

Date: 28 March 2024
Our Ref: Peter Tshisevhe
Direct Tel: 011 243 5027
Your Ref: Professor Laurance
Van Staden

Professor Laurance Van Staden
NATIONAL STUDENT FINANCIAL AID SCHEME

By email: profvanstaden@gmail.com

Dear Professor Van Staden,

THE ORGANISATION UNDOING TAX ABUSE REPORT ON RECORDED CONVERSATIONS BETWEEN THE NSFAS CHAIRPERSON AND 'INDIVIDUALS LINKED TO COINVEST AFRICA (PTY) LTD, A SERVICE PROVIDER CONTRACTED BY THE NATIONAL STUDENT FINANCIAL AID SCHEME FOR THE DIRECT PAYMENT OF ALLOWANCES TO NSFAS BENEFICIARIES.

1. We refer to the above matter and the final report dated 28 March 2024 ("**Report**") prepared by Advocate William Mokhare SC ("**Counsel**"), who we have briefed as you have instructed us and we worked with very well in the preparation of the report.
2. We are writing to address a difference in opinion that has arisen between us and Counsel, with whom we have been collaborating on your behalf as we believe that it is necessary for you to know that we hold a different view on one finding in the Report on terms of your terms of reference.
3. Please be advised that we agree with the contents of the Report in many respects. However, after careful consideration and extensive discussions, we have concluded that our legal analysis of the facts differs from that of Counsel on one particular term of reference.
4. Specifically, we hold the view that the conduct of the NSFAS board ("**Board**") chairperson of NSFAS, Mr Ernest Khosa ("**Mr Khosa**") in engaging with the two individuals on issues that they

engaged on particular in relation to the affairs at NSFAS was in breach of his duties as a non-executive director and board chairperson.

5. We set out below our views in that regard.
6. In our view clause 18.3 of the NSFAS board charter provides that *“all meeting papers and submissions made at the Board meeting are strictly confidential and Board members must under no circumstances circulate them to any other parties.”*
7. The above clause further provides details on how to maintain confidentiality from the board members by stating that the board members are expected to manage their security passwords providing electronic access to their meeting packs with due care and vigilance. Furthermore, all hard copies of meeting papers and board submissions must be left in the boardroom at the conclusion of the meeting.
8. To us, what is stated in paragraphs 6 and 7 above confirms that board meetings and issues dealt with thereat often involve sensitive discussions and are therefore confidential. Hence, it is essential to maintain confidentiality.
9. In our view, Mr Khosa, as the board chairperson of NSFAS has a duty to keep board discussions confidential.
10. Our analysis of the recorded conversations and the interview with Mr Khosa, we concluded that the conversation between Mr Khosa, Mr Joshua Maluleke (**“Mr Maluleke”**) and Mr Thula Ntumba (**“Mr Ntumba”**) included *inter alia*, matters that the board was seized with at the time namely:
 - 10.1. the termination of the contracts of the service providers;
 - 10.2. the placement of the erstwhile CEO of NSFAS, Mr Andile Nongogo (**“Mr Nongogo”**) on special leave;
 - 10.3. the terms of reference in the investigation of Mr Nongogo relating to the award of the BID No. SCMNO22/2021; and
 - 10.4. the engagements with Parliament on the matter.
11. All the above matters are matters that the board was seized with at the time and Parliament was indeed addressed on those issues.

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12. Furthermore, in the recorded conversation, Mr Khosa mentioned that one of the resolutions of the board was to give him all the power to craft the terms of reference. This is factually correct as the board gave him the power to run with the matter.
 13. In our humble view, the issue is not whether such discussions yielded the required result as expected by Mr Maluleke and Mr Ntumba but whether factually, there was a discussion on confidential matters affecting the board. In our view, there was a discussion on confidential matters affecting the board.
 14. In his submission, Mr Maxwell Nceba Fuzani stated that one of the reasons the Board decided to grant Mr Khosa full authority to run with the matter was to prevent the board's discussions from being leaked to the general public. This in our view, highlights the board's commitment to maintaining confidentiality.
 15. There is nothing wrong in our view with Mr Khoza engaging anyone, but it is the contents of the discussion that is an issue.
 16. Discussing details of the Board meeting with Mr Ntumba and Mr Maluleke breaches his duty to always act in the best interests of NSFAS which such duty also include keep board matters confidential to those who should not ordinarily get to know about them.
 17. On careful review of the board minutes of NSFAS, we found no record of Mr Khosa disclosing his discussions with Mr Ntumba and Mr Maluleke to the board and he is required in law to do so more so as they were lobbying him and could have lobbied other directors.
 18. As much as Mr Khosa explained his engagements says he was "*playing them along*", the recording itself among others impact the reputation of NSFAS and his comments on the issues that they discussed relating NSFAS, are not comments that a board member should in our view, make to outsiders. Even though what Mr Ntumba and Mr Maluleke asked for was not done, Mr Khosa engaged on board matters with people he should not be engaging with.
 19. Mr Khosa's conduct also contradicts clause 10.1.1.2 which mandates the chairperson to set the ethical tone for the board and NSFAS, clause 7 which deals with the reputation of NSFAS and clause 9 which deals with the independence of the board. The said meeting with Mr Maluleke and Mr Ntumba was aimed at influencing his mind on board matters although we believe that such influence did not occur.

20. Having regard to what is stated above, we would recommend that the NSFAS board should consider sending Mr Khosa to board leadership training by organisations such as The Institute of Directors South Africa or any relevant institution. This is in our view is in line with clause 19 of the Board Charter which provides that Board members should participate in a program of induction, training, and development as and when required. Developing skills is not a weakness but a necessary tool in leadership.
21. If you have any questions or concerns regarding the contents hereof, please do not hesitate to contact us.
22. Thank you for your continued trust in our firm.

Yours faithfully,

[Electronically transmitted without signature]

TSHISEVHE ATTORNEYS INCORPORATED

Per: Peter Tshisevhe