



9 February 2015

DRAFT REPORT OF THE SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS ON THE HEARING OF THE MAYIBUYE - TRANSNET PETITION, HELD ON 26 NOVEMBER 2014 AT PARLIAMENT

1. BACKGROUND

The Mayibuye – Transnet Petition was referred to the Select Committee on Petitions and Executive Undertakings (Committee) by the Office of the Secretary to the National Council of Provinces (NCOP) on 1 October 2014 and emanates from the Eastern Cape. Prior to its referral to the Committee, a delegation of 126 and their representative, Mr MM Matshaya (Matshaya), paid an unannounced visit to Parliament on 22 September 2014. The delegation was met and hosted by the Secretary of the NCOP as well as the Secretary of National Assembly (NA) (House Secretaries). The House Secretaries also took it upon themselves to set up a meeting with the petitioners in an effort to listen to reasons for their unannounced visit to Parliament. At the meeting the petitioners indicated that they were former employees of the Ciskei Transport Corporation (CTC), currently trading as Mayibuye Trading Corporation (MTC) and South African Transport Services (SATS), currently known as Transnet and they had unsettled claims against the two entities in relation to amongst others unpaid wages, Unemployment Insurance Fund (UIF) benefits and pension benefits. This effectively means the petitioners are comprised of two distinct groups. The first group of petitioners is made up of former employees CTC currently trading as MTC whereas the second group of petitioners is comprised of former employees of SATS currently known as Transnet. The petitioners seek the intervention of the Committee in resolving the claims they have against MTC and Transnet in this regard.

The petitioners who were formerly employed by CTC contend their wages; UIF benefits; pension fund contributions; and dissolution benefits were not paid upon the dissolution of CTC.

The petitioners who formerly employees of SATS, on the other hand, claim the following from Transnet:

- They were unfairly dismissed in 1998 after taking part in a wage related strike;
- Not paid their wages from 1 October 1988 to date;
- Not paid their UIF benefits; and
- Their pension fund contributions were not paid over to the pension fund.



After hearing from the petitioners and Matshaya, the House Secretaries assured them it would ensure the speedy referral of the petition to the Committee. It further assured them preliminary investigations into their claims would be carried out by NA and NCOP officials as well as other relevant officials in an effort to assist the Committee in its consideration of the petition.

2. PURPOSE OF THE HEARING

After the referral of the petition to the Committee by the House Secretaries, the Committee took a decision to hold a hearing around the petition in an attempt to obtain first-hand information on the petition and gain further clarity on the content of the petition.

3. COMMITTEE MEMBERS AND OFFICIALS

The following Committee Members were present at the hearing:

- Hon S G Thobejane, ANC, Limpopo;
- Hon M T Mhlanga , ANC, Mpumalanga;
- Hon G M Manopele, ANC, Northern Cape;
- Hon D L Ximbi, ANC, Western Cape;
- Hon L Suka, ANC, Eastern Cape;
- Hon Michalakis, DA, Free State; and
- Hon J W W Julius, DA, Gauteng;

And the afore stated Members were supported by the following officials Mr T Madima (Committee Secretary); Dr M Gondwe (Committee Researcher); and Adv G Rhoda (Parliament Legal Advisor)

4. STAKEHOLDERS IN ATTENDANCE

Although a number of stakeholders were invited by the Committee to make oral submissions at the hearing only Mr Matshaya (a representative of the petitioners); Mr Mkhaliipi (a representative from the Department of Labour); and Mr Luxelwa (NCOP Procedural Officer) were able to attend the hearing.

5. SUBMISSIONS BY MR MATSHAYA

Matshaya began his submission by explaining that he is the director of Matshaya Consultants which was representing the petitioners some of whom are former employees of CTC (currently trading as MTC). Matshaya then went on to set out the events that gave rise to the petition. According to Matshaya CTC was dissolved in 30 April 1990 by the former Ciskei government



however in the course of its dissolution incorrect processes and procedures were followed. Upon its dissolution, the then head of the Ciskei government, Brigadier Oupa Qozo directed Reverend Nquka to take charge of the company. Reverend Nquka took charge of the company until MTC was established for an estimated R50 million.

Matshaya further explained that he started his investigations around the various claims by the petitioners in June 2007 after receiving instructions to undertake the investigations on their behalf and at that stage he conducted investigations on behalf of 850 former employees of CTC, the majority of whom were deceased and only their beneficiaries remained. Matshaya further stated that the Premier at the time, Premier Balindlela, attempted to intervene in the matter and he gave the Premier's Office room to conduct its own investigations on the matter but nothing came out of the investigations by the Premier Office. He further submitted that in or around February 2010, he undertook a visit to the Union Buildings to formally lodge a complaint in President Mbeki's Office and he was given a letter to give to former Premier Balindlela. He gave the letter to the Premier but did not receive a satisfactory response from the Premier's Office and this prompted to organise for the petitioners to visit the Premier's offices in 2011 in order to lodge a formal complaint with her Office. Matshaya and the petitioners were met by one Mr Qwashe who gave them a meeting date of 12 April 2011. The meeting was scheduled to be held in East London.

According to Matshaya, the meeting took place on the scheduled date and was attended Mr Qwashe and other government representatives, namely Adv Fenana, Adv Fortune and Mr Goliath Mphshwe. Matshaya said he was accompanied by Mr Maweni, Mr Dulase and Mr Nonjama (the latter being an attorney based in East London). Mr Qwashe from the Premier's Office presided over the meeting and he asked Matshaya and those accompanying him to state their case. They then indicated that they wanted the dissolution certificate for CTC and Mr Qwashe indicated that his Office was not in possession of the dissolution certificate. Matshaya further related how he told Qwashe he knew MTC had received the government subsidy under CTC, which was an anomaly seeing as CTC had been dissolved and was no longer in existence. Matshaya maintains he wanted the dissolution certificate to prove they were irregularities in the operation of MTC under the different Premiers of the Eastern Cape. He maintains the Premiers knew that MTC was operating illegally and funds were being channelled into MTC via CTC, an entity which was supposedly dissolved.

With regards to the claims of unpaid pension fund contributions by former employees of CTC, Matshaya states that he spoke to the relevant pension fund manager at Sanlam about the claims and he was told that the terms of the pension fund contained a clause that stipulated that beneficiaries of the fund would benefit at the age of 60 years. But this benefit had not as yet accrued to the qualifying beneficiaries.



6. SUBMISSIONS BY MR NXELEWA

Mr Nxelewa (Nxelewa) was requested to make a submission to the Committee because the Committee sought clarity on the processes followed by the Office of the Secretary of the NCOP prior to referring the petition to the Committee. In his submission Nxelewa also outlined some of the preliminary findings that he and other Parliamentary Officials made. In making his submission to the Committee Nxelewa was able to confirm that:

- 6.1 Mr Matshaya submitted a list of the beneficiaries making claims against MTC and Transnet as well as copies of their identity documents to the NCOP on 8 October 2014. Matshaya further submitted the documents purporting to be the power of attorney signed by individual petitioners.
- 6.2 The Director of Transport Services of the EC Department of Transport, Mr Andre de Vries, provided the NCOP with the shareholders compact and board of charter of the MTC on 29 September 2014.
- 6.3 In an email dated 29 October 2014 to the NCOP, Chris Mtise of MTC pointed out that the claims by the MTC petitioners pertain to CTC, an entity which was liquidated in 1990. He further pointed out that MTC has no records of former employees of CTC. Also according to Mr Mtise in an attempt to assist the petitioners MTC had located one of the lawyers who had handled the claims on behalf of the affected former employees of CTC to shed light on the matter but the said lawyer had yet to get back to MTC.
- 6.4 The Department of Labour (DOL) reported that its system did not generate any records in connection to CTC or SATS as far as UIF declarations were concerned. The DOL further reported that it had punched in all the identity numbers of the petitioners provided by Mr Mastshaya and had found no qualifying employment history details in relation to the petitioners or found that the employment history details of the petitioners were linked to companies other than CTC and Transnet. The DOL also emphasised that because the petitioners were employed between 1990 and 1998, a period spanning more than 26 years, their claims were difficult to process because they were meant to claim UIF benefits 6 months from the date of the termination of their employment.
- 6.5 In a letter dated 29 October 2013 to Mr Matshaya, the PP made the following determination with regards to the claims by the Transnet petitioners:
 - 6.5.1 The pensions of former and current employees of Transnet are administered by an independent administrators, namely Metropolitan and not Transnet;
 - 6.5.2 Those petitioners who had not received their pensions should contact Mr Rodrick Salani (Mr Salani) of Salani Consultants, a consultant that was purportedly appointed by the Transnet petitioners to recover their pension fund contributions;



- 6.5.3 The UIF benefits related claims had to be made directly to the DOL given that Transnet does not administer UIF benefits;
- 6.5.4 The alleged dismissals of striking employees and the letters of their subsequent dismissal dated 1 November 1998 were sent to their attorneys, namely Messers Bell Dewar and Hall; and
- 6.5.5 Transnet does not owe any of its former employees any monies.

6.6 On 26 September 2014 officials of the NA requested information from Mr Salani on the bases of the response received from the Public Protector. Mr Salani responded by stating that they had no knowledge of Mr Matshaya and they have no company named Rodrick Salani Consultants and their company is instead known as Gateways Rod Juris. He further indicated that on the bases of this background the matter from their side had been concluded. Mr Salani was further requested information substantiating the conclusion of the matter from their side, Mr responded by saying he would liaise with his legal team and the Office of the PP on the matter and respond formally in writing. The NA has yet to receive a formal written response or additional information from Mr Salani.

Nxelewa further pointed out that an undertaking to resolve the petition within 1 month was given by the House Secretaries at the meeting with Matshaya and the petitioners held on September 2014.

7 SUBMISSIONS BY MR MKHALIPI

Mr T Mkalipi (Mkhalipi) introduced himself as the Acting Deputy Director General of Labour Market Policy in the Department of Labour. He then proceeded to shed light on the issue of the non-payment of UIF benefits to the petitioners. Mkhalipi explained that in terms of the Unemployment Insurance Fund Act, UIF claims must be made within 6 months of the termination of employment i.e. 6 months from the date a person's employment is terminated. According to Mkhalipi, it was more likely than not that the petitioners were not eligible for UIF benefits because the period under review in the petition was well over the stipulated 6 month period.

He further emphasised that because the petitioners were employed between 1990 and 1998, a period spanning more than 26 years, their claims were not going to be easy to establish because the affected employees were meant to have claimed UIF benefits 6 months from the date that their employment was terminated. Lastly he added that the identity details of the petitioners were also needed to verify whether the petitioners had indeed made UIF contributions through the employer.



8 OBSERVATIONS AND FINDINGS

The Committee made the following observations and findings after hearing all the submissions made:

- 8.1 Matshaya does not have a legal qualification, in fact it appeared from his submission that from time to time he uses the services of qualified attorneys and his day to day occupation is that of tracing unclaimed pension fund monies.
- 8.2 In so much as Matshaya blamed CTC/MTC for denying the petitioners their benefits he did not have sufficient evidence (such as salary slips) to show that all the individuals he represented had in actual fact worked for CTC and as such he ran the risk of representing individuals who were not entitled to receive any benefits. Matshaya was only in possession of 800 sworn affidavits made by former employees of CTC and copies of their identify documents;
- 8.3 Matshaya had no documents in this possession that could prove to the Committee that he had been mandated to act on behalf of both sets of petitioners.
- 8.4 Masthaya had signed documents in his possession purporting to be a powers of attorney from the individual petitioners however on closer scrutiny by the Committee legal advisor, the documents were determined to be acknowledgements of debts given that they make reference to the payment of a monthly instaiment of R1000 per month.
- 8.5 The acknowledgement of debt showed that Matshaya was charging the petitioners for exercising their constitutional right to petition Parliament, a right they they were entitled to freely exercise in terms of the country's laws – Mastshaya indicated that he was not aware that the right to petition could be exercised free of charge.
- 8.6 The visit to Parliament on 22 September 2014 by Matshaya was in fact not his first visit to Parliament relation to the petition. He had previously visited Parliament and had met with Mr Peter Lebeko (Manager in the Office of the Speaker) and the late Secretary to Parliament, Mr Michael Coetzee, and both house Secretaries were aware of this first visit to Parliament.
- 8.7 The petitioners did not submit a petition to Parliament, they merely arrived at Parliament on September 2014 and met with the House Secretaries. In other words, there was no evidence presented at the hearing to suggest that a petition had been formally submitted to Parliament in terms of the Rules of the NCOP.
- 8.8 In conducting preliminary investigations in to the claims made by the petitioners in the petition and referring the petition to the Committee, the various officials from the NCOP and NA were merely acting on the instructions of the House Secretaries.



9 RECOMMENDATIONS

The Committee made the following recommendations with regards to the petition:

- 9.1 A petition should be formally submitted to the NCOP by the petitioners to ensure due compliance with the NCOP Rules.
- 9.2 Matshaya to produce documentary evidence proving that he was mandated to represent the petitioners and a comprehensive list of all the petitioners and their details.
- 9.3 A verification process be undertaken for purposes of establishing if all the petitioners Matshaya was representing qualified in terms of the claims they were making against MTC and Transnet.
- 9.4 The Committee to focus on raising public awareness around the right to petition and the fact that this right can be exercised at no financial cost to a petitioner.
- 9.5 The Committee to advise Matshaya and the petitioners he purported to represent that the right to petition Parliament is a constitutional right that is exercised free of charge.
- 9.6 The Committee to request a legal opinion from Parliamentary Legal Services (PLS) on the legality of Matshaya accepting monies from the petitioners in relation to the petition and depending on the nature of the legal advice received from PLS further investigations aimed at having Matshaya pay back the monies received from petitioners would have to be undertaken.
- 9.7 The Committee to meet and engage with its sister committees in the Eastern Cape Province as well as other stakeholders including but not limited to the Provincial Labour Department, the Board of MTC and the Premier's Office.
- 9.8 The Committee to only make a determination once it was satisfied it had all the necessary information and had consulted other relevant stakeholders.

Report to be tabled for consideration.

