



OUTA

ORGANISATION UNDOING TAX ABUSE

DR BEN NGUBANE

OUTA'S SUBMISSION TO THE
JUDICIAL COMMISSION OF
INQUIRY INTO STATE
CAPTURE



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INTRODUCTION



1. In this chapter, we look at the infamous Dr. Ben Ngubane (“Ngubane”).
2. Prior to 2013, Ngubane had largely avoid media attention or scrutiny but the #Guptaleaks revealed his ties to the Gupta Family.
3. Ngubane sent his passport to Rajesh Gupta in October 2013, together with invoices for a charter flight to travel to the Central African Republic.¹
4. The flight was for members of Ngubane’s company Gade Oil and Gas which Salim Essa (“Essa”) and Ngubane established together.² Although a company search indicates that Ngubane is the only director of Gade Oil and Gas, it does show a resignation by Salim Essa as director on or about 12 January 2015.
5. Ngubane claimed to have no knowledge of how his passport reached Tony Gupta and suggested the fraudulent use of his passport.
6. An email to Ronica Ragavan dated 8 October 2013 indicates that Ashu Chawla, the infamous Gupta Lieutenant, attached to his email, copies of what appears to be Iqbal Sharma’s (“Sharma”) and Ngubane’s passports.³
7. These arrangements followed correspondence between Andy Macaulay from Blackstone Resources, and Sharma and Essa on 30 July 2013 setting out payment terms on what appears to be a deal pertaining to mining within the Central African Republic (“CAR”).⁴

¹ BN1

² BN2

³ BN3

⁴ BN4

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8. In May 2017, it was reported that despite the steps taken by the parties above, Gade Oil and Gas, led by Ngubane and Essa, failed in their bid to secure a deal with the CAR government.⁵
 9. The article further sets out the intricacies of the parties involved in trying to secure a deal in the CAR which also involved two South Africans, Lumphumzo Kebeni and his partner, Emmanuel Baba Zuma. Lumphumzo motivated for a payment to be made to a minister of CAR and certain payments “*behind the scenes*”.
 10. The email correspondence reported on, is attached hereto.⁶ The minister of CAR (assumed to be mineral resources minister) was due for a visit to South Africa in November 2013 and Sharma indicated his desire to meet with the minister concerned.


PUBLIC PROTECTOR: STATE OF CAPTURE REPORT

11. Former Minister Lynne Brown recommended the Eskom board which was appointed by Cabinet during 2015.⁷
12. Ngubane was appointed chairperson of the board along with, *inter alia*, Brian Molefe (CEO), Anoj Singh (CFO), Nazia Carrim (“Carrim”), Romeo Khumalo (“Khumalo”), Marriam Cassim (“Cassim”) and Devapushpum Viroshini Naidoo (“Naidoo”).
13. Carrim is the spouse of Muhammed Sikander Hussain, Hussain being a family member of Essa. At conclusion of the State of Capture Report, Carrim had resigned from the board. Carrim did not declare her relationship with Essa on appointment to the board.

⁵ BN5

⁶ BN6

⁷ Public Protector State of Capture Report – Pages 118 – 121 – BN7

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14. Khumalo also resigned from the board in April 2016. He was a co-director with Essa in Ujiri Technologies (Pty) Limited.
 15. Cassim was previously employed by Sahara Computers but did not declare it on appointment to the board.
 16. Naidoo declared her husband, Mr. Kuben Moodley (“Moodley”) who was a special advisor to the former Minister of Mineral Resources, Msebenzi Zwane. She also declared herself as an employee of Albatime whom we now know contributed R10 million to the acquisition of Tegeta (although Moodley denied it).⁸
 17. At the helm of this board, Ngubane failed to declare his interest as director of Gade Oil and Gas.
 18. This board with obviously strong Gupta links, is another board composed by former Minister Lynne Brown (other being Denel) which suffered severe maladministration and financial difficulties in the years to follow.
 19. Brown’s appointment of Ngubane was questionable taking into account that he did not perform at reasonable standards at the SABC and Land Bank prior.⁹
 20. In August 2015, Ngubane and Brian Molefe meet Minister Ramathlodi to suspend all Glencore’s mining licences.¹⁰
 21. The first Brakfontein contract signed with Tegeta and Eskom happened in March 2015 when Ngubane was appointed board chair.¹¹

⁸ BN8 - <https://www.timeslive.co.za/politics/2017-09-12-state-capture-independent-audit-report-shows-more-damning-proof/>

⁹ BN9 – Eskom Inquiry Reference Book, August 2017, Professor Anton Eberhard and Catrina Godinho page 6

¹⁰ Ibid 9 – Page 15

¹¹ Ibid 9 – Page 16 Paragraph 4



NATIONAL TREASURY SECOND DRAFT REPORT¹²

22. According to National Treasury's second draft report ("report"), Ngubane became a director on 25 September 2009 of Mitsui (2004/017696/07), a company registered on 25 June 2004.¹³
23. Mitsui was one of the companies that were awarded locomotive tenders by Transnet.
24. On 10 September 2012, just five days after Mitsui was appointed and accepted by Transnet as a preferred bidder, Ngubane resigned as director.
25. After 2012 and Ngubane's resignation at Mitsui, Mitsui received no locomotive tenders with most of it going to China South Rail.¹⁴
26. Ngubane, along with Matshela Koko and Suzanne Daniels, sent confidential Eskom information to an email address infoportal1@zoho.com.¹⁵
27. An analysis of Ngubane's and/or Molefe's email addresses also showed various requests to Anoj Singh for various payments to be made with no supporting documentation but only account numbers.¹⁶



¹²FUNDUDZI FORENSIC SERVICES: FORENSIC INVESTIGATION INTO VARIOUS ALLEGATIONS AT TRANSNET AND ESKOM, Tender Number NT 022-2016, RFQ 026-2017, July 2018. Relevant extracts from report pertaining to Ben Ngubane attached and marked accordingly – Complete report attached to OUTA's submission on Transnet: locomotive deals

¹³ BN 10.1 – Page 86

¹⁴ BN 10.2 – Page 391 – Paragraph 5.168.2

¹⁵ BN 10.3 – Page 22

¹⁶ Refer BN10.2 – Paragraph 5.168.3

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28. At page 394, paragraph 5.176 of the report, it notes that an email was sent from Ngubane's email address to Anoj Singh requesting that a payment of R230,000.00 be made to a Standard Bank account, the details of which Ngubane provided.
 29. Ngubane denied any knowledge of the email account and/or requests to Anoj Singh. Ngubane also denied knowledge of the infoportal1@zoho.com account.
 30. Matshela Koko's attorney, Asger Gani, on 13 July 2018 however, stated that the infoportal1@zoho.com account was given to him by Suzanne Daniels on the basis that Koko had to use it for purposes of assisting Daniels to provide daily information to Ngubane. One must beg the question as to why this could not be done on their usual Eskom email accounts.



EARLY RETIRMENT OF BRIAN MOLEFE

31. Ngubane played a significant role in the attempted withdrawal of pension benefits in respect of Brian Molefe.¹⁷
32. On 24 November 2016, Ngubane advised Molefe that his early retirement had been approved in terms of Rule 28 and 21.4 of the Eskom Provident Pension Fund Rules.¹⁸ This was done allegedly without Brown's knowledge at the time.
33. In legal proceedings launched by, *inter alia*, the Democratic Alliance¹⁹, in a bid to review and set aside the decision of Brown as Public Enterprise Minister at the time, the judge presiding stated "*the decision by Eskom to waive penalties and buy Mr. Molefe an extra 13 years of service totalling R30.1 million after only 15*

¹⁷ We deal with this issue in more detail in our ESKOM submission.

¹⁸ BN11

¹⁹ BN12





months service at the age of 50 stretches incredulity and unlawful for want of compliance with the rule of the EPPF [Eskom Provident Pension Fund]. What is most disturbing is the total lack of dignity and shame by people in leadership positions who abuse public funds with naked greed for their own benefit without a moment's consideration of the circumstances of fellow citizens who live in absolute squalor throughout the country with no basic services."

34. The judgment further explains that Mr. Molefe did not fall within the category of section 28(1). Rules 23 and 24 could also not be applied as Mr. Molefe had not yet reached the age of 55 and was not a permanent employee.
35. The Eskom Provident Pension Fund averred that it relied on the relationship of trust it had with Eskom. The judge described this as "*This explanation extends incredulity.*"
36. The judge also remarked "*There is a strong inference to be drawn from the above factors that the early retirement agreement was deliberate scheme devised by Eskom with the involvement of Mr. Molefe to afford him pension benefits he was not entitled to.*"

CRIMINAL COMPLAINT AGAINST NGUBANE – FRAUD

37. On 13 June 2017 OUTA laid a criminal complaint against Ngubane and his wife alleging that they had falsified share certificates and produced same with the intention of swindling, *inter alia*, mining rights from a company in liquidation.²⁰ We do not attach the annexures for the sake of prolixity but can do so upon request by the commission.

²⁰ BN13

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38. On 11 June 2018, a year later, Captain Mnisi of the South African Police Service in Germiston, informed OUTA that the National Prosecuting Authority (NPA) had issued a *nolle prosequi* in respect of the complaint.
 39. On 5 July 2018 OUTA requested reasons for the decision not to prosecute which was provided.²¹
 40. Mr. Mogagabe on behalf of the NPA advised that:
 - 40.1. The affidavit by David Button was used in civil proceedings and cannot be relied upon for purposes of criminal proceedings;
 - 40.2. The statement by Button is only that of a litigant and not the court;
 - 40.3. Nowhere in the affidavit by Button is there an allegation of fraud;
 - 40.4. No Gauteng court had jurisdiction;
 - 40.5. Button's civil matter is still pending; and
 - 40.6. The entire contents of A1 (annexure to OUTA's complaint) is hearsay.
 41. OUTA responded to the reasons provided as appears from its letter attached hereto and requested a reconsideration.²²
 42. After following up on 27 July 2018, on 24 August 2018, the NPA confirmed that it would re-open the case docket for further investigations to be conducted as should have been the case at the outset.²³

²¹ BN14

²² BN15

²³ BN16



CONCLUSION

43. Whilst the Gupta leaks did not explicitly implicate Ben Ngubane in any underhanded conduct, his failure to declare his interest in Gade Oil and Gas as chairperson of the Eskom board is telling.
44. He also chaired a board at Eskom with clear strong links to the Gupta family and/or associates which board precipitated the financial crisis Eskom finds itself in.
45. Ngubane's role and decision pertaining to the Molefe pension claim is as the judge above described "*extends incredulity*". He showed a total disregard for public funds to line the pocket of one individual. The fact that the Eskom Provident Pension Fund acted on his instruction based on a relationship of "trust" is deeply concerning and speaks to the power Ngubane held in controlling a state entity and even an independent board of trustees tasked with looking after its investors' funds.
46. Lastly, one may infer from the *Nolle Prosequi* reasons by the NPA that it was simply looking for reasons not to prosecute Ngubane. The reasons provided do not hold water and again leads one to question the control Ngubane held not only over Eskom but also the NPA.