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Former national health laboratory CEO ordered to cough up R22m for questionable contract approvals

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Joyce Mogale (Simone Kley, Netwerk24)

- **Joyce Mogale has lost her Labour Court case for unfair dismissal from the National Health Laboratory Service.**
- **In addition, she was ordered to pay the public entity about R22 million for losses related to one of three questionable commercial contracts.**
- **The conduct of Mogale and former CFO Sikhumbuzo Zulu "undermined the whole framework and structure of tender law principles", Judge Connie Prinsloo found.**

Former National Health Laboratory Service (NHLS) CEO Joyce Mogale has been ordered to pay about R22 million to her former employer in a Labour Court judgment which rejected her unfair dismissal claim.

The NHLS has hailed the order as a "victory for governance" after money was lost as a result of her conduct.

Mogale and the estate of former CFO Sikhumbuzo Zulu – who died before the proceedings were concluded - approached the court after they were dismissed in 2019 for irregularities and a failure to fulfil their duties related to three procurements worth about R200m.

They were found to have exceeded their delegations of authority and of irregularly appointing and paying service providers.

This after the board became aware of irregularities in February 2017, whereafter Mogale and Zulu were suspended.

It related to the following three commercial contracts:

- Without the board and far above the limit of her authority, Mogale approved a R72-million contract – which was then upped to R79 million- for Afrirent vehicle leasing.
- A R25-million Blue Future contract for IT equipment, which the NHLS said Mogale increased to R83 million for other goods not related to the tender, was approved. The initial amount authorised by the board was disregarded.
- Mogale signed a R6.5-million addendum to the DV8 wide area network contract without tendering and without specifications for the goods that were to be purchased.

Labour Court Judge Connie Prinsloo said in her judgment that the case showed the importance of having skilled, competent and qualified people employed in key positions and how "devastating the consequences are if a CEO or CFO is not up for the task".

"Ms Mogale as the CEO and Mr Zulu as the CFO both presented that they were duly qualified, experienced and competent to perform their functions and they contractually agreed that they would perform their functions with the necessary diligence, care and skill as may reasonably be expected by the employer having due regard to the nature of the functions."

"The only thing they managed to do effectively and diligently, was to collect their salaries."

Mogale was ordered to pay the NHLS R 22 135 346.70 for the Afrirent losses, while Mogale and Zulu's estate were held jointly liable for the R342 545 for the DV8 debacle.

In terms of Blue Future, Prinsloo found there was no convincing evidence to show that the NHLS suffered damages, nor the quantum of the damages.

The judge said the pair's conduct undermined the whole framework and structure of tender law principles, and added that Mogale's conduct specifically showed she lacked the capacity to hold the position of CEO.

Board chairperson Professor Eric Buch said on Tuesday that the NHLS' debt to its suppliers at the time of Mogale and Zulu's suspensions was in excess of R800 million, which "outstripped its paltry cash balance".

"Since then, a diligent effort has steadily turned the NHLS around. The NHLS now has substantial reserves and its staff members have received reasonable annual increases, while annual tariff increases have remained below 5%."

In 2017, the NHLS board also laid criminal charges related to Blue Future, which resulted in Mogale being charged, together with former head of supply chain management Graham Motsepe; manager for contracts and tender compliance Mthunzi Mthimkulu; legal manager Sibusiso Mthenjane; and owner of Blue Future, Pierre Petersen.

They are on trial in the Palm Ridge Magistrate's Court, although Pretorius has already been found guilty of fraud in his tender submission to the NHLS, spokesperson Mzi Gcukumana said.

Buch remained optimistic that people would still be charged for the Afrirent and DV8 matters.