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Zondo commission – Gigaba admits flaws in Molefe appointment as Transnet CEO

The appointment of Brian Molefe as GCEO of Transnet in early 2011, though he was not the board's preferred candidate, came under the spotlight at the state capture commission on Thursday evening. Former minister of public enterprises Malusi Gigaba took the stand once again.

Gigaba admitted that the regulations governing the process of appointment of CEOs of state-owned entities may be flawed in that they do not accommodate a rigorous process where the shareholder minister interrogates recommendations brought forward by the board.

Molefe had scored second while Dr Mandla Gantsho, currently the CEO of Africa Rising Capital, had the best score. Gigaba was asked if this detail reached his office, where the memorandum recommending the best three candidates was to be presented to Cabinet for approval, as is standard practice. He told the commission that he did not recall this being presented to Cabinet, which was told any of the three – Molefe, Gantsho and Pepi Silinga – could be selected.

Commission chairperson Deputy Chief Justice Raymond Zondo questioned the rationale behind a cabinet memo recommending three candidates, in circumstances where the scores they achieved through the board's evaluation process are not taken into account. If the minister of public enterprises ends up appointing a preferred Cabinet candidate who isn't preferred by the board, that could lead to problems ahead, especially if Cabinet is not apprised of the board's preference.

"You don't want the board to turn around and say well, don't blame us, you told us to appoint the CEO, we didn't choose the CEO ... I would have assumed that would be the rationale, that these people are accountable for the performance of the SOE, let them give us their preference," Zondo said.

Gigaba agreed: "I think, Chairperson, you are absolutely correct, and I think you are exposing the weakness of this process in that it doesn't provide sufficient space between the recommendation of the board and the forwarding of a memorandum for discussion by Cabinet.

"That in itself would require rigorous engagement between the company and the shareholder department, unless the shareholder is in agreement with the board in regard to the preferred and recommended candidate. So I take the point that you're saying."

Zondo had earlier made the point that Gupta-owned *New Age* newspaper had reported in late 2010, around the same time that the board was being appointed, that Molefe was to be CEO of Transnet. Furthermore, board member Iqbal Sharma, who had business ties with Gupta associate Salim Essa, scored Molefe significantly higher than Gantsho in the evaluation process.

Gigaba noted, from a follow-up question by Zondo on whether the cabinet noted that the board, in its recommendations, elaborated on Molefe's credentials extensively, but did not do the same for the other two.

“I did not take note of it, Chairperson, but as you are presenting it, it’s a valid point. I think it goes back to saying how do you reconcile 2.5 and 2.6 [in the cabinet memorandum] to make the process rigorous, not to disadvantage, especially if the preferred candidate of the shareholder is not the one preferred by the board.”

Zondo further pointed out that it appeared, in the context of the evidence he has heard on SOEs to date, that certain decisions were being made by people outside of government departments that should have been made by people in those departments.

“Chairperson, indeed one has heard those allegations, and one would not be able to comment for the period when one was not there.”

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