

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

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**AFFIDAVIT**

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I, the undersigned,

**MAFIKA EDMUND MKWANAZI**

do hereby declare and state that:

1. I am an adult male born in January 1954 in Pimville, Soweto Johannesburg in the Gauteng Province.
2. I was an Executive director of Transnet from 1996 to 2001. I am the former Group Chief Executive Officer of Transnet, having held that position from 2001 to 2003. I am also the former Chairman of the Board of Transnet having held that position for a period of 4 years from December 2010 to December 2014. I was furthermore the Chairman of the Corporate Governance and Nomination Committee as well as a member of the Acquisitions and Disposal Committee (ADC) during the tenure of the Board.
3. The facts contained in this declaration fall within my personal knowledge, or appear from documents under my custody or control, or from copies of documents I have seen. To the best of my knowledge and belief, the facts set out in this declaration are true and correct.

**4. INTRODUCTION**

- 4.1. I depose to this declaration on the request of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State established in terms of Proclamation 3 of 2018, published in Government Gazette 41403 of 25 January 2018 ("the Commission"). The request of the Commission is recorded in a letter dated 15 June 2021 addressed to myself (attached hereto marked "Annexure A") in which it requests that I furnish an affidavit or affirmed declaration in which I set out all which is within my knowledge regarding Mr. Brian Molefe's appointment as Group Chief Executive Officer of Transnet including the procedure followed in appointing Mr. Molefe.

- 4.2. I was appointed to the Transnet Board as Non-Executive Chairman on or about 10<sup>th</sup> December 2010 by then Minister of Public Enterprises Malusi Gigaba. At the time, there was an Acting Group Chief Executive Officer (hereinafter referred to as "GCEO") within Transnet, Mr. Chris Wells. A few days after my appointment, Minister Gigaba decided that I must also become the Acting GCEO of Transnet. I had a discussion with Mr. Chris Wells on how the two of us would work in our positions until a permanent GCEO was appointed. Mr. Wells had been Acting GCEO for two (2) years at the time. Besides Mr. Wells, there were four (4) other Executives in acting roles for periods of at least two (2) years. There was a sense of urgency to fill the GCEO position in order for all other "Acting" Divisional and Group Executive positions to be permanently filled as well.
- 4.3. Minister Gigaba issued a document titled "Guidelines for the Appointment of a Chief Executive Officer for State-Owned Enterprises" on 14<sup>th</sup> December 2010. The first paragraph of that document reads "...In addition, the shareholder authority includes appointing the executive directors of a company, which includes the CEO and CFO..."
- 4.4. I cannot comment on the December 7<sup>th</sup> New Age article on Brian Molefe. I suggest the New Age should be asked about that as I am not a representative of the New Age.

## 5. BACKGROUND

- 5.1. On the 7<sup>th</sup> January 2011, a special Nominations and Governance Committee (hereinafter referred to as "NGC") meeting was held to discuss the strategy to appoint a GCEO. In that meeting Leaders Unlimited (hereinafter referred to as "LU") was appointed after a process which included consideration of other recruitment agencies to provide professional advice and assistance in the selection process. Members of this NGC committee were Mr. ME Mkwanzazi, Ms. T Mnyaka, Ms. DLJ Tshepe and Mr. IM Sharma.
- 5.2. On 13<sup>th</sup> January 2011, members of the Board of Transnet nominated names of potential candidates which were submitted to LU for consideration. A total of thirteen (13) candidates were nominated by Board members (that list should be available from LU or Transnet). LU furthermore did its own sourcing of candidates by way of Headhunting and in turn identified a total number of twenty (20) potential candidates.
- 5.3. On 20<sup>th</sup> January 2011, the NGC met to review profiles of all thirty – one (31) candidates that had been identified by board members and identified by Leaders Unlimited. Each NGC member was then requested to identify their top 10 individuals from this list of 31. The names were submitted to LU. (Appendices 1 to 10 from LU will assist).

- 5.4. On 23<sup>rd</sup> January, the NGC met with LU to review the names of candidates which were identified. A list of 18 names emerged. Out of this list, a top six (6) shortlist was created in order to start the process of interviewing the shortlisted candidates. A second top six (6) list from the remaining twelve (12) was subsequently created. Following a review of the candidates, the Board resolved that the process be opened to attract more candidates. The board resolved to advertise the position externally. An external advertisement was then placed in a number of key publications and a total of thirty – one (31) candidate responded to the Advert (Appendices 1 to 10 of LU will have more information).
- 5.5. On 26<sup>th</sup> January 2011, the NGC met with Leaders Unlimited in view of obtaining feedback on the first six (6) shortlisted individuals identified during the meeting of 23<sup>rd</sup> January which were namely: Dr Mandla Gantsho, Ms. Monhla Hlahla, Ms. Motshoanetsi Lefoka, Mr. Brian Molefe, Mr. Tau Morwe and Mr. Phuthuma Nhleko. At this meeting only Gantsho, Hlahla, Molefe and Morwe had accepted the invitation to the interviews. Subsequently Hlahla withdrew her candidacy. The NGC agreed to extend the list to the second six (6) candidates which were shortlisted who were namely: Mr. Nazir Ali, Mr. Thulani Gcabashe, Mr. Nkosinathi Khena, Dr Simo Lushaba, Mr. Mpumelelo Tshume and Mr. Lazarus Zim. LU was advised to also create a shortlist of candidates from the advert responses.
- 5.6. Through emails and telephone calls, the NGC was advised that the candidates to be interviewed on the 29<sup>th</sup> January were Mr. Cyril Gamede, Dr Mandla Gantsho, Mr. Nkosinathi Khena, Mr. Tau Morwe and Mr. Maurice Radebe. Subsequently Maurice Radebe withdrew his candidacy.
- 5.7. On 29<sup>th</sup> of January, the first round of interviews was scheduled to take place despite the knowledge that the media advertisements would bring more candidates. A Structured interview was nonetheless prepared for the following candidates Mr. C Gamede, Dr M Gantsho, Mr. N Khena, Mr. B Molefe and Mr. T Morwe. Their scoring detail is indicated on page 7 of Leaders Unlimited summary. The interview questions are also available on the LU Appendices which form part of Annexure H of the Commission's bundle.
- 5.8. A special board meeting was held on 1<sup>st</sup> February 2011 to discuss progress. The Board recommended a timeline extension in view of awaiting responses which were yet to be received and considered from the external advertisement of the position and that legal advice be sought regarding one of the candidate's suitability to be interviewed for the position.
- 5.9. The NGC met with LU the 3<sup>rd</sup> of February 2011 to review progress and outcomes from the advertisement process. Three (3) candidates emerged, Mr. Monwabisi Kalawe, Mr. Ike Nxedlana and Mr. Mninawe Pepi Silinga. The 4<sup>th</sup> candidate was Mr. Siyabonga Gama whose suitability to be

interviewed was however subject to a legal opinion. Transnet Group legal joined the meeting to present an opinion from Senior Legal Counsel. This legal opinion is captured on Page 8 of LU summary. A point raised was "... Clause 2 of the recruitment procedure provides that Transnet may, in its sole discretion, deviate from the policy where necessary, in respect of executive appointments. Transnet may therefore deviate from Clause 4.8.4 at its sole discretion". Following extensive deliberations by NGC it was then agreed to waive Clause 4.8.4 and consider Mr Gama's application.

5.10. On 8th of February 2011, the NGC then conducted a second round of interviews of the 4 candidates mentioned above, some of which were identified from the external advertisements. The interview outcomes are shown on Page 9 of the LU summary ratings. In total 9 candidates were interviewed, scores of which are indicated on Pages 9 and 10 of the LU summaries.

5.11. In order to ensure appropriate leadership interface and potential behavioural development areas of the selected individuals, the NGC agreed that all shortlisted candidates be subjected to Leadership Behaviour Assessments based on the three instruments; Personality Archetype; Emotional Intelligence and Consciousness Quotient. Results of these assessments are available from Leaders Unlimited Appendices 1 to 10. At this stage verification of academic qualifications had been done. The plan was to later conduct a State Security Clearance.

5.12. On 11<sup>th</sup> February 2011, a Special Board Meeting was held to give the Board final feedback on the GCEO interview process and results. The Board expressed concerns on a few issues which were:

5.12.1. How did the NGC conduct the selection process?

*This has been answered above.*

5.12.2. Why was the process rushed?

*There were too many long-term Acting Executives in Transnet. Starting with the Chairman, CEO, CFO, and Divisional CEO's. This also implied that some positions below Divisional CEOs were also acting.*

5.12.3. The focus was on candidates with General Management backgrounds. In the list of interviewed candidates there are candidates with technical backgrounds. The thinking was that deep technical skills were available at divisional level.

5.12.4. As explained above some potential candidates came from non-executive Board members (this information is in Appendices 1 to 10), some from the media advertisements and some from LU.

5.12.5. The advert was done late, as from the work of the LU we thought we would get enough candidates. Also, from a transparency perspective, we felt that let us open the process to give other South Africans an opportunity to apply.

I do not think that the Board was aware of conflicts of interest at this stage. Board members did nominate potential GCEO candidates. There were Board nominated candidates in the top 9 candidates and top 3 candidates.

5.13. On page 7 of the Commissions submission, it is mentioned that staff at DPE being Director General Mr. T Matona and Deputy Director General Ms. R Lepule received communication from DPE Special Advisor Advocate Mahlangu. Ms. R Lepule then sent an email to Mr. M Makobe indicating that the preferred choice of GCEO is Mr. Molefe. This was not a Transnet Board Recommendation.

5.14. The three (3) preferred candidates selected by the NGC were excellent and their scoring came very close to each other. The NGC did not have a preferred candidate. That is why all three were submitted to the Board. In the Guideline from DPE, the Minister had a right to appoint the GCEO and interview the 3 candidates if necessary.

5.15. On 10<sup>th</sup> February 2011, Mr. Don Mkhwanazi wrote a letter raising his concerns regarding the recruitment process. The main one being the process being rushed. I agree with him, we could have taken at least 4 months under normal circumstances. The situation was not normal. There were too many executives in acting positions. At some stage Transnet was called a Bollywood because of the number of executive positions which were "Acting". His suggestion of even changing the composition of the Nominations and Governance Committee was flawed as there was an NGC in place and it was doing its job. The question of conflict of Board members who had nominated thirteen (13) candidates for GCEO position is valid, particularly if that Board member is in the NGC. Mr Don Mkhwanazi's preferred candidate was not in the recommended three (3) which may have been the basis of his frustration with the process.

5.16. On 17<sup>th</sup> February 2011, Professor Juergen Schempp resigned as a member of the Transnet Board. Professor had a calendar problem of attending Board meetings. The Transnet Company Secretary at the time can confirm this. There is another sentiment that the Prof mentioned which is not in his letter. Why was this appointment not concluded by the Board? I agree with this sentiment. However, it is a requirement of the Minister's Guideline that three (3) names must be submitted to the Shareholders for before final appointment(paragraph 2.5 of the DPE Guideline).

## **ANNEXURES RECEIVED FROM THE COMMISSION**

Annexure A: Memorandum Regarding the Appointment of Mr. Brian Molefe as Group Executive Officer of Transnet.

Annexure B: E-mail communication by Iqbal Sharma nominating Mr. Brian Molefe to be considered as a candidate for the Group Chief Executive position at Transnet.

Annexure C: E-mail communication by Mafika Mkwanazi and Letter from Mr. Don Mkwanazi addressed to Mr Mafika Mkwanazi.

Annexure D: Letter of Resignation from Professor Juergen Schrempp.

Annexure E: Guidelines on the Appointment of a Chief Executive Officer in State-Owned Entities by Minister of Public Enterprises.

Annexure F: Job Specification Brief for Search Agency including Transnet's Executive Search Matrix.

Annexure G: Letter of Minister Malusi Gigaba including Curriculum Vitae of Anoj Singh (CFO)

Annexure H: Status report and submission of recommendations to the Board of Transnet on the Appointment of the group Chief Executive Officer.

Please note that notwithstanding numerous attempts, we were unable to obtain Appendices 1 – 10 which form part of Annexure H above from the Commission.

Annexure I: Letter to Minister Gigaba – Recommendation on the Appointment of Group Chief Executive of Transnet Limited.



5.17. On Page 8 of the Commissions letter, it is quoted that "COSATU raises red flags on Guptas". This is relevant in view of the 7<sup>th</sup> of December New Age publication. The Board did not pick up any conflict of interest in the appointment of Mr. Molefe. At the time, the board was aware that Mr. Molefe had worked at Treasury and at the Public Investment Corporation. These were amongst other factors which influenced his shortlisting.

5.18. The process of appointing CEOs of State-Owned Entities is seriously flawed and creates discomfort and uncertainty. The Boards recommend and the DPE Minister appoints. How, for example was Ms. Maria Ramos to be CEO of Transnet?

### 5.19. CONCLUSION

Notwithstanding my misgivings of the process, the Board had an obligation to stabilize Transnet by ending the "Acting" environment that prevailed. We also had to do so in line with the Minister's Guideline, which we did.

  
DEPONENT

**SIGNED** and **SWORN** to at Midrand on this 23<sup>rd</sup> day of **JULY 2021** by the Deponent who stated that:

1. He knows and understands the contents of the declaration; and
2. He has no objection to taking the prescribed oath;
3. He considers the prescribed oath as binding on his conscience.

And that Government Notice Regulation 1258 as amended by the Government Notice Regulation 1648, Government Notice Regulation 1428 and Government Notice Regulation 773 was fully complied with.



**COMMISSIONER OF OATHS (RSA)**  
**Nhlanhla Mkhwanazi**  
*Ex Officio - Admitted Attorney (RSA)*  
Building 7, Design Quarter District  
Leslie Avenue, Magaliesig, Johannesburg

**COMMISSIONER OF OATHS**

A handwritten signature in black ink, appearing to be 'Nkhwanazi', located in the bottom right corner of the page.