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Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

## **THE NATIONAL ASSEMBLY**

### **QUESTION FOR WRITTEN REPLY**

#### **QUESTION NO. 1899**

**DATE PUBLISHED: 20 AUGUST 2021**

#### **Mr M J Cuthbert (DA) to ask the Minister of Trade, Industry and Competition:**

With regard to his reply to question 695 on 6 April 2021, (a) how are lawyers and/or legal firms chosen from the list of service providers, (b) what are the reasons that Ndobela Lamola Incorporated was selected to do so much work that they earned approximately 25% of all fees paid by the National Lotteries Commission between 2016 and 2020 and (c)(i) how was R5,7 million spent on the Mzukisi Makatse case, (ii) what are the full total breakdown of the costs associated with the case and (iii) what were the reasons for the costs having been so high? [NW2127E]

#### **REPLY:**

I have been furnished with a reply to the question submitted, by Ms Thabang Mampane, Commissioner of the National Lotteries Commission.

Ms Mampane's reply is as follows:

- (a) " The National Lotteries Commission is required to fulfil its mandate and ensure that the Commission performs its functions efficiently and effectively in compliance with this Act and any other applicable law. The NLC applies the principles of openness and transparency to advise the Minister on the efficacy of legislation pertaining to lotteries and ancillary matters, exercises its power to institute legal proceedings to properly discharge its functions and responsibilities and approach any court for any order the board deems appropriate for effective regulation and enforcement of the Lotteries Act.

In order to fulfil the above legislative requirements, law firms are chosen on the basis of expertise, skills, availability, capacity and urgency of the matters amongst others. The principle of rotation is always one that plays a part in which firm gets the brief, however the above criterion should not be viewed in isolation as capability of executing the work together with proven track record becomes key.

- (b) Ndobela Lamola Inc has been duly appointed through an SCM processes to serve on the NLC legal panel for two consecutive terms. The firm would have been issued with instructions that have overlapped to other financial years resulting in protracted matters that inevitably incur legal costs equivalent to the time spent on each matter. This firm specialises in conducting investigations and a bulk of the matters they have been instructed to do would commence as investigations and thereafter lead to labour and/or litigation matters which they would be requested to continue with such instructions due to it being a more efficient and effective manner of managing the brief.

Fees paid to Attorneys vary and include disbursements that would relate to travel and accommodation and those that would have been paid to other professionals outside the firm, for instance, in cases where consultants were utilised to advice in complex matters, the brief of junior and senior counsel and/or expert witnesses called in to testify. The notion of Attorney's fees needs to be understood in context of how legal practice works.

- (c)
- I. The Makatse matter commenced as a purely labour relations matter wherein a Disciplinary Hearing was held, thereafter the matter was subsequently referred to the CCMA situated in East London. The employee opted to abandon the CCMA process and lodged proceedings in the High Court situated in East London. The NLC defended and the matter is still ongoing. It is worthy to note that the NLC was successful in the High Court proceedings, and costs were awarded in favour of the NLC, such costs will be duly recovered. An application for an appeal was subsequently lodged by Makatse and the outcome of those proceedings are still pending.

- II. Legal fees were spent on chairperson and evidence leader's fees, attorney's fees, counsel fees both junior and senior counsel, expert witnesses, travel and accommodation for trial that was held in the East London High Court for 5 days that included over 10 witness and counsel travelling outside of East London to attend the trial. Numerous postponements that were outside of the NLC's control would have contributed to the escalation in cost.
  
- III. The history of the Makatse matter is articulated in (i) above which informs reasons for costs incurred. Costs related thereto were in line with reasonable costs associated with professional services rendered for successful pursuance of instituting legal proceedings to properly discharge our functions and responsibilities in the best interest of the National Lotteries Commission. The Commission was successful in the High Court proceedings, and costs were awarded in favour of the NLC, such costs will be duly recovered."

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