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Zondo commission – Myeni lawyers cry prejudice from Zondo

Dudu Myeni has registered prejudice from the commission of inquiry into state capture through her lawyers, citing what they see as inefficiencies on the part of its legal team.

Myeni's attorney Advocate Nqabayethu Buthelezi told commission chairperson Deputy Chief Justice Raymond Zondo that it was unfair that some affidavits relating to her evidence were being deposed to while she was already on the stand, making her question whether she was being ambushed.

At issue was the introduction of an affidavit deposed by an attorney employed by Werskmans from whom Myeni allegedly sought legal advice in early 2014 while she was chairperson of SAA. The advice was meant to address Myeni's position against the complaints of six fellow board members who voiced their frustration with her leadership to then public enterprises minister Malusi Gigaba. A result of Myeni's request was that a memorandum was put together that outlined the powers she had in challenging the complaints.

For Buthelezi, the commission's decision to obtain the affidavit was unacceptable. "This affidavit presents us with several challenges...in my understanding of the law, this seeks to violate client-attorney privilege. How is it that the commission can write to an attorney and ask for information that this person had consulted?"

"This is sacrosanct to the legal space, and we cannot comprehend how this commission and by extension you, can venture into the space where an attorney is now on record saying I have been asked to give evidence about circumstances where the former SAA chairperson asked me for legal advice. This brings the proceedings into serious disrepute," added Buthelezi, addressing Zondo.

This violation, he added, was not in isolation. Two more affidavits that were deposed to earlier in the week were also submitted before Zondo while Myeni was already giving her testimony. These related to an investigation by the Hawks into allegations that Myeni's home in Richards Bay was fitted with security features to the value of over R400 000, courtesy of facilities management company Bosasa in 2015. A Hawks investigator has since filed his affidavit, as has former Bosasa employee Richard le Roux. The latter testified in 2019 to having done the work at Myeni's home, and it was on the back of that testimony that the Hawks sought a search warrant to probe Myeni's home in October last year.

"We are registering, chair, extreme prejudice that has been going on until now. The commission has had knowledge of her attendance for the longest time. We have to bend over backwards to accommodate inefficiencies that are emanating from the other side."

Evidence leader Advocate Kate Hofmeyr defended her team, saying that the Werksmans affidavit was forwarded to Myeni's legal team via e-mail immediately when the commission itself received it.

On the point of the privilege raised by Buthelezi, she saw no basis for the claim of violation. "The situation is such that this memorandum was procured from Werksmans by Ms Myeni when she was chairperson in April 2014," she explained.

"It is work that Werksmans did and Ms Myeni required SAA to reimburse her for on the basis that the memorandum had been presented to the board and had been procured for the benefit of SAA. The consequence of that is that it is SAA's privilege, and not Ms Myeni's privilege."

The commission has engaged SAA, said Hofmeyr, and received consent to obtain the memorandum. "The holder of the privilege, SAA, was happy with him [Werksmans attorney] traversing the matters."

Hofmeyr further said the commission had been trying to engage Myeni for about a year now, until Zondo issued a subpoena. "From the point of view of early engagement on issues, certainly the commission has endeavoured for more than a year to engage."

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