

Powers and Privileges Committee note on the complaint of Dr KM Makhubela

1. You will recall that on 24 March 2021, the Speaker of the National Assembly ("the Speaker") referred a complaint of Dr KM Makhubela ("Dr Makhubela") to the Powers and Privileges Committee ("the PPC"), through the Chairperson, in term of section 25 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures, Act 4 of 2004 ("PPIPLA").
2. The nub of Dr Makhubela's complaint is fully articulated in his letter to the Speaker dated 12 March 2021 and is as follows:

According to the Business Day article of 10 March 2021, Ms Tobias is said to have informed the Portfolio Committee on Public Service and Administration ("the Committee") that ***"the previous CEO of Brand South Africa, Kingsley Makhubela, was suspended in 2019 over allegations of misconduct. An independent disciplinary hearing recommended that he be fired, but he was allowed to finish his contract which expired at the end of July 2020."*** [my emphasis]

3. The above statement is what triggered Dr Makhubela's complaint to the Speaker. Dr Makhubela averred that if the above highlighted statement as reported in the Business Day of 10 March 2021 is true, then the presentation of Ms Tobias to the Committee is factually incorrect and misleading.
4. It is instructive to note that the fundamental basis of section 25 of PPIPLA is to protect members of the public who are aggrieved by a statement or a remark made by a member or a witness before a committee of Parliament or the House.
5. The Chairperson has written to all the parties concerned (the Chairperson of Brand SA, Dr Makhubela and the Acting Minister in the Presidency), with a view to solicit their side of the story and in order to assist the Committee to resolve this matter. Both Brand SA and Dr Makhubela have provided the Chairperson with their responses on 26 May 2021 and 04 June 2021 respectively. The Presidency has not furnished the Chairperson with their version of events despite numerous letters to the Acting Minister that have gone unanswered. To this end, the Chairperson has escalated the non – response thereof to the office of the Speaker.

6. The NA Table staff have also managed to obtain the transcript of the Committee proceedings on the day. I deal with what is contained in the transcript below.
7. First and foremost, there are only three pages in the transcript in which reference is made to Dr Makhubela and these are pages 3, 10 and 34.
8. On page 3 of the transcript, the Deputy Minister in the Presidency, Ms Thembi Siweya, says, "**When it comes to Brand SA, we will speak to plans to stabilise the institution at a leadership position and issues related to the former CEO.**" [my emphasis]
9. On page 10 of the transcript, the Chairperson of the Board, Ms Tobias, says, "**Colleagues, today we have been tasked to make a presentation on, first, the finalisation of the 'suspended CEO' in inverted commas and, secondly, the stabilisation of Brand South Africa.**" [my emphasis]
10. Ms Tobias' verbatim presentation on this matter is captured as follows:

"On item number one; the Board when it was appointed in November 2019 first on its agenda it received a report from the then Minister Mthembu ...a report on to finalise on the matter of the suspension of the then CEO Dr Kingsley Makhubela. And the first agenda item that the Board had when it had its first meeting was to process this matter. Therefore the Board followed due process in relation to the labour relations Act and the board then made recommendations and provided them to the executive authority for concurrence. And the Board, in consultation with the Minister agreed to settle the matter in lieu of the reputational risk that Brand South Africa would continue to suffer in the public discourse if this matter was not finalised.

And in the process of engagement the fixed term contract of the then CEO came to an end on the 31st of March 2020, thus bringing the matter of the suspended CEO to an end. As we stand we're having an acting CEO in the name of Ms Thulisile Manzini who has been acting since the then CEO was suspended as seconded from the Department of Communications and with the concurrence of the relevant Ministers."
11. On page 34 of the transcript, a member of the Board, Mr Mlungisi Lulu Johnson, says, "**We find ourselves in that situation coming from a process wherein we were inundated with matters related to the former CEO Dr Makhubela and having just concluded on the matter as his term came**

to an end, end of July, we find ourselves as we speak now confronted with the moratorium.” [my emphasis]

12. You will note that on the fifth paragraph of page 2 of Dr Makhubela's letter dated 12 March 2021, the following submission is made:

“The fact of the matter is I took a voluntary leave of absence from 20 April 2018 to 19 May 2018...” [my emphasis]

13. However, on paragraph 37 of Dr Makhubela's letter dated 04 June 2021, the following submission is made:

“I took a leave of absence on 20 April 2018 and have since not returned to the office leading to the expiry of my contract on 31 July 2020.” [my emphasis]

14. On paragraph 42 of Dr Makhubela's letter dated 04 June 2021, Dr Makhubela makes reference to Board minutes dated 03 October 2018 wherein the following is recorded:

“Accordingly, the CEO should be kept on suspension until the new inquiry has been completed.” (Board Minute: 03/10/2018; para 12 – 13)

15. Dr Makhubela's suspension is, in my view, also clear, from his own version, on paragraph 62 of his letter dated 04 June 2021, in which he avers that, ***“the Board was happy to keep me away from Brand SA on full pay.” [my emphasis]***

16. In paragraph 39 of her rejoinder dated 26 May 2021, the Chairperson of Brand SA (Ms Tobias) makes the following statement regarding Dr Makhubela's unauthorised access to Board minutes:

“Dr Makhubela makes bold references to a number of minutes the proceedings for which took place while he was **suspended or on special leave.**” [my emphasis]

17. Importantly, suspension of an employee means keeping an employee away from the workplace temporarily for reasons of discipline. Leave of absence is permission from an employer to be away from work for a period of time. It might be voluntary, mandatory, paid or unpaid.

18. Dr Makhubela's version is that he took a voluntary leave of absence from 20 April 2018 up until 19 May 2018 as is evident from paragraph 12 above.

The period from 20 May 2018 up until 31 July 2020 was not a voluntary leave of absence and hence in his submission, as is evident from paragraph 15 above, is that the Board was happy to keep him away from Brand SA on full pay.

19. In view of the above, it is reasonable to conclude that, based on the contents of the transcript, the Chairperson of the Board of Brand SA, Ms Tobias did not mislead the Committee when she presented on 10 March 2021.
20. The above is so because when the current Board was appointed in November 2019, it had to deal with Dr Makhubela's matter and adopted Board minutes were already saying "...**the CEO should be kept on suspension until the new inquiry has been completed.**" (Board Minute: 03/10/2018; para 12 -13). This is Dr Makhubela's version as per paragraph 42 of his letter dated 04 June 2021. **[my emphasis]**
21. Regarding the other corruption related allegations, Dr Makhubela submits in paragraph 18 of his letter dated 04 June 2021 that he has referred such matters to the police under case number 25/10/2020. To this end, my view is that the police are better placed to investigate these matters as their adjudication falls outside the scope and mandate of the PPC.
22. In view of the foregoing, the Committee is well advised to inform Dr Makhubela that based on the available information before the PPC, the Chairperson of the Board of Brand SA, Ms Tobias, did not mislead or make any disparaging remarks about Dr Makhubela, as alleged, at the Committee meeting that was held on 10 March 2021.
23. However, for the sake of the *audi* rule, all concerned parties (Dr Makhubela, Brand SA and the Presidency) should be afforded an opportunity to appear before the PPC and put their versions, for determination by the PPC.
24. In the premises, if the PPC is of the view that Ms Tobias' presentation of 10 March 2021 to the Committee is factually incorrect and misleading, then a statement correcting that should be agreed between the aggrieved person (Dr Makhubela) and the PPC, and an entry thereof should be made into the ATC, for publication.
25. However, if it is established by the PPC that the Chairperson of Board SA (Ms Tobias) did not mislead the Committee, as alleged, no correction

should be made via an entry into the ATC and such an eventuality should bring this matter to finality.

26. I advise accordingly.

Document Author: Mr Andile Tetyana

Date: 22 July 2021

Signature: Signed Electronically