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Zondo commission – No sound justification for Eskom-style suspensions at Denel

The commission of inquiry into state capture kicked off this week with evidence relating to state owned arms manufacturer Denel. The first witness of the day was former board member Nonyameko Mandindi, who spoke of what she viewed as the unfair, hasty removal of the company's top structure, with no basis, in September 2015.

Mandindi joined the board in May that year, and underwent a formal induction two months later. Two months after that, she told the commission, a special board meeting was held on 23 September that was meant to discuss the Land Systems South Africa (LSSA) transaction that Denel had entered into earlier in the year, but instead ended up discussing the suspensions of three executives. Denel bought LSSA from part owners BAE Systems, but whether or not the deal constituted any wrongdoing on the part of the executives suspended is yet to be found out.

The heads of CEO Riaz Saloojee, CFO Fikile Mhlontlo and company secretary Elizabeth Africa were on the chopping block on the day of the meeting, their fate having been decided in an earlier meeting of the audit and risk committee (ARC). For Mandindi, the sudden development did not sit well, and when her turn came to speak on the matter, she expressed her uneasiness with taking such drastic action when there was little information on what the executives had done wrong. Her understanding, as per the preparation pack sent to all members, was that the LSSA deal was to be discussed in detail, and not the fate of the executives.

"The discussion was around the unhappiness with the CEO, the CFO and the company secretary, so it was really around the executives' performance and behaviour."

The concern she raised was that the board, new as it was, could not make an informed judgement on the competence of the three.

"I raised my concerns and objections because I felt that if we are to be getting into a discussion, especially when it's that advanced that you're talking of suspending senior people in the organisation, we should be receiving a report back from the ARC so that all board members would have applied our minds to the facts that were being considered by the audit committee."

The only information the board had was a document that was circulated at the meeting, causing more concern. Mandindi left the meeting before it concluded on the matter, feeling that she was adding no value to the discussion. "I felt it was a bit odd, or rather unfair, not only to the executives but to us that you should be thrown into such a drastic decision without prior preparation." Furthermore, she added, in the few interactions that the board had had with the executives, she was not of the opinion that any of them displayed incompetence or acted to misinform the board. "So I couldn't make a value judgement with regards to the misinformation or inadequacy of information or incompetence claims."

The discussion, however, continued without her, and board member Tau Mahumapelo was nominated to act in the position of company secretary, while Denel's business development head

Zwelakhe Ntsephe was suggested as acting CEO. “We were informed the following day that the three members had been suspended,” said Mandindi.

Two days after the meeting she penned a letter to chairperson Daniel Mantsha detailing her concerns. For one, Mahumapelo’s appointment raised an issue of conflict of interest, as he was a member of the ARC that deliberated over the proposed plan of action.

“I was greatly troubled and concerned when the events unfolded in the meeting the way they did, because I felt that to suspend or release senior members of the organisation there has to be very serious allegations levelled against them,” Mandindi explained when asked by evidence leader Paul Kennedy what she hoped to gain by writing the letter. “These things are very disruptive for these entities and I just felt greatly troubled that we didn’t even have something, a report that is written as a board, that we could apply our minds to with regards to the allegations levelled against the senior executives.”

The ARC report was not circulated before the meeting.

“It is a serious concern, chair. You don’t suspend senior executives on the basis of documentation you’ve just received at the meeting without applying your mind. We needed to have received that information before so that we can objectively evaluate whether it’s a wise decision or not.”

Mantsha did not respond to Mandindi’s letter, and the next time the board met, the discussion had moved on to the task of appointing an external investigator into the conduct of the three executives. The result of this was a round robin resolution in October on the appointment of law firm Dentons, which Mandindi also opposed on the basis that a more suitable service provider would be from a transaction advisory background, and not a law firm.

The technical specifications of the LSSA deal, she explained, should have been probed, not just the legalities of the transaction. Again, she was overruled and Dentons was appointed. By the time she resigned in July 2016, the law firm had not presented a final report, a point corroborated by the second witness of the day, Monhla Hlahla, Denel’s current chairperson.

According to Hlahla, Dentons only presented its final report earlier this month, after some wrangling between it and Denel. It is with the current ARC, she told the commission, and is expected to be shared with the rest of the board. Commission chairperson Deputy Chief Justice Raymond Zondo wondered why it took so long for the firm to complete its investigation.

“My understanding is that at some point the position they took was to refuse to go any further in dealings with Denel,” said Hlahla, who promised her board would co-operate with the commission in making the report available.

Zondo had earlier noted, during Mandindi’s testimony, the similarities between the events at Denel and Eskom within a space of several months. Eskom’s top structure was also suspended in March 2015 by a newly-appointed board, pending an investigation into the parastatal’s poor performance. Although Dentons was appointed in that case as well to carry out the investigation, evidence before the commission is that the Eskom probe was suspended in July that year at the board’s request, after separation agreements were signed with three of the four executives.

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