OUT OF BOUNDS

Report on a complaint into allegations of a violation of the Executive Ethics Code by the former Deputy Minister of Economic Development, the Hon. Mr Enoch Godongwana, MP in connection with allegations of failure to fully disclose his financial interests in the Parliament’s register of Members’ Interests and the register of executive members’ interests conduct against Hon. Mapisa-Nqakula

Report No: 14 of 2015/16
REPORT ON A COMPLAINT INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE FORMER DEPUTY MINISTER OF ECONOMIC DEVELOPMENT, THE HON. MR ENOCH GODONGWANA, MP IN CONNECTION WITH ALLEGATIONS OF FAILURE TO FULLY DISCLOSE HIS FINANCIAL INTERESTS IN THE PARLIAMENT'S REGISTER OF MEMBERS' INTERESTS AND THE REGISTER OF EXECUTIVE MEMBERS' INTERESTS

1. I received a complaint into allegations of a violation of the Executive Ethics Code by the former Deputy Minister of Economic Development, the Hon. Mr Enoch Godongwana, MP in connection with allegations of failure by Hon. Godongwana to fully disclose his financial interests in the Parliament's Register of Members' Interests as well as non-disclosures in the Register of the Executive Members' Interests. The complaint was lodged by a Member of Parliament, the Hon. Mr Kobus Marais, MP of the Democratic Alliance.

2. Hon Marais lodged the complaint for investigation in accordance with the provisions of section 3 of the Executive Members' Ethics Act, section 182 of the Constitution, 1996 as well as sections 6 and 7 of the Public Protector Act. In his complaint against the conduct of Hon Godongwana, Hon Marais stated that;

"I am concerned about his involvement in a company called Canyon Springs Investments. This company and its shareholders of which Deputy Minister Godongwana is one - was involved in the defrauding of the South Africa clothing and textile Workers' Union Provident Fund and is currently being investigated in a confidential liquidation inquiry.

It seems furthermore that the Deputy Minister Godongwana has not properly disclosed his involvement with Canyon Springs as required by the Executive Ethics Code. After examining both the Register of Members' Interests and the Register of Executive Members' Interests, I could find no proof that Deputy Minister Godongwana had disclosed his interests in Canyon Springs.

After the DA released a statement on this issue, the Deputy Minister's spokesperson responded by saying that the Deputy Minister had indeed disclosed his interests in Canyon Springs, but that it was confidentially disclosed. Section 7 of the Executive Ethics Code explains in which instances these disclosures are made confidentially, but none of these instances seem to be applicable in this case. I therefore believe that the Deputy Minister has purposefully disclosed this information confidentially, when in fact he should have disclosed it publicly, in order to keep it out of the public eye; and in so doing he has breached the Executive Code of Ethics."
3. Hon Marais concluded his complaint by requesting that I investigate the former Deputy Minister’s failure to publicly disclose his interests in Canyon Springs Investments as sanctioned by Section 4 of the Executive Members’ Ethics Act.

4. During my preliminary investigation into the matter, it transpired that the complaint lodged by Hon Marais was based on media reports in particular an article that was reported in the Mail & Guardian publication issued on 17 June 2011 under the heading, “Godongwana and the missing union millions” and a sub-heading which read, “Deputy Minister Enoch Godongwana is embroiled in controversy about his role in the disappearance of millions of rands of workers’ retirement money.”

5. In the article, it was reported that:

“Deputy Minister of Economic Development Enoch Godongwana has deepened the controversy about his role in the disappearance of millions of rands of workers’ retirement money this week, insisting he did not know that the company he co-owns borrowed R93-million from clothing factory workers’ provident funds. This is despite the fact that Godongwana’s family has a 50% stake in the company, Canyon Springs Investments 12, and that he was its chair at the time of some of the loans.

In addition, papers submitted in court this week show that his name appeared on stationery as the company’s chair between August 2008 and March 2009, when the company received R19.8-million that ultimately came from workers’ provident funds. This week the floundering Canyon Springs was placed under provisional liquidation by Western Cape Judge President John Hlophe in the Cape High Court, escalating concerns about how much of the pension money sunk into the company would be recovered.

A total of R420-million from five provident funds in the clothing and textile industry may have gone up in smoke in various failed investments, potentially affecting the retirement benefits of more than 20 000 workers. The provident fund money was consolidated in an investment vehicle called Trilinear Empowerment Trust, which is not registered with the Financial Services Board (FSB). It was lent to Canyon Springs with the authorisation of a linked asset management company, Trilinear Capital, allegedly through an unsecured loan agreement that court papers claim remained purely verbal until it was signed in February 2009.
The owner of Trilinear Capital, Sam Buthelezi, denied this and said he would seek proof that the loan agreement was documented from the start. In an interview this week, Godongwana said: “When I came into the company I was told it was money raised by Trilinear Capital, for which they got a fee. What institution they raised it from was not interesting to me at the time. None of the money was drawn by me. I was not operational when I was chairperson. When I joined, funding was intact. Unfortunately I only discovered the funding came from pension fund money when this thing was already becoming a crisis.”

But his version of events differs dramatically from that of Trilinear Capital, which claims Godongwana was involved from the start in the loan agreement with Canyon Springs. Trilinear Capital’s attorney, Chris Briston, told the Mail & Guardian Godongwana knew that the Canyon Springs loan came from clothing workers’ provident funds. The fact that Godongwana was involved in procuring the loan, and that his family trust had a stake in Canyon Springs, made the loan proposition more attractive to Trilinear Capital, Briston said.

Godongwana confirmed that his family trust owned 50% of the shares in Canyon Springs, while families of alleged loan facilitator Richard Kawie and company director Mohan Patel hold the other half through family trusts. Patel suddenly resigned from Canyon Springs this week. Godongwana said he supported a full forensic investigation of the meltdown because he and his family had nothing to hide. “My approach throughout all the discussions with the parties was twofold. First, we support a full investigation so that if there are people who have done anything untoward they must face the full might of the law.

“Our second approach is the best option to enhance the value for workers. My sense is that liquidation is not going to enhance workers’ lives. I think a number of people who opposed the liquidation were of the same view.” The deputy minister recently assured Cosatu that a loan agreement governing the transfer of the provident fund money to Canyon Springs was in place before he joined the company in November 2007. But company records show some of the money was transferred under his watch.

In August 2008, when Godongwana featured on the letterhead of Canyon Springs as chair, Patel requested R8-million in a drawdown from its loan agreement. Documents reveal further amounts of R3.8-million and R8-million were drawn in January and March 2009, while Godongwana was in office.
Court papers show that about R25-million of the pension fund money was sunk into a company he was creating, Pan African Service Benefits, which offered actuarial, administrative and consulting services to pension funds.

Godongwana, his wife Thandiwe and Patel were listed as owners of Pan African until he resigned from his position in this company and Canyon Springs to take up his government post. Thandiwe is shown as the new chair of Canyon Springs in June 2009 in a letter sent by Patel to the Trilinear Empowerment Trust to request another drawdown of R11-million from the provident fund money.

Godongwana correctly pointed out that the first payout of R30-million to Canyon Springs was released from Trilinear Empowerment Trust in March 2007, before he became chair. Trilinear Capital claimed it had urged the trustees of the Trilinear Empowerment Trust to register with the FSB. Court papers reveal further concerns that the loan to Canyon Springs by the trust was unsecured.

"We learnt later about the loans involving pension fund money, and that is something I've been trying to find a solution to," said Godongwana. "The problem is people have been really focusing on me. I'm not really acting on this because I'm in government. I am hands off from it." In addition to the R93-million that was lent to Canyon Springs, Trilinear Empowerment Trust invested R100-million in ailing luxury property developers Pinnacle Point. Last year it also bought Absa's R150-million stake in the development, making it the main shareholder.

Barnabas Xulu, the lawyer representing Trilinear Empowerment Trust trustees, who applied for the liquidation of Canyon Springs this week, said Godongwana's claim that he did not know where the money came from was "a classic". "An inquiry will now show exactly what happened. But it is a classic that a part-owner and chairman of a company that [borrowed] such a lot of money says he does not know that it came from provident funds."

Godongwana's relationship with Kawie, a former consultant to the South African Clothing and Textiles Workers' Union, a Cosatu affiliate, would be examined at the liquidation inquiry because he allegedly facilitated the loan to Canyon Springs, said Xulu. The M&G has learnt that Patel has been cooperating with investigations and has made statements that could be used in court. He could not be reached for comment. Godongwana said Patel was involved in organising the loan deal with Trilinear Capital, but was reluctant to say more.
"In the light of what is happening, let's just say it was Patel who struck the deal," said Godongwana. "But a couple of things have emerged that are worrying."

Xulu said there would be attempts to salvage some of the pension money, especially if Pan African Service Benefits was sold. Trilinear Empowerment Trust was set up to serve provident funds, including those of the Cape clothing industry, the textile industry and Pep Limited.

Xulu said Godongwana had "pleaded" at a meeting of interested parties last week for more time to find a buyer for Canyon Springs. Yet although the company initially said it would oppose the liquidation application it did not take the matter further.

Trilinear Holdings asked the court for leave to intervene in the winding-up application to pursue an opportunity for Canyon Springs to sell Pan African Benefit Services for R150-million to clear its debts. Trilinear Capital claims it had a willing buyer for the company before Canyon Springs was provisionally liquidated this week, but claims Canyon Springs did not take up the offer. The Textile and Allied Workers' Provident Fund lodged an urgent application to interdict the liquidation of Canyon Springs.

A draft report on Canyon Springs's annual financial statements for the year ended February 28 2011, handed in to court, revealed that the company had accumulated losses of R46.6-million. Deputy Minister of Economic Development Enoch Godongwana has deepened the controversy about his role in the disappearance of millions of rands of workers' retirement money this week, insisting he did not know that the company he co-owns borrowed R93-million from clothing factory workers' provident funds.

This is despite the fact that Godongwana's family has a 50% stake in the company, Canyon Springs Investments 12, and that he was its chair at the time of some of the loans. In addition, papers submitted in court this week show that his name appeared on stationery as the company's chair between August 2008 and March 2009, when the company received - R19.8-million that ultimately came from workers' provident funds.

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6. In a further article published by the Independent On Line (IOL) newspaper publication issued on 5 October 2011 (which is just a day before Hon Marais lodged the complaint with me) under the heading, "Deputy minister has declared interests" it was reported that the former Deputy Economic Development Minister Enoch Godongwana has denied failing to disclose his business interests to Parliament.

7. The former Deputy Minister Godongwana's spokesman, Mr Mandi Mantlana was reported in the article as having stated that he had disclosed all his interests and that some would be contained in the confidential section of Parliament's register of members' interests.

8. In response thereto, so it was reported, Hon Marais stated that it appeared as though Hon Godongwana had breached the executive ethics code by not disclosing his interests in the reportedly fraudulent company, Canyon Springs Investments. As a consequence thereof, Hon Marais is reported as having stated that he intended asking the Public Protector to investigate the matter.

9. It was noted that whilst conducting my preliminary enquiries into the matter, the former Deputy Minister Godongwana resigned as both the Member of Parliament and as a Deputy Minister responsible for the Department of Economic Development on 15 January 2012 to pursue personal interests and as a consequence thereof, it was difficult for me to pursue the investigation as Hon Godongwana was no longer a Member of the Executive as envisaged in the Executive Members' Ethics Act for purposes of an investigation in terms of the provisions of the Act despite the fact that the complaint was received whilst the former Deputy Minister Godongwana was still in office.
10. It was further noted that, following the resignation of Hon Godongwana as a Member of Parliament and as the Deputy Minister, the Parliament's Joint Standing Committee on Ethics and Members' Interests also decided not to pursue its inquiry as he had resigned and was no longer a Member of Parliament.

11. I have accordingly decided to close the investigation and leave the matter to your discretion in terms of the Executive authority vested in you in terms of section 85 of the Constitution of the Republic of South Africa

ADV THULI N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 31 March 2016

Assisted by: Good Governance and Integrity Branch (GGI)