

Perspectives

on KwaZulu-Natal

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MEC not guilty of being in possession of KwaZulu Government shotgun

KwaZulu-Natal's Minister for Safety and Security, Local Government and Traditional Affairs Nyanga Ngubane of the Inkatha Freedom Party was acquitted in the Pietermaritzburg Magistrates Court in June on charges relating to a raid at his Bulwer homestead in 1999.

The controversial raid by the national Special Priority Crimes Unit attached to the office of the National Director of Public Prosecutions Bulelani Ngcuka took place some six weeks before the 1999 general election. The minister was not at home at the time.

Ngcuka's office justified the operation by announcing immediately that three allegedly illegal firearms and two IEC bar-code scanners were recovered from the homesteads of Ngubane and IFP councillor Gamuntu Sithole.

Unsurprisingly top IFP leaders refused to accept the legitimacy of the raid. Outraged by the operation, IFP national chairman, Lionel Mtshali described it as an "overt political act" which would "precipitate tensions between the ANC and the IFP in the run-up to the elections". Announcing that Ngubane would seek legal advice on the issue, Mtshali said: "The ANC-led government is behaving exactly like the apartheid security police. Their actions are characteristic of petty despots." Ngubane described the raid as "malicious and politically motivated". He said that his family were traumatised by the raid; "Why was it necessary to raid my home in the middle of the night as if I were a common criminal?"

IFP members claimed, contrary to Ngcuka's reports, that two handguns, which were found at Sithole's house, were licensed while a rifle that was recovered was "rusted and badly damaged". The shotgun found at Ngubane's house, the party stated, belonged to Gray Security, the company that was contracted to guard the minister's household.

The scanners were found soon after the raid to have been issued by the Independent Electoral Commission to Sithole's daughter and contained no data. However, the investigations relating to the firearms continued.

But for Ngubane the matter was not easily resolved. Shortly before the elections, Minister Ngubane, his cousin Sigwili Ngubane and Sithole handed themselves over to officials from Ngcuka's office by arrangement and were released on warning after

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appearing in the Pietermaritzburg Regional Court.

Fifty-three-year old Sithole was tried separately and acquitted in November 1999 for the unlawful possession of a gun. The weapon in question was described by his lawyer Petrus Coetzee as a "rusted" barrel of a G3 rifle and was found in a car wreck on his property. Finding Sithole not guilty, Magistrate Fred Heuer said that anyone could have placed the weapon in the vehicle.

The trial of Minister Ngubane and his 35-year-old cousin was delayed by several postponements until the first evidence was heard on June 4 this year. The two were charged on two counts: One of theft for allegedly stealing a shotgun that belonged to the State between December 7, 1995 and April 15, 1999. The second was a charge of being in the unlawful possession of the shotgun. With regards to this count, the State charged the two with an alternative count of failing to safeguard the weapon. Both men pleaded not guilty.

The investigating officer of the case Senior Superintendent Wentzel Diedericks told the court that his team acted on information that had been given to the Scorpions in Pretoria about the existence of various weapons that were being kept in the Bulwer area. The informant stated that the weapons prevented the police from carrying out their work. Diedericks led the operation to the Bulwer area at about 2 am and after leaving one team at the Ngubane household he accompanied another to Sithole's property. He said the operation was by no means covert with the investigators travelling in police vehicles with their blue lights on.

One of the Priority Crimes' unit members who carried out the search at Ngubane's house, Superintendent Jannie Herholdt said that the shotgun in question was found hanging on the wall in a room used by Sigwili Ngubane. The room was in one of about 15 dwellings on the property and was not part of the main house. The investigators also discovered 14 rounds of ammunition for the shotgun in the room. Several other firearms were also found on the property, which is guarded by security guards and members of the police VIP Protection Unit. However, valid licences were produced for all of them.

The day after the raid Ngubane's wife and a policeman tasked with guarding Ngubane went to the Bulwer Police Station inquiring about the firearm and ammunition that had been recovered during the raid, according to evidence given in court. The police returned the ammunition, but instructions had been given for the shotgun to be sent for ballistics testing.

Ngubane's wife also produced a letter of authorisation that stated that the shotgun was an official firearm belonging to the former KwaZulu Government. It had been issued to Minister Ngubane together with 20 rounds of ammunition "for the purpose of protecting KwaZulu Government property". The letter also stated that Mpumelolo R. Shezi was authorised to be in possession of the weapon and the ammunition and that he had been properly training in the handling of a firearm.

The ownership of the gun as stated in the authorisation letter was confirmed somewhat by witnesses who told the court that checks on the firearm register found that the shotgun in question was registered as a State firearm and that it had been transferred to Ulundi in 1988.

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Commissioner Abrie Burger, who was head of the police's Central Firearm Register until the end of 1999, told the court that attempts were made in 1995 to recover firearms, such as the shotgun in question. The efforts followed a notice that appeared in the *Government Gazette* on September 22, 1995. The notice states that arms, ammunition and rifles which fell under the executive authority of the governments of the former Republic of South Africa and the former self-governing territories were distributed to certain individuals "mainly for purposes of protecting State property or self-defence". The individuals to whom the guns were distributed were not members of organised State bodies such as the police, defence force or correctional services. The notice stated that authority given for the possession of such weapons was withdrawn. The arms and ammunition had to be surrendered by October 31, 1995 to any police station. The notice also states that anyone who did not hand the firearms in before the deadline would be regarded as being in the unlawful possession of the firearm and could be liable to prosecution.

Burger said that the weapons were not returned to the State as quickly as authorities had hoped. After the deadline, he was instructed to head a project to retrieve weapons that had been assigned to traditional leaders in KwaZulu-Natal.

Members of Burger's task team assigned went to Ulundi once a week during November 1995 and assisted the traditional leaders by expediting licences for firearms bought from weapons dealers in exchange for the return of the State firearms. He said that in November 1 607 applications were made for licences by 1 315 individuals and 995 licences were approved. In addition 67 applications were turned down and 545 were given to the police because they required additional information. Burger said that he did not know how many weapons were recovered, but there were more than approved licences. The project was stopped on instruction at the end of November. Burger said that he had several discussions about the project with Minister Ngubane and believed that he fully understood the legislation and the processes that were required.

As part of the Special Priority Crimes unit's investigation into the shotgun that was the subject of Minister Ngubane's court case, Diedericks told the court that he attempted to contact Shezi after being shown the permit but was unsuccessful. He spoke to the policeman who had accompanied Ngubane's wife to the Bulwer Police Station but the SAPS member ran away while making a statement. He also discovered that Shezi had made a statement to Commissioner Hamilton Ngidi who is based with the police in KwaZulu-Natal.

Ngidi told the court that he had been approached by Minister Ngubane to interview three people, including a person he remembered as Shezi. He said that he decided of his own accord to take statements from the three, but could not recall the details. Ngidi gave the statements to a policeman who accompanied the three and who was a guard for Minister Ngubane. He did not keep a copy of the statements and said that he was not aware that the minister was a suspect in a matter relating to firearms.

Immediately after the State closed its case, defence advocate Shane Matthews applied for an acquittal with regard to Minister Ngubane. He said that there was "not a shred of evidence" against the accused. State prosecutor Tarla Jeena opposed the application saying that although Minister Ngubane was not present during the search, the letter of authorisation was in his wife's possession. She said that the minister should be called to

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answer the allegations.

Magistrate Kevin Leat ruled in favour of the defence and acquitted Minister Ngubane. He said that there was no direct evidence that the minister had handled the letter of authorisation and that there was complete doubt as to who had issued the authorisation.

However, Magistrate Leat said he was suspicious to a degree about several issues. These included the non-availability of Shezi, the disappearance of the policeman who guarded Ngubane's house while giving a statement to the police and the Minister Ngubane's approach to one of the province's most senior police officials to take statements. The magistrate said that he suspected it was such "little things that persuaded the state to prosecute in the case".

Magistrate Leat said that it is likely that a high profile figure such as Ngubane would not have physically received the firearm himself and there is no proof that he exercised any control over the firearm. The magistrate said that he could not fault Minister Ngubane for not seeing to it that the particular firearm was not returned to the government in October 1995.

Responding to his acquittal, Minister Ngubane said that the outcome of the case gave him faith in South Africa's judicial system. He also said that he was happy that the ballistics tests had been carried out on the firearm and had revealed that it was not used to commit a crime.

Sigwili Ngubane was subsequently also acquitted on the charges. Magistrate Leat said that although the accused proved to be a "shocking" witness, the version that he provided was reasonable and probable. As a result of his doubt about Sigwili Ngubane's guilt, the magistrate said that he was required to release him.