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Zondo Commission – Arguments for and against Moyane’s application to cross-examine Gordhan

It is ridiculous to assume that former Sars commissioner Tom Moyane’s application to cross-examine public enterprises minister Pravin Gordhan at the commission of inquiry into state capture is part of a political smearing campaign against the latter. His lawyer, Advocate Dali Mpofu, submitted Moyane’s argument to be permitted to cross-examination, over allegations Gordhan made against him during his testimony before the commission in November last year.

If anything, said Mpofu, Gordhan being cross-examined gives potential witnesses and people implicated by their testimonies the confidence to approach the commission, knowing that it seeks the truth that may come from both sides of an issue. Gordhan has a duty as a sitting senior public official to have his version tested on this public platform, in the interest of transparency.

Gordhan had testified that Moyane used the Hawks in 2015 to charge him for having established a unit comprising investigators of certain politicians and high profile people during his tenure as commissioner. Mpofu argued that the Sikhakhane commission, established to verify these allegations of a “rogue unit”, found that it had indeed gone beyond the mandate of Sars in its operations. He said on that basis, Moyane had to act on its findings upon coming into office in 2014. “He could not sit and do nothing,” he said, adding that his important position required leadership, and that was exactly what he showed.

Gordhan’s lawyer, Advocate Michelle le Roux, disagreed, saying Moyane only wanted to use the state capture commission to resuscitate his career and restore his reputation as a senior government official, since being fired from his job by President Cyril Ramaphosa in November last year. His dismissal follows recommendations by the Nugent commission, set up earlier in 2018, to probe his fitness to hold office. To allow Moyane to cross-examine Gordhan is to assist him in digressing, an effort that is unnecessary for the commission, in light of its scope and its mandate.

To this, Mpofu responded by saying if it is instances of state capture that Zondo is looking at, then all findings around the rogue unit have to be explored. The establishment of a unit within a state organ like Sars, mandated with advancing the interest of one person with a particular motive, is a form of capture that makes it Zondo’s business to investigate. That ship, said Le Roux, had sailed, and findings put to Ramaphosa, who has now acted.

Moyane’s failure to convince the Constitutional Court twice that he has a case against being fired from his position, she added, should be seen as reason for the commission to refuse him cross-examination rights. Moyane has taken the Nugent commission’s findings on review. He also took action against Ramaphosa for his dismissal.

Le Roux told Zondo that his commission did not have to use its limited time and financial resources to consider Moyane’s need to air his personal issues with Gordhan. She said the former commissioner only wants to use the commission as a platform to discredit Gordhan and to pursue a personal vendetta against the minister, whom he has accused of being racist and undermining black people.

Another point that Moyane wants to pursue with Gordhan was where the minister accused him of lying to Parliament regarding a Sars tender irregularity that allegedly favoured a friend of his, Patrick Monyeki. When questioned on the matter by the standing committee on finance, Moyane said he did not know that Monyeki was doing business with Sars. On a subsequent occasion, in an affidavit answering to a High Court case brought forward by a disgruntled bidder for the same tender, Moyane apparently conceded that he had signed off on the tender. Le Roux said while that matter is in court, it is not for Zondo to canvass its validity through a cross-examination of Gordhan. Mpofu, however, said to support Moyane's responding affidavit to Zondo, he has a copy of Parliament's Hansard record to refute Gordhan's claim.

The head of the Zondo commission's legal team, Paul Pretorius, argued that it was an implicated person's given right to cross-examine a witness. There are conditions that have to be met, such as the implicated person bringing forth their own version. It is also up to Zondo to institute a probe into the allegations a witness makes, and not the lawyers of an implicated person.

Another application brought forward on the day was that of former head of the National Prosecuting Authority (NPA) Shaun Abrahams, who asked for a condonation from Zondo to respond to a notice of implication outside of the stipulated two-week period after having receiving such notice.

Abrahams is responding to Gordhan's allegation that the NPA's decision to charge him at the time were baseless and motivated by a political campaign of which Abrahams was a part.

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