



17 March 2020

Zondo commission – Dodgy suppliers and escalating contract costs all in a day’s work at Prasa

The commission of inquiry into state capture has heard how the legal department within Prasa is often consulted at the crisis stages of supplier contracts, to save the parastatal, but hardly ever for advisory services in the beginning. Prasa’s head of legal Martha Ngoye has been testifying since Monday about the entity’s legal troubles, stemming from dodgy multi-billion-rand procurement processes undertaken during the term of former group CEO, Lucky Montana.

She made the assertion that maladministration continues to this day, and as a result Prasa has over 100 litigation matters where it is either being sued by, or is suing, suppliers. There is even a complaint regarding former chairperson and now Judge Tintswalo Makhubele, over her alleged interference in litigation brought against Prasa by Siyaya, one of its suppliers, in 2017.

Dodgy supplier 1: Prodigy

Montana fired Ngoye in May 2015 for what he called her insolence with regard to a procedural matter relating to a customer service training contract with Prodigy, a company linked to KwaZulu-Natal businessman Roy Moodley. Talk around Prasa at the time was that the Prodigy contract was well protected by Montana, despite several red flags raised by Ngoye at the time over how it was managed. “We were told that whoever touched Prodigy would have to deal with Mr Montana,” said Ngoye, describing the context in which the dispute between the two of them arose. Previous witnesses testified over the influence Moodley appeared to have within Prasa, while raking in millions through several contracts.

The term of the training contract was about to come to an end, said Ngoye, but Montana was pushing for an extension as well as a broadening of the scope. Despite warnings from several colleagues not to oppose Montana, she pushed for Prasa to refrain from amending the contract without securing proper legal advice. This prompted Montana to send an internal memorandum on 18 May, in which he expressed his irritation at being opposed, and even accused some of his subordinates of leaking information about contracts to the board led at the time by Popo Molefe.

Ngoye believed this accusation was targeted at herself and one of her subordinates, Fanie Dingiswayo, under whom the proposed amendment to the Prodigy contract had been handled. By the end of that evening, Montana had fired Dingiswayo, and when Ngoye confronted him over this the next day, she too was fired.

“The culture at Prasa was that not many people would challenge Mr Montana,” she told the commission.

When the letter confirming her dismissal came, said Ngoye, it repeated what Montana had said to her verbally, that she was insolent. Dingiswayo’s letter accused him of insubordination because of his refusal to amend the contract terms without following procedure. The pair took their grievance to the board, which reversed the dismissals and ordered Montana to follow proper processes if he was unhappy with their performance.

His next move was to suspend them for three months, but the charges against Ngoye then changed to alleged maladministration during her tenure as CEO of Intersite, a Prasa subsidiary. She was accused of wrongdoing in two instances, one of which made Prasa liable for R10-million, while the other was placed at R59-million. By the time the suspensions lapsed, Montana had gone after a fallout with the board, according to Molefe's own testimony. His replacement in an acting capacity was Nathi Khena who, realising that Prasa did not have a case against the pair, reinstated them, said Ngoye.

Dodgy supplier 2: Siyangena

Despite absolution from her new boss, Ngoye found that she was still facing difficult times. Former Public Protector Thuli Madonsela was probing allegations of maladministration and corruption relating to contracts.

One of these again involved a Moodley company, Siyangena. At the centre of the controversy surrounding the contract was the manner in which it was extended and its scope broadened. From being a sub-contractor of another company appointed to refurbish two stations in Johannesburg, Siyangena was appointed main contractor to install security equipment at over 80 stations across the country. By the end of the amendment, which was eventually approved by the board, the contract was worth R2.2-billion.

Although the broader contract had been put to a closed bidding process, it was not until bids were in that each was asked to make a proposal of total cost to Prasa. Siyangena put its cost at R1.1-billion, further proposing a funding model for the project that would involve it putting money in. On the basis of the funding proposal, the company was awarded the contract to refurbish over 60 stations, with the number growing to over 80 after the award.

"When the whole process started, it was clear that Prasa did not have money to make this happen," said Ngoye, noting that the funding model was used as an incentive. The irregularity, though, was that this element of the tender had not been solicited from any of the other bidders, only Siyangena.

With Montana and then chief procurement officer Chris Mbatha at the helm, the value of the approved contract had escalated to first R1.95-billion, and later R2.2-billion, the commission heard. Prasa later applied to the North Gauteng High Court to have the contract set aside, and revealed in its application that the value had risen to just under R5-billion. The matter is still pending with Montana, Mbatha and several other accused, also from Prasa. According to Ngoye, investigating the Siyangena matter has proved a challenge as many Prasa employees were implicated, and many others did not want to associate themselves with implicating them.

Dodgy supplier 3: Siyaya

Another controversial Prasa supplier over the years has been Siyaya, which held several contracts under different variations of its name. Director Makhensa Mabunda was said by Molefe in his testimony to be a close friend of Montana from the pair's days in previous government roles.

Siyaya's work in Prasa ranged from engineering advisory services to signalling and depot design, all part of the parastatal's R172-billion modernisation programme. Mabunda too was treated with a lot of respect within Prasa, said Ngoye, as he had a great deal of influence, like Moodley.

Prasa is currently defending a R56-million lawsuit from Siyaya, which claims the rail agency has not paid for work done. The odd thing about the Siyaya litigation, however, was that it was launched soon after Montana's departure. According to Ngoye, six summonses were received through Prasa's lawyers on the contract, Diale Mogashwa Attorneys. Prasa's defence is that Siyaya is claiming for work not done in some instances, or work done that was not in their scope, in others.

As part of a liquidation process that Siyaya had applied for, the company's lawyers demanded payment from Prasa in 2017. By the end of the year, a new board was in place, with Makhubele as chair while she awaited a Judicial Service Commission decision on her fate. An anomaly noted by Ngoye during Makhubele's tenure of five months, however, was her close interest in the Siyaya case. Not only was the chairperson sharing information on the process with Siyaya's legal representatives, said Ngoye, but she was restricting Prasa's legal team by barring its lawyers from providing advisory services as required. So close were her interactions with Siyaya's lawyers that Makhubele obtained the company's liquidation report, before ordering payment of R30-million from Prasa's coffers, as a settlement offer. Siyaya however said the amount should be R56-million.

"It looked odd that the attorneys on the other side would have been advised about what the offer was," said Ngoye.

Makhubele, said Ngoye, expressed at some point that the settlement demanded by Siyaya was too small an amount for the efforts she had put into the matter, but Ngoye argued in turn that the amount was below the board's delegation of authority and need not have been interfered with. Judgment was in favour of Siyaya, given that it was the board chairperson who had approved payment of R56-million. But Ngoye launched a new attack and achieved an interdict with the blessing of then transport minister Blade Nzimande, to whom Ngoye had taken concerns regarding Makhubele.

On her resignation in March 2018, Makhubele took up a position on the bench. The Siyaya matter too is still pending.

Dodgy supplier 4: Swifambo

Although Ngoye's team was not involved in the drawing up of the R3.5-billion contract with Swifambo Rail Leasing for the supply of trains in 2013, it was asked to advise over a process in which the company wanted the value to be increased to R5-billion.

The contract was ruled in July 2017 as having been obtained "through corrupt tender process" as the company acted for Vossloh, the Spanish company that supplied the trains. Swifambo too underwent liquidation.

Ngoye told the commission that the legal and risk compliance team at Prasa has shrunk over the years, as they lost staff. When she was Intersite CEO, the department had seven people, but the number has gone down. The lawyers in Prasa's employ, she argued, have the expertise to offer advice on contracts, given that the entity enters into billion-rand deals, but are not considered until Prasa is in crisis mode.

"We get called in when there are problems with the contract, without being brought in in the initial stages."

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