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Zondo Commission – Moyane may cross-examine Gordhan, subject to affidavit submission

Former South African Revenue Service commissioner Tom Moyane should be able to defend himself against state capture allegations made against him by Public Enterprises Minister Pravin Gordhan before the Zondo commission – provided that by 15 January 2020, he submits an affidavit stating clearly his position on Gordhan’s assertion that he used his position as commissioner to advance the objectives of state capture.

This is the ruling delivered by commission chairperson Deputy Chief Justice (DCJ) Raymond Zondo on Monday. Gordhan accused Moyane in his supplementary affidavit, following his appearance in October last year, of abusing his powers in 2015 when he laid charges against the minister in the controversial rogue unit matter.

This was the only outstanding area of Moyane’s first application to cross-examine Gordhan, heard earlier this year. Zondo had ruled against broader cross examination on 16 April. At the time, the commission’s position was that Moyane had failed in his responding affidavit – attached to his application as per commission rules – to clearly state which parts of Gordhan’s founding statement he was responding to. Instead, his version took a thematic approach, where he was vague and non-committal to actual allegations from Gordhan.

Delivering his ruling on Monday, however, Zondo said Moyane’s interpretation of whether or not Gordhan referred to the former commissioner’s actions against him as malicious was incorrect. The DCJ instead read Gordhan’s statement in this regard to mean that the charges against him were motivated by a “malicious, politically-driven campaign” to oust him as finance minister soon after he was re-appointed by former president Jacob Zuma in December 2015. This, said Gordhan, was to get him to resign, so that a more submissive minister could replace him.

Zondo did, however, point out the importance of fairness in allowing Moyane to defend himself against further allegations by Gordhan that the former was motivated in his legal action against him by personal goals which included the advancement of state capture objectives.

“I consider that subject to the one condition, it is in the interest of the work of this commission to grant Mr Moyane leave to cross-examine,” said Zondo. “Before this commission it must rank as the most serious allegation or statement for it to be said that you performed your official duties to advance objectives of state capture.”

Moyane’s lawyer Eric Mabuza welcomed Monday’s ruling. “We’re looking forward to Mr Gordhan coming to justify his statement he used against Mr Moyane,” he said in response to

media questions. The allegations have been percolating for a long time, he added, to the extent that everyone believed they are true.

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