



**11 March 2021**

### **Zondo commission – Brian Molefe appears before Zondo: part one**

From defending the Guptas to posturing with lengthy analogies against his evidence leader and finally throwing the secretary of the state capture commission under the bus, Brian Molefe had an eventful week appearing before Deputy Chief Justice Raymond Zondo.

He dismissed all claims of a corrupt relationship with the Guptas, saying no law enforcement agency had ever proven that, and the constitutional principle of innocent until proven guilty prevails, even for the commission. Former public protector Thuli Madonsela, said Molefe, failed to protect his and the Guptas' constitutional rights in pursuing her state capture investigation in 2016.

His testimony started on Monday afternoon, with his first jibe in the introductions being to correct a proposition by evidence leader Advocate Anton Myburgh that as GCEO of Transnet, he was qualified to detect any form of corruption.

“No, I cannot say that for certain. The fact that you are qualified does not make you a corruption detective,” said Molefe. With that, he set the tone for the rest of the engagements with Myburgh, seeking to poke holes in all attempts to ascertain his complicity in the irregular awarding of contracts to Regiments Capital, and by association, Salim Essa.

According to Myburgh, Essa may have been the all-important conduit between Transnet and the Gupta family, and the facilitator of a money laundering scheme uncovered by the commission in a separate evidence stream. For the scheme to work, Regiments – in which Essa held majority shares – was inserted into elements of Transnet's grand procurement project of 1 064 locomotives, initially estimated to cost R38-billion. Before Transnet went out to procure the locomotives, it sought to appoint transactional advisers, and these came on a consortium basis, with a confined request for proposals sent out in 2012.

Molefe told the commission that he did not know Essa, despite both of them having close ties with the Guptas associated with both Transnet and Eskom at the times that he led the two companies.

He further dismissed claims by several witnesses, including Transnet officials, who placed him at the helm of the decision-making around Regiments' role in the consortium, and the rest of the procurement process. This, said Myburgh, was because Regiments had never bid for any business with Transnet, but repeatedly replaced companies that had. The first instance involved the transaction advisory tender, which was awarded to a consortium led by international firm McKinsey in July 2012. Soon afterwards, in August, Regiments was edged in to replace consortium member Letsema Consulting, after a conflict of interest was picked up. Molefe

confirmed this, saying that Letsema was indeed linked to Barloworld, a component manufacturer for one of the winning bidders.

“Barloworld, which was advising them, was also building engines for Caterpillar whose engines were used by EMD and EMD was a bidder, so Letsema had a conflict. What then happened is that McKinsey was informed of the conflict and then asked to appoint somebody else instead of Letsema.”

Just over a year later, in November 2013, Regiments would replace Nedbank on another element of the contract, again because of a conflict, as Nedbank would be one of the funders of the loaners for the project. Then in April 2014 Regiments bumped McKinsey off the consortium lead, with Transnet’s blessing, after what was described in Molefe’s affidavit as exceptional work in saving Transnet R2.8-billion in costs related to the project. None of these developments followed a process of evaluation, and were done through confinements. Molefe refused to comment on these developments, saying that for him to approve these processes, his executives would have to have sent memoranda that justifies them. He lambasted the Transnet legal team, however, for not advising against the change in contract model for the transactional advisers contract, which encouraged an additional R78-million to be paid to Regiments for the saving in costs. This addition bumped up the transactional advisers contract value from R51-million to R119-million.

Myburgh asked Molefe if he knew that half of the additional R78-million had gone to Essa, to which Molefe responded by saying: “I did not know that at the time, even now I do not know it other than the fact that you said it.

“The people were asking to be remunerated for it and I thought that, for purposes of ensuring that in future we can even have more savings if we can encourage them to do these structures that they did, we should pay them R78-million.”

Another point of contention was the estimated total cost (ETC) for the 1 064 locomotives. It was increased, on Molefe’s approval, from R38-billion in January to R54-billion five months later, in May 2014. Previous evidence from several witnesses including Transnet executives and forensics firm Mcedisi Ndlovu Sedumedi (MNS) was that it was unsubstantiated, hence it was approved by way of a confinement.

Molefe’s justification for the rise in ETC was that Transnet approached the market with the initial cost, and was prepared to pay it, but after engaging the approved manufacturers, the cost went up because his team asked for a fixed price per locomotive. This meant that the final cost would not be prone to changes in exchange rates, among other factors.

“When you go for fixed price, typically the suppliers would make you pay for it, and this differed and was a subject of negotiation.”

Myburgh put to Molefe the finding by MNS that even if these factors were put in the final ETC, it would go up to about R4.1-billion at the most.

“This is not a science... the E in ETC is estimated and the thing about estimated, is that if I asked everybody in this room to estimate anything, we will not have the same number. So it is not a science, it is an art. Estimation is an art,” retorted Molefe.

But the author of the finding of MNS, Allistair Chabi, is an expert, said Myburgh, challenging Molefe. “You were given this report. You did not go to your own expert to get a contrary view,

you just want us to accept that ‘look, this is an art, not a science?’ I mean that is essentially what you want the chairperson to do.”

Molefe responded by decrying the time constraints under which he had to prepare for his submission. “This notice [summons] required us or me to deal with this, with all of these issues within seven weeks, and then on the same day there was another directive that said that, which was an Eskom directive, which required me to deal with quite substantial issues within 30 days.”

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