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Zondo commission – Gigaba advisor denies interference in Gama matter

Former special advisor to Malusi Gigaba, Siyabonga Mahlangu, has denied that he put pressure on a senior Transnet legal official to expedite the reinstatement of Siyabonga Gama to his position as CEO of Transnet Freight Rail in 2011. Gama had been dismissed the previous year on misconduct charges, and was aiming for the more senior role of GCEO of Transnet that was vacant at the time.

Mahlangu told the commission of inquiry into state capture on Friday that he joined Gigaba's office in December 2010, a month after the latter was appointed minister of public enterprises following a cabinet reshuffle at the end of October. He could not have pressured then general manager of legal services Siyabulela Mapoma into expediting Gama's reinstatement process, as they had a social relationship founded on mutual respect. Mahlangu said he was in fact surprised to be implicated by Mapoma, whom he says downplayed their relationship in his affidavit before the commission.

"Given that at the time, I was new in my job, I could not have pressured Mapoma. I had no reason to pressure anyone. In any event, my role or function did not involve pressuring any official." Mapoma testified that Mahlangu phoned him twice in early 2011, on the first occasion to politely check in on the process of reviewing Gama's dismissal, and on the second to enquire on the reinstatement process. It was on the second call that Mapoma recalled being put under pressure by Mahlangu, to the point where he scolded him and told him to never call him again.

Evidence leader Anton Myburgh put it to Mahlangu that there was a probability that he would pressure Mapoma, given that his political principal had a special interest in ensuring that Gama was reinstated. Myburgh told Mahlangu that former Transnet board chairperson Mafika Mkwanazi had testified to a meeting with Gigaba that preceded the latter's appointment, at which they discussed the Gama matter. Gigaba had expressed at this time his unhappiness with the disciplinary process that Gama had been subjected to at the parastatal, citing unfairness and double standards for black and white senior executives who faced similar charges. To this, Mahlangu said he could not comment as he had not joined Gigaba's office at the time, and only got to know about the Gama matter once he had.

"I had no reason to call Mapoma. If I had any questions, I would have forwarded them to Mkwanazi," he said.

The commission has heard of a rushed process between the arrival of Mkwanazi in December 2010 and February of the following year, to review Gama's dismissal and to reach a settlement agreement with him that included an alleged unlawful compensation of legal costs.

In addition to placing him in his previous post, the board also agreed to award his full remuneration for the time he was away since his suspension in 2009, along with benefits. The agreement also contributed to 75% of the legal fees incurred by Gama – a figure in the region of R420 000 – in a failed

High Court bid to interdict his dismissal in 2010. This despite the High Court ruling ordering Gama to pay costs for himself and Transnet in the matter.

While the board reviewed his dismissal, it also suspended a parallel process to recoup the money from Gama, in effect ending the mandate of Bowman Gilfillan attorney Christopher Todd – who had acted as legal advisor for Transnet through the disciplinary process. Mkwanazi asked Mapoma to calculate the settlement figures and authorise payment of the legal costs.

Mahlangu testified that his role in the review process was a clinical one, where he would advise Gigaba on how far his official interests in the matter go. He read an e-mail into the record where he outlined to Gigaba different courses of action on the minister's part in resolving the reinstatement and settlement issues. In the e-mail, he also suggests that Gigaba inform former president Jacob Zuma of Gama's impending reinstatement, given that it would become public, said Mahlangu. However, he was unsure if Gigaba had indeed spoken to Zuma. "I have no knowledge if the minister discussed the settlement with the former president.

"The politicisation of this matter was not lost on me," Mahlangu said, adding that he had known even before joining Gigaba's office of the "drama" surrounding Gama at Transnet. His advice further served to help buffer any backlash, should there be any, as a result of Gama coming back. "When this thing backfires, you must have the president's backing," he told Gigaba.

But under no circumstances would Mahlangu believe that Gigaba would act outside of his mandate to instruct a board on the reinstatement, as Mapoma had testified. In his evidence, Mapoma told the commission that Mkwanazi had told him when requesting his help in the review process, that the instruction to review had come from "above, higher than the minister."

Commission chairperson Deputy Chief Justice Raymond Zondo put to Mahlangu that on Mkwanazi's version – albeit a concession after being pressed – he did acknowledge that Gigaba asked him to look into the Gama matter on the same day in that October meeting that he offered him a position on the board.

Mahlangu maintained that his role in the reinstatement was with Gigaba's interest in mind, and his seniority would in any case bar him from engaging Mapoma, when he could talk to Mkwanazi instead. Zondo came in again to say perhaps due to his social relationship with Mapoma, Mahlangu felt that he could simply call him to get things done. To this, Mahlangu said he regarded Mapoma as his elder, and would not likely engage him in a manner where he would put him under pressure.

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