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Zondo commission – “Dishonest” Kwinana’s evidence explained

Yakhe Kwinana walked away from her chairperson role at SAA Technical (SAAT) and non-executive board membership at SAA in August 2016, taking with her an undue benefit of millions of rands from a R1.5-billion irregular contract for the supply of components, and a conflict of interest that benefited her private auditing business. She left a legacy of ruling with an iron fist and purging those who opposed her ideas.

These are some of the submissions likely to be made to the chairperson of the commission of inquiry into state capture, Deputy Chief Justice Raymond Zondo, to inform his final report. They were put to Kwinana on her last day of testimony on Saturday by evidence leader Kate Hofmeyr. Kwinana, she said, had been a dishonest witness who breached terms of her subpoena by not providing critical documents from her private company to the commission to help it do its work.

Kwinana sat on the SAA board from 2009 to 2016, and chaired the SAAT board from 2014 to 2016.

Meddling in procurement matters

In the three days of Kwinana’s testimony on Monday, Tuesday and Saturday last week, some time was spent looking at the R1.2-billion aircraft components contract awarded by SAAT in 2016 for five years. It was awarded to a joint venture (JV) between American components manufacturer AAR Corp and its local BEE partner JM Aviation under dubious circumstances, said Hofmeyr. The JV should have been disqualified, she added, because it enjoyed favour from both Kwinana and SAAT’s former head of procurement, Nontsasa Memela. The pair allegedly pushed for JM Aviation to be the preferred partner of AAR, despite being introduced to AAR by another local company, SRS Aviation, owned by Sibongile Sambo who testified in February this year.

Kwinana denied on Tuesday that a trip paid for by AAR to its Chicago headquarters in April 2015 – taken by herself, Memela, several other SAAT executives, and another board member – constituted a conflict of interest, given that the tender process was open at the time. In her defence of the decision by the delegation to be hosted on a tour of the company’s facilities, she said it had nothing to do with the fact that AAR had bid.

“We were not going there for purposes of the tender. We were going there for the purposes of the partnership, and therefore I didn’t see any need for me to check if there’s a tender going on and if AAR has tendered,” said Kwinana. By partnership she meant a separate process sought between SAAT and AAR to reach a memorandum of understanding (MoU) for the company to become its long-term supplier of service parts.

According to Kwinana, there was no room for the board’s influence because the procurement process was a “rigorous” one. At the end of it, SAAT management recommended Air France, and not AAR, as the preferred bidder. But the submission to the board had holes, asserted Kwinana, in that despite having management’s vote, Air France failed at a basic component of the tender, namely supplier

development. This was in application of a policy strategically engaged at the time by SAA, but declared unlawful by National Treasury, for all large contracts to set aside 30% of the total value to a local BEE company.

“One of the criteria was that the bidders should comply with BEE, and therefore Air France should not even have been there because they did not have BEE,” said Kwinana.

Air France had actually scored the lowest of the three bidders, with Germany’s Lufthansa being top and AAR second. But another drawback for Air France was that it was going to procure the components from AAR anyway, since the latter is an original manufacturer. Lufthansa scored well on the technical side, but it too lacked on the BEE front. AAR on the other hand was bringing on JM Aviation, but was suspected by management of low balling – a concept in procurement that involves a bidder charging far less than is realistically possible, to appear to be the cheapest.

The board urged management to negotiate with AAR to come to a fair price, according to Kwinana, and it worked. The AAR/JM Aviation JV won the tender in July.

“After the award of this contract, there was a lot of unhappiness from people who were not part of this process at all,” said Kwinana. “I received a letter of complaint from the chairperson of the board [of SAA], I received a letter from National Treasury as the chairperson, and there was also the media. Rightly so because this is a big contract.”

This, however, was not the end of the drama. Hofmeyr traversed evidence alleging that through JM Aviation, Kwinana and Memela earned kickbacks to the tune of R2.5-million and R1.8-million respectively.

Payments made to the business account of Zano Spark, a forex trading company established by Kwinana in February 2016, by JM Aviation director Vuyo Ndzeke, came under the spotlight. Kwinana insisted that the money was for forex trading on Ndzeke’s behalf. She told the commission that after the award of the contract, Ndzeke became one of her few clients, and the three transactions totalling R2.5-million went through Zano Spark for that purpose. Memela’s share, Hofmeyr argued, paid towards a property in Bedfordview at which she resides. Like Memela before her, Kwinana denied the allegations.

During its investigation the commission found two e-mails from Ndzeke’s daughter, Khosi Sokhulu, to Memela’s private e-mail address in January 2016, again while the process was open. In the first e-mail Sokhulu greets Memela as “Cousin” before questioning the shareholding provision for the JV as proposed by AAR. The second one opens with “Hi Cuz”, and she asks Memela to quality check the final bid documents to be submitted by the JV.

“When I was at SAA and SAAT, I did not have a business relationship with Vuyo. The business relationship with Vuyo happened after I left SAA Technical,” said Kwinana.

But Hofmeyr argued that for the kickbacks to be effected, Kwinana and Memela had to have secured them early on in the process, by ensuring that JM Aviation became attached to AAR for the lucrative contract. By their mere pairing of the two companies, they were assured success if the JV won, and this was inevitable since AAR was favoured.

Conflict of interest

Kwinana and Associates, Kwinana’s auditing company, gained some business from Nkonki Inc. which audited the financials of SAA as part of a JV with PricewaterhouseCoopers (PwC) under a controversial award for services from 2011 to 2015. National Treasury found the contract to be irregular, after red flags that emerged when SAA asked the auditor-general in mid-2015 if it could drop PwC and remain with only Nkonki as its official auditors.

The auditor-general found that there was no contract holding either party accountable. SAA operated only on letters of award for the JV, according to business executive head Polani Sokombela, who testified earlier this year. Hofmeyr later argued during the testimony of PwC head auditor Pule Mothibe in July that the commission's own calculation of the accumulated irregular expenditure owing to extensions of the "contract" came up to around R70-million.

Kwinana was at the time the chair of the SAA's audit and risk committee, which put her in close proximity with her client Nkonki. Kwinana explained in her affidavit that a R300 000 payment from Nkonki to Kwinana and Associates was for a fund of black auditors. Hofmeyr pressed for details, saying that although such a firm existed in the past, it was deregistered back in 2011. To this, Kwinana said that a newer version of the grouping of auditors had emerged and she had been asked to hold the money, meant to be a contribution for a fund raiser of the Jacob Zuma Foundation, in her personal account.

Reign of terror

Kwinana was also questioned on the evidence of SAA's former head of procurement Masimba Dahwa that she and former SAA chairperson Dudu Myeni ruled the airline with fear and intimidation. Dahwa claimed that the 30% set-aside policy caused such friction between himself and the two board members, that it led to a disciplinary process against him in 2015.

Kwinana could not remember a meeting at SAA that Dahwa testified had lasted several hours, where Kwinana and Myeni allegedly tried to pressure him into incorporating the policy in some of the existing contracts of the time. A distressed Dahwa stood his ground, arguing that the policy was unlawful and could get him into trouble. For this, Kwinana laid a complaint of insubordination against Dahwa.

Hofmeyr alleged that the process was flawed as it was to be overseen by the late Mbuleli Kolisi, of law firm BMK Attorneys, which too was contracted to SAA, when Kwinana also had an association with him in her private capacity. The association with Kolisi was explored through the revelation of a loan of just over R800 000 facilitated by Kwinana for another personal associate of hers, who allegedly needed the money to fund the supply of services on which she was contracted to SAA.

The alleged bullying tactics against staff made their way into the investigation by Organisation Uncovering Tax Abuse (OUTA) which in 2017 sought to have both Kwinana and Myeni declared delinquent directors through the courts. One of the allegations made by former staff was that Myeni created false whistle-blower reports purporting wrongdoing, usually by people within SAA that she did not like.

There were several other allegations eventually drawn up by OUTA against Myeni. On Saturday, Hofmeyr revealed that Kwinana approached OUTA to save her own skin, throwing Myeni under the bus in the process. OUTA provided a recording to the commission claiming that in it Kwinana ousts Myeni's false whistle-blower tactics.

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