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Zondo commission – Another no-show as Makhubele makes excuses

The evidence of Pretoria High Court Judge Nana Makhubele before the commission of inquiry into state capture has been postponed to Monday 3 August 2020, while she is ordered by chairperson Deputy Chief Justice Raymond Zondo to submit an affidavit responding to allegations made against her by past witnesses, by Wednesday next week.

This is after a no-show from Makhubele, who had been scheduled to appear on Friday.

According to her legal representative, Advocate Gift Shakoane, Makhubele was involved in a car accident on Thursday evening which left her uninjured, but in a traumatised state that rendered her unable to proceed with giving evidence. Shakoane also provided pictures as proof to support Makhubele's submission. The grounds for the application, though, have to do with the judge having not secured legal representation in time.

"This has caused the commission a lot of inconvenience. This day was set aside for her to give her evidence," said Zondo, in the process of making his ruling.

Shakoane's team had only consulted with her once before Friday, in preparation for the application. Makhubele has been co-operative with the commission to date, said her lawyer, even consulting with its legal team to prepare for her appearance, but an unfortunate set of events where she was abandoned by two attorneys on separate occasions meant that she was unable to establish a clear legal defence strategy for herself.

Zondo noted that while the accident was a factor in Makhubele's absence from the day's hearing, her intention to ask for a postponement preceded the accident. This means that even if it had not been for the incident, her application was still to be made on the day, on the arguments presented, which he felt did not have merit. Zondo expressed disappointment in Makhubele's conduct in this regard, stating that he expected more from a high court judge, particularly because she is aware of how legal processes happen.

Makhubele is expected to respond to allegations against her of interference in the legal process involving a disgruntled contractor of the Passenger Rail Agency of South Africa (Prasa) in 2017. She was the board chairperson of Prasa from October 2017 to February of the following year, and witnesses including the agency's legal head Martha Ngoye have testified that within weeks of her appointment, Makhubele involved herself in a lawsuit brought against Prasa by Siyaya Group of companies.

Siyaya held several contracts under different variations of its name. Its director Makhensa Mabunda was described by Makhubele's predecessor Popo Molefe in his testimony as a close friend of former

Prasa CEO Lucky Montana. As a consequence, Siyaya is alleged to have enjoyed certain privileges within Prasa that saw it bag millions of rands in contracts. Once Molefe's board came into office, it instituted investigations into a number of irregular contracts, one of which was Siyaya. This resulted in Siyaya taking the agency to court, only for the matter to be moved to an arbitration process later.

The commission's Advocate Vas Soni, who is scheduled to lead Makhubele's evidence, told Zondo that as early on as February this year, the judge had been provided with the affidavits of Ngoye and colleague Fani Dingiswayo as well as Zackie Achmat of #UniteBehind, an activist group involved in Prasa-related advocacy work. Zondo pointed out that, given that Makhubele had known about the allegations against her for five months, there was no excuse for her not to have secured a defence for herself in line with the process, especially being a judge and knowing the urgency of such a process.

Dismissing Makhubele's original request for a month's postponement, Zondo said: "All the grounds that she had relied on ...do not reveal any merit for a postponement.

"I'm not going to postpone the hearing of her evidence for a month. I am going to postpone it for a week. She has had ample time to do what needs to be done. Her counsel has said she has offered to file her affidavits by end of next week."

The commission, he said, is working under very serious time constraints. "It cannot afford to have postponements which can be avoided. But, as I have said, I will postpone the hearing of Judge Makhubele because of the reality of the situation."

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