



5 November 2020

Zondo commission – charge Myeni for rules breach, says evidence leader to Zondo

The commission of inquiry into state capture should charge former SAA chairperson Dudu Myeni for breaching an order of its chairperson Deputy Chief Justice (DCJ) Raymond Zondo by disclosing the name of a witness who appeared in-camera in February this year. This is according to the commission's Advocate Kate Hofmeyr, who was leading Myeni's evidence when the latter revealed the name of a protected witness during proceedings on Thursday.

Zondo told Myeni that he was disappointed in her conduct, particularly because she had given the impression at the beginning of her testimony the previous day that she respects the procedures of the commission. But when Hofmeyr began going over evidence relating to Myeni's tenure as chairperson of the Umhlathuze Water Board, the incident happened.

The witness in question, known only as Mr X, applied for permission to give his evidence in-camera, with his true identity hidden, for fear of his safety. Zondo granted the application and on 17 February this year he gave evidence in which he implicated both Myeni and her son Thalete in money laundering allegations. While giving evidence on Thursday, Myeni disclosed Mr X's real identity, claiming that the two of them are as close as family, and that Mr X was being used to disrupt her family. Mr X too had indicated during his testimony that his family shares a closeness with Myeni's.

In response to a question by Hofmeyr on whether or not Myeni was aware of Mr X's evidence that he received money from Thalete's company, Premier Attraction, Myeni asked who Mr X was. Hofmeyr explained the circumstances under which he came to be known as Mr X, to which Myeni confirmed that she had indeed read the transcript of the February testimony as provided to her under Rule 3.3 of the commission directing the legal team to furnish implicated persons with the affidavits of their accusers.

Zondo explained further: "I made a ruling that he should be referred to as Mr X for reasons that were dealt with at the time. So we'll refer to him as Mr X."

"An application was made before me for me to make a ruling that his identity should not be disclosed, if I recall correctly, and therefore I was satisfied that there were proper grounds for invoking those powers and I said his identity cannot be disclosed."

At this point, Myeni thanked him, before carrying on with giving her response. "For the first time, I read Mr X's file, the full file. And your office, chair, has the SIU investigation against Mr X."

In her next sentence, Myeni revealed Mr X's true name. "This is a distraction [sic] of a family member. Mr X is my family. His children are my children. There is no truth in hiding his identity," she said.

“Our system continues to deplete the fibre of our society. I’m not going to talk to issues that pertain to what the so-called Mr X said because of the fear that has been presented before you. This is an honest man that I’ve known for over 25 years.”

At this point, Zondo called on Myeni to pause her testimony, and declared that proceedings would adjourn for the lunch hour while he reflected on what to do about what had just happened.

Following the lunch break, and after deliberations between Hofmeyr and Myeni’s legal team in Zondo’s chambers, the two sides were given an opportunity by the DCJ to address him with their reactions to the earlier events.

“Just before the lunch break, Ms Myeni mentioned somebody’s name that should not have been mentioned, that she should not have mentioned, in terms of an order that I had made, and I’d just explained to her that I made an order to protect the identity of the person,” said Zondo.

“I met with Ms Myeni’s legal team and the evidence leader. They both have something to say about the way forward.”

Hofmeyr was first: “Section 5 of the Commissions Act makes it an offence for a person to wilfully obstruct a commission in the performance of its functions. That section is re-enforced by similar provisions in Regulation 12 of the regulations that have been promulgated in accordance with the establishment of this commission.

“Today Ms Myeni has breached that section of the Commissions Act and Regulation 12, and I say that for four reasons. The order that you made, chair, concerning the identity of Mr X was granted because you were satisfied that disclosure of his identity would threaten his and his family’s personal safety.”

Zondo had also made it clear to Myeni that he ruled that Mr X’s identity was not to be revealed because he was persuaded that but for that protection, his personal safety was at risk, said Hofmeyr.

“We submit that you should direct the secretary of the commission to lay a charge against Ms Myeni for breaching Section 5 of the Commissions Act so that justice can take its course.

“As per discussions we held in chambers, we have requested to make a formal submission to you, chair... we deem the situation serious and we come to thecChair with a formal submission,” said Myeni’s attorney, Nqabayethu Buthelezi.

Zondo then gave Myeni’s legal team until Monday 9 November at 10h00 to deliver their formal submission, which Buthelezi said would also respond to Hofmeyr’s motion of a criminal charge.

“I don’t know what explanation Ms Myeni will be giving in due course ... on the face of what happened here which we all know, what you did is really something that, it seems to me, would discourage other witnesses who want to give evidence before the commission anonymously when they fear for their safety or their lives.”

There are many people who want to share information with the commission and have done so over the past two years, he added. “When something like this happens in the commission, it undermines the work of the commission in a very serious way.”

Useful links:

[Zondo Commission website](#)

Corruption Watch’s [Zondo Commission update page](#)

[SAA corporate website](#)