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Zondo commission – former Prasa chair pressured lawyer to settle Siyaya claims

Former Prasa attorney Madimpe Mogashoa has confirmed that he received instructions in December 2017 from then interim board chairperson Judge Nana Makhubele to settle claims brought against the agency by contractor Siyaya Group. Until that point, Prasa had urged him to defend the claims. He was also told to exclude the internal legal department of Prasa in the settlement process.

Mogashoa, of Diale Mogashoa Attorneys, testified before the commission of inquiry into state capture on Wednesday. He told the commission how, in a meeting in December – two months after Makhubele joined Prasa – she told him that four of the six claims for what Siyaya termed services not paid for, would be handled between his firm and the board. All communication in this respect would be made through then company secretary, Lindikaya Zide.

Diale Mogashoa had been acting on behalf of Prasa since 2012 and had handled several matters in which Prasa was being sued for a variety of reasons.

The Siyaya matter in particular had first emerged around September 2015, when the agency received summonses from different companies under the Siyaya Group. For the most part, said Mogashoa, Prasa could defend the claims, so the instruction to settle came as a surprise.

He also found it strange that Siyaya was singled out by Makhubele as the only matter in which the board would give him instructions. Mogashoa said he had no engagements with Makhubele outside of the Siyaya matters.

“I was told by the chairperson that the board would take a view on how to proceed with these matters and, if needed, what our firm’s further involvement would be.

“One of the issues raised was that I would then have to accept that the matter was no longer the responsibility of legal, and that the board was now seized with the responsibility of dealing with the matters further,” Mogashoa explained.

This in itself was not an unusual order, he noted. “It is not unusual that we receive such instructions in our firm, given the profile of some of our clients. So it has happened before that the CEO of an institution would request us not to deal with legal, perhaps because legal was the subject of whatever investigation we had to carry out.”

Strangely, however, the settlement offers in question would have to bear confidentiality provisions. “It doesn’t happen often that we would be instructed to stipulate in an offer we make that it carries some confidentiality, and I wouldn’t be sure what the considerations were at that time that Prasa

thought it proper to place such a condition on the tender itself, although as I say, it has happened before in some of the matters that I've had to deal with," said Mogashoa.

The meeting was followed by written instructions – communicated through Zide – on how each of the four claims would be settled, including the amounts.

Mogashoa prepared the settlement offers, and when he communicated these to the Siyaya lawyers, he was surprised to get a response that the amounts stipulated were not what he was instructed by Prasa to indicate. It became clear that the attorneys on the opposing side were also privy to the details discussed between Prasa and Mogashoa.

Allegations against Makhubele were first made by the head of Prasa's legal department, Martha Ngoye, and one of her colleagues Fanie Dingiswayo, who testified to fighting the settlement process after only finding out about it when it was at an advanced stage. The price of having been left out of the process, said Ngoye, was that Prasa has had to incur further legal costs, when it was already on a defence course with Mogashoa.

The reversal of the settlements was made by Bowman Gilfillan, who were instructed in March 2018. This marked the end of Mogashoa's journey with Prasa in terms of the Siyaya matters.

Makhubele is expected to return on 17 August to continue responding to allegations against her of interference in the Siyaya matters.

Siyaya held several contracts under different variations of its name. Its director Makhensa Mabunda was described by Makhubele's predecessor Popo Molefe in his testimony as a close friend of former Prasa CEO Lucky Montana. As a consequence, Siyaya is alleged to have enjoyed certain privileges within Prasa that saw it bag millions of rands in contracts.

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