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Zondo commission - Ngubane cornered over Gupta links during Eskom tenure

The blame game continued among former Eskom board members on Tuesday with the testimony of Ben Ngubane before the commission of inquiry into state capture. Ngubane took on the chairperson role in 2015, after Zola Tsotsi's departure. This was his second appearance.

He was once again quizzed on the sequence of events leading up to the suspension of four executives who made up the top structure of Eskom, in March 2015. Much of the dispute in evidence has been over how and when the name of then finance director Tsholofelo Molefe made it on to the list. The other three, CEO Tshediso Matona, group capital head Dan Marokane, and head of technology and commercial Matshela Koko were first mooted at a meeting that Tsotsi testified took place at the official residence of former president Jacob Zuma in Durban on 8 March.

Their removal was to coincide with the launch of an inquiry to determine the reasons for Eskom's poor performance at the time. Then public enterprises minister Lynne Brown met with the board on 11 March to explain the decision behind the suspensions, and later that day they were removed.

Commission chairperson Deputy Chief Justice Raymond Zondo put it to Ngubane that one theory may be that the executives were removed to enable Eskom's capture by bringing in willing participants in the Gupta agenda. This, he added, could be solidified by previous attempts – as per Molefe's testimony – as Gupta associate Salim Essa had tried to edge in to do business with Eskom, but failed.

"We know the origin of the decision to suspend executives. We know. Mr Tsotsi told us precisely what he was instructed to do, who was going to do this. Mr Tsotsi told us that there was a big thick document in the Presidency about how this inquiry must be conducted," said Ngubane.

Zondo noted that the positions in question were strategic ones that could be pursued by anyone wanting to capture Eskom, but Ngubane argued that even Brown's speech to the board on the day of the meeting hinted at the areas that would be investigated, and the necessity to remove the people heading those units to allow for an "unfettered" process. Finance was one of those areas, and so it followed that the director would be added to the list of suspended individuals.

Zondo further raised a point in previous evidence that Ngubane appeared to consult with the Department of Public Enterprises soon after the suspensions had been completed, as if to be guided on who to appoint as replacements.

"Mr Tsotsi said that it was you who told him that the minister wanted the finance director to be removed," said Zondo.

"Mr Tsotsi must tell us why he badmouthed the FD then, saying that she was talking to potential suppliers when tenders were being evaluated. That's a very serious charge for any accountant, because an accountant must uphold procurement principles. He's the one who introduced her.

Secondly, the minister said all four areas that would be the focus of investigation must step aside. That was directly including the FD,” Ngubane responded.

“As for me going in and out of the meeting, it was because some names that Mr Tsotsi raised and the names that the minister was aware of and happy with, were not acceptable to other board members.”

The minister only was interested, he added, in the board ensuring that she would be consulted on Matona’s replacement.

Evidence leader Pule Seleka put a further proposition to Ngubane that suggested that he had the most to gain from Tsotsi being charged by the board later on in March and resigning, given that he was placed as the acting chairperson thereafter. This was in light of Ngubane’s business relations with Essa, to which he had already admitted, and the apparent close proximity of Essa and then Gupta-owned TNA Media CEO Nazeem Howa in the operations of Eskom.

Ngubane’s response was to call it a “dangerous proposition.”

Seleka had earlier read an e-mail from Howa to Ngubane, dated several days before Tsotsi’s resignation upon being charged, that he had the charges against Tsotsi recorded in preparation for a media statement. Ngubane admitted that it was odd that an external person had such insight into what decisions the board would later take regarding Tsotsi. But Seleka pressed him, suggesting that for Howa to have that information, he would have had to have access from inside the board to the inner workings.

A seemingly irritated Ngubane accused Seleka of insinuating that he was Howa’s inside man, saying there were always undertones at Eskom of information sharing, and some of this was reported in the media.

The charges brought against Tsotsi, said Seleka, stemmed from the appointment of private consultant Nick Linnell, who was tasked with coordinating the inquiry process. He was fired by the board, and soon after Tsotsi was charged.

Zondo noted that when first meeting Linnell, the board seemed to embrace him and his ideas. But when they grew unhappy with him, it was Tsotsi that they turned on.

“Unfortunately Mr Linnell ran out too fast forward. I think this is what changed the attitude of the board,” said Ngubane of Linnell’s ideas. “But that’s different from saying it’s wrong to allow him to work. My question is about the board allowing him to get involved, without raising process issues, and only charging Mr Tsotsi after that.

“Probably the audit people might answer that. However, from my point of view, he started committing Eskom to expenses with companies that he was now negotiating with, without prior authorisation. Most of these companies charge an arm and a leg for any work they do, I think that’s where the problem came in.”

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