FINDINGS AND RECOMMENDATIONS IN THE MATTER OF

KOBUS MEYER // MALIKHANYE SIMON MABENA & INALENI TECHNOLOGY (PTY) LTD

CASE NUMBER: 9/2/2017

***Summary**: Allegations - investigation pursuant to a complaint alleging that respondents submitted a fraudulent B-BBEE certificate for purposes of obtaining work – the B-BBEE certificate purported to be issued by a certain verification agency, which denied issuing it - Findings – the B-BBEE certificate in question is invalid and respondents misrepresented B-BBEE status or attempted to do so – respondents failed to cooperate with the B-BBEE Commission – Recommendations – referral to CIPC and consider initiating a court process in terms of section 13J (4) of the B-BBEE Act for 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 Upon investigations, the B-BBEE Commission may in terms of section 13J (7) (a) of the B-BBEE Act, read with regulation 15 (12) (c) of the B-BBEE Regulations, publish any finding or recommendation it has made in such a manner as it may deem fit.

1.4 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 Minister of Trade and Industry issued the B-BBEE Regulations on 06 June 2016 which prescribe the process for complaints in terms of the B-BBEE Act. Regulation 15 specifically outlines the process from submission to resolution of a complaint, and further provides for both instances where the B-BBEE Commission responds to a complaint and where it investigates a complaint on its own initiative.

2.2 The B-BBEE Commission conducted the investigation in response to a complaint alleging misrepresentation of B-BBEE status, lodged by Mr Kobus Meyer of Vodacom (Pty) Ltd ("the Complainant") against the Mr. Malikhanye Simon Mabena (hereinafter referred to as "First Respondent") and Inaleni Technology (Pty) Ltd (hereinafter referred to as "Second Respondent"), alleging that the Respondents presented a fraudulent B-BBEE certificate to Vodacom (Pty) Ltd for purposes of obtaining business, a practice that would amount to an offence of misrepresentation of B-BBEE status in terms of section 13O (1) (a) of the B-BBEE Act.

2.3 The B-BBEE Commission followed the process outlined in the B-BBEE Act read with the B-BBEE Regulations, with sufficient opportunity given to the Respondents to reply to the allegations and clarify issues during the investigations in pursuit of fair administration of justice.

2.4 The Respondents were not cooperative during the investigation and in addition to avoiding telephone calls and not responding to written correspondence, they provided false and misleading information to the B-BBEE Commission.

2.5 The B-BBEE Commission was also compelled to also conduct a site visit for purposes of determining the operational site of the Respondents and serve them with the correspondence directly. Mr Malikhanye Simon Mabena demonstrated direct disregard to the process and continued to ignore correspondence.

3. Findings of the B-BBEE Commission

3.1 Having investigated the allegations in terms of the mandate under section 13F (1) (d) and section 13J (1) of the B-BBEE Act, issued Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd with the letter with preliminary findings for their response on 28 February 2018, which they failed to respond to, 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, has made the following findings:

3.1.1 that Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd falsified the B-BBEE certificate and/or obtained B-BBEE Certificate Number EME CC 64863 REV1 fraudulently contrary to the requirements of the Codes of Good Practice and the objectives of the B-BBEE Act, which B-BBEE certificate was knowingly presented to Vodacom (Pty) Ltd;

3.1.2 that the B-BBEE Certificate Number EME CC 64863 REV1 submitted by Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd for purposes of the electronic tender issued by Vodacom (Pty) Ltd in September 2016 is invalid as it has been issued or obtained in a manner contrary to the requirements of the Codes of Good Practice and the objectives of the B-BBEE Act, with the verification agency NERA that was purported to have issued the B-BBEE certificate Number EME CC 64863 REV1 flatly denying having verified Inaleni Technology (Pty) Ltd;

3.1.3 that Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd misrepresented, or attempted to misrepresent, the B-BBEE status of Inaleni (Pty) Ltd by presenting B-BBEE Certificate Number EME CC 64863 REV1 to Vodacom (Pty) Ltd for B-BBEE compliance in order to be considered for business, which conduct points to an offence in terms of section 13O (1) (a) of the B-BBEE Act;

3.1.4 that the conduct of Mr Malikhanye Simon Mabena in submitting the invalid B-BBEE Certificate Number EME CC 64863 REV1 for the purposes of obtaining business, thereby misrepresenting the B-BBEE status of Inaleni Technology (Pty) Ltd, and further denying that he submitted any proposal to Vodacom (Pty) Ltd, falls short of the required responsibilities of a director of a company in that it is reckless, dishonest and unethical;

3.1.5 that Mr Malikhanye Simon Mabena further provided false information by denying that Inaleni Technology (Pty) Ltd submitted any proposal or had any dealings with Vodacom (Pty) Ltd when in fact Mr Malikhanye Simon Mabena signed the Vodafone Mutual Non-Disclosure Agreement and Rules on behalf of Inaleni Technology (Pty) Ltd, which conduct points to contravention of section 13N (3) (c) of the B-BBEE Act which inter alia, provides that a person commits an offence if that person knowingly provides false information to the B-BBEE Commission;

3.1.6 that Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd failed to respond to the B-BBEE Commission and to submit the required information in a manner that caused significant delays to the processes of the B-BBEE Commission, which conduct points to obstruction of the work of the B-BBEE Commission which is an offence in terms of section 13N (3) (a) of the B-BBEE Act;

3.1.7 that Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd failed to demonstrate the required corporate governance by trading with an invalid, falsified and/or fraudulently obtained B-BBEE Certificate Number EME CC 64863 REV1, and failing to act in the best interest of the company by presenting a falsified and/or fraudulent B-BBEE Certificate Number EME CC 64863 REV1 for purposes of obtaining business from Vodacom (Pty) Ltd, and failing to remedy the situation even after being notified of the conduct, which conduct points to a violation of the Companies Act;

3.1.8 that Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd demonstrated conduct that points to fraud and forgery in the manner that the B-BBEE Certificate Number EME CC 64863 REV1 was produced, received and/or obtained, specifically

illegally using the name of NERA, which points to serious criminal offences in terms of the criminal laws of South Africa; and

3.1.9 Based on the above, the B-BBEE Commission is of the view that Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd have acted in a manner that is contrary to the objectives of the B-BBEE Act, and which conduct further points to misrepresentation of the B-BBEE status in terms of section 13O (1) (a) of the B-BBEE Act, and may amount to fraud and/or forgery under the criminal laws of South Africa.

3.2 In terms of regulation 15 (13) of the B-BBEE Regulations, the Respondents were afforded a period of thirty (30) days to respond to adverse findings and in this case the Respondents failed to respond even after several follow ups, including a site visit.

3.3 In terms of regulation 15 (14) of the B-BBEE Regulations, the B-BBEE Commission must proceed to issue its findings if the Respondents fail to respond and the B-BBEE Commission has done so. The Respondents were duly served with the final findings as required.

4. Recommendations of the B-BBEE Commission

4.1 Based on the above-mentioned findings, the B-BBEE Commission has recommended the following actions in accordance with the B-BBEE Act:

4.1.1 refer the conduct of Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd regarding corporate governance in the running of the affairs of Inaleni Technology (Pty) Ltd and apparent breach of the duties of directors to CIPC to determine appropriate remedial action under the applicable legislation, including declaration of Mr Malikhanye Simon Mabena as a delinquent director to bar him from holding directorship or membership in any other entity, including Inaleni Technology (Pty) Ltd; and

4.1.2 consider instituting proceedings in a court to restrain any breach of the B-BBEE Act or to obtain appropriate remedial relief in terms of section 13J (4) of the B-BBEE Act, including seeking remedial relief to declare Mr Malikhanye Simon

Mabena delinquent or unfit to hold any membership or directorship in any entity, including Inaleni Technology (Pty) Ltd.

4.2 In line with regulation 15 (12) (a)-(c) of the B-BBEE Regulations, any findings or recommendations made by the B-BBEE Commission in respect of an investigation must be in writing, communicated to the complainant, and published in a manner that the B-BBEE Commission deems appropriate, including on its website. The complainant was notified of the outcome of this complaint.

4.3 The final findings were issued by the B-BBEE Commission on 28 February 2018. Mr Malikhanye Simon Mabena and Inaleni Technology (Pty) Ltd had 180 days from the date of the final findings above to initiate a judicial review process, and they have to date not initiated any review proceedings against the B-BBEE Commission in the appropriate court of law.

4.4 In the absence of successful review, the findings of the B-BBEE Commission remain valid and the B-BBEE Commission has resolved to publish the findings in accordance with section 13J (7) (a) of the B-BBEE Act read with regulation 15 (12) (c) of the B-BBEE Regulations in the interest of the public.

5. Status of this publication

5.1 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.

6. Conclusion

6.1 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.

6.2 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.

6.3 For any queries or further clarity on this publication, kindly feel free to contact us at the following contact details:

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