



**24 February 2021**

### **Zondo Commission – Zondo issues police complaint against defiant Prasa contractor**

Deputy Chief Justice Raymond Zondo has instructed the secretary of the state capture commission to urgently issue its third police complaint, this time to Auswell Mashaba, a former Passenger Rail Agency of South Africa (Prasa) contractor. Mashaba was a no-show on Wednesday, despite having been served with a summons by the commission to appear and give evidence in relation to a R3.5-billion contract for the supply of locomotives to Prasa, entered into in 2013, with his company Swifambo.

“The secretary of the commission is instructed to lay a criminal complaint against Mr Auswell Mashaba for his failure to appear before the commission today in accordance with the terms of the summons that had been served on him.”

The contract has to date been declared corrupt by the South Gauteng High Court, and Swifambo’s appeals before both the Supreme Court of Appeal and the Constitutional Court were unsuccessful. As much as R2.78-billion of the total amount has already been paid to the company in respect of a batch of 70 locomotives, evidence leader Advocate Vas Soni told Zondo, but to date only 13 have been received.

Soni said Mashaba was served with his summons on 10 February, with a response coming from his lawyer on 15 February to say that he would not be appearing on account of the order being invalid. Mashaba had previously complied with the requirements of the commission, submitting an affidavit in November last year. However, in a second letter, given to the commission on Wednesday morning, he reiterated his position that he would not appear on the basis of what he called the “purported” summons.

Soni reminded Zondo of a remark he had made on 15 February, after similar defiance of the commission’s summons was displayed by former president Jacob Zuma who refused to appear. “The point you made chairperson is that that is going to lead to more such defiance, and that is exactly what has happened.”

Zondo agreed. “This may well be the start of more people defying summonses issued by the commission, and refuse to appear before the commission, which obviously undermines in very significant way, the work of the commission.

“When people who have knowledge of certain transactions and certain events that are relevant to the investigation of the commission refuse to appear when they have been served with summonses. This may defeat the objective of the commission.”

He added that Mashaba’s attorney does not place any factual or legal argument in his letter for why his client regards the summons as being irregular, as was the case with Zuma’s lawyers last week. “This witness has done the same, and we may well see more. I hope not. The conduct of

defying a summons to appear before the commission, without having gone to court to have it set aside, if somebody thinks the summons is irregular or not valid, but simply to defy it and not appear before the commission, is totally unacceptable.”

The commission, along with law enforcement agencies had to put a stop to it, he added, because if it spreads it will be the end of our judicial system. Sections of the South African society will think it is right to defy orders to appear before legal proceedings if the disregard for them is not curbed now.

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