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Zondo Commission – More light shed on NPA papers leaked to Bosasa

Advocate Marijke de Kock, senior prosecutor with the National Prosecuting Authority (NPA), told the commission of inquiry on state capture on Tuesday that the documents relating to Bosasa's fraud and corruption case, submitted by the company's former COO Angelo Agrizzi to the commission, were authentic NPA records leaked during her investigation several years ago. She had raised concerns back then that there were systematic information leaks that put Bosasa a step ahead of the NPA in the case, but nothing could be done at the time because the source of the leaks could not be determined.

Because De Kock has a tendency to create extensive notes on cases, Bosasa ended up with a large, detailed volume of information, despite her best efforts to keep it safe. In late 2012, following an email from Bosasa's legal representative Brian Bierbuyck, De Kock was asked for an urgent status update by the head of the NPA's special commercial crimes unit, Lawrence Mrwebi. She was expected to hand this in within the space of a day, which was odd, she said, because it was extremely short notice. Mrwebi communicated through the then acting regional head of the unit, Marshall Mokgatle, to whom De Kock reported.

De Kock was appointed to the case in early 2010 by then NPA head Menzi Simelane – replacing advocate Glynnis Breytenbach – on the back of an investigative report by the Special Investigating Unit (SIU) that had found corruption in the formulation of four contracts between Bosasa and the Department of Correctional Services (DCS).

Breytenbach's removal from the case followed the exchange of memoranda between herself and Simelane, in which she gave the first status update of the case at that time, noting that no dockets had at that point been obtained to support the case. She also raised the potential impact on the case for former national DCS commissioner Linda Mti, given that he had just been appointed head of security for the 2010 World Cup. Mti had been indirectly implicated in the SIU report, but proof of him benefiting financially from the corruption had not been established. In response to Breytenbach's memo, Simelane reprimanded her over her insinuations on Mti, but instructed her and her support team to withdraw from the case.

In his initial testimony to the inquiry in January, Agrizzi said Bosasa got hold of the documents with the help of Mrwebi and advocate Nomgqobo Jiba, who would – as per an arrangement entered into with him – hand over progress reports to Mti, often at his house in Midrand. Mti would then give the information to Agrizzi and Bosasa CEO Gavin Watson, handing the pair ammunition in the case against them. A third NPA official, Jackie Lepinka, then Jiba's personal assistant, was also implicated by Agrizzi in the leaking of the documents to Mti. The three NPA employees would get monthly cash compensation for their efforts. Jiba and Mrwebi denied these allegations during their appearances before the commission of enquiry looking into their fitness for office, headed by Justice Yvonne Mokgoro. The findings of that process are currently with President Cyril Ramaphosa.

The SIU handed its report to the NPA in late 2009, according to lead investigator Clinton Oellermann, who told the inquiry on Monday of his sense of initial reluctance from the NPA to move on the case at the time.

During a meeting between Simelane, then justice minister Jeff Radebe and then correctional services minister Nosiviwe Mapisa-Nqakula – the minutes of which were also leaked to Bosasa – the NPA head argues the lack of substance for the case, saying the SIU worked outside of the prescripts of the proclamation guiding their investigation. He also questioned the constitutionality of the SIU's process in handing over the document to the NPA, instead of following up with a criminal investigation first.

In February a case of corruption and money laundering was opened against Agrizzi, three of his former Bosasa colleagues, Andries van Tonder, Frans Vorster, and Carlos Bonifacio, as well as Mtši and former DCS chief financial officer Patrick Gillingham.

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