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Zondo commission - Zwane pushed for unlawful housing scheme, defied orders

The commission of inquiry into state capture has this week heard how former Free State MEC for human settlements Mosebenzi Zwane defied orders from then minister Tokyo Sexwale to stop an unlawful prepayment scheme devised in 2010 for an ambitious low-cost housing project worth over R1-billion. The 500 000 housing units envisaged in the project plan were not completed, despite over R500-million being spent from the budget, and to date, R631-million remains unaccounted for.

Evidence heard so far suggests that despite half of the 2010/11 financial year having lapsed, Zwane pushed for the project to go ahead in an effort to prevent the national department from taking back funds.

Zwane first went against the advice of officials in his department in October 2010, said its former head, Mpho Mokoena. They cautioned Zwane against contravening National Treasury guidelines by positioning the department – and not the construction companies enlisted for the project, as is the norm – to procure building supplies directly from vendors. This meant that large sums of money would leave the department before any work had even started on the ground, without envisaged milestones reached.

Mokoena told the commission that he was opposed to the plan, which Zwane introduced as a solution to a warning from the national department that it would pull back funding allocated for that financial year if no project milestones were reached, and re-allocate it to a better performing province. The department's financial year starts in March, said Mokoena, so in October when Zwane called a meeting to propose the plan, his team was already halfway through the financial year and overwhelmed with the task of meeting targets. They were also incapacitated and had a deficit of expert technical staff to advise on a project of this magnitude.

His proposal was that instead of the norm of going into contractual agreements with construction companies wherein the latter provided building materials, the department would instead pay local suppliers ahead of the construction. Contractors then entered into a unique arrangement with the department, signing separate contracts for work to be done and for ceding their obligation to procure building materials themselves.

Furthermore, the list of approved contractors came from Zwane. Many were new and unknown to the department. Several on the list got special attention from Zwane, who would pressurise officials to pay them, despite reports of little to no construction progress.

When Mokoena initially raised his concerns with Zwane, he was told he could resign if he did not want to go ahead with the plan. "He said to me: 'this is my plan and it's going to happen'," said Mokoena. In support of the plan, and to allay Mokoena's misgivings, Zwane enlisted the help of his

advisor Mmuso Tsoametsi to research its feasibility. Out of that exercise came a memorandum produced by Tsoametsi, which Mokoena said he was forced to approve in late November.

Soon afterwards, prepayments to suppliers started, with no progress on the ground. When the national department learned of this in February 2011, Zwane and Mokoena were ordered to stop the prepayments. According to Mokoena, he had the impression that the payments were indeed stopped, but evidence leader Advocate Paul Pretorius noted that more payments were made beyond February.

Mokoena resigned in December 2011, citing pressure from then premier Ace Magashule, to deliver on promises made in public as part of Operation Hlasela. His department, he said, was expected to turn materials bought through the prepayments into houses to meet Magashule's targets.

As an accounting officer, he was under a lot of pressure, unfairly so considering it was Zwane's idea that had led to the mess.

Commission chairperson Deputy Chief Justice Raymond Zondo questioned Mokoena's culpability in the matter. "What would you say if somebody comes here and says you have downplayed your role in this matter?" Mokoena replied that he disagreed with that version. "The origin of the scheme came from the MEC as advised."

But his subordinate at the time, then chief director in the department Kaizer Maxatshwa, places Mokoena among those to blame for the scheme. He was one of six officials dismissed after an investigation conducted by a private firm found them guilty for their part in it. He testified that officials in the department made all efforts to warn against the scheme, but Zwane was determined to go ahead with it. Disciplinary processes were started after Mokoena's departure, but only officials were 'purged', although they were not the decision makers.

Maxatshwa added that his protestations notwithstanding, Mokoena was just as complicit as his principals. The officials charged were selected unfairly, he said, without clear rationale for their punishment. To date, they have tried several times, unsuccessfully, to gain access to certain material documentation to help with their case, which is now with the CCMA.

Maxatshwa asked for the commission's help in this instance, to which Zondo said Pretorius's team would advise on what can be done.

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