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Zondo commission – Remove biased evidence leader, Montana asks Zondo

Former Prasa CEO Lucky Montana has asked that state capture commission evidence leader Advocate Vas Soni recuse himself. Soni has been leading evidence on Prasa since last year and has led Montana's evidence on five occasions.

Montana said at the end of his second day of testimony this week, on Tuesday, that Soni has displayed signs of bias and is intent on following a certain narrative – dictated by a “network” of people that has coerced witnesses to make allegations against him, despite the fact that the authenticity of the evidence on which he relies is uncertain.

“I think Mr Soni should recuse himself. I think he has demonstrated signs of being biased, signs of having taken sides on these issues,” said Montana.

The point of contention was the documentation that Soni has relied on to pursue evidence related to allegations that during his term at Prasa, Montana acquired properties in upmarket suburbs in Johannesburg and Pretoria with the help of one of its contractors. His intent, argued Montana, was to prove that a company whose subsidiary had a R3-billion contract with Prasa, paid for the four properties – with an estimated total of around R36-million – and not Montana.

Pretoria-based law firm Loubser Van der Walt Incorporated had represented TTM Holdings, which owns Siyangena Technologies, for some time when partner Riaan Van der Walt allegedly associated with Montana, in a property development scheme through which the latter says the properties were paid.

In July last year, Nicholas Loubser testified at the commission how Van der Walt explained his association with Montana to the law firm, when first confronted with the matter amid media reports of their dealings. Loubser said he and the rest of the partners had been unaware that Van der Walt had the property business – run via a shelf company, Precise Trading and Investment – that involved Montana.

A set of hand-written notes that Van der Walt had made to explain transactions of money coming into and exiting the firm's trust account, was admitted as evidence. He scribbled entries of several payments made in relation to Montana and TMM. He also made an entry in the notes for an amount attributed to TTM as a loan. While he had begun answering questions relating to the notes earlier in the day, Montana questioned their veracity and the commission's reliance on them, given that they were not supported by an affidavit from Van der Walt himself. Van der Walt is currently based in the US and is therefore outside the commission's jurisdiction for a subpoena.

Montana contended that Soni insisted on apportioning weight to the notes, particularly the TTM entry, to pursue an agenda suggesting that the company played a part in payment towards one of the properties in question, in Parkwood, Johannesburg. This despite Montana's insistence that in the absence of Van der Walt's explanation of the notes, Soni could not draw conclusions.

“Remember why we’re here, chair. It is said that R36-million of Precise Trade comes from TMM. I’m saying it is false, they [TMM] are saying it is false ... the allegation is that Siyangena was given R4-billion’s worth of contracts, and it paid for properties,” said Montana.

A TMM affidavit deposed to by CFO Tomas Dubeck in respect of a North Gauteng High Court matter between Siyangena and Prasa, in which he denies that TMM or Siyangena paid any money to Precise via the Loubser Van der Walt account, was read into the record. Dubeck also says the account in question appeared to have been opened by Loubser Van der Walt in TMM’s name, but was not held by the company. In 2014 Van der Walt allegedly informed Dubeck and TMM director Mario Ferreira that the account was opened to facilitate payments in respect of agreements between the firm and TMM.

Between the notes and the commission’s investigation on the strength of a report by private investigator Paul O’Sullivan, said Montana, Soni had proved himself to be far-gone in his conclusions that TMM paid for the properties under scrutiny, despite Montana’s numerous explanations of how his partnership with Van der Walt – unrelated to either individual’s relationship with Siyangena – operated.

Soni’s response to the recusal suggestion was that Montana only became uncomfortable when he insisted that TMM effectively bought the Parkwood property to help make a profit for Montana, who sold it for R6.5-million in 2016, having bought it for R1.5-million two years before.

“I can’t, as an evidence leader, come to the commission with no prima facie view about what has happened. I have to have a view, otherwise I would be wasting taxpayers’ money by investigating things that in a sense are not worth investigating,” said Soni.

Commission chairperson Deputy Chief Justice Raymond Zondo said he would not make an immediate decision on the recusal matter, but would apply his mind. This is not Montana’s first recusal request. He applied to the Judicial Service Commission in 2020 to have Zondo recuse himself on the basis that he had decided not to hear his evidence in respect of allegations Montana made against some of his accusers. That application was unsuccessful.

For Soni too the request was not the first. Former Prasa chairperson Nana Makhubela requested last year to have him removed before she gave oral evidence, citing Soni’s biased conduct in the pre-testimony discussions between the two parties.

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