



**SUMMARY OF FINDINGS AND RECOMMENDATIONS**  
**IN THE MATTER OF**  
**B-BBEE COMMISSION // VICKY ADEY CONSULTING CC & OTHERS**  
**CASE NUMBER: 7/5/2020**

**Summary:** Matter initiated by the B-BBEE Commission – Respondents are Vicky Adey Consulting CC and its two members – Allegations – misleading and distorting information about B-BBEE, misrepresentation of B-BBEE status and fronting practice, which followed after a video recording was circulated across social media in South Africa showing Olufunsho Adebayo Ademoye, a Nigerian born African male, claiming that he is benefiting under the B-BBEE laws of South Africa through his South African business, which statements pointed to possible misrepresentation and fronting practices that warranted an investigation - Findings - evidence of misrepresentation of B-BBEE status found, no evidence of fronting practice could be established, Respondents secured placement of panels of organs of state as well as CIDB grading based on the misrepresented B-BBEE status - Recommendations – Respondents agreed to remedy the adverse findings, including by withdrawing from the government panels in question, voluntarily surrendering the CIDB grading and making contribution in good faith towards NSFAS.

## **1. INTRODUCTION**

- 1.1 The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is established in terms of section 13B of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended by Broad-Based Black Economic Empowerment Act No. 46 of 2013 (“the B-BBEE Act”).
- 1.2 The B-BBEE Commission is empowered to conduct investigations on any matter arising from the application of the B-BBEE Act, including any B-BBEE initiative or a category of B-BBEE initiatives, in terms of section 13F (1) (d) and section 13J (1) of B-BBEE Act, read with

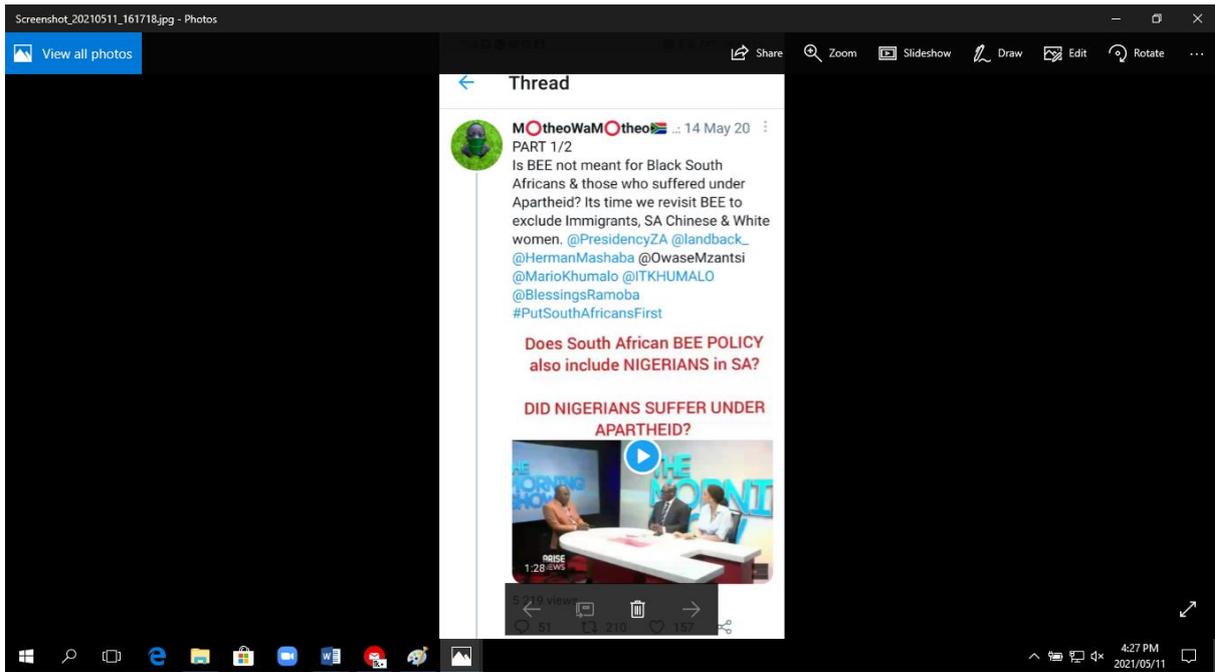
regulation 15 of the Regulations Regulating the Administration and Implementation of the B-BBEE Act and the Functions of the B-BBEE Commission, 2016 (“B-BBEE Regulations”).

- 1.3 Without limiting the powers of the B-BBEE Commission, in terms of section 13J (3) of the B-BBEE Act, read with regulation 15 (4) (g) of the B-BBEE Regulations, the B-BBEE Commission may make a finding on whether any B-BBEE initiative involves a fronting practice.
- 1.4 In terms of regulation 15 (13) of the B-BBEE Regulations, before making its final findings, the B-BBEE Commission must notify the respondent in writing of the details of the adverse finding(s) and afford them an opportunity to respond to each or any finding within 30 (thirty) days, which on merit can be extended by a maximum period of 10 (ten) days.
- 1.5 In terms section 13J (7) (a) of the B-BBEE Act read with regulation 15 (12) (a)-(c) of the B-BBEE Regulations, the finding(s) or recommendation(s) made by the B-BBEE Commission must be in writing, communicated to the complainant and published in a manner it may deem fit or appropriate, subject to section 13J (7) (b) of the B-BBEE Act.
- 1.6 This publication is therefore issued in line with these provisions of the B-BBEE Act and in the interest of the public.

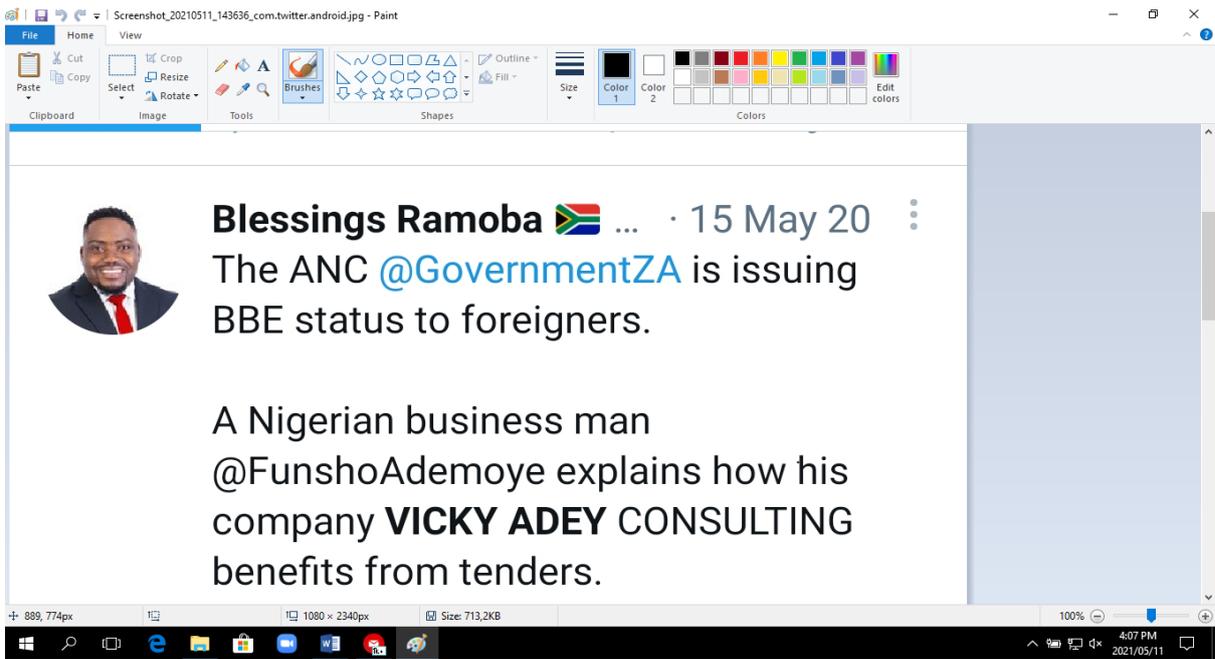
## **2. BRIEF DESCRIPTION OF THE COMPLAINT**

- 2.1 The B-BBEE Commission received information through media channels, in particular Twitter and WhatsApp, that contained statements that distort and mislead on the application of B-BBEE in South Africa. The statements were made by Olufunsho Adebayo Ademoye, a member of Vicky Adey Consulting CC. The information received further indicated possible fronting and misrepresentation of B-BBEE status by Vicky Adey Consulting CC.
- 2.2 The following are the two of the captions that appeared on the social media *twitter* on 14 and 15 May 2020 and circulated across other social media platforms:

Picture 1: Screenshot from twitter of 14 May 2020



Picture 2: Screenshot from twitter of 15 May 2020



2.3 Based on the information, Vicky Adey Consulting CC is claiming to be 100% black owned, and such black ownership includes a Nigerian national who does not qualify as a beneficiary for B-BBEE purposes. Vicky Adey Consulting CC has two members, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo, who respectively hold 40% and 60% members' interest.

- 2.4 Further, based on the information, it appears that Vicky Adey Consulting CC may be accessing opportunities in government on the basis of the B-BBEE status that includes ownership of a Nigerian national (40%) who does not qualify to benefit under the B-BBEE Act if one has regard to the definition of black people in section 1 of the B-BBEE Act.
- 2.5 From the preliminary assessment of the information received, including the details of the close corporation on the Central Supplier Database and the Companies and Intellectual Property Commission, there was an indication that Vicky Adey Consulting CC may be misrepresenting its B-BBEE status to obtain government contracts and other authorisations from government.
- 2.6 In essence, Olufunsho Adebayo Ademoye, a member of Vicky Adey Consulting CC appeared in a Morning Television Show in Nigeria talking about B-BBEE, basically indicating that he is a beneficiary of B-BBEE, that he is a business man in South Africa that has tenders from government and also that being a permanent resident in South Africa and married to South African woman entitled him to benefit under B-BBEE.
- 2.7 The video was circulated widely on social media and immediately raised a concern as the content was misleading and incorrect. It therefore seemed that if Olufunsho Adebayo Ademoye claims to get contracts through his corporation in South Africa, the B-BBEE status of his corporation would be incorrect as he is a Nigerian born African male who does not qualify for a benefit under the B-BBEE Act.
- 2.8 The matter was initially assessed by the Compliance Division of the B-BBEE Commission who concluded that it must be referred for an investigation in terms of section 13F (1) (d) and section 13J (1) of the B-BBEE Act and notified Vicky Adey Consulting CC accordingly.
- 2.9 Upon referral, the Investigations and Enforcement Division of the B-BBEE Commission assessed to determine if an investigation is indeed justified. Based on the information at hand, the Investigations and Enforcement Division concluded that there is justification for the investigation to be initiated on the basis summarised below:
- 2.9.1 Vicky Adey Consulting CC is claiming to be 100% black owned with a B-BBEE Contributor Level 1 when the information assessed indicates clearly that Olufunsho Adebayo Ademoye does not qualify under the definition of black people in the B-BBEE Act.

- 2.9.2 Section 1 of the B-BBEE Act has defined black people as “Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalization before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date.
- 2.9.3 Olufunsho Adebayo Ademoye is a Nigerian born male who acquired citizenship in South Africa by naturalisation after 27 April 1994 and the copies of his Identity Document and the Naturalisation Document were considered for this purpose.
- 2.9.4 Vicky Adey Consulting CC has deposed to a B-BBEE Sworn Affidavit for Exempted Micro Enterprises claiming to be 100% black owned and 60% black women owned with a Contributor Level 1 based on the generic Codes of Good Practice when the entity falls within the Construction Sector that applies the Amended Construction Sector Code.
- 2.9.5 Section 10 (3) of the B-BBEE Act states that an enterprise wherein the Minister of Trade, Industry and Competition has issued a sector code must apply that sector code. Further, the B-BBEE Sworn Affidavit in question is invalid in that the deponent did not indicate her designation as required and the calendar year was used as opposed to the financial year end in determining the total revenue of the entity.
- 2.9.6 The B-BBEE Sworn Affidavit submitted is invalid for purpose of B-BBEE compliance as it falls short of meeting the requirements of the B-BBEE Act. The said B-BBEE Sworn Affidavit was deposed by Phumudzo Nancy Muthelo on 7 October 2018.
- 2.9.7 Based on the List of Panel of Contractors Per Region of the Independent Development Trust that includes Vicky Adey Consulting CC (obtained from the internet) and the registration of Vicky Adey Consulting CC on Central Supplier Database, it seems that Vicky Adey Consulting CC may be doing business with organs of state and or public entities using the misrepresented 100% black ownership status to secure opportunities within government.

- 2.9.8 The CIPC historical record indicates that Olufunsho Adebayo Ademoye has been a member of Vicky Adey Consulting CC since 2007 and that the South African born Phumudzo Nancy Muthelo only joined the entity acquiring 60% members' interest in 2016. In its response, Vicky Adey Consulting CC indicated the role of Phumudzo Nancy Muthelo, who is the majority member in the entity, is *attending tender briefings, client liaison, bookkeeping and office administration*, while the core management and overall project implementation is done by Olufunsho Adebayo Ademoye.
- 2.9.9 Whereas Phumudzo Nancy Muthelo is said to be responsible for client liaison, the contact details for Vicky Adey Consulting CC that appear during the internet search of Vicky Adey Consulting CC are those of Olufunsho Adebayo Ademoye. This arrangement has fronting indicators that needed to be investigated further to determine if the ownership requirements under the B-BBEE Act are met in respect of the 60% members' interest of Phumudzo Nancy Muthelo and that her credentials are not being used merely to give the entity the advantage of the 60% black women ownership. A copy of the Description of Roles as submitted by Vicky Adey Consulting CC on 20 May 2020 was considered for this purpose.
- 2.10 On the basis of the above, it was concluded that it is justifiable for the B-BBEE Commission to investigate this matter for violation of the B-BBEE Act, misrepresentation of the B-BBEE status and fronting practice and make appropriate findings, with or without recommendations.
- 2.11 As both members of Vicky Adey Consulting CC seemed to be implicated in this arrangement or conduct, especially Olufunsho Adebayo Ademoye who appeared on the Nigerian TV channel boasting about his benefits under B-BBEE, it was important that Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo be cited as respondents.
- 2.12 From the information gathered, it appeared that there may be a need to refer this matter also to the Department of Labour and CIPC in accordance with section 13J (6) of the B-BBEE Act for these regulatory bodies to determine if an investigation is warranted in regard to the affairs of this corporation based on some of the statements made in the video.

- 2.13 In particular, Olufunsho Adebayo Ademoye in the video that circulated in the social media suggested that his entity may be defying the labour rules by using cheap labour from foreign nationals instead of paying the labour rate under the laws of South Africa.
- 2.14 Also, statements made by Olufunsho Adebayo Ademoye in the video in question indicate that the entity may also not be running for a legitimate commercial reason that also adheres to the Close Corporations Act, 1984, as amended.
- 2.15 The B-BBEE Commission followed due process to notify the respondents of the complaint in terms of regulation 15 (4) (d) of the B-BBEE Regulations and afforded them an opportunity to respond to the allegations in line with the *audi alteram partem rule*, and to submit documentation required in the investigation of the complaint.
- 2.16 Upon investigation, the B-BBEE Commission afforded the respondents an opportunity to respond to adverse findings that were issued to them in writing as required by regulation 15 (13) of the B-BBEE Regulations. After consideration of the response, the B-BBEE Commission issued its final findings which have since been communicated in writing to the respondents.

### **3 FINDING(S)**

- 3.1 The B-BBEE Commission has acted in accordance with the B-BBEE Act read with B-BBEE Regulations and has conformed to rules relating to fair administrative justice processes applicable to investigations, in its communication with Vicky Adey Consulting CC and its members Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo and also afforded them sufficient opportunity to respond to the adverse findings.
- 3.2 Having investigated the allegations in terms of the mandate under section 13F (1) (d) and section 13J (1) of the B-BBEE Act, and considered the response from the Respondents, the B-BBEE Commission in terms of section 13J (3) read with regulation 15 (4) (g) of the B-BBEE Regulations makes the following findings:
- 3.2.1 Vicky Adey Consulting CC, a close corporation duly registered in accordance with the laws of South Africa under registration number 2007/196304/23, together with its members Mr Olufunsho Adebayo Ademoye and Ms Phumudzo

Nancy Muthelo have violated the B-BBEE Act and acted contrary to the objectives of the B-BBEE Act on the basis of the following:

- 3.2.1.1 Vicky Adey Consulting CC is a close corporation that is owned by Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo with 40% and 60% each, respectively and this is confirmed by the Companies and Intellectual Property Commission and the Central Supplier Database, and admitted as correct by the respondents.
- 3.2.1.2 Vicky Adey Consulting CC claimed to be a 100% black owned and 60% black women owned Exempted Micro Enterprise with a B-BBEE Contributor Level 1, however, evidence shows that Olufunsho Adebayo Ademoye, who holds 40% members' interest in Vicky Adey Consulting CC does not qualify under the definition of black people in the B-BBEE Act;
- 3.2.1.3 Section 1 of the B-BBEE Act has defined black people as Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalization before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date, and Olufunsho Adebayo Ademoye does not meet this definition;
- 3.2.1.4 Olufunsho Adebayo Ademoye is a Nigerian born male who acquired citizenship in South Africa by naturalisation after 27 April 1994 and as a result his 40% members' interest in Vicky Adey Consulting CC cannot be included as black ownership for purposes of compliance with the B-BBEE Act;
- 3.2.1.5 Olufunsho Adebayo Ademoye is a South African citizen born in Nigeria, but based on the documents seemingly issued by Department of Home Affairs, he was naturalised on 19 August 2009, which means he cannot be regarded as a black person as defined in terms of section 1 of the B-BBEE Act.

- 3.2.1.6 Vicky Adey Consulting CC can thus not be presented as a 100% black owned corporation as such claim is untrue, false and incorrect as Olufunsho Adebayo Ademoye fails to meet the definition in section 1 of the B-BBEE Act.
- 3.2.1.7 According to Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo, they got married customarily in 2015 and the marriage was registered with the Department of Home Affairs. Whereas Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo got married customarily in 2015, the copy of the Permanent Residence Permit of Olufunsho Adebayo Ademoye issued on 10 October 2006 categorises him as a spouse already in 2006, but it is not indicated to whom he was a spouse as it is clearly not Phumudzo Nancy Muthelo.
- 3.2.1.8 Phumudzo Nancy Muthelo is a South African citizen by birth based on the copy of the Identity document submitted to the B-BBEE Commission, and her 60% in the corporation can be regarded as black as she would meet the definition of black people in the B-BBEE Act.
- 3.2.1.9 Other than her signature in the B-BBEE sworn affidavit dated 07 October 2018, 2017 financial statements and on the acceptance letter for Coega Development Corporation, correspondence of Vicky Adey Consulting CC reflect credentials and signature of Olufunsho Adebayo Ademoye and not Phumudzo Nancy Muthelo as the majority owner.
- 3.2.1.10 On 07 October 2018 Phumudzo Nancy Muthelo deposed an EME B-BBEE sworn affidavit claiming that Vicky Adey Consulting CC is 100% black owned, 60% black woman owned, and that it is a B-BBEE Level 1, using the generic Codes of Good Practice. This B-BBEE sworn affidavit and previous others were admittedly

submitted to organs of state and public entities by Vicky Adey Consulting CC to secure contracts/work or other authorisations.

- 3.2.1.11 In this regard Vicky Adey Consulting CC presented itself for opportunities to Department of Education, Gauteng Province, Independent Development Trust and Coega Development Corporation, who subsequently selected Vicky Adey Consulting CC for their panel of service providers/contractors. Further, Vicky Adey Consulting CC also made an application to the Construction Industry Development Board and was subsequently awarded a CIDB Grading Level 4.
- 3.2.1.12 As the black ownership status of Vicky Adey Consulting CC as a 100% black owned corporation is incorrect and false, Vicky Adey Consulting CC and its members misrepresented its B-BBEE status as the corporation is only 60% black owned, which would only entitle it to the automatic B-BBEE Level 2 provided that the exercisable voting rights, economic interest and net value requirements have been met as guided by the Construction Sector Code.
- 3.2.1.13 Based on the averment by members that they operated the corporation as a family business that did not keep any records of meetings or decisions of the corporation, also noting that the corporation has not demonstrated that it was operated in accordance with the basic corporate governance entailed in the Close Corporations Act and that no profit shares were distributed to the black member, Vicky Adey Consulting CC is not entitled to even claim the automatic B-BBEE Level 2.
- 3.2.1.14 In terms of Item 4.2.3 of CSC 000 of the Construction Sector Code, an entity that is at least 51% black owned but less than 100% black owned can claim the automatic B-BBEE Level 2. According to Schedule 1 of the Construction Sector Code defines 51% black owned to mean an entity in which black people hold at least 51% of

the voting rights and at least 51% of the economic interest and has earned all points for net value under Statement CSC 100.

- 3.2.1.15 Vicky Adey Consulting therefore would have been entitled to claim the automatic B-BBEE Level 2 based on the 60% black ownership of Phumudzo Nancy Muthelo, however, there is no evidence of 60% exercisable voting rights and economic interest, which means it cannot be regarded as at least 51% black owned for purposes of claiming the automatic level.
- 3.2.1.16 Not only has Vicky Adey Consulting CC misrepresented its B-BBEE status in terms of the B-BBEE Act, but it has also submitted false or misrepresented information regarding its B-BBEE status to organs of state and public entities, including those mentioned above, for purposes of determining its B-BBEE status.
- 3.2.1.17 Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo claim that they were not aware of the requirements of the B-BBEE Act and Phumudzo Nancy Muthelo stated that she thought that Olufunsho Adebayo Ademoye qualified to be regarded as a black person under the B-BBEE Act. Phumudzo Nancy Muthelo in her affidavit stated that *"...I was under the impression that being a South African citizen, and a black male, he was indeed black as anticipated by the Act."* Olufunsho Adebayo Ademoye stated in his affidavit that *"I claimed that Black Economic Empowerment initiative is meant to benefit Africans, Coloureds, Chinese, Indians and not only Black South Africans. I claimed that we as South African permanent residence are due beneficiaries of the BEE initiative."*
- 3.2.1.18 It is a fact that ignorance of the law is not an excuse and cannot absolve respondents from liability. It is more worrying in this case that reasons provided by the respondents for such alleged ignorance of the law are not consistent. In any event, records show that apart from misrepresenting the B-BBEE status of Vicky Adey Consulting CC for tenders/contracts, the respondents also

misrepresented the information when they made their application to Construction Industry Development Board for the grading.

- 3.2.1.19 Specifically, in the application to Construction Industry Development Board the respondents included financial statements that reflect turnover that cannot be substantiated given that the affidavit of Olufunsho Adebayo Ademoye stated that the sub-contract they referred to for 2016/17 was not successfully completed for the corporation to derive the revenue reflected on the financial statements of 2017 submitted to Construction Industry Development Board.
- 3.2.1.20 The above said, in the application to Construction Industry Development Board the respondents included a letter from an entity, Kontinental Engineering Consulting, that purports to confirm that Vicky Adey Consulting CC delivered on the RDP Housing project, not maintenance, for a specified value, when the respondents stated under oath that the sub-contract in 2016/17 was not completed, which may either mean that this letter is fabricated or the respondents lied under oath. The respondents have shown what seems to be a trend or tendency to falsify or misrepresent information for a specific purpose, including for accessing tenders or other authorisations from government, as is the case with Construction Industry Development Board.
- 3.2.1.21 Vicky Adey Consulting CC reflected on its B-BBEE sworn affidavit that the nature of their business is Building and Civil Construction, which means that they operate within the Construction Sector Code. The amended Construction Sector Code came into effect on 1 December 2017, which means that Vicky Adey Consulting CC ought to have been measured using the sector code in question.
- 3.2.1.22 Vicky Adey Consulting CC has deposed to a B-BBEE Sworn Affidavit for Exempted Micro Enterprises through Phumudzo Nancy Muthelo claiming to be 100% black owned and 60% black women

owned with a Contributor Level 1 based on the generic Codes of Good Practice whereas the entity falls within the construction sector.

- 3.2.1.23 Section 10 (3) of the B-BBEE Act states that an enterprise wherein the Minister of Trade, Industry and Competition has issued a sector code must apply that sector code. Vicky Adey Consulting CC applied the generic Codes of Good Practice and not the Construction Sector Code contrary to the B-BBEE Act.
- 3.2.1.24 Further, in the B-BBEE Sworn Affidavit deposited by Phumudzo Nancy Muthelo, the deponent did not indicate her designation as required and the calendar year was used as opposed to the financial year end in determining the total revenue of the entity. Even if Vicky Adey Consulting CC was entitled to depose a B-BBEE sworn affidavit, the B-BBEE Sworn Affidavit submitted is invalid for purpose of B-BBEE compliance as it falls short of meeting the requirements of the B-BBEE Act.
- 3.2.1.25 Olufunsho Adebayo Ademoye has been a member of Vicky Adey Consulting CC since 2007 and the South African born Phumudzo Nancy Muthelo only joined the entity acquiring 60% members' interest in 2016, however, Olufunsho Adebayo Ademoye is responsible for the core operations and activities of Vicky Adey Consulting CC.
- 3.2.1.26 Vicky Adey Consulting CC indicated to the B-BBEE Commission that the role of Phumudzo Nancy Muthelo, who is the majority member in the entity, is attending tender briefings, client liaison, bookkeeping and office administration, while the core management and overall project implementation is performed by Olufunsho Adebayo Ademoye, as demonstrated by the various corporation documents executed and signed by Olufunsho Adebayo Ademoye.

3.2.1.27 Whereas Phumudzo Nancy Muthelo is said to be responsible for client liaison, the contact details for Vicky Adey Consulting CC that appear during the internet search of Vicky Adey Consulting CC are those of Olufunsho Adebayo Ademoye, an indication that Olufunsho Adebayo Ademoye is responsible for this function. As indicated above, Phumudzo Nancy Muthelo is reflected in a few areas, such as the B-BBEE sworn affidavit, financial statements for 2017 and the acceptance letter for Coega Development Corporation.

3.2.1.28 The arrangement between Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo in relation to Vicky Adey Consulting CC indicates that Phumudzo Nancy Muthelo may be included in the entity owned by Olufunsho Adebayo Ademoye as a 60% member to enhance the B-BBEE status of Vicky Adey Consulting CC and give it advantage as a black women owned entity for opportunities.

3.2.1.29 The conduct and/or practice and/or arrangement of Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo is contrary to the provisions of the B-BBEE Act.

3.2.2 Olufunsho Adebayo Ademoye under oath in his affidavit admitted that on 10 September 2019 he made ill placed statements on the Morning Television Show in Nigeria, which were careless and reckless, and which statements the B-BBEE Commission has found to distort information about B-BBEE and misleading, and undermine the objectives of the B-BBEE Act, as captioned below:

*“ I claimed that I am doing business in South Africa and in particular that, that I am currently engaged in infrastructure maintenance for various Government departments; I claimed that I have been given tenders to do infrastructure maintenance; I claimed that the Black Economic Empowerment initiative is meant to benefit Africans, Coloureds, Chinese, Indians and not only Black South Africans; I claimed that we as South African permanent residence are due beneficiaries the BEE initiative; I claimed that I benefitted as a black man by marrying a South African woman; I indicated there that South Africans think*

*that the BEE is meant for them only and yet it is meant for Africans; I indicated that those Africans who have been in South Africa after 1994 are meant to benefit from the BEE Act; All in all I indicated that I have benefitted from the BEE initiative”.*

- 3.2.3 Vicky Adey Consulting CC, together with its members Olufunsho Adebayo Ademoye and Ms Phumudzo Nancy Muthelo therefore misrepresented the B-BBEE status of Vicky Adey Consulting CC and also presented false or misrepresented information relevant for assessing B-BBE compliance to organs or state and public entities, as supported by evidence, which amount to an offence in terms of section 13O (1) (a) and (c) of the B-BBEE Act.
- 3.2.4 The information gathered indicates that Vicky Adey Consulting CC is controlled and managed by Olufusho Adebayo Ademoye, however, it could not find sufficient evidence to confirm a fronting practice on the basis of that Vicky Adey Consulting CC has not really been active in business and the role of Phumudzo Nancy Muthelo as the owner of the majority stake in the close corporation could not be established fully to draw a conclusion of fronting practice, which is an offence in terms of section 13O (1) (d) of the B-BBEE Act.
- 3.2.5 Based on the information gathered, Vicky Adey Consulting CC is not operated in a manner that is consistent and compliant to the provisions of the Close Corporations Act and the basic corporate governance principles relating to such corporations, as demonstrated by lack of records of meetings, including minutes and resolutions, even if it may be a family business, possible manipulation of financial statements and performance of sub-contracting work without payments being made to the account of the corporation, and as such may be in violation of the Close Corporations Act.
- 3.2.6 Based on the incorrect information reflected on the B-BBEE sworn affidavit, Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo may have committed perjury as they misrepresented the B-BBEE status of the corporation under oath, which is a criminal offence.

3.3 After having granted respondents the opportunity to respond to adverse findings, the B-BBEE Commission indeed received the response from respondents, who also expressed willingness to remedy the issues raised in the adverse findings.

#### **4 RECOMMENDATION(S)**

4.1 In terms of section 13 N (3) (a) of the B-BBEE Act, a person commits an offence if that person hinders, obstructs or improperly attempting to influence the B-BBEE Commission when it is exercising a power or performing a duty in terms of the B-BBEE Act. Further section 13 N (3) (c) of the B-BBEE Act provides that a person commits an offence if that person knowingly provides false information to the B-BBEE Commission. The respondents in this matter cooperated with the investigation and provided information requested, although they made incoherent statements at times.

4.2 In terms of section 13O (1) (a) of the B-BBEE Act, a person commits an offence if that person knowingly misrepresent or attempts to misrepresent the B-BBEE status of an enterprise. The B-BBEE Commission is required in terms of section 13J (5) of the B-BBEE Act to refer a matter that it has investigated to the National Prosecuting Authority or the appropriate division of the South African Police Service, if it is of the view that it involves the commission of a criminal offence in terms of the B-BBEE Act or any other law.

4.3 The B-BBEE Commission may, if it is of the view that a matter can be resolved through alternative dispute resolution mechanism, facilitate a resolution of a matter or refer a matter for alternative dispute resolution to any appropriate dispute resolution process in terms of regulation 15 (11) of the B-BBEE Regulations. The B-BBEE Commission has not explored this mechanism as it did not seem appropriate given the nature of the matter.

4.4 Having considered the findings in this matter, the B-BBEE Commission considered actions of Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo to be a serious violation of the B-BBEE Act and recommended the following remedial recommendations, which in its view would remedy the violation in the manner that is in the interest of the public and the objectives of the B-BBEE Act:

4.4.1 Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo must within 10 days of the findings issue a written public apology which

should be placed on public social media platforms, including Twitter and Facebook, the contents of which must be approved by the B-BBEE Commission and proof of publication to be submitted to the B-BBEE Commission within 24 hours of publication;

- 4.4.2 Olufunsho Adebayo Ademoye must within 10 days of the findings record and place on social media, including Twitter and Facebook, a video specifically apologising to the South African public and the its government for the false, reckless, careless and misleading statements made on the Morning Television Show in Nigeria on 10 September 2019, the contents of which must be approved by the B-BBEE Commission and proof of publication to be submitted to the B-BBEE Commission within 24 hours of publication;
- 4.4.3 Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo must within 10 days of the findings issue a letter immediately withdrawing from each panel of contractors / service providers of any organ of state or public entity, including the Independent Development Trust, Coega Development Corporation and Department of Education Gauteng Province, on the basis of false and misrepresented information, and proof to be submitted to the B-BBEE Commission within 24 hours of submission of the letters;
- 4.4.4 Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo must within 10 days submit a letter to Construction Industry Development Board to surrender for cancellation the CIDB grading awarded to Vicky Adey Consulting CC on the basis of false and misrepresented information and proof to be submitted to the B-BBEE Commission within 24 hours of submission of the letters;
- 4.4.5 Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo must within two (2) months attend training on B-BBEE and corporate governance with any service provider or training institution accredited to provide such training by relevant authorities in South Africa, noting that training by the B-BBEE Commission and Companies and Intellectual Property Commission as responsible regulatory entities for the B-BBEE Act and the Close Corporations Act respectively, and submit proof thereof to the B-BBEE Commission within 24 hours of attending such training; and

4.4.6 Vicky Adey Consulting CC must pay a once off monetary contribution amount of **R50 000 (Fifty Thousand Rand)** in the interest of the public towards the promotion of the objectives of the B-BBEE Act, in this case, skills development for black people at institutions of higher learning, noting the following:

4.4.6.1 the above contribution amount shall be paid to the National Student Financial Aid Scheme (NSFAS) in 5 monthly instalments of R10.000 (Ten Thousand Rand), particulars of which will be furnished by the B-BBEE Commission);

4.4.6.2 the contribution amount shall be paid within 10 (ten) days of receipt of the banking account details from the B-BBEE Commission by Vicky Adey Consulting CC, and proof thereof shall be sent to the B-BBEE Commission within 5 (five) days of such payments; and

4.4.6.3 this contribution amount shall not constitute a fine contemplated in the B-BBEE Act, shall not be regarded as a donation or form part of allowable corporate social responsibility or similar expenditure or be used for any legally allowable deductions in the determination of taxable income or any other similar deductions.

4.5 Whether or not the respondents accept the remedial recommendations, the B-BBEE Commission should issue a letter to Department of Home Affairs for them to verify the correctness and validity of Olufusho Adebayo Ademoye's permanent residence, marital status and citizenship given the suspicion that false or misrepresented information may have been used to obtain the status. The B-BBEE Commission has since issued the letter to the Department of Home Affairs in this regard.

4.6 It is important to note that the respondents have accepted the remedial recommendations and have already implemented all with the exception of the recorded apology which is still to be uploaded as required. Respondents demonstrated full cooperation.

4.7 In the event that the respondents do not agree to implementation of the remedial recommendations made herein, which in the view of the B-BBEE Commission are reasonable

given the seriousness of the transgressions, the B-BBEE Commission may consider implementing any or all of the following actions in accordance with the B-BBEE Act:

- 4.7.1 pursue criminal action Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo on the basis of misrepresentation of the entity's B-BBEE status by referring this matter to the appropriate division of the South African Police Services and/or the National Prosecution Authority in terms of section 13J (5), for contravening section 13O (1) (a) of the B-BBEE Act, and any other law;
- 4.7.2 refer the corporate governance aspects of violations of the Companies Act to Companies and Intellectual Property Commission, as amended, for them to consider for further investigation the affairs of Vicky Adey Consulting CC and impose appropriate remedial action, with a view to also declare Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo as delinquent and unfit to hold directorship or membership in any entity;
- 4.7.3 institute proceedings against Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo in court for an order to restrain the apparent breach of the B-BBEE Act, including misrepresentation of the B-BBEE status and/or to obtain appropriate remedial relief, as provided for in section 13J (4) of the B-BBEE Act;
- 4.7.4 refer findings on this matter to National Treasury for the purposes of invoking the processes in the Preferential Procurement Policy Framework Regulations, relating to submission of false information in respect of the B-BBEE status for entering Vicky Adey Consulting CC on the register of restricted suppliers, and further Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo into the register of tender defaulters in terms of the provisions of section 13P of the B-BBEE Act so that they are barred from contracting or transacting any business with an organ of state or public entity for a period of up to 10 (ten) years upon conviction thereof;
- 4.7.5 refer the findings to SARS to consider investigating the tax affairs of Vicky Adey Consulting CC, Olufunsho Adebayo Ademoye and Phumudzo Nancy Muthelo in

light of the possible manipulation of financial information and misrepresentation, and impose appropriate remedial action;

- 4.7.6 refer the findings in this matter to all organs of state and public entities, including Construction Industry Development Board to consider cancelling or withdrawing contracts and other authorisations awarded to Vicky Adey Consulting CC as permitted under section 13A of the B-BBEE Act on account of false and/or misrepresented information;
  - 4.7.7 refer findings to South African Revenue Services to consider investigating the tax affairs of Vicky Adey Consulting CC and its members, particularly the possible manipulation of financials and payments made outside the official accounts of Vicky Adey Consulting for activities or projects implemented;
  - 4.7.8 refer Vicky Adey Consulting CC to Department of Employment and Labour to consider investigating allegations of violation of the labour laws on the basis of the statements made by Olufunsho Adebayo Ademoye that he employed cheap labour of foreign nationals in the projects;
  - 4.7.9 refer Vicky Adey Consulting CC to Department of Home Affairs to consider investigating the legitimacy of the documents relating to permanent residency, naturalization and marriage of Olufunsho Adebayo Ademoye; and
  - 4.7.10 refer the evidence of manipulation of the financial statements of 2017 to SAIPA to consider an investigation in the matter for the relevant professional to give his/her version of events in regard to the financial statements, and if there is wrongdoing, for appropriate remedies to be employed.
- 4.8 With the implementation of the remedial recommendations by respondents, the B-BBEE Commission will not pursue any further action against respondents and will continue to monitor the conduct of respondents going forward and will not hesitate to act against them should any violations of the B-BBEE Act be detected.
- 4.9 The B-BBEE Commission has now invoked the provisions of section 13J (7) (a) read with regulation 15 (12) (c) of the B-BBEE Regulations which provides for the publication of any

findings or recommendations made in respect of any investigation conducted in such a manner as the B-BBEE Commission may deem fit.

## **5. IMPLEMENTATION OF RECOMMENDATIONS**

5.1 Reference to 'days' in the recommendations above means calendar days unless stated otherwise. The B-BBEE Commission may adjust timelines as may be necessary to give effect to the recommendations. In this case timelines were adjusted to take into account factors that prevailed during the implementation of the remedial recommendations.

## **6. STATUS OF THIS PUBLICATION**

6.1 This publication is prepared only for the purpose of publishing the findings and recommendations of the B-BBEE Commission on this matter in the interest of the public, but does not constitute an investigation report in regard to this matter, which is a separate bulky document with annexures.

## **7. CONCLUSION**

7.1 The B-BBEE Commission has taken all due care in preparing this publication, and should there be any errors you wish to highlight or should you require any clarity regarding the contents of this publication, please do not hesitate to contact us immediately.

7.2 This publication will also be available on the website of the B-BBEE Commission from the date of its release and it will be circulated to the public through channels that the B-BBEE Commission deems fit.

7.3 For any queries or further clarity on this publication, kindly feel free to contact us at the following contact details:

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Issued by the B-BBEE Commission  
**16 September 2021**