

Home Affairs seeks legal advice to enforce Fireblade court order

Home Affairs Minister Malusi Gigaba says there is no policy framework that can enable the department to formalise an arrangement to enable Fireblade Aviation to have immigration services at the VVIP terminal at OR Tambo International Airport.



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The Minister said the discussion on how the arrangement can be formalised needs to be taken to Cabinet.

Meanwhile, Home Affairs Acting Director-General Thulani Mavuso says the department has, following last week's court decision, asked for legal advice on how to enforce the Constitutional Court order.

Gigaba appeared before the Portfolio Committee on Home Affairs on Tuesday night to brief Members of Parliament on the agreement between Home Affairs and Fireblade Aviation on the private terminal at the OR Tambo International Airport.

“As we indicated in the meeting in May, there is still no policy on private VVIP terminals – this being the first one of its kind, which has been arrived at in this manner.

“There is therefore no policy. It means the policy has to now be developed so that it can provide a framework for how such issues are dealt with going forward.

“Certainly, we will be consulting with our Cabinet colleagues because the other question that arises is who [is the custodian of] is this? Airports are the responsibility of the Airports Company of South Africa, under the Department of Transport? Under whom do VVIP terminals fall?

“The Department of Home Affairs only renders a service... We may be the coordinating agency of border management services but we are only one of the services rendered at the port of entry,” Gigaba said.

His remarks come after the committee invited him last week, following the Public Protector's report, which revealed that he lied under oath and the Constitutional Court ruling, which dismissed the Minister's leave to appeal the lower court's ruling on the matter.

Last week, the Oppenheimers, the owners of Fireblade, appeared before the same committee to present their side of the story. They told MPs that Gigaba lied after he denied approving the operation of an airport terminal for Fireblade Aviation at OR Tambo International Airport.

With all legal avenues exhausted after the Constitutional Court hearing, Gigaba said the court decision is the reason Cabinet should now discuss the formulation of a policy that will make the arrangement possible to implement.

“Does this decision therefore unwittingly now mean that VVIP terminals have been rendered the responsibility of the Department of Home Affairs?

“Should we therefore lead the process of formulating a policy framework or should it be the Department of Transport that should be a lead agency? That is the discussion that must be undertaken.

“Given the precedent now set, what is the procurement process for such VVIP terminals? Will it still go through the PFMA [Public Finance Management Act] process? Is it going to be a supply chain management process? Is the Cooperative Governance Act still relevant?

“All these processes, the entire governance process of awarding contracts and tenders in government, needs to be clarified.

“What we are saying is that we are going to take to Cabinet a discussion, which is going to take into consideration the implications that have arisen as a result of this decision, so that we get guidance about a long-term, sustainable policy framework going forward,” the Minister said.

Home Affairs enters into agreement with Fireblade following court judgement

In his presentation to the committee, Mavuso said following last week's Constitutional Court decision and the fact that the department has to comply with it, the department had to enter into some form of agreement with Fireblade on how border management staff would be deployed to the private terminal and to agree on a financial model to cover the salaries of the staffers.

“But we have not signed a MoU. We used the court order as a basis upon which to implement the operations.

“What we will do moving forward is to get legal advice [for] the interim, while we do not have a policy framework, on how to ensure that we protect staff, for example, and ensure that there is some form of an interim measure that is at least written on paper instead of the current agreement, where we submitted a letter and a letter came back from Fireblade agreeing on the financial model.”

After confusion that spanned for over an hour, the majority of MPs in the committee, which is chaired by Hlomani Chauke, asked Gigaba not to comment on the Constitutional Court ruling and the Public Protector's report, saying as a committee, they concur with the findings and would not want to be seen to be favouring Gigaba by affording him an opportunity to explain his side of the story.

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