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Zondo commission - Zwane's 'layman politician' defence before Zondo

Former Free State human settlements MEC Mosebenzi Zwane was at pains to defend himself before the commission of inquiry into state capture on Monday. The commission continues to probe an illegal prepayment scheme attached to a massive housing project for which the provincial department had received funding from national government.

Zwane designed the scheme, several former officials in the department have testified, in a desperate attempt to prevent the funding allocated in the 2010/11 financial year being withdrawn because of non-performance. He first suggested the scheme in late in 2010, just months before having to account to the national human settlements department.

It would involve the Free State department buying building materials directly, and not the appointed contractors, as is the norm. This not only meant that a bulk of the funding would be spent in that period, but also that the appointed contractors would sign cessions, thereby relinquishing their part in the original contracts, despite this going against the prescripts of the Housing Act.

Zwane announced the scheme at a meeting with the contractors in November, and soon afterwards payments were made for materials. Over R600-million was spent in respect of the scheme in the last three months of the financial year, a normally quiet period for the construction industry as the workforce takes a break over the Christmas holidays. It was found later that department had received no value by going the prepayment route. In fact, an investigation, according to current head Nthimotse Mokhesi, found that R650-million of the allocation remains unaccounted for.

The head of department at the time, Mpho Mokoena, testified last month that Zwane imposed a no-leave rule on senior officials at this time, expecting them to keep working throughout the holidays to oversee the project. Mokoena defied him, and this strained their working relationship, he said.

Evidence leader Advocate Paul Pretorius challenged Zwane on Monday, telling him that the scheme was illegal and contravened the Public Finance Management Act.

Zwane disagreed. "The advance payment or prepayment in terms of SA law is not an illegal issue. If you have an advanced payment there should be a contract that indicates you are going to do an advanced payment in which case you must administer an advanced payment."

But no contract existed that legitimised this, continued Pretorius. Zwane replied that Mokoena should have advised accordingly. As the accounting officer, he should have seen to it that all legal bases were covered.

Pretorius pressed on, challenging Zwane on the fact that his oversight role as MEC meant that he was responsible, but Zwane rejected this notion.

“From where I am seated I think it will be unfair of this commission to want to say I, as a layman politician there, should have taken the responsibilities of an accounting officer who himself had actually signed this document.”

Mokoena testified that when he challenged the scheme at first suggestion, Zwane instructed deputy director-general in the sister local government department, Mmuso Tsoametsi, to research its viability. When Tsoametsi presented a report, said Zwane on Monday, he assumed – given Tsoametsi’s legal background - it had covered the legality aspect of the scheme. Tsoametsi himself has testified that he did not pursue the aspect of legality in his research.

Even after the report had been written, said Mokoena, he continued to refuse to sign it, but Zwane allegedly threatened him by saying he’d expect him to resign if he did not sign it.

“I find some of the facts from Mpho Mokoena amazing because he knew about legislation and as an accounting officer had powers to overrule me on issues of illegality. He should have asked me in writing and report me to both provincial and national treasuries,” said Zwane.

“This scheme continued beyond my term as MEC in that department. Why did they continue when I was not there anymore? I left in early February. In May, Mpho Mokoena was still signing these cessions. So if I have to entertain what was said [at the commission], he should have stopped this thing in February because ‘it’s MEC Zwane’s scheme’. But he did not.”

Zwane is expected to return at a yet to be determined date to give further evidence.

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