



1 July 2020

Zondo commission – conduct of former Prasa chair in question

The commission of inquiry into state capture on Wednesday heard of the alleged inappropriate conduct of Judge Nana Makhubele, who chaired an interim board of the Passenger Rail Agency of South Africa (Prasa) from 2017 to 2018, in a litigation process brought against Prasa by a service provider. The Siyaya group of companies, owned by Makhensa Mabunda, took Prasa to court to demand payments the company claimed were owed it for services rendered.

Siyaya instituted four such lawsuits against Prasa. The service provider's different entities formed part of a collection of tenders that the previous board, chaired by Makhubele's predecessor Popo Molefe, had started to investigate over allegations of irregularities.

Makhubele was notified of her appointment as judge in October 2017, shortly before taking the Prasa role. She continued in that role despite her appointment, which was to take effect in early 2018. She resigned as Prasa chairperson in March of that year.

Testifying on Wednesday morning was Advocate Francois Botes, who was part of the legal team of the liquidators of Siyaya Rail Solutions.

According to Botes, Makhubele contacted him in November 2017, soon after she joined Prasa, to ask him to advise her on the status of the legal process in the litigation matter. When Botes asked why she was not getting this information from Prasa's internal legal team, Makhubele allegedly revealed to him that she did not trust them as they had been captured.

Botes obliged by providing documentation relating to the matter a few days later. Makhubele later instructed attorneys Diale Mogashoa to settle with Siyaya, and awards for settlements amounts – with interest – were made for each of the entities in early 2018. The settlement was for a little under R60-million before interest. The additional interest amounts would later be included in Makhubele's instruction to Diale Mogashoa, outlined in an email where she told the law firm how much to pay. In the email, Makhubele included Botes, despite him being on the opposing side of the litigation.

Learning of these developments, the Prasa legal team – headed by Martha Ngoye, who testified before the commission on Tuesday – opposed the settlement. The application was denied on the basis that even though the law firm handling the opposition, Bowman Gilfillan (now known as Bowmans), was instructed by Prasa, their appointment and pursuance of the matter did not have the authority of the Prasa board, as Diale Mogashoa's was believed to have. It would later emerge that Diale Mogashoa's instructions were not only kept from Ngoye's department, but also the rest of the board. In essence, the inquiry heard, Makhubele acted on her own in pursuing a settlement that favoured Siyaya.

Botes told commission chairperson Deputy Chief Justice Raymond Zondo that he and Makhubele go back a long way and had even practiced together on the Pretoria Bar. Makhubele later made allegations against Botes to the bar council of Pretoria, accusing him of using their long-standing

relationship to try to influence a favourable outcome for Siyaya. Botes refuted this and told the enquiry that came as a result that it was Makhubele who had initiated the contact between the pair.

The enquiry concluded in May this year, with Botes' exoneration.

Makhubele also laid a complaint with the Judicial Services Commission in April 2019 against fellow judge Neil Tuchten, who had criticised her role in the matter. That complaint was dismissed in October of that year.

Useful links:

[Zondo Commission website](#)

Corruption Watch's [Zondo Commission update page](#)

[Prasa corporate website](#)