



3 August 2020

Zondo commission – chairperson dismisses another Makhubele application to postpone

On Monday morning the chairperson of the commission of inquiry into state capture, Deputy Chief Justice Raymond Zondo, dismissed yet another application for the postponement of the oral evidence of Judge Nana Makhubele. The hearing was adjourned for two hours, however, to consider Makhubele's application for the commission's Advocate Vas Soni to recuse himself from leading her evidence.

She accused Soni of having been rude and dismissive towards her during a consultation last month that was meant to brief her on the areas of the Prasa-related evidence that she had been implicated in. On this basis, Makhubele asked that he be removed and replaced by another member of the team, since her application to have her testimony postponed had been dismissed and she was expected to testify.

A further inconvenience for Makhubele, she stated, was that her legal representative – former National Prosecuting Authority head Advocate Mxolisi Nxasana – was ill-prepared to see her through her testimony on the day. Makhubele briefed Nxasana for the first time on Saturday, with the instruction that he should put forward her latest postponement application. The basis for the application, said Nxasana to Zondo, was that he would oversee the matter, on the arrangement that her desired counsel would be fully briefed and instructed later on how to proceed going forward. Nxasana did not name the counsel, who was said to only be available from mid-September.

This was not the first time that Makhubele asked the commission to consider her application under these circumstances. On 24 July, her then legal representative, Advocate Gift Shakoane, also applied for a postponement on her behalf, on the basis that the judge would seek and brief counsel to take over her matter for the longer term. It was on this day that Zondo first dismissed the application, placing a directive for Makhubele – who was absent on that Friday – to appear to give evidence on Monday morning at 10h00. In making a case for her application, she told Zondo that Soni had said a lot about her on the 24th that is not true. A perception has been created about her in the media that she is arrogant and disrespectful towards the commission, but an affidavit that she filed before her appearance on Monday morning covers all the efforts she made to keep the commission informed about her status of legal representation and state of readiness, which seem to not have been taken into consideration.

Makhubele is also facing a disciplinary process before the Judicial Conduct Committee of the Judicial Service Commission over the same allegations that bring her before Zondo. She is accused of having abused her power as Prasa board chairperson by meddling in legal affairs involving a contractor that

was under investigation at the time. Siyaya Group sued Prasa for just under R60-million in 2017 after the rail agency cancelled its contracts citing alleged irregularities that needed to be probed.

The company underwent liquidation thereafter, and a former lawyer for the liquidators, Advocate Francois Botes, told Zondo in July that Makhubele had been closely involved in the case. Prasa's legal head Martha Ngoye testified that in all Makhubele's dealings in the case, she had sidelined not only Ngoye's department, but also other board members, and acted inappropriately in handling the issue on behalf of Prasa on her own. Siyaya is among several contractors who are said to have enjoyed favouritism within Prasa due to its director's close friendship with former CEO Lucky Montana.

Zondo was expected to hear Makhubele's supporting argument for her request for Soni's recusal at 15h00.

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