

NCOME

CHAPTER 29

THE ARSENAL

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CHAPTER 29

THE ARSENAL

1. INTRODUCTION

The Commission's investigations into the arsenal maintained at Ncome Prison revealed that the various registers that should be in place in an armoury in the Department were in a total state of disarray with the rules and regulations governing the control and maintenance of the arsenal not being followed.

The members implicated in this Chapter are:

- 1.1 Mr Msweli, a prison warder and assistant armoury controller;
- 1.2 Mr Sibusiso Ernest Khanyile, the Assistant Head of Prison; and
- 1.3 Mr Funokwakhe Wilmot Khumalo, who is the Head of Prison at Ncome Medium 'B' Prison.

2. EVIDENCE LED

2.1 Mr Funokwakhe David Goqo

Mr Goqo, an investigator with the Commission, testified that he had looked into the keeping of arsenal registers at Ncome Prison and had found that such registers were in total disarray with controls being non-existent. Naturally, this evidence is of great concern to the Commission as the absence of controls and the resultant loss of the firearms has the potentially disastrous consequence of such firearms being used in all sorts of criminal activities.

2.2 Mr Msweli

Mr Msweli confirmed in his evidence that he was the armoury controller, having been appointed as such to Medium 'A' Prison after a certain Mr Mtshali, who was previously responsible for the armoury, had been transferred. Mr Msweli testified that it was Mr Mtshali who had shown him the procedures to be followed at the armoury but stated that no formal training was given to him on how to control the arms and ammunition.

Mr Msweli's letter of appointment clearly sets out his responsibilities as armoury controller, in that he was:

- (a) Appointed to control all the firearms and ammunition on a rotation basis issued to the members.
- (b) Personally responsible for the safety of firearms and ammunitions issued to members on a rotation basis.
- (c) Responsible for the issuing and receiving of firearms and ammunition on rotation basis issued to members.
- (d) Informed that he will be held responsible for any shortage that may result from the loss of any firearm and ammunition from the armoury and that he must keep the armoury keys safely.
- (e) Required to ensure that all firearms in the armoury are in good working condition and that the firearms and ammunition are never be kept together but are kept in such a way that they can be easily accessible in times of emergencies.

The letter is signed by the Head of Prison, Mr F.B. Buthelezi.

2.3 Missing Firearm

Mr Gogo testified that he had inspected the arsenal register and discovered that ten (10) firearms were not in the register and that members had booked them out. However, there was one firearm, Z88 with serial number TQ125260, that was not accounted for. He then enquired from Mr Msweli about the whereabouts of the firearm. Mr Msweli did not know what had happened to it. Mr Msweli conducted his own inspection and confirmed that the firearm was indeed missing. The firearms register clearly reflects that one, Mr W. Howard was the last person to book out the firearm on the 16 April 2004 and that it was returned to Mr Msweli on the 17 April 2004. There was no evidence of this firearm having been booked out at any stage after that. Inspection of the weekly certificates, which are issued and compiled by the firearm controller, provided no evidence of the firearm having been issued to any other member.

Although in his testimony before the Commission Mr Msweli confirmed that he was responsible for the issuing of firearms, it is clear that during the relevant period when the firearm went missing, the people who had keys to the armoury were the following:

- Mr Msweli;
- Mr Zulu;
- Mr Khumalo; the Acting Head Of Prison;
- Mr Khanyile, the Assistant head of Prison.

Astoundingly, neither Mr Khanyile nor Mr Khumalo, as the senior members, could offer an explanation as to how the firearm could have gone missing. Furthermore, neither was able to recall any incident of break-in at the armoury. Mr Msweli testified that he did not know how this firearm went missing, in that:

- (i) When he issues firearms, he is very careful to ensure that there is no possibility of a firearm being taken without being properly registered.
- (ii) There had been no incident reported of a break-in into the armoury.
- (iii) The door of the armoury was a steel double door, which was safe and secured.
- (iv) There had been no reports, as far as he knew, of the key being lost.

2.4 Head Office Inspection - Mr A. Somaru

However, what became evident was that the arsenal register and the weekly and monthly certificates that were supposed to be kept were in total disarray. This was evidenced by the unsuccessful National Office attempt to inspect the armoury. Mr Annuplalal Somaru from Head Office had visited the prison prior to the Commission's arrival at Ncome and was informed at the time that there were no registers available for inspection. Mr Somaru testified that he was responsible for inspections, implementation of policy and to provide feedback to the Department. When he arrived at Ncome Prison, he could not conduct the inspection as the armoury controller and the Head of Prison could not furnish him with the appointment letter for the armoury controller nor could they provide the duty sheet for the armoury. He also requested certificates and registers that deal with the armoury but none were forthcoming.

Mr Somaru testified before the Commission that he had expected to receive the following certificates at the time of his inspection:

- (a) A daily certification certificate signed by the armoury controller and his superior, who would have been the Head of Security/Prison.
- (b) Weekly certificates, which required that the Head of Prison physically inspect the armoury, a function that could also be delegated to the manager of security.
- (c) Monthly certificates, which have to be completed by the Head of Prison, a task that may not be delegated.

Mr Somaru also expected to inspect the following registers:

- (i) The issue of firearm register.
- (ii) Loan basis register, which is often used by the Emergency Support Team (EST).
- (iii) Private firearm safekeeping in the armoury register.
- (iv) Emergency firearms and ammunition, which are separated from daily use armoury.

Mr Somaru was informed that he could not get any of these registers. Mr Somaru believed that Mr Khumalo, who is the Head of the Prison, lacked the ability to manage the institution as a whole. When Mr Khumalo testified, he explained that if the policies had been followed properly, he would have been able to detect that a firearm was missing and that the armoury controller would have known immediately that a firearm was missing.

The armoury controller, Mr Msweli, had informed Mr Somaru that he was new to the establishment, that he did not know how to maintain the registers of the armoury and had requested to go for training. This lack of training of members of the Department holding responsible positions appears to be a recurring theme the Commission encountered during its investigations at Ncome.

The Commission was also surprised to hear during the testimony of Mr Somaru that when he arrived at Ncome prison to conduct his inspection, he found very junior officials on night duty at Medium 'A' Prison in Ncome. In fact only three (3) prison warders were present. This glaring absence of adequate security caused the Chairperson of the Commission to make a request for copies of the duty list for the date in question, 1 July 2003, to verify what the situation was on that particular day and who was on duty and who did not turn up for duty.

It was interesting to note that Mr Somaru had been to Ncome Prison to conduct an inspection on the 1 July 2004 and was not furnished with any of the documentation. However, Mr Goqo, an investigator with the Commission, who conducted an inspection there only six (6) days later, was furnished with the relevant documentation. Although there could be any number of explanations for this, a plausible explanation would be that the registers were available but due to the fact that they were in a state of disarray, the officials at Ncome Prison were not willing to give them to Mr Somaru.

2.5 Mr S.E. Khanyile

Mr Sibusiso Ernest Khanyile, who is the Assistant Head of Prison, stated that he is also Assistant Head of Security in that he assists the Head of Prison. Mr Khanyile conceded that the arsenal is in a mess, that this has been the position for some time, that the registers are not in good order and that he had spoken to the Head of Logistics, Mr Shabangu, about this problem. He acknowledged that it is his duty but stated that the final responsibility lay with the arsenal controller. Mr Khanyile testified that they had not been able to comply with the regulations for the firearms and in particular, regulation 5.6.4, which sets out the duties of the arsenal controller and attributed this mainly to the unavailability of registers from the logistics office. He stated that he is certain that as the registers had now become available, all things would be back to normal.

Mr Khanyile further stated that the last time he had conducted a physical check in the armoury was in about February/March 2004. However, this visit had not been documented anywhere. He said he understood the firearms control regulations and that he had them in his office, in particular regulations 5.6.4 and 5.8. Mr Khanyile had not completed any of the certificates, which were placed before court and are required for the Head of Prison to sign and he had not done that for some years.

Mr Khanyile informed the Commission that he is now going to enforce some precautionary measures, including that no one may be found in the arsenal who should not be there and that he would keep the arsenal keys as always since the arsenal is just opposite his office. Mr Msweli, Mr Khumalo, the Head of Prison and himself, Mr Khanyile the Assistant Head of Prison, would implement this by the following week Wednesday. Mr Khanyile conceded that Mr Msweli should not be signing certificates on his behalf. He (Mr Khanyile) had never authorised Mr Msweli to sign on his behalf. He only became aware that Mr Msweli was signing some of the certificates on his behalf when Mr Goqo approached him.

2.6 Mr Funokwakhe Wilmot Khumalo

Mr Khumalo, who is presently the Acting Head of Prison at Medium 'A', testified that he had some experience in the keeping of firearms and that while he was an armoury controller at Nongoma, where had worked previously, no firearms went missing. Mr Khumalo confirmed that the armoury controller is answerable to him. Mr Khumalo stated that he had never checked the armoury physically and he did not know he was required to inspect it. He only knew of the registration of arms on rotation that are working day to day and the firearm register, which are the arms taken out with the escorts. He also knew about the G20B card. He did not know about any other registers.

Lack of training as a recurring theme was again evident when Mr Khumalo complained that his position overwhelmed him. He also pointed out that he is working as an Acting Head of Prison without remuneration and feels he has had enough of this position, as he is ill equipped to perform the duties that are required of him. He wants to go back to his original post and would like to be relieved of his position. He had made a request to the Area Commissioner that he should revert to his post and the Area Commissioner had informed him that he could do so once they have a replacement. Mr Khumalo stated that he relied heavily on information he received from the arsenal controller and he felt that the arsenal controller was the person responsible. If the arsenal controller had checked the arsenal and said

that the things were in order, he was satisfied with the report received. Mr Khumalo confirmed that he, as the Head of Prison, kept the keys to the safe. In his absence, Mr Khanyile, the Assistant Head of Prison, took control of the keys. Mr Khumalo added that Mr Zulu, Co-ordinator Corrections, also looks after the control keys. Mr Khumalo stated that he had no idea how the firearm could have disappeared.

Mr Khumalo also could not understand why it was that Mr Msweli had signed the weekly reports on his behalf. He also indicated that he had never instructed Mr Msweli to do so. Mr Msweli stated that he had a problem in that on Fridays Messrs Khanyile and Khumalo are unavailable as they attend meetings and he would, therefore, sign as he was under pressure from the Offender Controls to have the forms handed in and sent to the Area Commissioner's office.

Mr Khumalo has claimed that he had discovered that the inventory was in a mess after Mr Somaru's visit but that he would from the day after he had testified before the Commission put some measures in place to ensure that the regulations are followed and that a relief arsenal controller is appointed. Mr Khumalo stated that he had not reported the problem to the Area Commissioner, as the latter is new to the prison and that he does not know many things.

3. FINDINGS

In considering all the evidence, the Commission finds that:

- 3.1 There was no proper arsenal control at Ncome Medium 'A' Prison and that explains why the firearm went missing. It is manifestly evident that the rules and regulations as set out in Regulation 5 of the Control of Firearms are not being followed at all.

3.2 Mr Msweli, despite his claim of not having been trained, had not kept to the procedures explained to him by Mr Mtshali, the previous Arsenal Controller. He seemed to have no difficulty, however, in signing documents that he had no authority to sign.

3.3 Messrs Khanyile and Khumalo were also not performing their duties in that they did not countersign or check whether Mr Msweli was doing his job properly. It was evident that these officials in their respective capacities as the Head of Prison and the Assistant Head of Prison relied heavily on the information supplied by the arsenal controller and that they did not conduct physical checks as is required.

Mr Msweli had free reign. He would complete the forms and the registers, countersign and check everything himself and pass this on to the Area Commissioner's Office, which in turn never queried obvious irregularities in the firearms control and which explains why a firearm went missing. In fact, with the current state of disarray, a possibility exists that there may be more firearms missing that have not been detected due to the poor record keeping of the arsenal inventory and the registers.

4. RECOMMENDATIONS

The Commission makes the following recommendations regarding the implicated members stationed at Ncome.

4.1 Mr Msweli

Mr Msweli should be charged with the contravention of clause 2.1 of Column A of the Disciplinary Code, in that he was grossly negligent in the execution of his duties.

4.2 Messrs Khanyile and Khumalo

4.2.1 Messrs Khanyile and Khumalo should be charged internally with:

- (a) contravening clause 4.3 Column A of the Disciplinary Code in that they signed the certificates stating that they had conducted physical searches on the armoury whereas, in fact, they had not done so.
- (b) contravening clause 4.3 Column B of the Disciplinary Code in that they failed to account for government property.
- (c) contravening clause 2.1 Column B of the Disciplinary Code in that they failed to comply with the Department's regulations and directives.

4.2.2 Messrs Khanyile and Khumalo should also be charged criminally in terms of Section 120(8)(b) the Firearms Control Act 60 of 2000 in that they failed to take reasonable steps to prevent the loss or theft of the firearm.