

AFFIDAVIT

I, the undersigned,

Natasha Wendy Anita Mazzone

hereby make oath and state that:

AD DEPONENT

1.

- 1.1 I am an adult **female** person of the above details and of full legal capacity, employed as **Member of Parliament** on the third floor of the Marks Building, Parliament, room number M301, and residing in **Cape Town**
- 1.2 Unless specifically indicated otherwise, the facts contained in this affidavit fall within my personal knowledge, and are to the best of my belief both true and correct.

AD PURPOSE

2.

- 2.1 This affidavit concerns possible criminal and/or statutory offences committed in terms of the *Public Finance Management Act*, Act 1 of 1999 (hereafter referred to as the “PFMA”), the *Prevention and Combating of Corrupt Activities Act*, Act 12 of 2004 (hereafter referred to as the “PACCA Act”) and the *Powers Privileges and Immunities of Parliament and Provincial Legislatures Act*, Act 4 of 2004 (hereafter referred to as the “Powers and Privileges Act”) by Mr. **BRIAN MOLEFE**, the Group Chief Executive of Eskom.
- 2.2 I depose this affidavit in my capacity as a concerned citizen, and as a Member of Parliament representing a sizable constituency that are directly affected by the incidents detailed hereunder.

- 2.3 It is my belief that the acts detailed hereunder warrant further investigation by the South African Police Services, with the view to criminal prosecution.

AD BACKGROUND

“State of Capture” Report

3.

- 3.1 I will throughout my statement refer back to a report, dated 14 October 2016 and released to the public on 2 November 2016, drafted by Advocate Thuli N. Madonsela, who was at date of the report acting in her capacity as the Public Protector. Advocate Madonsela’s term of office as Public Protector has since, after signing of the report, expired.
- 3.2 The full title of the report is *“STATE OF CAPTURE: Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family’s businesses; Report No: 6 of 2016/17”*. I will refer to it throughout as “the report.”
- 3.4 The report is available from the office of the Public Protector, and can be downloaded from the Public Protector’s website. For ease of reference, I attach a copy of the report hereto as **Annexure “A”**.

AD OFFENCES

Details of potential offences in terms of the PACCA Act.

4.

- 4.1 Section 3 of the PACCA Act, which provides for a general offence of corruption, as follows:

Any person who, directly or indirectly –

- (a) *accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) *gives or agrees or offers to give any other person any gratification, whether for the benefit of that other person or for the benefit of another person –*

In order to act, personally or by influencing another person so to act, in a manner -

- (i) *That amounts to the –*

- (aa) *illegal, dishonest, unauthorized, incomplete or biased; or*

- (bb) *misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation*

- (ii) *That amounts to –*

- (aa) *the abuse of a position of authority;*

- (bb) *a breach of trust; or*

- (cc) *the violation of a legal duty or a set of rules,*

- (iii) *designed to achieve an unjustified result; or*

- (iv) *that amounts to any other unauthorized or improper inducement to do or not to do anything,*

Is guilty of the offence of corruption.

4.2 Section 12(1) of the PACCA Act, which provides for offences in respect of corrupt activities relating to contracts as follows:

Any person who, directly or indirectly –

- (a) *accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*

- (b) *gives or agrees or offers to give any other person any gratification, whether for the benefit of that other person or for the benefit of another person –*

- (i) *In order to improperly influence, in any way –*

- (aa) *the promotion, execution or procurement of any contract with a public body, private organization, corporate body or any other organization or institution;*

- (bb) *the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or*

(ii) *As a reward for acting as contemplated in paragraph (a)*

is guilty of the offence of corrupt activities relating to contracts

- 4.3 Section 21 of the PACCA Act provides for an offence that involves the attempt, conspiracy or inducement of another person to commit offences in terms of the PACCA Act. It reads as follows:

Any person who –

(a) attempts;

(b) conspires with any other person; or

(c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person

to commit an offence in terms of this Act, is guilty of an offence.

- 4.4 The relationship between *inter alia* Mr. **BRIAN MOLEFE**, Mr. **ATUL GUPTA**, Mr. **NAZEEM HOWA**, Ms. **RONICA RAGAVAN**, and Mr. **RAJESH KUMAR GUPTA**, and others should be investigated to determine whether or not any offences in terms of the PACCA Act, or any other legislation, have been committed.

- 4.5 In this regard, I can make reference to pages 301 to 303 of the report, detailing telephone calls that were made and received between these persons in a time period in which Eskom, of which Mr. Molefe was then the CEO, awarded prime contracts to companies in which Mr. Gupta, Mr. Howa and Ms. Ragavan, amongst others, have direct and uncontested financial interests.

- 4.6 In this regard I also wish to draw attention to a City Press article of 12 June 2016. I have attached a copy of the electronic version of the article (which can be found at <http://citypress.news24.com/News/how-eskom-bailed-out-the-guptas-20160612>) hereto as **Annexure “B”**. The article is also reproduced on pages 49 to 53 of the report, which provides particulars of alleged irregularities in contracts awarded by Eskom.

It is my submission that the relationships of Mr. Molefe and the potentially irregular role he had played in awarding contracts to companies linked to the Gupta-family should be thoroughly investigated in order to determine whether or not any offences have been committed in terms of the PACCA Act.

Offences in terms of the PFMA

6.

- 6.1 Section 50(2) of the *Public Finance Management Act*, Act 1 of 1999 (hereafter referred to as “the PFMA”) states that:

A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not –

- (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or*
- (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person*

is guilty of an offence (...)

- 6.2 Section 50(3) of the PFMA states that:

A member of an accounting authority must –

- (a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and*
- (b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member’s direct or indirect interest in the matter is trivial or irrelevant.*

- 6.3 Breaching section 50 of the PFMA is an offence in terms of section 86 of the PFMA.

7.

- 7.1 According to the report, **BRIAN MOLEFE**, at the time, the Chief Executive Officer of Eskom, placed 44 telephone calls to Mr. Ajay Gupta between 2 August 2015 and 22 March 2016. (Paragraph (z) on p. 301).
- 7.2 The report further states that telephone records can place Mr. Molefe in the Saxonwold area, where the Gupta family lives, on at least 19 occasions between 5 August 2015 and 17 November 2015 (Paragraph 5.100, p. 123)
- 7.3 Mr Ajay Gupta confirmed in the report that Mr. Molefe is a “very good friend” of his and often visits his home (paragraph 5.6 on page 86 of the report).
- 7.4 Mr. Ajay Gupta and members of his family stood to benefit directly from contracts awarded by the Eskom board in the time period mentioned above, when Mr. Molefe was in such frequent contact with them, deemed a good friend by Ajay Gupta, and in a position of influence as the CEO of the board of Eskom.
- 7.5 Mr. Molefe was also in that time period in contact with Mr. Nazeem Howa and Ms. Ronica Ragavan, both of whom are directors in Tegeta, the company that was awarded the contract in question (paragraph (ee) on p. 303 of the report)
- 7.6 It is my submission that Mr. Molefe’s relationship with Ajay Gupta and his family, and with the directors of Tegeta, as well as his role in the awarding of contracts to Tegeta and other companies linked to the Gupta family, should be thoroughly investigated to determine whether or not any offence has been committed in terms of section 50 of the PFMA, or in terms of any other relevant laws.

Offences in terms of the Powers and Privileges Act

8.

- 8.1 Section 17(2)(e) of the *Powers Privileges and Immunities of Parliament and Provincial Legislatures Act*, Act 4 of 2004 (hereafter referred to as the “Powers and Privileges Act”) states that:

A person who –

(...)

(e) whether or not during examination under section 15, willfully furnishes a House or committee with information, or makes a statement before it, which is false or misleading, commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment

9.

9.1 On 31 August 2016, I was present at a meeting of Parliament's portfolio committee on Public Enterprises in Cape Town, where Mr. Molefe was presenting on its 2015/16 annual report and other pressing matters.

9.2 At this committee meeting, Mr. Molefe denied having any close relationship with members of the Gupta family.

9.3 However, in paragraph 5.6 on page 86 of the report, the Public Protector reports Mr. Ajay Gupta saying that Mr. Molefe is a very good friend of him.

10.

In the light of the above contradiction, I believe that Mr. Molefe may have committed an offence in terms of section 17(2)(e) of the Powers and Privileges Act, and that it is therefore necessary for a thorough investigation to determine the nature of the relationship between Mr. Molefe and Ajay Gupta, in order to determine whether or not Mr. Molefe provided false information to the portfolio committee on 31 August 2016.

CONCLUSION

11.

I herewith request that the matter be investigated, and the appropriate steps – whatsoever they may be - taken to see justice done and the rule of law upheld.

12.

This is all I can declare.

DEPONENT: N W A MAZZONE

I CERTIFY THAT THIS AFFIDAVIT WAS SIGNED AND SWORN TO BEFORE ME AT _____ ON THIS _____ DAY OF _____ 2016. THE DEPONENT HAVING ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND I CERTIFY THAT THE REGULATIONS IN TERMS OF SECTION 10 OF ACT 16 OF 1963, AS PUBLISHED UNDER GN. R1258 OF 21 JULY 1972 AS AMENDED BY GN. R1648 OF 1977 AND GN. R1428 OF 1980 AND GN. R773 OF 1982, HAVE BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

FULL NAMES : _____
DESIGNATION : _____
AREA : _____
ADDRESS : _____

How Eskom bailed out the Guptas

Susan Comrie 2016-06-12 09:45

Related Links

- [Guptas: Avoid them, IDC’s urged; Zwane denies Switzerland trip](#)
- [On the trail of Tegeta’s offshore shareholder](#)

Industry insider says parastatal’s deal with family’s company is ‘sleight of hand’ as coal is diverted from one power station and bought for a higher price at another

Eskom has quietly awarded a contract worth more than R564 million to a coal mining company owned by the Gupta family and President Jacob Zuma’s son Duduzane.

Two months after being awarded the lucrative contract, Tegeta Exploration and Resources appears to have performed a financial miracle.

In March, the business rescue practitioners of Optimum Coal – which was sold to Tegeta in April for R2.15 billion – reported that the mine was projected to lose R100 million a month.

But now, they say that the Guptas’ new mine will be taken out of business rescue in August, or even sooner.

[Gupta's strike black gold](#)

At the heart of the company’s spectacular turnaround is the R564 million contract Eskom quietly awarded to Tegeta in April to supply Arnot power station with 1.2 million tons of coal over six months. With transport costs added, Eskom is paying just under R700 million – excellent, by Eskom standards.

Until recently, Optimum Coal, situated just south of Middelburg, Mpumalanga, was owned by mining giant Glencore. It was announced in December that Tegeta would buy it. It was later alleged that mining minister Mosebenzi Zwane travelled to Switzerland with the Guptas to help them seal the deal.

Tegeta’s major shareholders include the Gupta family’s Oakbay Investments (29%); Duduzane Zuma’s Mabengela Investments (28.5%); Gupta associate Salim Essa’s company, Elgasolve (21.5%); and two unknown investors in Dubai.

When Tegeta took over Optimum in January, it was losing more than R3 million a day because of a lossmaking contract to supply coal for the Hendrina power station. At the time, there was widespread speculation that Tegeta would use its political influence to secure more lucrative terms from Eskom.

Eskom, though, has repeatedly denied this, insisting there would be no special treatment for the Gupta company. “There’s an impression that we are doing special favours for them. This is not true,” Eskom spokesperson Khulu Phasiwe said on Thursday.

But a City Press investigation has identified a number of ways Eskom is helping to bail out Tegeta’s new mine.

Pricey coal

At R470 a ton, Tegeta’s Arnot contract is one of Eskom’s most expensive.

In May last year, Public Enterprises Minister Lynne Brown told Parliament that Eskom paid an average price of R230.90 a ton for coal, and that the average price of Eskom’s five most expensive contracts was a “delivered price” of R428.84 a ton.

However, the price paid to Tegeta excludes transport costs. Eskom refused to reveal the transport costs, saying these are “commercially sensitive”. However, City Press has established that, with transport, Tegeta is paid roughly R580 a ton, pushing the total value of the six-month contract up to just under R700 million.

Officially, the business rescue practitioners say the turnaround at Optimum is thanks to Tegeta boosting production and cutting costs, but spokesperson Louise Brugman confirmed the new Arnot contract played a significant role.

Waiting for the Guptas

Tegeta only received this lucrative contract thanks to a nine-month delay in Eskom awarding a permanent supply contract to replace a 40-year-old Exxaro contract that expired at the end of 2015.

Eskom was supposed to award the contract in November, but this was initially delayed until March, and then delayed again until September this year.

When Tegeta started supplying Arnot in January, they were one of seven short-term suppliers.

In a rare public statement, the Guptas’ Oakbay Investments insisted they had only a small piece of the pie: “We had a one-month contract in January, supplying less than 15%.”

But by the end of March, the contract for Arnot had still not been awarded.

“Initially, the contract was supposed to be fulfilled in March, but we couldn’t do that because out of the five [short-listed bidders] none of them was able to give us the full 5 million tons a year,” said Phasiwe.

But the original request for the proposal document issued in August last year does not require a single supplier for the full 5 million tons.

Eskom says it approached the four remaining ad hoc suppliers at Arnot and offered them the opportunity to increase their supply.

“We had to get extra tonnages from the four that are remaining. If we did not get any extra tonnages, we would have had a shortfall of 2.1 million tons,” Phasiwe said.

Two companies were then given additional contracts: Umsimbithi for 540 000 tons, and Tegeta for 1.2 million tons.

Phasiwe said the delays in awarding the Arnot contract did not only benefit the Guptas.

“If we have other companies benefiting, then I don’t think it’s fair to single them out.”

Umsimbithi spokesperson Shamiela Letsoalo would not confirm the price they were paid, but it is less than the amount paid to the Guptas.

“The terms of the contract are confidential. We can, however, confirm that the delivered contractual price is below the R450 a ton, as reported by Eskom previously,” she said.

Sleight of hand

Under the existing Eskom contract that Tegeta inherited from Glencore, Tegeta must deliver 458 000 tons of coal a month to the Hendrina power station.

But City Press has established that Optimum does not produce enough coal to honour both contracts.

In what one mining industry financier describes as a “sleight of hand”, it appears that Eskom is allowing Tegeta to divert a significant portion of Optimum’s coal from Hendrina power station, where Eskom pays them R174 a ton, to Arnot power station 50km away, where Eskom buys the same coal at R580 a ton.

Eskom confirmed that for the past three months, Tegeta delivered, on average, 315 000 tons of coal a month to Hendrina.

Four different coal industry analysts and miners City Press spoke to questioned why Eskom did not take possession of the full 458 000 tons of coal at R174 a ton, but allowed Tegeta to use them to increase its supply to Arnot.

Yesterday, Eskom said it had reduced the coal requirements at Hendrina in the past few months.

“As far as we are concerned, no coal meant for Hendrina is being diverted to Arnot.

“Deliveries early in the year were reduced by Eskom due to a lower burn requirement at Hendrina power station,” Phasiwe said.

“The commitment from Optimum, going forward, is to meet the Hendrina burn requirements.”

Tegeta declined to respond to a detailed list of questions, saying: “We are committed to the future sustainability and profitability of Optimum. Our strategy for the Optimum mine will be announced in due course.