



MEDIA RELEASE

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AFRICAN TUNA TRADERS CC IN VIOLATION OF THE B-BBEE ACT BY USING BLACK EMPLOYEES AS SHAREHOLDERS TO OBTAIN FISHING RIGHTS

The B-BBEE Commission has found African Tuna Traders CC, Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd to have contravened the B-BBEE Act and has since referred the findings to the Department of Agriculture, Forestry & Fisheries for consideration. This is after an investigation revealed that credentials of black employees were presented as black shareholders for the purposes of obtaining the fishing rights that African Tuna Traders CC currently trades with in the fishing industry, with no participation or economic interest for the said black employees. Section 13A of the B-BBEE Act permits organs of state to cancel a contract or authorisation awarded on account of false information relating to B-BBEE status.

The complainant was Mr Phephe Elias Khekhe, who was employed as a driver of Africa Tuna Traders CC since 2001 until his employment was terminated in 2010. He was also appointed as a director of Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd, entities created by his employer, effective from the 01 August 2004 and on 14 April 2010 and 24 November 2014, respectively.

Based on records, Umbhalo Trading (Pty) Ltd was allocated fishing rights for a period of 8 years during the Long Term Fishing Rights Allocation Process in 2005/2006, which expired on 31 December 2013. In the 2013 Fishing Rights Allocation Process, African Tuna Traders CC and Umbhalo Trading (Pty) Ltd were both allocated fishing rights on 30th December 2013 for a period of 7 years in the Tuna Pole Fishing Sector, which will expire on 31 December 2020. During the 2015/2016 Fishing Rights Allocation Process, Umbhalo Trading (Pty) Ltd was allocated a right in the Large Pelagic Fishing Sector on 06 February 2017 for a period of 15 years, which will expire on 31 January 2032.

According to the application, Umbhalo Trading (Pty) Ltd's ownership was 20% held by African Tuna Traders CC and 80% by Homotsego Trading (Pty) Ltd in which Mr Phephe Elias Khekhe and six other black people held 14.29% each as direct shareholders. Also stated was that the 80% held by Homotsego Trading (Pty) Ltd would be transferred to Umbhalo Empowerment Trust whose beneficiaries will be black people, but such transfer did not materialise. In practice, all three entities were operated by members of African Tuna Traders CC, Jonathan Ronald van Breda and Christopher Fergus Hamel with 50% members interest each, without the participation of and/or economic interest to black people who were presented as shareholders.

African Tuna Traders CC has 0% black ownership while the said black owned Homotsego Trading (Pty) Ltd is dormant and does not have any financial statements. Both Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd were created as empowerment companies but had no employees and the administrative functions for Umbhalo Trading (Pty) Ltd were performed by African Tuna Traders CC. African Tuna Traders CC stated that the only revenue of Umbhalo Trading (Pty) Ltd was from the license fees charged to other related companies on the basis of the fishing rights it holds.

African Tuna Traders CC, Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd engaged in conduct that is contrary to the B-BBEE Act and would amount to a fronting practice which is an offence in terms of section 13O (1) (d) of the B-BBEE Act and misrepresentation of the B-BBEE status, which is an offence in terms of section 13O (1) (a) of the B-BBEE Act. Also, the entities provided false and/or misrepresented information relevant for assessing black economic empowerment status to an organ of state, in this case Department of Agriculture, Forestry & Fisheries, which is an offence in terms of section 13O (1) (c) of the B-BBEE Act.

The white members of African Tuna Traders CC operated the entities and controlled both the operations and finances, and the creation of Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd presents a typical opportunistic intermediary arrangement in that Umbhalo Trading (Pty) Ltd was used to secure rights/licences to operate in the fishing industry for the benefit of African Tuna Traders CC. There were also multiple inconsistencies in the ownership information reflected in the B-BBEE documents and financial statements of the entities, which raised concerns regarding the governance in addition to misrepresentation of the black ownership.

In addition to this referral, the B-BBEE Commission is empowered to take any action under the B-BBEE Act and it will also refer the report in this matter to the relevant Parliamentary Portfolio Committee to consider this in relation to other rights allocated in the fishing industry as there are concerns that may require a systemic approach to prevent recurrence in the future.

Click on the link for the investigation publication:

Long link: https://www.bbbeeommission.co.za/wp-content/uploads/2020/11/Publication-of-Findings-and-Recommendations-PE-Khekhe-and-African-Tuna-Traders-25-November-2020-for-issue_1.pdf

Shortened link: <https://bit.ly/3kZ1wQs>

The B-BBEE Commission was established in terms of Section 13B of the amended B-BBEE Act No 46 of 2013 effective from 6 June 2016. The Commission's mandate, amongst others, is to supervise and encourage adherence to the B-BBEE Act in the interest of the public, to promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of the objectives of broad-based black economic empowerment and to conduct investigations on fronting and other violations of the B-BBEE Act in response to a complaint or on its own initiative.

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Issued on behalf of the B-BBEE Commission

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