

## **CHAPTER 30**

# **UNLAWFUL PECUNIARY DEALINGS** **WITH PRISONERS**

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## CHAPTER 30

# UNLAWFUL PECUNIARY DEALINGS WITH PRISONERS

### 1. INTRODUCTION

This section shows that in spite of clear regulations being in place prohibiting pecuniary dealings between prisoners and warders<sup>1</sup> and in spite of the cashless system having been introduced into the Department,<sup>2</sup> some members at Ncome Prison showed a blatant disregard for the provisions of the Act and the rules of the cashless system.

The cashless system was introduced by the Department on 31 December 2002.

The system provides a mechanism for prisoners to make purchases or pass-on monies to their families without the prisoner physically handling the money. The system was obviously designed to quell corruption in prisons where the exchange of cash promotes numerous incidents of bribery and abuse of power by the members, such transactions being unrecorded and therefore untraceable.

The evidence of pecuniary dealings in the Ncome Management Area, however, showed that unless the rules and regulations regarding the cashless system are strictly enforced, the system will not achieve the objective of rooting out corruption in our prisons.

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<sup>1</sup> Section 1182(b) of the Correctional Services Act No. 111 of 1998 specifically provides that no Correctional Custodian Official may directly or indirectly have any pecuniary dealings with a prisoner.

<sup>2</sup> The system was introduced in the Department on the 31 December 2002.

During the evidence of the illegal pecuniary dealings, the Commission also heard of the lack of diligence on the part of the Head of Prison, who in many instances became aware of the offences and yet took no action against the offenders.

The Commission cannot emphasize enough the need for the Department to begin to enforce its own laws, rules and regulations. It is the Commission's view that no matter how good legislation is, it becomes ineffective if it is neither respected nor enforced.<sup>3</sup>

The evidence implicated the following three (3) members in pecuniary dealings with prisoners:

- Mr T.P. Mbatha,
- Mr Mandla Nkosi Lawrence Thusi,
- Mr P.B. Mncwango

The Commission will now deal with each implicated member and the evidence that was led against them.

## **2. MR T.P. MBATHA**

### **2.1 Mr. Wellington Desini Zungu**

The evidence of the inmate Wellington Zungu, who is currently serving a thirty (30) year term of imprisonment for murder and theft, directly implicated Mr Mbatha. Mr Zungu alleged that he had heard from fellow inmates that Mr Mbatha could arrange for him to purchase a television set to place in his cell for private use. When he

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<sup>3</sup> The lack of discipline is dealt with in greater detail by the Commission, inter alia, the Chapters on Historical Background, Trade Unionism, Sexual Violence, Abuse of Power, Treatment of Prisoners and Disciplinary Inquiries.

made inquiries with Mr Mbatha, he was advised that the cost of the television set would be R1500-00 and that the set would be obtained from a friend of Mr Mbatha's. Mr Zungu had then given Mr Mbatha R1500-00 to purchase him the television set on or about January 2003. Mr Mbatha, however, never delivered the television set as promised but over time advanced a number of excuses as to why he was not able to deliver on his promise, one of which was that his friend had changed his mind about selling him the television set. Mr Zungu realizing eventually that he was not going to get the television set demanded his money back from Mr Zungu.

In the interim, the Head of Prison, Mr Buthelezi, had come to hear about this unlawful transaction but when he enquired from Mr Zungu as to the veracity of the allegations, Mr Zungu denied them in an effort to protect Mr Mbatha. Following this confrontation with the Head of Prison, Mr Zungu informed Mr Mbatha that he would rather have his money back as the Head of Prison was now aware of the transaction and he would forego the television set. Mr Mbatha agreed to this arrangement.

However, six (6) months passed without Mr Zungu receiving his money. Mr Zungu then, in desperation approached the Head of Prison, Mr Buthelezi to inform him that despite his earlier denial, there had indeed been an agreement to purchase a television set, which he had never received and that Mr Mbatha had failed to return his money. The Head of Prison refused to assist him as Mr Zungu had earlier denied the transaction.

Mr Zungu informed the Commission that he then approached the Assistant Head of Prison, Mr S.E. Khanyile to inform him about the transaction between himself and Mr Mbatha and that Mr Mbatha was unwilling to repay the money. Mr Khanyile intervened and approached Mr Mbatha who made an undertaking to repay the money. Mr Mbatha, however, approached Mr Zungu and was very angry about the fact that he had informed Mr Khanyile about the transaction. Mr Zungu became increasingly concerned that the matter was not being finalised and yet he was due for transfer to Kokstad Prison on the 30 September 2003. Therefore, on the 22 September 2003, he again approached Mr Mbatha and the latter promised to

deposit the money into Mr Zungu's bank account, the details of which were furnished to him.

On the 29 September 2003, Mr Zungu showed Mr Mbatha a bank deposit slip as proof of deposit of a sum of R200-00 into his bank account. Mr Mbatha informed Mr Zungu that his wife would deposit the balance of R1 300-00 by the 30 September 2003. On the 30 September 2003, Mr Zungu was transferred to Kokstad and he had still not received the balance of the amount due to him from Mr Mbatha. Mr Zungu was making a plea to the Commission to ensure that Mr Mbatha repays him his money.

Mr Zungu also reported to the Commission that he had always had a close relationship with Mr Mbatha and that he had requested Mr Mbatha on a number of occasions to withdraw money from Mr Zungu's bank account on Mr Zungu's behalf. He had also requested Mr Mbatha to pay school fees for his children and that he, in fact, had loaned Mr Mbatha R150-00 on another occasion.

According to Mr Zungu it was common practice to use prison warders with whom one was on good terms to assist one with one's financial affairs. He testified that the withdrawals were at a cost that ranged from R30-00 to R100-00. On one occasion when Mr Mbatha was attending a wedding, he had requested him to withdraw R1 000-00 for which Mr Mbatha had requested R150-00 for providing the service.

In his defence, Mr Mbatha denied the allegation that he owed Mr Zungu any money. He conceded, however, that he had received a sum of R1 000-00 from Mr Zungu and had only agreed to the transaction when Mr Zungu had shown him proof of an application and approval of the Assistant Head of Prison to purchase a television set. He claimed that he had repaid Mr Zungu by first paying R800-00 in cash and then by depositing R200-00 into Mr Zungu's account being the balance due to Mr Zungu. Mr Mbatha, however, could not recall the date or the time on which the R800-00 had been paid to Mr Zungu, except to say that he had returned the money

to Mr Zungu in his cell. He was also unable to produce before the Commission any proof of the alleged deposit of the balance into Mr Zungu's banking account.

## **2.2 Findings**

The Commission finds Mr Zungu's version to be the more plausible of the two. Mr Mbatha was unable to state when or how he had paid the R800-00. He was clearly an untruthful witness who was evasive. Mr Zungu, on the other hand, gave clear and concise evidence and made no attempt to embellish the case against Mr Mbatha. Furthermore, it is evident that there had been a relationship of trust between Mr Mbatha and Mr Zungu due to the previous financial transaction that had occurred between the two. Mr Mbatha failed to adequately challenge Mr Zungu allegations but merely dismissed them as untrue.

The Commission therefore finds that Mr Mbatha did contravene Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and also clause 4.7 of the Disciplinary Code in that he received money from a prisoner.

## **3. MR M. L. THUSI**

The Commission heard evidence to the effect that Mr. Mandlenkosi Lawrence Thusi, a prison warder, had also been deeply engaged in financial dealings with prisoners and had abused his position as a prison warder in so doing. Mr Zungu implicated Mr Thusi in his evidence as being involved in the following financial dealings:

### **3.1 Mr Thembinkosi Mvubu**

Mr Thusi allegedly borrowed money from prisoner Mr Thembinkosi Mvubu, who has since been transferred from Ncome Prison to Waterval.

On this charge, Mr Thusi admitted that he had borrowed R200-00 from Mr Mvubu but stated that he had needed this money due to bereavement. He admitted that he knew he was not allowed to borrow the money from the prisoner but stated that he had had no option but to do so as his colleagues were not able to assist him.

### **3.2 Mr Christian Mandlenkosi Mntambo**

Mr Thusi had also allegedly acted as a middleman between Mr Zungu and Mr Christian Mandlenkosi Mntambo, an adult male teacher who is teaching at Ntswalakahla Primary School in Dalton. Mr Mntambo had been the driver of the motor vehicle when a fatal accident resulted in the death of Mr Zungu's son. Mr Mntambo had sought to rectify this by approaching Mr Zungu in prison and performing certain rituals according to Zulu custom. Mr Mntambo, who is also Mr Thusi's brother-in-law, had approached Mr Thusi to support him in discussions with Mr Zungu and to arrange the ritual. Messrs Zungu, Mntambo, Thusi and other members of the family had subsequently met and agreed that Mr Mntambo should *inter alia*, pay a contribution of R3 000-00 to the Zungu family in damages. To this end Mr Mntambo gave Mr Thusi a sum of R1 500-00 to pass on to Mr Zungu, which Mr Zungu said never reached him.

Mr Mntambo confirmed in his testimony that Mr Thusi had promised to pass on the money to Mr Zungu's family. Mr Thusi, however, failed to pass this money on to Mr Zungu who, after contacting Mr Mntambo during June 2004, confronted Mr Thusi. Mr Thusi had then confirmed that he had received the money but that he did not have the money at the time. At around this time, Mr Zungu was transferred to Kokstad and Mr Mntambo had promised that he would send the money through to him at Kokstad but he did not do so. It was only during September 2004 about two weeks prior to the Commission arriving at Dundee for hearings that Mr Thusi deposited the money into Mr Zungu's account.

Mr Thusi admitted that he had received the money and that he had failed to pass on the money to its rightful owner. He denied, however, that he had done so with any

malicious intent but made up numerous contrived stories as to why the money was not paid to Mr Zungu.

### **3.3 Findings**

The Commission finds that Mr Thusi acted in breach of trust between himself and his brother-in-law and clearly used the money for his own personal benefit. He only paid it back when he realized that the Jali Commission was “in town” and that he would be in trouble. The payment was also most likely only done after he had received the subpoena.

The Commission also finds that Mr Thusi contravened Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and also clause 4.7 Column A of the Disciplinary Code in that he received money from a prisoner.

## **4. MR P.B. MNCWANGO**

### **4.1 Mr M.J. Ndabeni**

Mr Mshimane John Ndabeni, a male prisoner at Ncome Medium 'B' Prison and employed in the kitchen section, testified about unlawful dealings with Mr Mncwango, a member at Ncome Prison. Mr Ndabeni is presently serving a 20 year sentence for murder and robbery. The Commission heard evidence to the effect that Mr Mncwango and Mr Ndabeni had several financial dealings, beginning from the 27 December 2001. During that period, Mr Mncwango had borrowed various sums of money from Mr Ndabeni: R300-00, R20-00, R50-00 and R150-00. Mr Mncwango would often pay this money back in installments.

Mr Ndabeni further informed the Commission that around November 2002 he had given Mr Mncwango a sum of R446-00 to purchase him a compact disc radio. Mr

Mncwango had promised to bring the radio on the following Monday but had instead disappeared for up to three to four weeks. The next time he saw Mr Mncwango, the latter promised to repay him the money as he had used it for his own personal use. However, he disappeared again and they did not meet for about a year.

On 2 February 2004 the Head of Prison, Mr Ngcobo, addressed prisoners at the dining hall and informed them that the Jali Commission of Inquiry was coming to Ncome Prison. He also informed them that if they had any complaints they should lodge them with the Jali Commission of Inquiry.

Mr Ndabeni then approached Mr Ngcobo and informed him that Mr Mncwango owed him money. Mr Ngcobo called Mr Mncwango to the dining hall and asked if Mr Ndabeni's allegations were true. Mr Mncwango confirmed that he did owe him the money and he promised to repay it by the 13 February 2004. Mr Ngcobo then advised Mr Mncwango to report the matter to the Commission, which he did. Mr Mncwango continued to make promises that the money would be paid on the 16 February but that did not happen. Mr Ndabeni requested the Commission of Inquiry to please request Mr Mncwango to repay his money.

## **4.2 Findings**

As Mr Mncwango did not deny any of the allegations made against him by Mr Ndabeni, the Commission finds Mr Mncwango has indeed contravened Section 118 (2)(b) of the Correctional Services Act No. 111 of 1998.

A concluding observation is that the Commission noticed from the disciplinary records that Mr Mncwango is often absent from work and he has been charged for such absence on a number of occasions. Although there was evidence to the effect that he had a drinking problem, he denied this. On the record it was clear that he had been absent from duty on no less than ten (10) occasions and it appeared to the Commission that he had a drinking problem. He admitted that he drinks alcohol but denied he had a problem when the Chairperson of the Commission suggested he

seek professional counselling. Suspicions of his drinking problem are evidenced by the sum of monies he borrows all the time from prisoners ranging from R10 to R50 at any one time. It is clear that the inability to manage his financial affairs is caused by his apparent addiction to alcohol.

## **5. RECOMMENDATIONS**

The Commission makes the following recommendations regarding the members implicated in this Chapter of the report

### **5.1 Mr T.P. Mbatha**

He should be charged for contravening Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and also clause 4.7 Column A of the Disciplinary Code in that he received money from a prisoner.

### **5.2 Mr. M. L. Thusi**

He should be charged for contravening Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and clause 4.7 of the Disciplinary Code in that he received money from a prisoner.

### **5.3 Mr. P. B. Mncwango**

He should also be charged for contravening Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and also clause 4.7 clause A of the Disciplinary Code in that he received money from a prisoner.