

It all depends on how one looks at it

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COMMENT

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One has to be innovative with one's interpretation to believe that the spending of public funds on Nkandla is justified

AT FIRST glance, Public Works Minister Thulas Nxesi's latest explanations on government spending at President Jacob Zuma's Nkandla home make no sense.

According to Nxesi, a government investigation has apparently both revealed that the state paid over R206 million for the upgrade of Nkandla "so far" (R71m of that for "security upgrades"), and found "no evidence that public money was spent to build the private residence of the president or that any house belonging to the president was built with public money".

But Nxesi might not have contradicted himself - it all depends on how one defines terms like "build", "private residence" and "belong".

When former president Bill Clinton tried to explain in 1998 during his grand jury testimony on the Monica Lewinsky affair why he had not lied to his top advisers, despite having assured them that "there is nothing going on between us", he famously said that it all "depends on what the meaning of the word 'is' is".

Later, when asked if he was ever alone with Lewinsky, he said: "It depends on how you define 'alone'".

Clinton was widely ridiculed for his lawyerly parsing of words. Nxesi is surely also going to be derided for claiming that although the state had spent more than R135m on non-security-related upgrades at Nkandla, none of this was spent to build the private residence of the president.

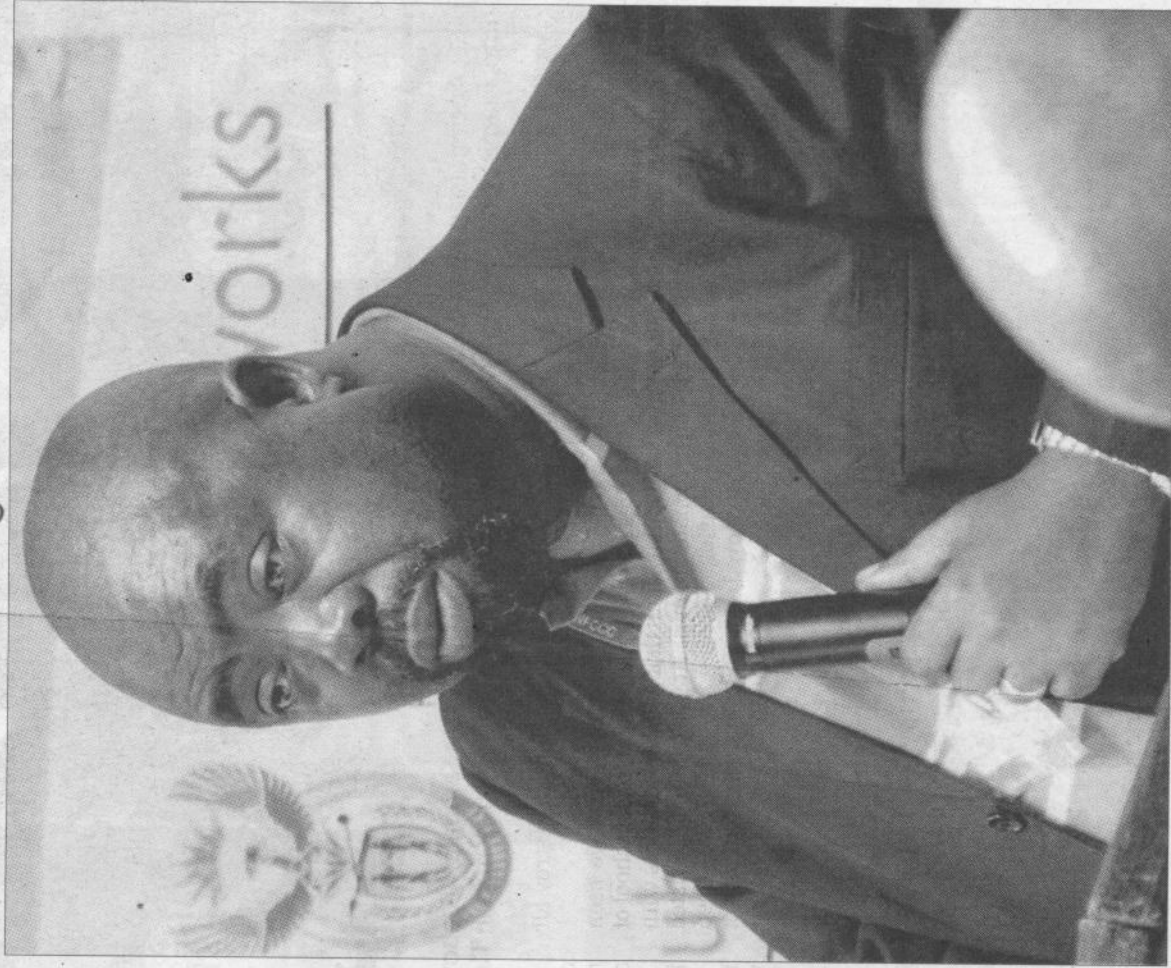
I will leave it to the comedians to mock Nxesi. Instead, I propose to parse his word in the best lawyerly fashion before determining whether it was lawful to spend over R200m on construction at the private residence of the president.

Of course, we do not know what is really contained in the report of the government task team set up to investigate the spending at Zuma's private home at Nkandla.

Nxesi is refusing to release the report for "security" reasons, which means we should treat his most recent statements about the matter as no more than allegations. But assuming these allegations are true, this is what I suspect Nxesi might have meant.

Nxesi originally claimed that the government only spent money on security upgrades at Nkandla. He now admits that his previous claim was false. According to Nxesi, the government allegedly spent just over R71m on "security upgrades" at Nkandla. Over R20m of this was allegedly spent on private security consultants.

(By the way, the use of private consultants suggests that our government is not very serious about Zuma's security. Who says these security consultants won't sell



PERSPECTIVE: Public Works Minister Thulas Nxesi's explanations on government spending at President Jacob Zuma's Nkandla home don't make sense at first glance, says the writer.

PICTURE: NOOBILE MBONAMBI

information about the security measures at Nkandla, to a foreign government or to the Boeremag? These consultants obviously know how to make a fast buck, so there are no guarantees that they will keep their special knowledge secret.)

Nxesi now claims that the government allegedly spent a further R135m on non-security related construction at Nkandla, but that none of it was used to build the president's private residence, or used on any of the houses that belong to him.

How can this be true? It can be true, first, if one adopts an innovative definition of "build" to include only

houses built from scratch.

This definition of "build" would exclude any cost related to the upgrade or extension of existing houses. For example, installing gold taps or electrically heated toilet seats in his residences, or adding a few rooms to an existing structure at Nkandla, would then conveniently not fall within the definition of "build".

Second, it can be true if one assumes that a "private residence" is only the main house where the president normally sleeps and works. Other houses in the Nkandla compound - where the family watches TV, or where his wives, children, extended

family sleep - would then conveniently not be viewed as his "private residence".

That would mean that some of the R135m was used to build many other houses at Nkandla for the private use and benefit of the president and his family, but these would then not be viewed as his "private residence".

Third, Nxesi might have meant that although R135m was spent to build several buildings at Nkandla and that many of them are exclusively used by Zuma and his family, these buildings do not "belong" to Zuma, because they were built on communal land and are not legally registered in his name at the deeds office.

It could also mean that he had ceded the houses to one of the Guptas or to FNB, which allegedly was kind enough to break the rules and register a bond over the property despite the lack of a title deed.

Does this clear things up? Perhaps not, as there is still the little matter of the Ministerial Handbook, the go-to bible of our ministers and MECs.

The handbook states: "The Department of Public Works will be responsible for making available general cleaning services in private residences used for official purposes. Members are responsible for all costs related to the procurement, upkeep and maintenance of private residences used for official purposes."

But, dear readers, there might be a loophole in the Ministerial Handbook, as it defines a "member" as any "minister, deputy minister, premier, member of the executive council (MEC) and a presiding officer/deputy presiding officer in Parliament". One can therefore argue that as far as the handbook is concerned, the president is not a "member" (no sniggers) and that the state is therefore not bound by this strict prohibition on the use of state funds for the procurement or upkeep of his private residence.

While it is obviously unconscionable for the state to spend R135m on upgrading the private property of the president, one might argue that the Ministerial Handbook does not prohibit this.

Just like the Bible sanctions the keeping of slaves, the Ministerial Handbook might sanction the use of public funds to enrich the president.

Perhaps the drafters of the Ministerial Handbook assumed that the president could be trusted not to waste R200m of public funds on his own comfort while many of our compatriots languish in poverty.

If one cannot trust the president (who earns a R2m salary and eats and lives for free) to put the interests of the poor above his own, who can one trust to do so?