



SUMMARY OF FINDINGS AND RECOMMENDATIONS IN THE MATTER OF ANGUS NORKIE // VAUGHAN WATTS

CASE NUMBER: 1/6/2016

Summary: *Complainant is Mr Angus Norkie – Respondent is Mr Vaughan Watts – Allegations – use of B-BBEE credentials of Mr Angus Norkie in the entity without corresponding economic benefits and participation, and diversion of funds to an entity co-owned by respondent and his wife - Findings - arrangement by the parties is contrary to the objectives of the B-BBEE Act and undermines the implementation of the B-BBEE Act - Recommendations – respondent to compensate complainant and both complainant and respondent to attend B-BBEE and corporate governance training – failing which matter would be referred for criminal investigation and prosecution, and process initiated in court to seek appropriate relief.*

1. Introduction

- 1.1 The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is established in terms of section 13B of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended by Broad-Based Black Economic Empowerment Act No. 46 of 2013 (“the B-BBEE Act”).
- 1.2 The B-BBEE Commission is empowered to conduct investigations on any matter arising from the application of the B-BBEE Act, including any B-BBEE initiative or a category of B-BBEE initiatives, in terms of section 13F (1) (d) and section 13J (1) of B-BBEE Act, read with regulation 15 of the Regulations Regulating the Administration and Implementation of the B-BBEE Act and the Functions of the B-BBEE Commission, 2016 (“B-BBEE Regulations”).

- 1.3 Without limiting the powers of the B-BBEE Commission, in terms of section 13J (3) of the B-BBEE Act, read with regulation 15 (4) (g) of the B-BBEE Regulations, the B-BBEE Commission may make a finding on whether any B-BBEE initiative involves a fronting practice.
- 1.4 In terms of regulation 15 (13) of the B-BBEE Regulations, before making its final findings, the B-BBEE Commission must notify the respondent in writing of the details of the adverse finding(s) and afford them an opportunity to respond to each or any finding within 30 (thirty) days, which on merit can be extended by a maximum period of 10 (ten) days.
- 1.5 In terms section 13J (7) (a) of the B-BBEE Act read with regulation 15 (12) (a)-(c) of the B-BBEE Regulations, the finding(s) or recommendation(s) made by the B-BBEE Commission must be in writing, communicated to the complainant and published in a manner it may deem fit or appropriate, subject to section 13J (7) (b) of the B-BBEE Act.
- 1.6 This publication is therefore issued in line with these provisions of the B-BBEE Act and in the interest of the public.

2. *Brief description of the complaint*

- 2.1 The investigation was in response to a complaint lodged by a certain Mr Angus Norkie (“Mr Norkie”) against a certain Mr Vaughan Watts (“Mr Watts”) alleging practices that are contrary to the B-BBEE Act and the complaint is summarised as follows for the purpose of this publication:
 - 2.1.1 that on 22 October 2006, Mr Norkie and his wife Ms Colleen Norkie registered Nocks Investments CC, a B-BBEE level 1 entity whose principal business was the selling of petroleum products, and also benefited from discounted price rates from PetroSA;
 - 2.1.2 that on or about 2008, Mr Norkie met Mr Vaughan Watts who was working for Brent Oil (Pty) Ltd, a company owned by Mr. Brent Watts, a brother to Mr Watts. At the same time Mr Watts had business relations with a company called Westmark Petroleum;

- 2.1.3 that around 2014, Mr Watts informed Mr Norkie that his business partner stole some money and Mr Watts was interested in forging a partnership with Mr Norkie and it was during this period that his entity was experiencing marginal success, and in an effort to grow it, he decided to partner with Mr Watts and sold 49% members interest to him at R10 a share, which he paid sometime in October 2015. Mr Norkie's wife then resigned as a member of the said close corporation to accommodate the new arrangement;
- 2.1.4 that part of the sale agreement was that the operation of the business will be located in Randburg, an office which was owned by Mr Watts. Mr Norkie indicated that the reasons for this arrangement was to increase the sales and profitability of the entity;
- 2.1.5 that whenever Mr Norkie requested business management reports, Mr Watts would indicate that the business is not doing well, and was restricted from active involvement in the daily activities of the business. Mr Norkie was merely requested to ensure that there is sufficient supply of petroleum products. Further, that Mr Watts was not welcoming the idea of Mr Norkie meeting with clients;
- 2.1.6 that in September 2015 Nocks Investment CC was converted into a (Pty) named Nocks Oil (Pty) Ltd. Subsequently the company was verified and obtained a level 2 B-BBEE status. Despite officially obtaining a level 2 B-BBEE status, the company continued to operate under a level 1 status in order to continue benefiting from discounted price rates on petroleum products that PetroSA granted to B-BBEE compliant entities, as well as applied for Eskom's procurement opportunities under this pretence; and
- 2.1.7 that it was at these B-BBEE related meetings that Mr Norkie became aware of the contraventions to the B-BBEE Act and attempted to rectify the situation with Mr Watts to no avail, and in seeking to resolve the matter, he then blocked the PetroSA account as well as the business account on 13 October 2015; and passed a resolution to remove the Mr Watts as a Director of Nocks Investment (Pty) Ltd.

3. Findings of the B-BBEE Commission

3.1 Having investigated the allegations, the B-BBEE Commission concluded that Mr Watts has engaged in a transaction, arrangement, or other act or conduct, which directly or indirectly undermines or frustrates the achievement of the objectives of the B-BBEE Act or the implementation of any of the provisions in that:

3.1.1 Mr Watts represented to clients that Nocks Investments CC, which was subsequently converted into a company, was 51% owned by Mr Norkie, thereby resulting in the B-BBEE Level 1 status for Nocks Investments CC, but inhibited Mr Norkie from substantially participating in the core activities of Nocks Investments CC;

3.1.2 Mr Watts failed to provide documentation to the auditors to enable them to accurately reflect the financial status of the business, thereby preventing Mr Norkie from establishing whether a financial benefit should have accrued to him in accordance with his 51% members interest in Nocks Investment CC;

3.1.3 Mr Watts transferred a once-off amount of the value known to the B-BBEE Commission out of Nocks Investments CC without the authorisation and knowledge of Mr Norkie;

3.1.4 Whereas Mr Watts averred that the amount was paid for overheads and expenses of the entity, he failed to provide substantial proof to that effect;

3.1.5 Mr Watts failed to demonstrate the arms' length relationship between Nocks Investments CC and U-Fuel, an entity that he co-owns with his wife, and the information assessed could not point to any relationship that properly meets the prescripts to give rise to the payment obligations from Nocks Investments CC into U-Fuel;

3.1.6 Due to Mr Watts transferring approximately 63% of the earnings of Nocks Investments CC to U-Fuels, without the authorisation and knowledge of Mr Norkie,

Mr Watts benefited financially to the exclusion and detriment of Mr Norkie as a significant member or owner of the entity; and

- 3.1.7 Mr Norkie did not receive the economic benefits that would reasonably be expected to be associated with the position or status held by Mr Norkie in accordance with the proportion of his membership in the Nocks Investments CC.
- 3.2 The B-BBEE Commission noted that Mr Norkie had participated in this arrangement that is contrary to the objectives of the B-BBEE Act with Mr Watts, however, acted by reporting the arrangement to **the dti**, and subsequently to B-BBEE Commission when it commenced handling complaints in 2016, albeit after a dispute emanated between him and Mr Watts.
- 3.3 Mr Watts, through J.F Van Zyl and Associates, responded to the findings wherein he vehemently denied having engaged in the practice of fronting and pointed out that the recommendations made by the B-BBEE Commission were without foundation in fact and display the traits of a *prima facie*, irrational intended decision. He further stated that it was never his intention to remain a member of Nocks Investments CC in that the sale of shares agreement was entered into before the entity was converted into a Proprietary Limited Company.
- 3.4 Mr Watts further stated that the parties signed a sale of shares agreement during February 2015, and that Mr Norkie was to arrange for the submission of all documentation to the relevant institution and that to the best of Mr Watts' knowledge, the changes were made and the name was to change to Watts Oil (Pty) Ltd.
- 3.5 According to Mr Watts, the changes from CC to (Pty) Ltd as well as the name change to Watts Oil (Pty) Ltd, took place during June/July 2015 and that Mr Watts was only a shareholder and director of Nocks for the period of March 2015 to October 2015. Further, Mr Watts indicated that Mr Norkie had not brought any business in the duration of this arrangement.
- 3.6 The responses from Mr Watts were considered, with further engagements, including through the meeting with his legal representatives, J.F Van Zyl and Associates, to clarify

and provide any additional information or documentation to substantiate the averments made, and therefore the above-mentioned findings were issued after this process.

4 Recommendations of the B-BBEE Commission

4.1 Based on the above-mentioned findings, taking into account the level of cooperation demonstrated by Mr Watts, redress to the complainant, and measures to address the apparent violation of the B-BBEE Act, the B-BBEE Commission made the following remedial recommendations:

4.1.1 Mr Watts must within **30 (thirty)** days of the findings pay a once off amount, which in the view of the B-BBEE Commission is reasonable compensation to Mr Norkie for his role as the owner of 51% members' interest in Nocks Investments CC, calculated from the commencement of their arrangement and taking into account the amounts previously drawn by Mr Watts as salary and/or management fees, as well as amounts paid to U-Fuel, which Mr Watts co-owns with his wife;

4.1.2 In the interest of advancing the objectives of B-BBEE and measures to prevent similar transactions or arrangement involving any of these two parties, both Mr Watts and Mr Norkie must within **60 (sixty)** days of the findings undergo training on the B-BBEE Act through the B-BBEE Commission, or any institution accredited in terms of the law of the Republic of South Africa to offer such training, it being noted that where the accredited institution is utilised, proof of attendance shall be provided to the B-BBEE Commission;

4.1.3 In the interest of promoting good corporate governance in respect of any entity involving any of these two parties, both Mr Watts and Mr Norkie must within **60 (sixty)** days of the findings undergo training on corporate governance through the Companies and Intellectual Property Commission (CIPC), or any institution accredited in terms of the law of the Republic of South Africa to offer such training, it being noted that where the accredited institution is utilised, proof of attendance shall be provided to the B-BBEE Commission;

- 4.1.4 Considering that Mr Norkie has removed Mr Watts as a member of Nocks Investments CC and that Mr Watts has transferred ownership wholly to Mr Norkie, it is not necessary to take any action in respect of ownership and management of Nocks Investments CC; and
- 4.1.5 Considering that Mr Norkie has also opened a criminal case against Mr Watts regarding the finances of Nocks Investments CC, it is not necessary for the B-BBEE Commission to refer the matter to the South African Police Service and Mr Norkie may pursue this criminal process with the South African Police Service.
- 4.2 In the event that Mr Watts is not agreeable to implementing the above-mentioned recommendations made by the B-BBEE Commission, which in the view of the B-BBEE Commission would remedy the adverse findings made above, the B-BBEE Commission would:
- 4.2.1 pursue criminal charges on the basis of fronting practice and/or misrepresentation of the B-BBEE status against Mr Watts by referring this matter to the appropriate division of the South African Police Service and/or the National Prosecuting Authority in terms of section 13J (5) of the B-BBEE Act, for offences under sections 13O (1) (a) and 13O (1) (d) of the B-BBEE Act, and any other law;
- 4.2.2 refer the conduct of Mr Watts regarding failure to adhere to corporate governance in the running of the affairs of Nocks Investments CC to CIPC for the purposes of determining whether it warrants an investigation under the applicable legislation, and recommend appropriate remedial intervention;
- 4.2.3 report Mr Watts to organs of state and public entities that may have awarded any contracts or authorisation to entities which he is an active member, director or shareholder, to determine whether the contracts or other authorisations should be cancelled, without prejudice to any other remedies they have in law; and
- 4.2.4 consider approaching a court of law in terms of section 13J (4) of the B-BBEE Act to restrain or declare the conduct or arrangement illegal, or seek any

other appropriate remedial relief, including declaring Mr Watts as a delinquent director or unfit to hold any membership or directorship in any other entity.

4.3 The B-BBEE Commission had also taken into account the role of Mr Norkie in the arrangement that was being investigated, the duration of the arrangement, redress to Mr Norkie, the need to address the apparent violation of the B-BBEE Act in a manner that advances transformation in the interest of the public, and measures to prevent similar transgressions from occurring in the future, in determining whether remedial recommendations may be warranted.

4.4 Both Norkie and Mr Watts were notified of findings and recommendations, and Mr Watts, although he had disputed the findings, he stated that he agreed to the remedial recommendations set out above in order to resolve the matter amicably. Mr Watts further requested that he be permitted to pay the amount proposed to Mr Norkie in 2 (two) instalments, and the B-BBEE Commission accepted his request as reasonable. The respondent cooperated and the B-BBEE Commission considers the matter now closed.

5. *Implementation of recommendations*

5.1 Reference to 'days' in the recommendations above means calendar days unless stated otherwise. The B-BBEE Commission may adjust timelines as may be necessary to give effect to the recommendations. The final findings, with recommendations, were issued on 13 April 2018. The B-BBEE Commission monitored the implementation of recommendations.

6. *Status of this publication*

6.1 This publication is prepared only for the purpose of publishing the findings and recommendations of the B-BBEE Commission on this matter in the interest of the public, but does not constitute an investigation report.

7. Conclusion

- 7.1 The B-BBEE Commission has taken all due care in preparing this publication, and should there be any errors you wish to highlight or should you require any clarity regarding the contents of this publication, please do not hesitate to contact us immediately.
- 7.2 This publication will also be available on the website of the B-BBEE Commission from the date of its release and it will be circulated to the public through channels that the B-BBEE Commission deems fit.
- 7.3 For any queries or further clarity on this publication, kindly feel free to contact us at the following contact details:

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Issued by the B-BBEE Commission
01 October 2019