

Fraud whistle-blower takes MTN to court

By [Graeme Hosken](#)

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MTN SA, still reeling from the Iran cellphone scandal, is embroiled in a new bruising battle - this time involving its legal department and a retrenched whistle-blower.



The dispute between MTN and its former senior legal adviser, Violet Magagane, had been kept under wraps until this week, when the Johannesburg Labour Court heard claims of large-scale fraud involving more than R12m.

Central to the dispute is Magagane's claim that she was victimised and retrenched for blowing the whistle on alleged fraudulent transactions involving MTN's chief corporate services officer, Robert Madzonga.

The details of the alleged fraud are contained in an explosive forensic audit by PriceWaterhouseCoopers.

Magagane's employment at MTN came to an abrupt halt last year after she raised the alarm about Madzonga's alleged signing of 78 invoices from consultancy Nozuko Nxusani Attorneys.

The law firm was hired for work apparently done by the MTN legal department.

A 'sham'

In court yesterday, Magagane described her retrenchment as a "sham" and "camouflage" for getting rid of her for "spilling the beans".

MTN's advocate, Martin Brassey, dismissed her claims.

"Your motive is questionable. You heard about the retrenchments and proceeded with these actions," he challenged.

"You claim there was no proper consultation but you cannot deny that, whether the correct procedures were followed or

not, you would have been retrenched."

Instead of following proper grievance channels, including blowing the whistle to MTN's external auditors, Deloitte and Touche, Magagane had spoken to a senior staff member, Brassey said.

"The person you reported this to has friends in PriceWaterhouseCoopers. He wanted you to go this route because he was pursuing political battles within MTN."

Brassey said Magagane had not gone to MTN business risk management group executive Shauket Faki, to whom the PriceWaterhouseCoopers report was addressed and who is responsible for the company's whistle-blowing system.

"The only sham is what you have done," he said.

Magagane countered by saying that Faki had sat on the audit report.

"It was not in his interest to help," she said.

Dozens of allegedly dubious invoices listed

The draft audit report - compiled in August last year, after Magagane had lifted the lid on the alleged fraud - lists dozens of allegedly dubious invoices signed by Madzonga.

The report says that the invoices were mainly for drafting agreements, which Nozuko Nxusani was allegedly not contracted to do.

It says Madzonga was not involved in day-to-day legal matters and had no reason to appoint external attorneys for work usually done by internal legal advisers. There was no evidence of work done by the firm and there should have been more than one signature on the invoices, PriceWaterhouseCoopers said.

The document shows that MTN paid R12.2m to Nozuko Nxusani Attorneys between March 2010 and March 2011.

"The description of the services rendered is vague and lacks details . the date of the services rendered and the time frame in which it was completed is unrealistic; the date the work was performed was the same date the invoices were submitted and some invoices totalling R975 840 were possibly duplicated," the report says.

According to PriceWaterhouseCoopers, Madzonga flouted MTN procurement policy by failing to say why consultants were needed.

Lack of detail in invoices

The report raises concerns about Nxusani having been the only person in her firm who did any work for MTN, that invoices were issued before work was done, and that the hourly rate Nxusani charged varied from R6246 to R168 358.

"Clearly Ms Nxusani needs to explain the lack of detail contained in the invoices."

The report found that Madzonga:

- Knew Nxusani from university;
- Introduced her to MTN in 2001 with the intention of developing a black-owned law firm;
- Referred 62% of work to her despite his department having the capacity to deal with it;
- Did not thoroughly check the accuracy of invoices;
- Approved invoices based on trust;

- Acknowledged that the hours billed were incorrect; and
- Did not notify MTN legal advisers about outsourcing their work because he did not want to "hurt their feelings".
- The report is a damning indictment of the lack of oversight in the MTN legal department.

The auditors, having interviewed Nxusani, found that she had memorised invoice details and relied on memory when submitting invoices.

Report challenged

It also found that the processes followed to appoint Nozuko Nxusani were different to those used to appoint other legal firms.

Brassey challenged the PriceWaterhouseCoopers report, saying it was only a draft, had not been properly investigated and "was not worth the paper it was written on".

MTN SA spokesman Bridget Bhengu said yesterday that the signatory specific to the invoices was authorised to sign them by internal policies.

"On receiving the PriceWaterhouseCoopers report, MTN implemented its [recommendations], establishing an internal inquiry to test the allegations.

"The individuals were called to appear before the inquiry and presented evidence to refute the allegations.

"Disciplinary action was taken against the individuals concerned. As per standard practice, MTN reviewed the services and did not renew the contract."

Bhengu said Nxusani's services included legal advice, vetting of contracts and writing opinions.

On Magagane's allegation that she was retrenched because she blew the whistle, Bhengu said: "In line with MTN's continued efforts to maximise efficiencies, MTN retrenched more than 700 employees during 2011, including the individual who reported the alleged misconduct."

Source: *The Times* via I-Net Bridge

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