

■ SET ASIDE

Arms deal commission 'not waste of time'

Setting aside of case was done on technicalities, room for appeal – expert

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and BALDWIN NDABA

CONSTITUTIONAL law expert and political analyst Professor Shadrack Gutto said the work done by the Seriti Commission of Inquiry into the arms deal was not a total waste of time.

This was despite yesterday's ruling by the North Gauteng High Court setting aside the controversial commission's report on the R60 billion arms deal.

Judge Willie Seriti was appointed in October 2011 and he made his final findings on December 23, 2015.

In his findings, Judge Seriti said he found no substantive allegations of corruption against politicians or other officials, especially former SANDF arms acquisition head Chippy Shaik and businessman advocate Fana Hlongwane.

However, Judge President Dunstan Mlambo ruled that the Seriti Commission failed to investigate allegations that Shaik had solicited a \$3 million (R45m) bribe for his personal use from the German Frigate Consortium.

The court also agreed that the commission failed to probe evidence that Shaik had instructed a French company, Thomson-CSF, to give business to his brother Schabir Shaik through his company Nkobi Holdings.

The court also accepted evidence that the commission failed to investigate claims that Schabir Shaik solicited a bribe of R500 000 from Thomson-CSF for the benefit of former president Jacob Zuma, allegedly in exchange for protecting the French company against criminal prosecution.

The application to set aside the findings of the commission was brought by advocacy groups Corruption Watch and Right2Know.

Reacting to the ruling, Gutto said the decision to have the matter set aside was based on technicalities within the investigation: "There were technical elements that influenced the court's decision. The court can only act on credible evidence."

He said the decision did not say there were no fraudulent shenanigans, but dealt specifically with particular traits of the arms deal. Gutto said there was still room to appeal the decision.

Political science professor at Unisa Dirk Kotze said future commissions of inquiry chairpersons could take a lesson from the court's reasons for setting the matter aside. "The commission was not a waste of time. Not many of the commissions have had a real impact and now this places the onus on the chairperson to verify all evidence set before them," he said.

Kotze said the decision did have major implications for the case against former state president Zuma: "Now he cannot use the findings of the commission. There are serious implications

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CORRUPTION WATCH

for a number of other people, including Thabo Mbeki, who was chairperson of the Cabinet committee that approved the Strategic Defence Package."

Calling the commission a "white-wash", the DA welcomed Mlambo's decision. "The Seriti Commission was a gross miscarriage of justice, which cost the people of South Africa over R137m.

"Even more worrying is the fact that accused and convicted Shaik was released from prison with a terminal illness, and finds himself alive and well 10 years later," the party said in a statement.

According to Shaik, the decision to have the findings set aside was interesting. "The truth takes a long time to come out but it does come out eventually," he said.

Corruption Watch in-house lawyer Caroline James said they would not be seeking a re-opening of an inquiry into the arms deal.

"We will, however, use this judgment as a precedent-setting one for future commissions of inquiry to ensure they're conducted in accordance with the standards as set out in this judgment," she said.

James said while the time and money spent on the Commission was huge, the effect of this judgment was that future commissions of inquiry could no longer act as whitewashing efforts.

"For this reason, the litigation around the Arms Procurement Commission has not been a waste," she said.

Good party leader and Public Works Minister Patricia de Lille welcomed the court's outcome.

"We have slipped, in the perception of many, from the high table of global ethics and morality to occupy a much lower position beset by allegations of malfeasance and maladministration, on the one hand, and continuing inequity and grinding poverty on the other," De Lille said.

R2K's Busi Mtabane said they welcomed the judgment.

"The Seriti commission ignored extensive evidence of corruption that is in the public domain.

The commission also refused to give witnesses and critics access to key information in their possession," Mtabane said.