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Zondo commission – Muthambi quizzed on Gupta e-mails

Did former communications minister Faith Muthambi irregularly consult with the Guptas on government policy in her new role as communications minister in 2014? She told the state capture commission no.

Muthambi appeared before the commission on Friday evening, first denying that she sent e-mails to Ashu Chawla – then CEO of Sahara Computers – in July 2014, which were later forwarded to Rajesh Gupta and Duduzane Zuma, to get their influence on aspects of government’s digital migration programme. Three e-mails dated 18, 25 and 29 July 2014, canvassed by evidence leader Advocate Anton Myburgh, were part of the GuptaLeaks trove exposed in 2016.

Muthambi said she only communicated with Chawla because of his standing as a stakeholder in the television broadcast sector. The Gupta family owned TNA Media at the time, which launched a 24-hour news channel ANN7 in August 2013.

“We are dealing with leaked documents here, and these are some of the e-mails we picked up from Sahara Computers. I sent these e-mails to Mr Chawla based on the fact that they own ANN7.

“I admit that I sent it to Mr Chawla as a stakeholder who was interested in a matter that we were dealing with,” Muthambi said.

But it was the nature and status of the documents sent as attachments that is of interest to the commission. In one of the e-mails from Muthambi, a document attached appears to be a draft proclamation still to be gazetted by former president Jacob Zuma. It followed the reconfiguration of his new cabinet following the May 2014 general elections.

Muthambi’s portfolio was one of those that had been split in two, and certain powers in government’s digital migration programme were set to fall under her new sister ministry, telecommunications and postal services, the minister of which was Siyabonga Cwele.

But just two months into office, the GuptaLeaks appear to show, Muthambi sent the e-mails to Chawla revealing Cwele’s plans to table, in Parliament, changes to the digital migration policy, despite her “request” not to.

“This meant that responsibility for matters including the broadcast digital migration policy would be taken away from Muthambi,” says an affidavit of civil society group OUTA, which laid treason charges against Muthambi in 2017, and on whose affidavit in that matter Myburgh partly relied in his questioning.

Muthambi appears to have tried to stall Cwele’s changes, and was proposing to Chawla that certain powers under the Electronics Communication Act be re-transferred to her ministry. “These sections must be transferred to the minister of communications,” she wrote, according to OUTA’s affidavit.

Commission chairperson Deputy Chief Justice Raymond Zondo asked Muthambi if she acted as a conduit between the Guptas and Zuma in this regard, to try to effect changes to the migration policy. “I want to put it on record that I have no knowledge of this, chair,” was her reply.

But if not to seek their input, or alternatively to suggest to them to influence Zuma into re-transferring the powers, asked Myburgh, why did Muthambi deem it necessary to communicate confidential Cabinet plans with private parties?

Muthambi against insisted that her only goal in communicating with Chawla, and by extension the Guptas, was because they were relevant stakeholders in the broadcasting space.

Myburgh asked if they were the stakeholders she claimed to have consulted with in court papers in a matter brought to the North Gauteng High Court by eTV in 2016. In its arguments, eTV said Muthambi imposed technical aspects of the digital migration policy – like the non-encryption of set top boxes to be rolled out by government as part of the programme – without a public consultation process. Muthambi’s argument at the time was that she did consult with stakeholders and sought relevant input, but eTV said she had kept these stakeholders secret.

She told the commission that she acted transparently, and has no case to answer for.

Muthambi is currently facing a disciplinary inquiry by the Joint Committee on Ethics and Members’ Interests over her actions in July 2014. Her lawyer Daniel Mantsha asked the commission for guidance prior to her testimony, given that the parliamentary process has not completed its work. Would the commission’s questioning of Muthambi not be an “intrusion on the doctrine of separation of powers of state?” he asked.

Zondo’s response to this was that because Muthambi’s matter is not of a criminal nature, she is not entitled to the privilege of non-incrimination. If she did not participate, “it would disadvantage the commission in a very serious way in determining issues of great national interest, issues of great public interest that it is investigating.”

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