

CHAPTER 31

THE MAVUNDLA MATTER

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CONTENTS

	<i>Page</i>
1. Introduction	186
2. Mr. N. Mavundla	186
3. Mr. L.M.E. Hlabisa	188
4. Mr M.P. Gwala	188
5. Mrs N. Mavundla	190
6. Mr S.E. Dhlomo (“Gonondo”)	191
7. Findings	193
8. Recommendations	193

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1. INTRODUCTION

The facts forming the basis of this matter occurred at the Pietermaritzburg Prison Management Area but because the complainant is presently incarcerated at the Ncome Prison, the Commission, for the sake of expediency, heard the matter along with the other Ncome Prison matters.

2. MR N. MAVUNDLA

On the 3 August 2004 the Commission heard the evidence of Mr Nhlanhla Mavundla, an inmate who has been serving a ten-year prison term since 2001 for murder. Mr Mavundla stated that while imprisoned at Pietermaritzburg Prison he befriended a fellow inmate, Mr Msane Hadebe who informed him that he could assist in getting his prison term shortened by bringing his parole date forward. Mr Hadebe stated that he knew of an inmate, "Gonondo"¹, who could assist him in that regard. "Gonondo" in turn introduced him to Mr Gwala, the prison warden, whom it was alleged could assist with the early parole.

At a meeting with "Gonondo" and Mr Gwala, it was arranged that the money for the parole could be paid in installments of R750-00. Mr Mavundla then informed his mother, Mrs Regina Ntombiyakhe Mavundla, who brought the money requested on a number of occasions concealed either on her person, her clothes or in food. Mr

¹ "Gonondo" was a well-known inyanga who practices traditional medicine and who has been incarcerated in many prisons. Evidence led before the Commission was that he treated both warders and prisoners.

Mavundla recalls the first meetings between the parties when Mr Gwala informed him that all communication would be through "Gonondo" and that he would hear of progress in his parole through "Gonondo". On one occasion he actually gave the money to "Gonondo" who passed it on to Mr Gwala in his presence.

The procedure that was followed was that each time he received money from his mother he would communicate this fact to "Gonondo" who in turn would inform Mr Gwala. Mr Gwala would come to the window of his cell and take the money. Mr Mavundla witnessed this and testified that on one occasion Mr Gwala had requested his residential address, which he had stated was necessary in processing the parole and to verify where he would be living when he was released on parole. Mr Mavundla furnished him with the information requested.

Mr Mavundla then asked Mr Gwala to provide him with his bank account as it was becoming increasingly difficult for his mother to come to prison to bring the money having to travel all the way from Port Shepstone. Mr Mavundla could not recall how it was that his mother received the details but he believed that Mr Gwala had telephoned her and furnished her with the details of his bank account. Subsequently a further sum of R750-00 was paid into Mr Gwala's account.

Mr Mavundla testified that he then became concerned as the months were rolling by and he was not receiving any information or feedback from either Mr Gwala or "Gonondo" as to the progress of his parole. He had also discussed the matter with his mother who advised him to wait. Mr Mavundla then asked "Gonondo" what was happening and "Gonondo" informed him that they were still processing the release but Mr Mavundla was not convinced. Mr Mavundla further testified that he did not approach the Commission at the time that it was in Pietermaritzburg as he feared that "Gonondo" would kill him with his traditional medicines.

3. MR L.M.E. HLABISA

Mr Lucky Mthokosizi Elliot Hlabisa, an investigator with the Commission, testified that he had met with Mrs Mavundla and had proceeded to the Natal Building Society to verify the authenticity of the deposit slip Mrs Mavundla had given him as proof of payment of money into the account of Mr Gwala. At the bank he found that indeed money had been deposited into Mr Gwala's account number on the 3 January 2002 at 09h18. The deposit slip had a bank teller's stamp on it and was dated. He requested Mr Gwala's bank statement and indeed it reflected the first deposit of R750-00, which matched with the deposit slip he received from Mrs Mavundla. Mr Hlabisa then approached Mr Gwala with this information. Mr Gwala denied all knowledge of Mrs Mavundla and stated that the deposit was a transfer from one cheque account to another.

4. MR M.P. GWALA

In the witness box, he implicated Mr Mtotile Petros Gwala, who is a Correctional Officer based at Pietermaritzburg Prison, and denied all allegations presented to him.

He confirmed, however that he knew "Gonondo" and that he knew him only as an *inyanga*.² He denied also that he had any knowledge of how "Gonondo" ran his practice from prison, the allegations that "Gonondo" treated prison warders and prisoners and that warders would let him out of prison to dig for herbs.

² Regarding this he informed the Commission that he had approached "Gonondo" and "Gonondo" had prescribed some medication for his child and he had proceeded to a chemist to obtain the herbs as prescribed by "Gonondo". He stated that he did not pay "Gonondo" for these services. He says that he only went back to thank him later on when his child was healed as a result.

Mr Gwala furthermore stated that he did not have a special relationship with “Gonondo” and had been in fact been surprised when the Head of Prison, Mr Mchunu, had gone out of his way to inform him that “Gonondo” was being transferred. He admitted that he did not have a good relationship with the then Head of Prison, Mr Mchunu, and that Mr Mchunu had believed that he was a supporter of his predecessor Mr Ngcobo.³ However, he stated that there was a misconception amongst other members that he was very close to “Gonondo” and that the members feared Mr Gwala believing he would use “Gonondo”’s medicines on them. He denied that he had ever been requested to desist from his relationship with “Gonondo”.

When questioned about the deposit slip obtained from Mrs Mavundla, Mr Gwala acknowledged that the address on the account was his but could not recall whether or not that was his account number. However, he conceded that he did at some stage have an account with the NBS but had since lost the book. For the rest, he denied all knowledge of this transaction with Mrs Mavundla claiming that he could recall nothing of the incident. He denied also that he had called Mrs Mavundla, that she had informed him that the money was deposited and that that was why he had eventually gone to the bank. He stated that he could not understand why she would come before the Commission and lie about him and that she had no business depositing money into his account.

Mr Gwala also could not recall whether he had at any stage queried this deposit with the bank nor could he explain why he had immediately the day after Mrs Mavundla deposited the money withdrawn the R750-00 from the very bank account that the money had been deposited into. He claimed that he had a Saambou bank account but he could not recall the account number. He could also not explain how it was that Mrs Mavundla knew about the NBS account.

³ The Commission found that at Pietermaritzburg Prison there was a split between those warders who supported the previous Head of Prison, Mr Ngcobo, and others who supported the present Head of Prison, Mr Mchunu. The tensions that existed at the Pietermaritzburg Prison are dealt with in greater detail in other Chapters in this report.

He denied that he could have in any manner made any promise to Mr Mavundla regarding his early release on parole claiming that he had never worked at the parole board office and he would not have been able to do this even if he had wanted to.

5. MRS N. MAVUNDLA

Mrs Ntombiyakhe Mavundla testified and confirmed that she is the mother of the inmate Mr Nhlanhla Mavundla, whose testimony is referred to above, and that she resides in Port Shepstone on the South Coast. She stated that shortly after her son was incarcerated he had telephoned her and informed her that a prisoner had said he could assist him with an early release. The member, whose name she could not recall, had informed her son that he required money to do this. She then organized money from loan sharks in order to save her son from a lengthy sentence. She testified that she gave her son seven hundred and fifty rand (R750-00) in four (4) instalments, which she had hidden in her underwear on one occasion and on another occasion in his food.

Mrs Mavundla further testified that on one occasion a member who identified himself as Mr Gwala, a warder from Pietermaritzburg Prison, telephoned her at her house and informed her that he wanted to help her son. He also called Mrs Mavundla on a number of other occasions. By the time he called her to give her the details of the Saambou bank account, he did not need to identify himself as she knew his voice well by then. She then went personally to deposit the money into the account and presented to the Commission proof of the deposit slip of the money she had paid into Mr Gwala's account.⁴ The following day he called to confirm that he had received the money and he thanked her, promising that her son would be released soon. She informed the Commission that she would like Mr Gwala to pay back her money and for the law to take its course thereafter.

6. MR. S.E. DHLOMO (“GONONDO”)

Mr Gwala called Mr Sipho Elton Dhlomo, known by the name “Gonondo”, who is an inmate at Barberton prison, as a witness. He was therefore led by Mr Gwala. He testified that between 2001 and 2003 he was at Pietermaritzburg Prison before being transferred in March 2003 to Barberton Prison.

Mr Dhlomo testified that he knew Mr Gwala from Pietermaritzburg Prison and that he had helped Mr Gwala with the traditional medicines. For example, he prepared what is known as *imbiza* or the pot, which is a mixture of herbs for Mr Gwala. He also prescribed medication to Mr Gwala personally and when Mr Gwala’s child was sick. He did not charge for these services but Mr Gwala would give him fifty rand (R50-00) in ten rand (R10-00) notes depending on what was available in Mr Gwala’s pocket at the time. He further testified that Mr Gwala had never informed him that he was not allowed to give him money.

When questioned about Mr Gwala’s relationship with Mr Mavundla, Mr Dhlomo stated that all he knew was that a family member of Mr Mavundla had deposited a sum of between R600-00 and R800-00 but he could not recall the amount exactly as this had happened a long time ago. He confirmed that money had been deposited into Mr Gwala’s account.

Mr Dhlomo’s explanation for these transactions was that inmates such as Mr Mavundla needed money and required the assistance of Mr Gwala to get money from their families. As far as Mr Dhlomo was concerned, the money was to help Mr Mavundla with traditional medicine and part of the money was also for Mr Mavundla’s own personal use. He denied that he knew anything about Mr Gwala’s ability to decrease or bring forward parole stating that he was unaware that Mr

⁴ See Ncome Exhibit M1.

Gwala was organizing parole for any inmates. Accordingly, he did not know that Mr Gwala had promised to arrange for an early release for Mr Mavundla.

Mr Dhlomo stated that he knew Mr Mavundla as an inmate at Pietermaritzburg Prison who had come to him for assistance when he had problems sleeping at night caused by dreaming about the woman he had murdered. Mr Dhlomo also consulted with him on a number of occasions to assist with other minor problems and he had performed certain rituals on Mr Mavundla. He gave him traditional herbs, which he had obtained from his box that was kept in the storeroom of the prison and contained all his herbs. Mr Mavundla had paid him R450-00 for the treatment and he was to pay the balance once his appeal was successful. According to Mr Dhlomo, the money was paid in cash and a balance of R1000-00 was outstanding.

Regarding the money deposited into Mr Gwala's account, Mr Dhlomo stated that as Mr Mavundla had owed him R1 450-00, he had solicited the assistance of Mr Gwala as a means of getting his money back. Mr Dhlomo explained that he was in Mr Mavundla's cell when Mr Gwala came to stand at the window, the place where they often met with Mr Gwala. He then informed Mr Gwala that people wanted to give him money and that he needed to use Mr Gwala's account. Mr Gwala then gave him an account number. He was not certain whether it was an account number for NBS or Saambou bank. However, he wrote the numbers down and gave them to Mr Mavundla. The money was deposited into Mr Gwala's account but he does not know when, how or by whom this was done but only that he did receive his share of the money, which was R450-00.

Mr Dhlomo testified that as far as Mr Gwala was concerned there was a very close relationship of trust between the two of them. He said Mr Gwala not only assisted him on this one occasion with Mr Mavundla's money problem but had also on a number of occasions received money deposited from Waterval and Port Shepstone and he was satisfied that Mr Gwala had on each occasion given him the money that was due to him.

7. FINDINGS

The Commission finds that Mr Gwala was indeed involved in illegal financial dealings with prisoners as Mrs Mavundla provided clear proof that she deposited money into his bank account.

Even though it is obvious that Mr Mavundla along with Mr Gwala were involved in some scheme, there appears to be insufficient evidence before the Commission to support the allegations against Mr Gwala that he extracted money from the inmate Mavundla for the purposes of securing Mr Mavundla's early release on parole.

8. RECOMMENDATION

It is recommended that Mr Gwala be charged criminally with a contravention of Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and contravening clause 4.7 Column A of the Disciplinary Code in that he received money from a prisoner.