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Zondo commission – Glencore used Ramaphosa link to bully Eskom, says Koko

The state capture commission is caught up in a narrative that Eskom executives were captured because former public protector Thuli Madonsela was selective in the evidence she pursued, and took a side.

This is what Matshela Koko told the commission on Monday evening, after a lengthy explanation on Eskom's decision to terminate a coal supply agreement (CSA) with Glencore-owned Optimum Coal Mine (OCM) in 2015 while the company was experiencing hardship. Koko said that, had Eskom executives been given the opportunity to explain to Madonsela at the time of her investigation into state capture in 2016, they would have proven that they did the right thing for the power utility.

One of the issues he had with OCM was that it did not engage Eskom in good faith, and used bullying tactics to try to come out of a cash flow problem that it had created for itself. Glencore had flouted CSA clauses by trying to, among other things, export coal from Hendrina, when Eskom required specific quantities and qualities as stipulated in the agreement, and could not afford to be compromised by Glencore's need to make more money. The Swiss company's executives were arrogant and felt entitled to push Eskom around because they had in their corner the then deputy president of the country, Cyril Ramaphosa, who had sat on its board.

Had Madonsela explored this element of the events of 2015, added Koko, she would have realised that Eskom was being abused for the purpose of Glencore's selfish business interests.

"This commission and Ms Madonsela are caught up between the business interests of the former president and the current president, and the difference with you is that you're following the evidence and will hopefully make your decision based on the evidence, while Ms Madonsela took a side without looking at the evidence," said Koko.

Commission chairperson Deputy Chief Justice Raymond Zondo pointed out that Madonsela seemed to have been pressed for time, and could not pursue some of the matters that the commission – which she recommended – has done.

"Then she shouldn't have called us captured. We are called captured because of her report," Koko retorted.

Glencore's arrogance prompted it to bully Eskom into submitting to a coal pricing adjustment at the beginning of 2015 by entering into a co-operation agreement, when it came across a challenge to keep its operations up. Upon the arrival of Brian Molefe as Eskom GCEO in April – at which point the co-operation agreement had just been finalised with OCM – he terminated it, demanding answers as to why the mine felt this was the only remedy to the situation, said Koko.

Throughout talks with the power utility, OCM was adamant that sustained supply of coal was at risk if Eskom did not adjust pricing to help it cover its operational costs. OCM had been supplying coal to

the Hendrina power station since 1983, said Koko, when it operated under a different name, and before Glencore took over.

Months later, and without the price adjustment, OCM went into business rescue. For Koko, the imminent threat to coal supply necessitated an intervention, and as head of generation, he sought this from the departments of public enterprises and mineral resources. Joel Raphela, a deputy director-general for the Department of Mineral Resources (DMR) agreed with a letter sent to the department by Koko that Eskom could look for an alternative supplier to OCM, given the situation at the time. He also supported an ultimatum by Koko that Eskom should only agree to the sale of the mine if all assets of its holding company, Optimum Coal Holdings, were included in the sale.

The decision by the business rescue practitioners in August to cut supply to Eskom is what sent Koko into a rage, he added, saying if he had had a gun at the time, he would have fired it. It was a tactic that showed that OCM, and by extension Glencore, did not have respect for the type of entity that Eskom is, and wanted to bully it into submission, just because Ramaphosa happened to sit on the Glencore board.

In November Koko led an Eskom delegation that met with representatives from OCM and Gupta-owned Oakbay Investments, which would negotiate on behalf of subsidiary Tegeta Exploration, for the purchase of OCM. At this meeting he gave OCM the ultimatum, effectively sending negotiations into a stalemate, according to previous evidence.

Evidence leader Advocate Pule Seleka questioned Koko on why he engaged Raphela in a matter that had to do with a private entity.

“Because there was nothing wrong with doing that, that’s the answer. It was the right thing to do,” he said.

Koko may return to finish his testimony on the matter, including his part in Eskom’s 2016 R1.6-billion guarantee to Tegeta in respect of the new OCM contract, and a R659-million advance payment forwarded to the company just weeks after it finalised the purchase of OCM. This is subject to the commission finding time for his oral evidence, said Zondo. If he does not return, he would have to submit an affidavit answering questions on these and other matters that remain outstanding.

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