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Zondo commission – Mabuyakhulu cross-examines investigator on “flawed” Amigos evidence

The case of the R1-million cash donation to the KwaZulu-Natal ANC in June 2009 – allegedly linked to the “Amigos” corruption case – once again featured before the state capture commission on Tuesday evening. The party’s former provincial treasurer and now deputy chairperson, Mike Mabuyakhulu, returned to conclude his testimony, and to cross-examine an investigator in the Amigos case.

PricewaterhouseCoopers forensic auditor Trevor White had previously told the commission that he assisted the provincial Hawks in the Amigos case – related to a R144-million allegedly irregular procurement deal – and linked some of the cash proceeds to the ANC as one of the beneficiaries.

The deal involved the supply of water purification and oxygen plants to the departments of health and local government, with Cape Town-based billionaire Gaston Savoi’s Intaka Holdings being the contractor. White’s assertion is that as payback for getting the tender, Savoi made payments to several key people in the chain of procurement events, including then head of the health department, Siphoshe Shabalala, who in turn forwarded some of the money – R1-million – to Mabuyakhulu.

The party was nearing its provincial elective conference in the middle of 2009 when Mabuyakhulu said he received a donation from Shabalala that he did not question. He has denied that there is a link between the Intaka tender and the donation.

There was no receipt for the donation, which Mabuyakhulu insists he understood to have come from Shabalala himself, as he had promised months earlier to find some cash needed to fund the event. Mabuyakhulu was the only one present when the cash was received, but he told the commission he mentioned it to the top structure of the province once it had arrived and was safely stored in a safe in his office.

But before the cross-examination of White, Mabuyakhulu questioned the veracity of the evidence of Sibusisiwe Zulu (nee Ngubane), who testified on Monday evening. She is a partner at Ngubane Wills Incorporated in Pietermaritzburg, a law firm that represented the ANC at the time of the transaction under scrutiny.

He told the commission that Zulu contradicted herself in her oral testimony, which is not the same as in her affidavit before the commission, on the sequence of events relating to her firm’s preparation of an affidavit on the matter, for the Hawks. Mabuyakhulu said he had no recollection of meeting with Zulu, despite her testifying that he gave her instructions on what to include in the affidavit.

“I would not have said to a practicing attorney to go and frame an affidavit on behalf of someone else, and include the thing that that person has no personal knowledge of and then actually make that person sign for it,” said Mabuyakhulu, adding that an honest attorney would have refused.

His account is related to Zulu's evidence that she was asked to rather speak to Delani Mzila, an ANC member who was charged with fundraising, for information required for the affidavit. She did so, before providing the ANC with a copy of the affidavit. Mzila's own testimony was postponed on Monday due to a technicality.

Mabuyakhulu's counsel, AJ Dickson, challenged White in the cross-examination, calling his testimony flawed as it relied on documentation that proved nothing beyond poor circumstantial accounts. That he could not prove his theory beyond the fact that payments from Savoi to business interests of Shabalala and his wife meant that the R1-million was forwarded from there, weakened his case.

"When you want to make a circumstantial case it all has to point in one direction, and if a whole lot of your circumstances fall to pieces because people recant their evidence, then your theory is no longer valid. I will take you through each of the pieces to show you your evidence is flawed," said Dickson.

The commission reached out to Shabalala for him to depose to an affidavit detailing his version of events, but he declined this, citing fear of incriminating himself. Shabalala, his wife, Savoi and several others remain suspects in the case relating to the tender. Mabuyakhulu too was charged in the matter, but the charges were later dropped by the National Prosecuting Authority.

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