



9 November 2020

Zondo commission – Myeni’s silence amid damning evidence

The chairperson of the commission of inquiry into state capture, Deputy Chief Justice Raymond Zondo, on Friday concluded the day’s proceedings by explaining the circumstances surrounding the testimony of former SAA chairperson Dudu Myeni and her refusal to answer most of the questions set to her.

Myeni testified from Wednesday to Friday last week, but only elaborated on a handful of the questions put to her by evidence leader Kate Hofmeyr. For the most part, she invoked a privilege against self-incrimination – allowed by the commission with some conditions – across the numerous areas of evidence on which she was questioned. She did take the time to launch attacks on the commission, the media, the Organisation Uncovering Tax Abuse (OUTA) and witnesses who implicated her, saying a narrative has been established against her that blemishes her as a corrupt, criminal and incompetent cadre, guilty because of her close association with former president Jacob Zuma.

“He had never told me why he has been hunted down. If I had a choice to reverse decisions I made, chairperson, I would have not taken the position of being the chairperson of the Jacob G Zuma Foundation, because in my journey as a successful businesswoman, an award-winning businesswoman, there has never been any black spots in my leadership.”

Myeni told the commission through her lawyers that she plans to appeal against a ruling of the Pretoria High Court in May that declared her a delinquent director. The ruling was a culmination of a 2017 application by OUTA, which alleged wrongdoing during her tenure as the chairperson of South African Airways (SAA). In her ruling, Judge Ronel Tolmay further directed the National Prosecuting Authority (NPA) to pursue an investigation into the allegations against Myeni to see if these constitute a cause to charge her criminally.

On her first day of testimony, Myeni’s legal representative Advocate Thabane Masuku put to Zondo that his client was in danger of being arrested and charged, on the back of the Tolmay instruction, and for that reason sought a way to protect herself from that.

“Before you is a witness who has an axe hanging over her head, and part of what makes a good witness in a fact-finding commission is the freedom to speak freely.”

In beginning her testimony, Myeni stated her case for wanting to remain silent: “I came before this commission in terms of its rules. I filed the affidavit indicating that while I respect the commission and wish to assist the commission, I am in a very difficult position, because before me there is a court order directing that I be charged in this regard.”

Much as she seeks to “deal once and for all” with insinuations about her, Myeni said she was anxious over the impending NPA probe, and wanted to exercise her right to remain silent on some issues.

For those watching the proceedings during Myeni's appearance, there may have been confusion over her tendency to answer some questions elaborately, and refuse others.

It did not go unnoticed by Zondo: "There are some things that you say or you have a lot to say, but when you are being challenged on your answer you then invoke your privilege and say you prefer not to answer because you do not want to incriminate yourself. It will come across as if you are quite happy to give an answer as long as you are not being challenged on it or when you think the question is easy, you answer, but the moment questions become difficult, you then invoke your privilege."

He added that the commission's legal team would have to look back at Myeni's evidence to distinguish which responses fell outside the privilege provided for by the rules for an implicated witness not to answer.

He later made the distinction between the provisions of the Commissions Act (Section 3(4) that witnesses who appear in response to a subpoena may invoke such privilege and Rule 8.2 of the commission that where necessary, the commission may compel such a witness to answer, if such answer helps it in its endeavours. The chairperson of the commission, he added, has to give such a witness latitude in that respect, further providing that the evidence a witness gives before the commission may not be used against them in a subsequent criminal case.

Allegations made against Myeni that she refused to answer to by invoking the privilege of silence, include:

- Myeni misrepresenting facts to then minister of public enterprises Malusi Gigaba in 2013 when she told him that it was on the strength of a board resolution that SAA entered into the sale and lease-back arrangement with Pembroke, over 10 Airbus 320s, later than originally expected. Six fellow board members of Myeni disputed this in a subsequent complaint to Gigaba, opening a can of worms over her alleged authoritarian leadership and refusal to hear opposing ideas.
- Her taking part in a money laundering scheme that saw R2-million move from a Free State housing project in 2015 through a company named VNA Consulting, to her son Thalete's company, Premier Attraction. From there the money went in several tranches into the business account of Isibonelo Construction, a company owned by a close associate of the Myeni family, who testified in camera in February under the alias Mr X, for fear of his safety. Mr X told the commission that once Premier Attraction deposited the cash, Myeni would instruct him on when to withdraw it and later deposit it or drop it off. Some of this money was deposited into the account of the Jacob Zuma Foundation, of which Myeni was the chair.
- Facilitating meetings with people who sought to influence Zuma in important government decisions, including the leadership of Bosasa. The company in turn was revealed by its former COO Angelo Agrizzi to have given cash to the foundation, through Myeni, on a number of occasions. Agrizzi further implicated Myeni in a September 2015 meeting at the Sheraton Hotel in Pretoria, where he said she gave to him and the late CEO of Bosasa Gavin Watson confidential police documents related to a broad investigation into Bosasa's affairs. The company held irregular contracts with government departments at the time. Furthermore, Myeni was alleged to have benefited from Bosasa security upgrades to the tune of over R400 000 for her Richards Bay home.
- Compromising a Hawks search and seizure investigation at the Myeni home when investigators travelling with former Bosasa employee Richard le Roux – who claimed to have installed the security features himself – were denied entry onto the premises. When the investigators eventually gained access to the home, a day later, they had limited movement and an affidavit from Le Roux said the areas of the residence that remained closed to them

were the locations of the equipment in question. Myeni is alleged by the leader of the investigations team of having berated him in a phone call while they were on the premises.

- Giving instructions for a security vetting exercise on the SAA top structure. Several witnesses, past and current senior SAA employees, testified in 2019 to having been subjected to an unlawful security vetting exercise by the State Security Agency (SSA), apparently on the instruction of Myeni in her capacity as board chairperson. SSA official Nokunqoba Dlamini testified that she carried out the task, having received a list of just over 100 individuals from her then minister David Mahlobo. The motivation for Myeni, it was alleged, was to rule with intimidation.
- Another tactic used by Myeni to isolate and intimidate managers who opposed her on issues at SAA was to create false whistle-blower reports of misconduct, by pretending to be lodging complaints from within the organisation.
- Forcing a cancellation fee of R50-million to BNP Capital, a company contracted to secure much-needed funding of R15-billion in 2016. The contract was valued at just over R250-million, but the insertion of Myeni's personal financial advisor – Masotsha Majola – into BNP leadership raised eyebrows and then CFO Phumeza Nhantsi rallied board support behind Myeni's back to oppose it. BNP came into the picture at SAA when the national airliner first sought financing for a loan meant to consolidate its debt in 2015. On the back of government guarantees amounting to R15-billion, it embarked on a procurement process that brought it down to two options that were both declined by the board in December of that year. Nhantsi's efforts proved unsuccessful as the cancellation fee was approved. Nhantsi and then CEO Musa Zwane were suspended, and later fired for their part in the deal.

For all of these allegations, Myeni refused to defend herself by giving an answer, choosing instead to invoke the privilege to remain silent. She is expected to return on a yet-to-be determined date to testify on allegations relating to Eskom.

Useful links:

[Zondo Commission website](#)

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

[SAA corporate website](#)