

Reserve Bank 'aims to get rid of protector'

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The Reserve Bank was attempting to remove Public Protector Busisiwe Mkhwebane from office, her legal team alleged in the High Court in Pretoria on Wednesday.



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Mkhwebane's advocate, Paul Kennedy, made this explosive statement in response to earlier argument by the bank's advocate, David Unterhalter.

Unterhalter had said "it would be for other branches of government, the legislature in particular, to consider what to do" if the court declared Mkhwebane had abused her office in her investigation into and subsequent report on the Absa-Bankorp matter.

The Reserve Bank is seeking such an order, as well as a costs order against Mkhwebane in her personal capacity.

The public protector's AbsaBankorp report has given rise to a bitter battle between her office and the Reserve Bank. The Bank, Finance Minister Malusi Gigaba and Absa have applied to have the report's findings set aside.

Kennedy said the Bank envisaged consequences flowing from the order, namely, that "the court should be used to prepare the ground for, presumably, the public protector's removal".

That Mkhwebane might be guilty of administrative irregularities and factual inaccuracies, as alleged, did not mean she had acted in bad faith, he said.

"If she has done something wrong, she must be found to have done something wrong, not to have abused her office."

In failing to disclose in her report her meetings with the Presidency and in failing to keep transcripts of these meetings, it was "hypothetically a possibility that she was covering up the meetings " but there may have been human oversight," he said. "Mistakes do happen, but these are not necessarily mala fide."

The Reserve Bank's suggestion to the contrary was an "unjustified attack" on Mkhwebane's personal integrity.

Conduct inconsistent with the constitution did not necessarily constitute an abuse of office, said Kennedy.

Unterhalter hit back, saying Mkhwebane's treatment of key issues demonstrated bad faith.

Mkhwebane had provided no explanation of her meetings with the Presidency and State Security Agency in her responding affidavit, despite an explicit request to do so.

"Matters were raised with the Presidency and State Security Agency, which should never have been canvassed," he said.

Mkhwebane had "evidently discussed with the Presidency amending the constitution to take away the Reserve Bank's primary function, a topic that bore no relation to her investigation", bank general counsel Johannes de Jager said.

Notes of the meeting with the State Security Agency included a discussion of the Reserve Bank's vulnerabilities.

The bank sought a personal costs order against Mkhwebane because she had lied in papers about her April meeting with the Presidency, claiming she had become concerned in that meeting that her remedial action might usurp the president's powers, said Unterhalter. Yet, the remedial action in her preliminary report of December had been careful not to do this - a precaution commended by the Presidency in a February letter.

This raised further questions as to what was discussed.

The matter continues.

Source: Business Day