

R45m victory for Prasa

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In a decision that vindicates Martha Ngoye, an arbitrator has ordered SA Fence and Gate to pay back the money.



Prasa spent millions on purchasing 2,000 solar lights to protect its depots. At most only 24 of them were ever put to use according to a forensic report. Archive photo: Ashraf Hendricks / GroundUp

- An arbitrator has ordered SA Fence and Gate to pay back R45.1m to Prasa.
- The company failed to deliver on a lighting contract.
- The ruling vindicates Prasa's recently dismissed legal head, Martha Ngoye, who has taken the rail agency to the labour court.

Advocate Lindi Nkosi-Thomas [ruled](#) on Wednesday that SA Fence and Gate should pay R45.1m back to the Passenger Rail Agency of South Africa (Prasa) after it failed to supply and install lighting for that amount. Nkosi-Thomas was acting as an arbitrator in a long-standing dispute between the two companies.

The most interesting aspect about this dispute is that a deponent for Prasa was Martha Ngoye, who initiated these proceedings as the agency's legal boss. Yet she was dismissed at the end of January and the agency is attempting to hold her responsible for the SA Fence and Gate lighting contract going wrong.

In response to her dismissal Ngoye has taken urgent court action against Prasa. The case is expected to be heard in the Labour Court in Johannesburg on Friday.

Read [Why are the lights off at Prasa?](#)

In 2013, Prasa entered into a contract worth R209m with SA Fence and Gate for the installation of fences and other security measures at train depots across the country.

After work on the initial contract began, Prasa and SA Fence and Gate began negotiating an extension to the contract to include, among other things, the provision of lights at the depots. This extension was improperly approved by Palello Lebaka, a Prasa executive who was subsequently fired after disciplinary hearings.

Since Prasa required the lights for the depot, Ngoye, as Acting Group CEO, approved the extension of the SA Fence and Gate contract to include lighting, on the recommendation of then-Chief Procurement Officer Josephat Phungula, and Prasa's Bid Advisory Committee.

But, after a dispute between SA Fence and Gate and lighting subcontractor Top 6, only R1.9m worth of lights were installed after Prasa had paid R47m to SA Fence and Gate.

SA Fence and Gate contended that the lighting extension was not authorised by Prasa's board and was therefore void. Interestingly this is the same argument put forward by the chair of Prasa's Board Leonard Ramatlakane in his [30 January announcement](#) in which he announced Ngoye's dismissal.

Yet this contention was not supported by the arbitrator, who found that the approval of the lighting was an administrative decision, not a Board one, supported both on 20 January 2015 by Ngoye as acting GCEO, and then ratified in December 2015 by the steering committee of the board.

Read [Executive who saved Prasa billions has been fired](#)

Nkosi-Thomas's ruling undermines Ramatlakane's case against Ngoye and another dismissed executive, Nkosinathi Khena, by indicating that Ngoye was duly authorised to approve the lighting condonement.

Ramatlakane's suggestion that Ngoye and Khena had cost Prasa money in this matter is also implausible, since Ngoye coordinated Prasa's legal team in winning this arbitration.

Nkosi-Thomas also rejected a claim by SA Fence and Gate against Prasa.

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