steel doors, timber and gates from the prison premises. Therefore no recommendation is being made against him in this regard.

There is sufficient proof that Mr Motsepe ate prisoners' food together with Mr Kgalane. There is also sufficient proof that Mr Motsepe used prison labour to prepare food for him.

There is also sufficient proof that he breached internal security arrangements by using the kitchen back door.

Accordingly, the Commission recommends that:

4.3.1 He be charged with contravening:

- (a) Clause 4.5 column A of the Department's Disciplinary Code – Theft/Unauthorised possession of Government property.
- (b) Clause 4.6 column A of the Department's Disciplinary Code – Use of prison labour for personal purposes.
- (c) Clause 5.10 column A of the Department's Disciplinary Code – Breaching internal security arrangements.

4.4 Mr Lesetje Eric Kgalane

There is sufficient proof that Mr Kgalane used prisoners to cook his food and that he ate it. His conduct in this regard amounts to a violation of the Department's Disciplinary Code.

Accordingly, the Commission recommends that:

4.4.1 He be charged with contravening:

- (a) Clause 4.5 column A of the Department's Disciplinary Code – Theft/Unauthorised possession of Government property.
- (b) Clause 4.6 column A of the Department's Disciplinary Code – Use of prison labour for personal purposes.

5. CONCLUDING REMARKS

Evidence also established that in Pretoria Central Prison the prisoners have no dining hall where food is served and that instead food is served in each section. Prisoners are also not given prison plates but instead use their own containers provided by their relatives. Evidence has established that the Pretoria Central Prison has a budget for purchasing utensils and other necessary items. Other prisons have dining halls where food is served and eaten by the prisoners.

It is not hygienic for prisoners to be served food in their sections where they eat in overcrowded communal cells.

Evidence has also established that the Head of the kitchen has no control over whether each prisoner gets sufficient food in terms of the dietary requirements. The Head of the section admitted in his evidence that he had received a number of complaints that certain prisoners did not get enough food, or any food at all. The distribution of food in the sections is left entirely to the prisoners. As a result of this arrangement some prisoners do not receive food at all. This borders on the dereliction of duty by the Head of the Prison.

The Commission has dealt more fully with this matter in the chapter on the Treatment of Prisoners.