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Shanghala strikes again . . . As phosphate mining back on the table

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03 November 2017 Author Sonja Smith

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Attorney General, Sackeus Shanghala, who was previously opposed to phosphate mining in Namibia, has sought the advice of UK-based scientists and a rookie Namibian lawyer on how the project can proceed within the laws of the country.

The Windhoek Observer is in possession of documents that show Shanghala's eagerness to proceed with phosphate mining in Namibian waters.

Phosphate mining is highly controversial and faces staunch opposition from the ministry of fisheries and marine resources as well as the tourism industry, the private sector and the environmental conservation community.

The documents indicate that a group of eight UK scientists and a Namibian graduate have been asked by Shanghala to provide technical and legal guidance on how the project to mine phosphates along the Namibian coast can proceed.

Namibian Marine Phosphate (NMP), fronted by businessman Knowledge Katti, was stopped last year from undertaking phosphate mining off the coast of Namibia.

The project seemingly died after the environmental clearance certificate originally granted by the Environmental Commissioner was revoked in the wake of a public backlash regarding the impact of phosphate mining on Namibia's N\$10 billion a year fishing sector and the permanent environmental wreckage such mining leaves in its aftermath.

At the time, Shanghala warned Government against the danger of phosphate mining until complete scientific research and investigation has been finalised.

He said in 2015 that Namibia has a duty not to mine marine phosphate until, "all relevant investigations were completed."

Fisheries and Marine Resource Minister, Bernard Esau, has been fighting tooth and nail against phosphate mining.

He told the National Assembly in October last year that an independent scoping study and comprehensive research should be conducted before any environmental certificate is issued by the Government.

Esau also complained that his ministry was not adequately consulted when the environmental clearance certificate was issued while his mandate covers the same area overlapped by the phosphate mining plan.

His opposition to phosphate mining was vociferous, aggressive and in the end, successful (at that time.)

Environmentalists and the fishing and tourism industries were stunned when a clearance certificate was seemingly issued quietly by the environment ministry.

The British scientists and environmental consultancy experts are Tom Mathewson, David Sutherland, Richard Newell, Dr Magnus Macfarlane, Matthew Davison (a fisheries ecologist), Dr Jez Spearman (sediment plume modelling expert) and Professor Dickson Howell who is said to be an expert in marine policy.

The British team is joined by Namibian law graduate, Stanley Kambonde, who did his Masters at Nottingham Trent University in the UK.

Kambonde owns a recently registered (April, 2016) company called Esel Kay Consultancy, and sources say the company is the link between Shanghala and the UK-based scientists.

"Stanley's personal drive and energy, and excellent research and comparative analytical skills equip him to bring new insights and fresh perspectives to the advisory task that the Attorney General needs legal guidance on," Kambonde's bio read in the proposal to Shanghala.

The British experts are offering Shanghala a way to manage the implementation of phosphate mining in Namibia as well as legal opinion and a technical note which they claim will expand on areas of international perspective on the regulatory aspects of marine mining.

The opinion will cost Namibia N\$4,5 million, according to the proposal.

Shanghala has in the past chosen UK-based experts despite their exorbitant rates demanded in hard currency and seemingly without searching for local or regional talent before engaging Europeans.

The British experts are linked to a company called HR Wallingford, an independent civil engineering and environmental hydraulics organisation, according to their official website.

Should Shanghala proceed with his plans, the two companies-both Esel Kay and HR Wallingford will draft regulations and EIA guidelines for his office on behalf of the tourism ministry within 16 working weeks.

Shanghala said this week that no decision has been made yet on the proposal, adding that he was disappointed by the media leaks.

“It was my intention to obtain an outline of how the researcher intends to tackle the matter so that I may present the need to the Cabinet Committee which is chaired by Hon. Mr. Tom Alweendo, MP to consider availing funds for this purpose. Before I could do so, and before the outlined plan reached my desk, it was apparently handed to the media,” he said.

“I must lament these leakages. They are destructive and journalists need to observe some modicum of dignity in their work.”

Asked why he was outsourcing legal work to a rookie lawyer based outside the country, Shanghala said there was nothing wrong with that.

“The Commonwealth over, senior law officers of State brief external counsel to assist them perform their functions, either due to lack of expertise or because they are inundated with work. Sometimes, it is because clients seek another opinion to convince them that their law officers are indeed on the right track. This is done through briefs.

“A brief is an articulation of the matter, factually, legally or otherwise, seeking professional input and advice. Sometimes, through the process of a brief, research may reveal the need to look into other matters or do other things. Sometimes, the research done into answering the brief, may reveal that litigation is not necessary, or that indeed, litigation is necessary. Sometimes briefs are returned when law firms and counsel discover conflicts, or because of other matters, may otherwise not be in a position to handle the brief.”

The attorney general also defended the move to engage legal services outside the country without Cabinet approval or going on tender, arguing that there is a provision in law that allows him to do so.

“As a standard, the Office of the Attorney-General always has had an annual exemption relating to the engagement of legal services. Questions 3 and 4 allude to a procurement process from which the procurement of legal services is exempted.”

Kambonde who on Monday requested questions to be emailed to him did not respond or pick up calls on his mobile phone.

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