

REPORT ON THE SUDDEN EXIT FROM THE ACTING POSITION OF
CHIEF EXECUTIVE OFFICER AT THE SOUTH AFRICAN FOOTBALL
ASSOCIATION

A Report Styled as: "The Mokoena Report".

And themed "Our lives begin to end the day we become silent about things that matter"
by Dr. Martin Luther King Jnr

Compiled By

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1. Introduction

Mr. Russell Paul, the Acting CEO during the period September 2018 and October 2019 resigned to take up employment at the Qatar World Cup Organizing Committee. The notice period of 30 days was rather short for a CEO position replacement. It takes a while to recruit a permanent CEO for an organization of the size of the Association. For this reason, the Association was left with no option but to identify an internal candidate to act whilst the recruitment process of a permanent CEO was under way.

On the 23 October 2019, the NEC had met with the Minister of Sport, Arts and Culture, Mr. Nathi Mthethwa to discuss the proposed Football Indaba. After the Minister had left, the NEC deliberated on the vacancy that was going to be created when Mr. Paul had left by the end of the month. After deliberation, the NEC requested me to consider replacing Mr. Russell Paul and to assist the President with the recruitment of a permanent CEO. It is important to mention that the President had already canvassed the idea (of Acting CEO) with me days before the NEC meeting. I had rejected the idea due to my business commitments. However, after the request by the NEC, I indicated that I would be prepared to reconsider my position albeit after consulting with my key stakeholders such as my shareholders, co-directors, bankers and key clients.

After consulting with my stakeholders, I confirmed my availability to assist with the Acting CEO role to the President during the weekend of the 26/27 October 2019. Indeed, I started acting on the 01 November 2019.

2. Objectives of the deployment

My understanding of my deployment during the NEC deliberations was three-fold as follows:

- To assist with the further development and the implementation of a Financial Recovery Plan after we had recorded a loss of R72 million at the end of the financial year in June 2019.
- To assist the President to recruit a permanent CEO as soon as possible. I had indicated that my availability will be for a short period of approximately 3 or 4

months. I had estimated that we would have found a suitable candidate by the end of this period.

- To carry out the normal duties of the SAFA secretariat/ administration.

This report will discuss the issues around the appointment of a permanent CEO and the subsequent sudden exit of the Acting CEO. A report in terms of the first and the last objectives is submitted together with this report but on a separate cover.

3. Issues related to the appointment of a permanent CEO

During January 2020, I prepared an advert for the CEO position in consultation with the Human Resource Department. The closing date for applications was set to be the 28 February 2020. Unfortunately, the President was away with CAF/FIFA business during the early part of February and therefore we could not advertise it before he could authorize it. On his return, we discussed the advert and he suggested that we should not advertise but we should rather go for head-hunting. A month or so later, I enquired if he had identified any candidates for consideration. The President advised me that he had identified about two candidates. However, he did not have their CVs as yet.

Recently, when we discussed my exit on the 15 April 2020, the President confirmed that he has three CVs. I was concerned that I had to exit on the same day and there was no one to hand over to. Therefore, I enquired with the President who was going to act. He advised me that Mr. Gronie Hluyo would act without getting the allowance of acting as a CEO. Whilst this could be a saving for the Association, it is regrettably violating the organization's Human Resource and Remuneration policy. Nevertheless, Mr. Hluyo was not appointed as an Acting CEO, but he was appointed as a Supervisor/ Co-ordinator. These position(s) do not exist in the organogram of the organization.

I have noted that the President also requested members of the NEC to submit CVs of potential candidates for the position on the 20 April 2020. As we are all aware, this confirms that SAFA does not have either a permanent CEO or an Acting CEO as I write this report. SAFA is a national organization without a head of administration.

It is important to mention that I am not raising these issues because I have sour grapes as the President requested me to vacate the Acting CEO position on the 15 April 2020. Some of my colleagues would know that I exited the jobs market 22 years ago. I am raising these issues because “our lives begin to end the day we become silent about things that matter” (Dr. Martin Luther King Jnr). More so, I have a fiduciary duty to the Association as a member of the NEC.

The position of Chief Executive Officer or Secretary General is a (constitutional) position imposed by the Constitution of the Association. It is very important to the organization. This means that, at the moment, SAFA is violating its own constitution by not having a permanent CEO or an Acting CEO. It is not an issue who this person is. There should be always a CEO (or an Acting CEO) and a President (or an Acting President) at SAFA. There cannot be a vacuum for these positions.

Furthermore, the President does not have the power or authority to appoint or dismiss a CEO. Clause 37.3 of the SAFA Statute reads as follows:

“The President will recommend the appointment or dismissal of the Chief Executive Officer / General Secretary, the Deputy Chief Executive Officer: Football and the Deputy Chief Executive Officer: Business and Finance to the NEC “.

On the 15 April 2020, the President dismissed an Acting CEO (who happens to be a Vice President of the Association) on a rationale of saving costs without a mandate or authority from the NEC. The President did so without consulting any member of the NEC. He removed the Acting CEO on his own, without authority or mandate whatsoever. By doing so, the President acted beyond his authority (*ultra vires*) of his mandate as prescribed by the SAFA Constitution. Therefore, the President violated Clause 37.3 of the SAFA Statutes.

The authority to appoint or dismiss a Chief Executive Officer, the Deputy Chief Executive Officer: Football (COO) and the Deputy Chief Executive Officer: Business and Finance (CFO) lies with the National Executive Committee. Clause 34.1.8 of the SAFA Statutes reads as follows:

“The National Executive Committee shall appoint or dismiss the Chief Executive Officer, the Chief Operating Officer and the Chief Financial Officer based on the necessary professional qualifications, applicable law and principles of corporate governance”.

It is very clear that the President is well aware of the responsibility of the NEC as prescribed by the Constitution, namely, of appointing or dismissing a CEO. His circular of the 20 April 2020 confirms this fact. In the circular, the President invites NEC members to submit candidates for the vacant CEO position. He further suggests an ambiguous process of appointing a CEO whilst the country is under Lockdown. The process suggested by the President is flawed and un-procedural.

Questions that arise out of the President’s action of dismissing an Acting CEO are:

- Why did the President act alone in removing an Acting CEO of the organization?
- Why did the President ignore consulting the NEC for a such a major decision?
- Why is the President only consulting the NEC five days or so later, after dismissing the Acting CEO?
- Why is the President suggesting a new process of getting names from the NEC? What happened to the headhunting process?
- It seems from the 20 April 2020 correspondence that the President would like to finalize the appointment of a permanent CEO during the Lockdown period. Why is there all of a sudden, an urgency to appoint a permanent CEO (when an Acting CEO was in place) during the Coronavirus Lockdown period? Is this appointment of a permanent CEO during the Lockdown not going to bring back the costs of the CEO position the President was eliminating in the first place?

These questions need answers. It is very clear that the President is the only decision maker on this matter. He has dismissed an Acting CEO because of costs and cashflow reasons; He has changed a recruitment process; He can replace a CEO as and when it suits him, regardless of the reasons of removing a previous CEO; It is my strong contention that the President is not mandated and he is not authorized to take such decisions. He is taking these decisions, deliberately, to achieve his own personal interests or for his own personal reasons.

Below, I relate my sudden exit as Acting CEO as mandated by the NEC on the 23 October 2019. This could assist to explain the rationale of some of the above decisions.

4. My sudden standing down/ exit from Acting CEO position

4.1. My Acting CEO Contract

During the meeting of the NEC in October, I had indicated that due to my business commitment, I would be available for 3 or 4 months to assist. When we negotiated the details of the contract with the President, I added another month and made it 5 months, i.e. from November 2019 to March 2020. We signed the contract only in February 2020 because of the hectic programme of the President. Due to the Lockdown, we last met with the President on the morning of the 23rd March. We therefore could not discuss the end date of my short contract before we left the office.

However, given the volume of work, the poor progress with the recruitment of a permanent CEO, the issues around the Coronavirus, the meetings we had planned and the general SAFA programme, I was prepared to continue until a permanent CEO was employed. The opposite is also true for me. If we had recruited a permanent CEO before the end of March and we were all comfortable that the hand-over process is done and dusted, I would have been happy to leave earlier than the March date. Nevertheless, we continued to work beyond the 30th March until the 15 April. We were dealing with major issues of the Association such as FIFA directives, a Constitutional Court case with Fli-Afrika, a Futsal case at CAS and applications for funding from Government in respect of the Coronavirus Lockdown period and other essential business of the Association. I assumed that we would sort out the contractual issues later (as was the case when I started) as the important thing is to attend to the urgent and essential business of the Association.

Therefore, although the end date on the contract was the 30 March 2020, neither the President nor myself had indicated that we should discontinue the contractual relationship. Instead, we continued doing the Association business as usual. There cannot therefore be an

argument that the contract had expired as the Association has communicated to the public. This statement is false and incorrect.

Once again, I have to stress that the issue raised is not about me keeping employment or demanding a notice and therefore an additional payment from the Association etc. I am not interested in those at all. I am raising the issue because I am concerned about the violation of the Statutes and corporate governance at the Association. I am concerned that the President is making unauthorized decisions and he is acting beyond his powers. I am also concerned that it is a dereliction of duty to remove an Acting CEO and not, through a recommendation to the NEC, appoint another Acting CEO who can take charge of the administrative responsibility of the Association, particularly during the coronavirus pandemic. The Association needs its leadership the most during such times. The President will probably argue that he has appointed Mr. Gronie Hluyo to be a “Supervisor / Contact person/ Coordinator”. I will argue that the Association has no such positions in its organogram. Once again, this point demonstrates that the President makes unauthorized decisions. It is the prerogative of the NEC to approve the organogram (organizational structure) of the Association. The President does not have the powers to create new positions in the organogram without the approval of the NEC.

4.2. Telephone conversation of the 15 April 2020

On the 15 April 2020, I received an email from the CFO, Mr. Hluyo reminding me that my contract had expired on the 30 March and therefore I had to discuss this matter with the President and revert to him. I called the President immediately to discuss. During the telephone conversation, the President instructed me that I should leave the office on the 15th of April. The President had mentioned to me the economic recession in the country and how our sponsors such as SAA, SASOL, Outsurance, SAB (beer not sold during Lockdown), Burger King sold to new owners etc. would struggle and eventually pull out of our Sponsorship Agreements. He further mentioned that the CFO is struggling with cashflow. Therefore, he was of the opinion that I should finish my acting role at SAFA on the 15 April (Mid-month) since there was not much happening any way, given the Coronavirus Lockdown period. He suggested that the CFO could pay me half my monthly salary. I reminded the President that it was the 15th on that day. He said he did not realize it but, in any case, it is okay that I finish

on the 15th. I accepted his proposal and enquired about the person to whom I will hand over. He then mentioned that the CFO, Mr. Gronie Hluyo would act but without an acting allowance. I confirmed that I will write back to Mr. Hluyo and confirm our discussion which I did a few minutes later.

As they say, the rest is history. I have already explained my view of this action above. It is up to the members to be “their own judges”.

4.3. Events and correspondence leading up to the 15 April 2020

I will relate the discussions that were taking place between me and the President with effect from the 01 April to the final telephone conversation on the 15 April 2020. I have the record of most if not all discussions either on email or on what’s up chats.

4.3.1. On the 01 April 2020, we chatted about complaints from the Regions about grant payments. The President forwarded me some comments from the Regions that they were pulling hard. The Lockdown period was going to make things worse. I advised the President that we had prioritized to pay Banyana Banyana for that week. We would pay the Regions the following week, once we had received some payment from one of our sponsors.

4.3.2. On the 05 April 2020, the President sent me a message asking about plans for staff reductions. I responded immediately and advised that we are cutting salaries from R55m to R33m. This was supposed to have been done much earlier at the beginning of the financial year, but nothing had been done. The President then responded that “all out of contract, month to month and part time staff must be terminated. Later on, on the same day, I sent the President a draft budget for the 2020/2021 year, indicating the reduction in expenses of R106m, including R20m for staff. I indicated that by that stage, I had not worked out the make-up of the R20m staff reduction. I promised to come back to him later. I also indicated that we would need NEC approval for some of the decisions, e.g. staff retrenchments and changes in benefits for staff, players and the NEC members etc. He suggested I round-robin the NEC for decisions.

4.3.3. On the 07 April 2020, a day later, the President sent me a further message indicating that “we cannot justify paying full salaries for staff (sitting) at home”.

We should “either let them take leave or reduce salaries as (other) companies are doing...” I advised the President that I had instructed the Human Resource Department to come up with a recommendation on staff remuneration during the Lockdown period. I also enquired if he wanted us “to implement the salary cuts this month, April?”. He responded by saying that “are we (not) going to run out of money?”

Later on, on that same day, I send the President a detailed plan on staff reduction, indicating the breakdown of the R20m that we have to reduce. (Because of the sensitive information about personal details of staff, I will make this document available at an appropriate time). I pleaded with the President to give me his opinion and advise. I even commented that I will be very flexible to accommodate his suggestions. The President never responded.

4.3.4. On the 13 April 2020, at 20h56, the President send me a message that “he will ask the NEC to approve cost cutting measures and he would like to discuss (same with me) the following day”.

4.3.5. Indeed, on the 14 April, he called me. He discussed the general state of the economy and the developments at the SAA. I prompted a discussion on the staff reduction plan that he had requested. In short, the President suggested that, as a VP of the Association, it might not be a good idea for me to implement the staff reduction plan. It would be better if a permanent CEO would implement the plan and see it through. I agreed with him, particularly on the latter point. We never got to discuss the cost cutting measures he would submit to the NEC.

4.3.6. The events of the 15th April have already been outlined above.

From this narration above, the NEC members can make their own conclusion. However, I have deduced and concluded the following:

- The President removed me on the 15 April 2020 because he did not like or approve of the staff reduction plan that I had submitted to him on the 7 April 2020. However, he never indicated his decision to me until the 14 April when he advised me that he prefers that a permanent CEO should implement the plan.
- The important point to note is that he, and only him, disapproved the Acting CEO’s recommended plan. The NEC was never involved in this matter despite the fact that I

had reminded him that we need to consult with the NEC. He completely ignored my advice to consult the NEC.

- He called me on the 20 April to discuss the circular on the appointment of the CEO. During the same conversation, he informed me that he had instructed Mr. Hluyo to implement the staff reduction. In other words, he has proceeded to implement “his staff reduction plan” through Mr. Hluyo. One staff member called me to confirm that he had received a “retrenchment letter”. This plan has neither been discussed nor approved by the NEC. Once again, the President is implementing what he, and him alone, thinks it is right for the organization. Corporate governance is again out of the window. Matters of staff reduction are a responsibility of the NEC. However, in this case, the responsibility of the NEC has been taken over the President.
- Unfortunately, I have to conclude that the President has once again, acted beyond his powers. He has implemented a plan which has not been approved by the NEC.
- The difficulty I had with the “instruction” of reducing staff in April, when we were already in April, is that it is going against the provisions of the Labour Relations Act. Moreover, we were going through a Coronavirus Lockdown period and staff was at home and they could not be consulted accordingly. I had spelt out the implications of Section 189 of the Labour Relations Act to the President. He insisted that we should proceed and “let them take us to court”. I could not accept this instruction and I am convinced that this is the point where the camel’s back broke. I was and I will not be prepared to knowingly go against the law of the country. By giving me this instruction, the President was wittingly instructing me to carry out an unprocedural or unlawful process of rationalizing staff. From the above, it seems that he has proceeded in any case to carry out this unprocedural or unlawful process, regardless of the advice I provided.
- The President would perhaps submit to the NEC that I, as Acting CEO, was supposed to give notice to terminate some of the expiring contracts of the staff. The challenge is that although we were discussing cutting costs from time to time and during January/ February, we never discussed staff reduction as an urgent, a matter of life and death issue. In fact, during January/ February, we were discussing employing at least two additional staff members, e.g. a Director of Women Football and a Director

of Schools football. The President had brought on board Mr. Mxolisi Sibam, a member of the NEC and the chairperson of the SAFA Audit Committee to do some internal audit work during late February/ early March. I will discuss this point in more detail below. The urgency of reducing staff in April and under the Lockdown period took me by complete surprise.

I have come to the conclusion that the President did not approve or support the Plan I had submitted to him. The question I am asking myself is, is it then right for the President to dismiss an Acting CEO if he does not agree with his/her plan? No matter how irrelevant the plan can be? The SAFA Constitution dictates otherwise as illustrated above.

4.4. General working relationship with the President

The President has been very supportive to me throughout the period until about a week or so before the 15th April. He guided me and introduced me to the people who matter in football, particularly at national and international level. He gave me strategic input from time to time. A best example is when the President called me from Morocco during mid-February to reconsider the friendly match of the Olympic Team (Under 23) at the end of March in Japan because of the Coronavirus. It was an excellent piece of advice that has made the Association look very good to the public. Another example is the advice to make Fun Valley available to Government for the COVID-19 pandemic. That is the kind of input I really appreciated from the President. There are many instances however it is not possible to mention all of them here.

The President is like all of us. He is a human being. Human beings do make mistakes. For instance, The President would get very emotional or angry with some mistakes made by staff members, particularly with the General Managers and instruct me to “fire” them there and there. After a while, he would be fine. This is a weakness that the President has to address going forward. From my side, I managed to handle the situation and I am happy that no negativity came out of this.

There are also incidents where the President would involve himself with administrative decisions without consulting the CEO. The following are some examples:

- (a) National Teams Logistics: Example: Recently we had to decide to charter or fly a commercial airline to Sao Tome. As CEO, I had resolved that, given our financial situation, we have to fly commercial and I had informed staff accordingly. The President overruled this decision to administrative staff. I heard from staff that we are going to charter a plane. The President explained to me days later the rationale for deciding to prefer the charter route. I understood and agreed with his rationale. In general, there is no problem if the President has a different view to the CEO. However, the two should discuss first before they make a final decision and then advise staff accordingly. However, in this instance, the President overruled my decision in front of or with staff and in my absence. This type of interaction does not auger well for a healthy relationship between the President and the CEO.
- (b) Another example is that the President recently instructed the CFO directly to assist a member of NEC with a sum of R30 000. The President did not inform the Acting CEO at all about this instruction. Although the course for assisting the member was justifiable, the transaction was not done according to accepted administrative procedures.
- (c) The President has a tendency of liking certain General Managers over others. When I arrived in November, the first staff issue that confronted me was Mr. Tebogo Motlanthe's contract as General Manager. He had just been promoted in a previous NEC and he was working through a short - term contract that was ending in January 2020. I advised him to relax as I would deal with this matter in due course. To cut a long story short, in February 2020, the President send me an email and called me to his office twice to conclude Tebogo's contract. I advised the President that Messrs Mlu Ncame and Mzwandile Maforvane were also or about to run out of their short-term contracts and I was planning to attend to all of them shortly. As a courtesy, I would discuss these contracts with him. He was not so concerned about the other General Managers. I got a lot of pressure from the President to sign off Tebogo's contract, motivating that I do not have to do anything else as the position had been approved by the NEC. I

eventually signed Mr. Motlanthe's contract only. It is very important to mention that the terms and conditions of this contract were negotiated between the two of them. I was never part of the discussion.

I was uncomfortable with this arrangement. However, I was prepared to live with it for the time being, with a hope of rectifying it with the President in due course. I welcomed the assistance the President could provide as I was new and acting. However, strictly speaking, contracts of General Managers are the responsibility of the CEO.

- (d) The most serious issue that transgresses corporate governance and that really concerned me was the bringing in of the NEC member, Mr. Mxolisi Sibam. The President called me one evening and told me that he would like Mr. Sibam to come in and conduct an audit on the FIFA Forward funds. I agreed and supported the principle of auditing the FIFA Funds before FIFA come for their audit in April/ May. I supported this idea given our experience in 2018. However, I vehemently objected to the bringing in of the Audit Committee chairperson as a consultant. This is probably the first of its kind since the inception of the King Code of Conduct. I explained to the President that, according to the King Code of Conduct "The Audit Committee should be chaired by an independent non-executive director" (King Code of Conduct 3, Chapter 3: Principle 3.3). We cannot therefore bring in our Audit Committee Chairperson to do either consulting work or executive work at SAFA. The President overruled me. Mr. Sibam is currently consulting at SAFA.

It is also good corporate governance to get a board approval if a non-executive director is to be engaged for any work for the organization. A good example in our case was the appointment of the Vice President to act as a CEO. This matter was tabled at the NEC (Read as the Board) and the NEC approved it. The appointment of Mr. Sibam was neither tabled for discussion nor approved by the NEC. Once again, this is a violation of corporate governance.

5. Summary

There are three categories of infringements that are raised by the contents of this report that need to be attended to by the NEC. They are constitutional, corporate governance related and bureaucratic in nature.

The violation of the SAFA Statutes (Constitution) is the most concerning. Clause 13.1.1. of the SAFA Constitution reads as follows:

The Members of SAFA have “to comply fully with the Statutes, Regulations, Directives and Decisions of FIFA, CAF and SAFA at all times and to ensure that these are also respected by its Members”. Therefore, violating SAFA statutes is unconstitutional and the NEC needs to address the violation.

The violation of corporate governance is not illegal per se. However, the King Code of Conduct for corporates and organizations, such as SAFA, was introduced as a guideline for these organizations to use as a yardstick for ethical and responsible corporate citizenship. An organization that flouts corporate governance is frowned upon by the (business) community and government. Such an organization will struggle to find customers, partners or associates to do business with.

In terms of the FIFA Constitution as approved by Congress in 2016, Clause 36.2 reads as follows: “The General Secretariat is supervised by, and is accountable to, the Council with regard to the discharge of its functions”. The SAFA Statutes in Clause 37.2.1 suggests that the President shall be responsible for “monitoring the implementation of the decisions passed by the Congress and the NEC through the Chief Executive Officer or the General Secretary. Furthermore, Clause 37.2.3 of the same Statutes reads as follows: The President shall be responsible for “overseeing the work of the Chief Executive Officer”. Instructing the CEO to implement a decision that has not been taken by either the Congress and/or the NEC, such as dismissal of staff, is definitely not overseeing the work of the CEO. The bureaucracy between the work of the President and the work of the CEO is blurred at SAFA.

A simple division of the responsibilities of a Chairman and a CEO is that “the Chairman runs the board and the CEO runs the company”. (King Code of Conduct)

5.1. The violation of the SAFA Statutes

5.1.1. The President dismissed an Acting CEO. The report has demonstrated that the President does not have the powers to appoint or dismiss a CEO, COO and/or CFO. Therefore, the President has violated Clause 37.3 of the Constitution.

5.1.2. The President failed to recommend to the NEC the appointment of an Acting CEO, leaving the organization without a head of the general secretariat. The position of a CEO is a constitutional position. Failure to fill it is a violation of the SAFA Constitution.

5.1.3. The President appointed the CFO to also act as the Acting CEO or alternatively as a Supervisor or Contact Person or Coordinator, positions that do not exist at SAFA. The President did not have the power and the authority to do so. The NEC is the only empowered body to do so.

5.1.4. Alternatively, the President created positions of Supervisor or Contact Person or Coordinator in the SAFA organogram without the authority of the NEC.

5.1.5. The President instructed the Acting CEO to ignore legal procedure to rationalize staff. In other words, the President gave the Acting CEO an illegal instruction.

5.1.6. The President dismissed staff without the approval of the NEC. The Provincial Technical Officers have been terminated on or around the 18 April but to be effected retrospectively on the 30 March 2020. This practice is un-procedural and illegal.

5.2. Corporate Governance

5.2.1. The President appointed a member of the National Executive Committee, Mr. Mxolisi Sibam, a Chairperson of the Audit and Risk Committee to do consulting work at the Association without the necessary approval from the NEC. Corporate governance requires that the chairperson of the Audit Committee is independent.

5.3. Bureuacracy

- 5.3.1. The President gives instructions to staff reporting to the CEO directly, and often, without involving or consulting the CEO from time to time.

6. Conclusion

As I have repeatedly indicated above, I am bringing this report to the attention of the NEC because I am carrying out my fiduciary duties. It is neither sour grapes of “losing” the Acting CEO position nor a wish to be appointed in this position permanently. But it is all in the interest of ensuring that SAFA is seen to be a responsible corporate citizen. It is up to the rest of the NEC members to live up to their fiduciary duties.

Once again, I close with the theme of this Report: *“Our lives begin to end the day we become silent about things that matter”* by Dr. Martin Luther King Jnr