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Zondo commission final report - “The antithesis of accountability”

Former South African Airways (SAA) chairperson Dudu Myeni and her fellow board member and counterpart at the airline’s subsidiary SAA Technical, Yakhe Kwinana, oversaw a state-owned entity riddled with corruption during their terms, and fuelled a culture of bullying, fear and purging of executives who did not agree with their agenda.

These are the findings contained in the 874-page report released by President Cyril Ramaphosa on Tuesday this week, hours after it was submitted to him by the chairperson of the commission of inquiry into state capture, Acting Chief Justice Raymond Zondo. The report is the first of a trilogy, with the next expected to be submitted at the end of this month, and the last at the end of February.

The swift release to the public by Ramaphosa is unprecedented, and has been hailed by analysts as a step in the right direction in the interest of transparency.

Of SAA, Zondo said the overarching theme of Myeni’s term could be described as the “antithesis of accountability”, given her insistence on the flouting of policies of the airline. Myeni was chairperson of SAA from 2012 to 2017, the first three years of which were in an acting capacity.

“SAA declined during the tenure of Ms Myeni to an entity racked by corruption and fraud. Despite this, she was retained as its chairperson well beyond the point at which she should have been removed,” noted Zondo in the report.

“Two successive finance ministers have explained to the commission that this was because of the personal preferences of former president [Jacob] Zuma.”

Zondo said it was inexplicable how Zuma ensured that she was retained, despite red flags in the form of irregularities and a decline of SAA’s performance under her leadership.

“President Zuma fled the commission because he knew there were questions that would be put to him which he would not have been able to answer. He could not have justified his insistence that Ms Myeni be retained at SAA nor could he have credibly denied Mr [Pravin] Gordhan’s and Mr [Nhlanhla] Nene’s evidence that he wanted Ms Myeni retained at SAA.”

Gordhan and Nene were finance ministers at different periods under the Zuma administration.

Vetting of SAA staff

Several witnesses testified before the commission in 2019 that Myeni and Kwinana, the latter in her capacity as board member of SAA, infringed on the rights of members of the airline’s executive management in an illegal process of security vetting not provided for in its employment policy. The State Security Agency (SSA) official tasked at the time with overseeing the project, Nokunqoba Dlamini, told the commission that the motive for the vetting was explained by Myeni as an initiative to help combat corruption. Myeni roped in then state security minister David Mahlobo for support in late 2015, and it was on Mahlobo's instruction that Dlamini and other officials conducted the vetting process of 118 SAA staff members.

The Zondo report notes that Mahlobo, in an effort to justify the need for the project in a letter to Nene in late 2015, purported to be quoting from Section 1 of the National Strategic Intelligence Act (NSIA).

"That section is a definitions section and contains no such provision. In fact, there is no such provision anywhere in the NSIA. It is not clear how Minister Mahlobo relied upon and quoted a non-existent section to justify the plan to vet SAA employees," said Zondo. He further recommended thqt the office of President Cyril Ramaphosa take a closer look into the practice of security vetting within the SSA so as to eliminate potential abuse.

Interference in procurement contracts

Myeni was also found by Zondo to have transgressed in her involvement regarding several SAA procurement contracts that she should not have become involved in. These included a process for the sourcing of a R15-billion loan to help SAA consolidate its debt, a catering contract for the lounge services of SAA, and the Pembroke transaction.

A R50-million cancellation fee was imposed on SAA by a company called BNP Capital in 2016, after SAA withdrew from a R256-million contract to source the funding for the loan. SAA's acting chief finance officer at the time, Phumeza Nhantsi, testified in 2019 about the circumstances under which the appointment of BNP happened, on a confinement basis, and after the initial scope of their contract had been expanded from a narrower advisory role for whomever was to source the loan, to securing the funding themselves.

Nhantsi further told the commission that Myeni and BNP's Masotsha Mngadi had placed pressure on her to facilitate the R50-million payment after an investigation into the deal rendered it irregular. Mngadi, she said, had earlier introduced himself to her as Myeni's personal financial advisor, raising a question of conflict of interest regarding the BNP deal. Zondo has recommended that the National Prosecuting Authority consider all three for prosecution over the matter. Nhantsi, he stated, had an obligation as an official in a public entity to report the matter under the Prevention and Combating of Corruption Activities Act.

On the Pembroke transaction, which involved the acquisition of aircraft for SAA in 2013, Zondo found that Myeni had misled then public enterprises minister Malusi Gigaba over the final decision taken by the board on the number of aircraft to be procured. While the board resolution was to go for two Airbuses, Myeni represented the decision to Gigaba as being for the acquisition of 10.

Zondo notes: "The board members concluded that Ms Myeni appeared to be trying to secure her own funding for the acquisition of the 10 Airbus A320s, without involving the executive, resulting in the attempted change in the board's funding resolution."

Myeni's conduct in the Pembroke transaction resulted in delays in the delivery of the aircraft that cost SAA approximately R800-million in pre-delivery payments, he added.

Tender awarded irregularly

Another contract that caught the attention of the commission was for catering services at SAA lounges across the country's airports. In 2015 SAA sought bids for the service, and among the companies that responded was South African-based Air Chefs, a subsidiary of SAA chaired by Kwinana, which held the contract at the time but was underperforming, according to then acting CEO Mathulwane Mpshe. She testified before the commission in 2019.

Myeni learned of the award of the contract to Lufthansa Airline-owned LSG Sky Chefs, following an open tender process, after it had been made, as its value fell within Mpshe's delegation of authority at R85-million. The chairperson then ordered the reversal of the award and that Air Chefs be reinstated, on the basis that it is a local company while Sky Chefs is German. Air Chefs, Zondo was told by witnesses, had also failed to submit all the relevant documentation expected from bidders. Mpshe's version that Myeni and Kwinana sent her strong-worded e-mails about management's decision to overlook a local company caught Zondo's attention.

"Ms Myeni and Ms Kwinana displayed a wanton disregard for the best interests of SAA in their decision-making on the lounge catering contract. They acted in gross disregard of their fiduciary duties to SAA when they took this decision."

Mpshe had said in her testimony that she had made a full submission to the board detailing the reasons for the exclusion of Air Chefs from the final round of the process due to non-compliance, and the agreement entered into between SAA and Sky Chefs to absorb existing Air Chefs staff, but this did not deter the two directors from their angry tones.

Zondo noted that given that Sky Chefs proceeded to sue SAA as a result of the retraction of its award, Myeni and Kwinana should have been disciplined for disregarding the compliance of management.

"They both ceased being directors of SAA more than 24 months ago. Accordingly, the shareholder is not now in a position to bring proceedings to have them declared delinquent directors under section 162 of the Companies Act."

With regard to the last point, Zondo stated in the report that he recommended that the time bar be amended by Parliament to allow for former directors of state institutions to be liable for exposure to delinquency processes even after the two-year window.

"This will mean that in cases such as this one, where the true extent of the board members' breaches of duty are only uncovered a number of years later, steps can still be taken by the executive to ensure that such directors are declared delinquent and are thereby prevented from serving on the boards of companies in the future."

Useful links:

Zondo Commission website

Corruption Watch's Zondo Commission update page

State Security Agency

South African Airways corporate site