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Zondo commission - failure of housing project not my fault, says Zwane

Former Free State MEC of human settlements Mosebenzi Zwane has thrown officials of the department at the time of the failed 2010 R1.4-billion housing project under the bus. Zwane took no responsibility for the way the project was undertaken, with almost half of its worth unaccounted for to date.

He blamed the head of department (HOD) at the time, Mpho Mokoena, for a failure in what he called his duty in terms of the Public Finance Management Act (PFMA) to account for the department's spending practices. Mokoena, he said, had a duty to follow the law and ensure that the agenda of the department, which was to provide housing for poor communities, was advanced.

The shock of the day, however, was that Zwane claimed to have not known about the Housing Act, which alongside the PFMA governs the area of human settlements, for a year after his appointment in 2009. He was only told about it, he said, when there were clear signs of problems with the project, which was meant to happen in the financial year between March 2010 and February 2011.

"I had familiarised myself with the Constitution of South Africa. I had also familiarised myself with the PFMA that's why I've been quoting it. It was only when the issue of the database was raised, when I was told about the Housing Act."

The database in question relates to contractors who were to be approved to work on the project. Zwane's and Mokoena's versions on how it was developed differ. While Mokoena told the commission that Zwane presented a list of contractors and instructed that they be added to the department's existing database, the former MEC said he instructed senior officials in the department to develop it along criteria approved by the provincial cabinet, following a resolution from the cabinet. Preference was to be given to companies owned by women, disabled people and the youth.

If the position was that the database in question was unlawful, considering that it had not undergone an open tender process, asked evidence leader Advocate Paul Pretorius, why was Mokoena not held to account?

"I must indicate that until I left the department in 2011, this matter of the illegality of the database had not been brought to the fore by anyone. The structures which would bring this thing to my attention were Treasury and the audit report, so at no stage had I ignored – as far as I can remember – a report that points to that direction."

But what of his role as an oversight body for the administration of the department?

"The accounting officer will be responsible for the management of the department's finances in an effective and efficient manner, and he had all the right to stop or allow any unauthorised expenditure." If Mokoena felt cornered by him, said Zwane, he had avenues to report this.

Mokoena testified earlier in the week that Zwane forced his hand in approving an unlawful advance payment scheme that goes against procurement guidelines set out by National Treasury. The scheme involved the department playing a role belonging normally to contractors, of procuring building materials ahead of the commencement of the project. As a result, large payments were made to suppliers before any work had started.

“If it was unlawful the accounting officer would have carried full responsibility for his actions,” said Zwane.

But evidence leader Advocate Paul Pretorius challenged him: “Is the MEC not at all accountable?”

“The MEC’s duty as I’ve expressed that before ... once I have given the accounting officer the needs of the people and the outcome, he implements and determines the output. Section 64 of the PFMA states very clearly that if any unauthorised expenditure happens because of my instruction as an MEC, and the HOD did not bring this to my attention in writing, that the activity or exercise you’re engaging yourself in will result in an unauthorised expenditure, he takes full responsibility.”

A unique arrangement was then entered into where contractors would sign separate contracts with the department, for work to be done and for ceding their obligation to procure building materials themselves. Zwane denied Mokoena’s version that the idea for the scheme originated from him.

“The issue of advanced payment came as a result of a meeting held with contractors, in Welkom if I’m not mistaken. The department had gone there to request the contractors to commit to ensuring that they work on weekends to try and catch up,” he said.

“Contractors in that meeting raised an issue of the builders’ holiday [in December], saying ‘Even if we’d like, we have to stop because there is no material’. That issue was raised there.”

Zwane added that the contractors present wanted the department to engage suppliers and get them to stay open over the December period to enable the smooth supply of materials, and on that basis, the scheme came into being.

But the duty of the MEC, said Pretorius, is to ensure that all steps take into consideration the legislation governing the portfolio. He read out what the Housing Act stipulates in terms of ministers’ and MECs’ roles, including the administration housing programmes. It was at this point that Zwane said he had not familiarised himself with the Act, much to the surprise of commission chairperson Deputy Chief Justice Raymond Zondo.

“It is a matter of concern to me that there would be an Act of Parliament, and it’s called the Housing Act that applies in the provinces as well, that the MEC responsible for human settlements doesn’t know about for more than a year in office,” he said.

“I hear the concern you say. Normally the process is that when you arrive in a particular department, you are welcomed in that department by the head of the department, and with time your first induction will be to be given tools that you’re going to work around,” replied Zwane.

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