

Doubts over Prasa's commitment to uphold High Court corruption judgment

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#UniteBehind seek to join Siyangena-Prasa case in the Supreme Court of Appeal after rail agency moves to reach settlement in corrupt contract.



Access gates installed by Siyangena at Cape Town Station never worked. Archive photo: KimReynolds / GroundUp

- Commuter activist organisation #UniteBehind is joining the SCA appeal between Prasa and Siyangena Technology after doubts were raised about Prasa's commitment to the matter.
- Leaked minutes indicated that Prasa was quietly seeking a R3.1-billion settlement with Siyangena, despite a High Court ruling setting aside the contract between the rail agency and the company.
- A legal opinion sought by Prasa warned that they should not settle the matter with Siyangena.

Commuter rail activist organisation #UniteBehind is to join the matter between the Passenger Rail Agency of South Africa (Prasa) and Siyangena in the Supreme Court of Appeal as amicus curiae. #UniteBehind has raised concerns about settlement negotiations between Prasa and Siyangena, initiated after the High Court found them to be in a corrupt relationship.

Siyangena is appealing the [October 2020 judgment](#) in which a full bench of the Pretoria High Court set aside the contracts between Prasa and Siyangena, finding the company was "complicit to the corruption, impropriety and maladministration" that surrounded the contracts for security and access management technology.

According to Zackie Achmat, deponent to [#UniteBehind's founding affidavit](#) in its application to intervene as amicus curiae, the commuter activist organisation sought to join the appeal "after having sight of the parties' heads of argument", and after news reports raised concerns that Prasa "was not organising to defend the case adequately".

In terms of the High Court judgment, an independent engineer was to be appointed to evaluate the cost of the work done by Siyangena. This evaluation was to then be compared to the money already paid to the company, and if the cost of the goods was greater than the amounts paid to Siyangena, Prasa has to compensate Siyangena for the difference. If it was less, then Siyangena must pay back Prasa.

But an independent evaluation has not started.

Subsequently, Siyangena filed papers to appeal the judgment in the Supreme Court of Appeal (SCA).



Embarrassing court defeat for Prasa

20 Apr 2022



In February this year, *GroundUp* [reported](#) that Werksmans, Prasa's lawyers in the High Court victory against Siyangena, had dropped the rail agency after it had failed to pay them.

Instead, Prasa has quietly been negotiating a possible settlement agreement with Siyangena to the tune of R3.1-billion, first revealed by [an amaBhungane investigation](#).

On 31 August 2021, Prasa received [a legal opinion](#) from advocate Kgomoane Mathipa, in response to 14 questions from Prasa's acting Group Executive for Legal, Risk and Compliance Sifiso Simelane, and Prasa's chairperson, Leonard Ramatlakane, mostly regarding a possible settlement between the rail agency and Siyangena.

Mathipa argued that a settlement may be considered before the SCA hears the case, but only if it is accepted by the SCA, and if Siyangena accepts the High Court judgment that found it was corrupt.

But Mathipa warned that Prasa should not settle the matter, except to agree that Siyangena withdraws its appeal in the SCA.

Ramatlakane also asked Mathipa if former Prasa CEO Lucky Montana's testimony at the Zondo commission about how he had acquired a large property portfolio using the same lawyers as Siyangena could hurt Prasa's chances in the SCA appeal.

The High Court had found that "the evidence is irresistible that [Siyangena] was providing the backing [for the purchase of homes for Montana]".

The High Court's conclusion was supported, not defeated, in the Zondo commission's report into Prasa.

Despite Mathipa's cautioning, in November 2021 Prasa's board and then-CEO Kgosi Matthews met with Siyangena's

bosses, including Mario Ferreira. [According to the minutes](#) of that meeting, a resolution was adopted that “a joint team of Prasa and Siyangena Technology should prepare a draft agreement that would be made an order of court.”

This agreement would consist of a R2.6-billion payout to Siyangena “to close the last chapter” and R500-million “as part of the court order”.



Prasa endeavours to improve train services

25 Jan 2022



On 30 May, #UniteBehind [wrote](#) to the attorneys for Prasa and Siyangena to raise their concerns about the negotiations between the rail agency and the corrupt contractor, calling it “unlawful conduct”, and that any settlement would be “unconstitutional and against public policy”.

On 29 June, Prasa’s new attorneys in the matter, Ngeno & Mteto, [replied](#) to #UniteBehind’s letter, saying that there was no settlement agreement concluded between Prasa and Siyangena. The letter also threatened to report #UniteBehind’s attorneys, Webber Wentzel, to the Legal Practice Council for a “conflict of interest”.

Raising the issue of conflict of interest is “baffling” since #UniteBehind is not “against” Prasa in the proceedings, [#UniteBehind replied](#) on 1 July. It pointed out that Webber Wentzel has been involved in the proceedings between Siyangena and Prasa as amicus curiae since inception in 2018 with Prasa’s “full knowledge (and acquiescence)”.

Prasa indicated that it would not oppose #UniteBehind’s application to join as amicus curiae. Siyangena initially said that it would oppose #UniteBehind’s application to join the SCA matter, but on 8 July, it changed tack and indicated that [it would not oppose its joining](#).

The matter will be heard on 26 August. Prasa spokesperson Andiswa Makanda said, “We have no comment at this stage pending the court process.”

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