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Statement by Minister of Land Reform and Rural Development Mr Mzwanele Nyhontso on the suspension of the Ngonyama Trust Board by His Majesty King Misuzulu

30 December 2024

I have learned about the suspension of the Ingonyama Trust Board following a letter from the Chairperson of the Ingonyama Trust, His Majesty King Misuzulu, dated 24th December. I am also aware of subsequent developments in which the suspension was done by one Stephen Jabulani Rakwena, purportedly acting on behalf of His Majesty King Misuzulu.

The Ingonyama Trust (the Trust) is established by the KwaZulu Natal Ingonyama Trust Act 3KZ of 1994. The Trust has the Ingonyama as the sole Trustee. A 1997 amendment of the Act established the Board to administer the Trust land as well as the affairs of the Trust. This Act also defines the Ingonyama.

Section 2A(3)(b) and (c) of the Act empowers the Minister to appoint 8 of the Board members, to designate a vice-chairperson of the Board since the King, as sole Trustee, is also the Chairperson of the Trust, and lastly to make Regulations. The appointment of the Board members is after consultations as provided for in subsections (b) and (c). This Act further empowers the Minister to make regulations.

The Trust is a Schedule 3A national public entity in terms of the Public Finance Management Act, Act 1 of 1999 (the PFMA) and therefore its public finance responsibilities are imposed by the PFMA. The PFMA provides that the executive authority in relation to a national public entity means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls. In this instance, it is the Minister of Land Reform and Rural Development (the Minister) and is accountable to Parliament for the Trust.

The Minister, as executive authority, also exercises control over the Trust as prescribed by Section 1 of the PFMA. This ownership control is defined in the PFMA to include, inter alia, the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities: (a) To appoint or remove all, or the majority of, the members of that entity's board of directors or equivalent governing body.

Section 49(1) and (2) of the PFMA provides that every public entity must have an authority

which must be accountable for the purposes of this Act and if the public entity has a board, then that board becomes the accounting authority of the entity. In this instance, the Ingonyama Trust Board is the accounting authority of the Trust. As the accounting authority, all the public finance responsibilities imposed by the PFMA and the Treasury Regulations rest on the Board.

From the above provisions of both the PFMA and the Ingonyama Trust Act, it is evident that only the Minister appoints the Board in terms of the Act and the PFMA further empowers the Minster to appoint or remove and by extension suspend the members of the Board as the entity's executive authority. It therefore follows that the King acted ultra vires by suspending the members of the Board, this power is solely placed on the Minister.

On the commissioning as well as appointment of the service provider to conduct the investigation, again the King acted ultra vires in that he did so outside of and without the Board as provided for in the Financial Regulations of the Act. This almost falls into the very same category of actions the King is purporting to be addressing with the Commissioning of the investigation.

The decision to suspend the Board members and action of the King to choose to run the Board on his own, with the "sole unaffected board member", not only flies in the face of good corporate governance but will also not stand legal scrutiny if challenged.

The consequence of these actions that are ultra vires is that the Board remains in office until the Minister decides otherwise, even then only after following proper processes.

The Ingonyama Trust Act of 1994 and the PFMA inform my actions as Minister of Land Reform. I will continue to engage the Chairperson and the other Board members of the Ingonyama Trust to address the concerns raised, whether in governance, supply chain management, violations of the PFMA, or any other related matter. I will execute my duty of appointment and removal of Board members accordingly.

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