

Without Prejudice

Dear Mr Sole

For the record, you published a story on June 1, 2017 where you reference the Mitsui confinement and you fabricated a version of events far from reality. You did not contact me for comment or clarity and hid behind the following rarely used disclaimer/statement at the end of your article:

“No one named in this story was contacted for comment. This is permitted by the South African Press Code in a situation where a publication “has reasonable grounds for believing that by doing so it would be prevented from reporting”. We invite those named in this article to provide us with comment and clarification after publication.”

Based on our previous interactions, you had no “reasonable grounds” to believe that I would prevent you from reporting. Your approach is akin to “shoot first and then ask questions” - exactly 8 months later. While you are entitled to your own opinions, you are certainly not entitled to your own facts.

While I reserve my rights against you in respect of the June 1, 2017 article, I will lay out the facts:

1. In June 2011, the Minister of DPE had to respond in Parliament to media reports that Transnet had concluded a locomotive deal in secret by confining procurement to Mitsui. The Chairman of the Board, Mafika Mkwazi relayed the Minister's displeasure to us at a subsequent Board meeting. The Board was concerned about the reputational damage to Transnet.
2. In 2013, Transnet Freight Rail (TFR) proposed an acquisition of locomotives from Mitsui by way of confinement on the basis of urgency.
3. Recalling the incident of June 2011, the BADC deliberated on the matter and the “urgency” reason did not seem plausible, as the need had been identified 15 months earlier. Management was sent back to improve their submission. It is not uncommon to send back ill prepared submissions for further work.
4. The decision to send back the submission was taken by consensus, however, due to the singular and passionate objection by committee member Nunu Ntshingila-Njeke, I decided to seek external guidance from the Shareholder – hence my letter to the DG.
5. It is also a fact that Nunu Ntshingila-Njeke served on the previous Transnet Board that had approved the two previous confinements to Mitsui as reported.

Confinements are meant to be the exception and not the rule. This method of procurement along with condonations (regularising a transaction that did not follow procedure after the fact) was widely practiced at Transnet and does not promote good governance. I did not need the DG's permission or approval to act as I did, however, seeing as the Shareholder could be called to account on the matter, I felt it prudent to get a perspective.

I have always acted in the best interest of Transnet and stand by my reasons for not supporting the Mitsui confinement, although you infer that by virtue of Mitsui having a plant in Nigel that they were entitled to a confined tender. As stated at the outset, I do reserve my rights in respect of your June 1, 2017 article and will ask you to prove your opinion, which you pass off as fact.

A decision on Mitsui was made based on the facts and information on hand at that point in time and related only to Mitsui. It is false for you to suggest that Mitsui was overlooked so that the tender would go CSR. All procurement submissions are generated by the Executives and presented to BADC, which would interrogate the robustness of their submission and ensure that proper procedures are followed before recommending to the Board. As non-executive independent Directors who attend one meeting a month we did not have the aptitude to interrogate the technical details of the matter, nor was it our role to do so. A decision to submit and withdraw submissions is at the discretion of the Executives and happened often. You will have to interrogate them on the reasons for withdrawal or changes. Around issues of subsequent PFMA approval requests submitted by Mafika Mkwanazi, you should address it to him. The Chairman of the Board, who was also a member of the BADC is the ultimate authority that all Board members fall under. You have also previously quoted him as admitting that he has a relationship with the Gupta family and were looking to pursue business with them. On issues of advance payments, you should address it to the Chairman, GCE or CFO.

I gave the DG a letter on the 14th of October and subsequently followed it up with a soft copy on the 18th of October. You allege that according to the email leaks, I sent an email to Tony Gupta on the 17th of October. I did not send the purported email to Tony. While the veracity of the leaks has yet to be tested, I can confirm that at least two emails attributed to me were not sent by me. I will substantiate this in an appropriate forum. On the 19th of October, I did send an email to Ashu Chawla to print a document for me, as I was going to see him and wanted to have a hard copy to read. I saw no issue in doing so as Ashu's function was like a PA/Secretary and I knew him. Had my intention been to send it to Tony, I would have done so directly. It is well known that I was well acquainted with the Gupta family. I also explored many different business opportunities in a range of areas and therefore had regular contact with them. It is also a fact that Salim Essa and I were friends and business partners and that he met the Guptas through me, however, as I have told you before, we parted ways when he decided that he did not want to continue in our business activities and preferred to go into business with Duduzane Zuma. I did not attend any meetings in Zurich or South Africa with any manufacturer and have never solicited any form of bribe for any transaction.

You say that it is common cause that VR Laser was acquired to use the Gupta influence to win locomotive subcontracts, however, that is a lie, which you presented, based on the evidence of a liar and thief, Benny Jiyane. You failed to question his motives and perpetuated a lie. A PWC forensic investigation initiated by Mafika Mkwanazi based on your article found Mr Jiyane's assertion that bidders had visited VR Laser was false. He could

provide no names, dates, business cards or other evidence to support his version that you printed. I have told you before that Benny Jiyane and I had an argument around his compensation, which he claimed (historically) was part paid in cash from sales of scrap metal that were not reflected in the official accounts of the company. I declined to continue this practice, which gave him a strong motive against me, and a willing listener in you. I have said earlier that you are entitled to your own opinions but not your own facts. You have written that I was appointed to the Board of Transnet and a special committee was set up for me to lead (BADC).

“Transnet would later create a new structure, formally called the board acquisitions and disposals committee, to supervise the planned pipeline of future large-scale infrastructure spending. Sharma was quietly appointed to chair this committee. Previously, Transnet’s individual subsidiaries had supervised their own procurement processes. The newly created board oversight committee, which Sharma chaired, took over the supervision of all tenders worth more than R2.5billion.”

The fact is that the BADC was established long before I chaired it. The Chair from its inception in December 2010 to September 2012 was Don Mkwanazi, a relative of the Chairman of the Board Mafika Mkwanazi. You knew about Don Mkwanazi’s appointment to the board as you reported on it in early 2011, referring to him as a Zuma ally. It is further instructive that you have failed to correct your version and that you have failed to report on irregularities involving Mr. Mkwanazi, which are detailed in a forensic report submitted to you, along with other questionable transactions involving Bidvest and others. This would lead one to believe that you are very selective about whom you write about and whether it supports your pre-determined narrative. While all people entrusted with responsible positions in society are accountable, so too are you in your reporting.

PS My references to you are directed at your publication and not necessarily you as an individual.