

IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION")

AFFIDAVIT

I, the undersigned,

SIYABULELA XHANTI MAPOMA

do hereby state under oath:

1. I am an adult male, and an advocate in private practice.
2. The facts contained herein are both true and correct, and unless the context indicates otherwise, within my personal knowledge and belief.
3. I have already deposed to two affidavits that are before the Commission – the first on 31 July 2020 and the second on 31 August 2020.
4. In preparation for me giving evidence before the Commission on 14 October 2020, I held a consultation with a member of the Transnet stream's legal team and investigation team, respectively, on the afternoon of 7 October 2020. Following the consultation, I was invited to put up this further affidavit, which deals with two things: new documents; and the payment of Mr Gama's legal fees.

NEW DOCUMENTS

5. During to consultation referred to above, I was provided with three documents: a Deneys Reitz consultation note dated 22 January 2010 (annexure **SM1** hereto); an email that I sent to Deneys Reitz on 14 February 2011 together with an attachment (annexure **SM2**

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- hereto); and an email that Deneys Reitz sent to me on 15 February 2011 together with an attachment (annexure **SM3** hereto).
6. In relation to annexure **SM1**, I confirm that I attended the meeting and that the note is an accurate reflection of what transpired. In particular, I confirm that Mr Mkwanazi stated what is recorded in paragraph 4 of the note at the outset of the caucus.
7. In relation to annexure **SM2**, I confirm that I sent the email (and attachment) to Deneys Reitz in order for them to finalise / settle the attachment, which I drafted at the request of Mr Mkwanazi in preparation for the board meeting on 16 February 2011. In relation to paragraph 7 of the attachment, Mr Mkwanazi himself had requested me to insert the sentence reading: *"The Chairman of the Board, with the support of the Shareholder Minister has within his rights and obligations decided to revisit the matter of the disciplinary proceedings against Mr Gama."*
8. I mention in this regard that from the outset of my interactions with Mr Mkwanazi, he made it clear to me that he had been instructed to reinstate Mr Gama, and that he wanted to find a way to do so *"cleanly"*. Although I did not consider it my place to ask who had instructed him, I assumed that it must have been former President Zuma.
9. In relation to annexure **SM3**, I confirm that I received the email and attachment from Deneys Reitz, with the attachment having been finalised / settled by them. It will be noted that Deneys Reitz added new paragraphs 10 and 11.
10. Following receipt of the settled document, I passed it on to Mr Mkwanazi, with it always having been my understanding that he intended to table it (as his view) at the board meeting on 16 February 2011. However, I do not know whether he did so.

PAYMENT OF LEGAL FEES

11. Clause 3.5 of the settlement agreement (annexure **B** to my first affidavit) reads:

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"Transnet will make a contribution equivalent to 75% of Mr Gama's taxed legal costs incurred during Gama's High Court application and in respect of his unfair dismissal dispute referred to the Transnet Bargaining Council."

12. I wish to clarify the following.

- 12.1 Two payments were made to Langa Attorneys while I was at Transnet. Firstly, they were paid R1 016 564.90 on 28 March 2011, being 75% of the taxed costs incurred by Transnet (with Bowman Gilfillan and Eversheds) in the High Court litigation. Secondly, they were paid R1 720 220.76 on 9 June 2011, being 75% of the taxed costs (by a private tax consultant) incurred by Mr Gama in the High Court litigation, his disciplinary inquiry and his referral to the Transnet Bargaining Council.
- 12.2 Regarding the first payment, it came about as follows. Following my dealings with Langa Attorneys (who presented a ridiculously inflated bill), I was opposed to paying Mr Gama's fees. This was an unpopular decision and I came under pressure within the organisation to finalise the issue. In this context, I held a discussion with Mr Mkwanazi (who I dealt with closely on the issue), which culminated in him instructing me to pay 75% of Transnet's taxed costs to Mr Gama (on the basis that he had incurred liability for such costs). Given that I was unhappy with this, I escalated the matter to Mr Singh, who approved of the payment. I refer in this regard to my handwritten annotations dated 28 March 2011 on the various taxed bills attached to Ms Mohlabi's affidavit on costs. The decision is also recorded in the memoranda to Mr Singh and Mr Molefe referred to in paragraphs 10 and 12 of my second affidavit. None of the recipients ever questioned the contents; to the contrary, they approved of the decision to pay.
- 12.3 Regarding the second payment, my interpretation of clause 3.5 of the settlement agreement was that the costs incurred by Mr Gama at his disciplinary inquiry fell

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within the reach of "his unfair dismissal dispute referred to the Transnet Bargaining Council", and that 75% of such taxed costs were payable. This was also Mr Mkwanazi's interpretation.


SIYABULELA XHANTI MAPOMA

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at EAST LONDON on this the 8th DAY of OCTOBER 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

SOUTH AFRICAN POLICE SERVICE
STATION COMMANDER
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