



MANANA'S COSTLY MACHINATIONS: NAUDE VINDICATED

Dr Malcolm Naude, together with two other State doctors who also lost their jobs at the hands of fervent ART denialist, former Mpumalanga Health MEC, Sibongile Manana, has been legally vindicated, winning R100 000 compensation.

The Labour Court in Johannesburg found that Naude, a community service doctor at the Rob Ferreira Hospital in Nelspruit at the time (2001), was unfairly dismissed for the courageous stand he and other doctors took in prescribing ARV drugs to patients.

The evidence of those who testified in her favour was 'improbable, disingenuous, unhelpful, not true and had to be rejected for lack of credibility'.

Acting Judge Cagney Musi praised Naude, saying he (Naude) felt strongly that it was not government's place to decide what kind of treatment a doctor should give a patient.

'It was his view that the government was not in favour of any form of HIV drug-based therapy, because at the time beetroot, garlic and olive oil took precedence over medication.'

Musi described Manana as a tyrannical and dictatorial manager, with those daring to oppose her becoming victims of her wrath. The evidence of those who testified in her favour was 'improbable, disingenuous, unhelpful, not true and had to be rejected for lack of credibility'.

He found Manana's lawyer, Miss Mnisi, 'a very unreliable witness who tried everything to sugarcoat the respondent's words and deeds and if needs be at the expense of her own integrity'.

Naude and his witnesses were 'credible and reliable'.

Naude found his verbally approved medical officer posting at Rob Ferreira suddenly withdrawn after he signed memoranda in support of post-exposure prophylaxis (PEP) for rape victims by the Greater Nelspruit Rape Intervention Project (GRIP).

The Labour Court ordered that he be compensated for 10 months' salary and that the Mpumalanga health department pay his legal costs. A Mpumalanga health department spokesperson said their legal advisors were studying the judgement before deciding whether to appeal.

When the controversy first broke, a rampant Manana gave instructions that GRIP no longer be supplied with the laboratory results of baseline HIV tests of rape survivors, some of them children (from whom GRIP obtained written permission). This effectively sabotaged their work, conducted from a room each at Rob Ferreira and Themba hospitals.¹

Cavalier style

The State Attorney withdrew a Manana-inspired court application to evict GRIP (and paid GRIP's legal costs), strongly advising her to quit the legal leg of her crusade. She promptly hired private attorneys.

Ironically GRIP was one of the NGOs used at the time by the national AIDS directorate as a feedback site for operational issues in the government pilot study for the roll-out of PEP for rape survivors.

Manana also fired Rob Ferreira's medical superintendent, Dr Thys von Mollendorff, for allowing GRIP tenure and, although she denied it, helped to organise an ANC Women's League protest. Protestors waved posters reading 'GRIP: Agents of

Wouter Basson', outside the Themba Hospital, handing over a rhetoric-filled memorandum. Manana also summonsed GRIP workers to her office, threatening them with 'charges and jail', and accusing them of contravening government policy.

She told them ART drugs were 'dangerous', that they should apologise to President Thabo Mbeki and immediately stop working for GRIP. An affidavit by a GRIP worker said Manana's promise of alternative jobs at a local clinic never materialised.

Von Mollendorff's legal appeal in mid-May 2002, given moral support by an outraged medical community and made on the grounds that his position gave him discretion, failed.

Interviewed by *Izindaba* at the time, Manana said GRIP was 'abusing hospital facilities, staff and patients for unethical research purposes'.²

'There's no cure here. What about the patients? What are they giving them, how much of it, what are the protocols and who is monitoring follow up,' she railed.

Memorable, destructive maverick

Another of the maverick MEC's memorable moves was ordering a probe into the links between her department and an award-winning NGO with an excellent record in providing HIV/AIDS care to orphans and those dying of AIDS. It failed to demonstrate any

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wrong doing by departmental staff, but the then provincial HIV/AIDS programme manager, Dr Kelvin Billingham, was shifted from his post and eventually resigned at the end of April 2002.

Mpumalanga then had (and still has) the second highest HIV/AIDS prevalence in the country. Its health department remains in a shambles, with massive staff vacancies and the majority of the low-income population underserved or not served at all.

In March 2003 the AIDS Law Project (ALP) tackled Manana head-on in the courts, accusing her of preventing and obstructing the provision of nevirapine in direct defiance of the 2002 Constitutional Court order that it be provided wherever VCT and doctor-prescribing capacity existed.

Former national health minister Dr Manto Tshabalala-Msimang leapt to her defence, famously asserting that if Manana was jailed for contempt of court 'they'll have to jail me as well'.

Five months after the constitutional court order, Mpumalanga was still providing nevirapine at only two pilot-site hospitals, Evander and Shongwe, and supporting 13 surrounding clinics.

Manana sent out a provincial directive that hospitals continue 'to obtain approval' before making nevirapine available, in direct contrast to the Western Cape, KwaZulu-Natal, Gauteng and North West Province that showed commitment to PMTCT roll-out.

Mpumalanga's ART roll-out, however, suddenly gathered speed when Manana was faced with the prospect of either showing evidence that her department was complying with the Constitutional Court ruling or being held in contempt of court.

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Judge Musi said it was clear that Manana 'liked to keep everyone in the department on a leash' and that the fight against GRIP was bigger than the simplistic issue of them occupying space at the Rob Ferreira Hospital, a point Mnisi refused to concede.

At the time of going to press Naude was recovering from a mild stroke suffered on 20 October.

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Mark Heywood, Director of the ALP, which supported Naude from the outset, reported him as 'thrilled' by the judgement.

Quoted in an earlier interview in which he was asked to respond to Manana now being a member of parliament and Tshabalala-Msimang being voted onto the ANC's National Executive Committee, Naude said, 'I think it's very sad to see that people who have basically abused human rights on a gross level such as this are being rewarded. It would be nice to see some kind of retribution. But just a recording of their crimes is one step towards people much later looking back and seeing that human life at one stage, despite our Constitution, is treated cheaply, especially if you're poor and don't have access. If you're rich and have support from your cronies, then things are going well. It's shocking.'

Chris Bateman

1. Bateman C. PMTCT court order; Manana in contempt? *S Afr Med J* 2003; 93: 168-169.
2. Bateman C. Manana determined to lose GRIP. *S Afr Med J* 2002; 9: 490-491.