



IN THE HIGH COURT OF SWAZILAND

Civil case No: 404/2014

In the matter between:

DUMISANI ZWANE

APPLICANT

AND

JUDGE OF THE INDUSTRIAL COURT

FIRST RESPONDENT

DUDUZILE NHLENGETFWA N.O.

SECOND RESPONDENT

SIPHO MAMBA N.O.

THIRD RESPONDENT

EZULWINI MUNICIPALITY

FOURTH RESPONDENT

THE REGISTRAR OF THE INDUSTRIAL

COURT

FIFTH RESPONDENT

CYRIL MAPHANGA N.O.

SIXTH RESPONDENT

THE ATTORNEY GENERAL

SEVENTH RESPONDENT

Neutral citation: *Dumisani Zwane v. Judge of the Industrial Court and Six Others (404/2014) [2014] SZHC122 (19 June 2014)*

Coram:

M.C.B. MAPHALALA, J

Summary

Labour Law – Review proceedings of a disciplinary hearing – legal principles governing review proceedings considered – held that the decision of the court *a quo* was reviewable and liable to be set aside on the basis that the court usurped the powers of the employer to conduct a disciplinary hearing over its employee – held further that the court committed an

irregularity by divesting the powers of the employer when directing that a third party would act on the recommendations of the Chairperson – held further that the employer committed a gross irregularity by not consulting with the employee before approving the new organizational structure and that consequently the requirement of procedural fairness was not followed – held further that the decision of the court *a quo* is reviewed and set aside with costs.

**JUDGMENT
19 JUNE 2014**

[1] This was an application for an order reviewing, correcting and setting aside a decision of the Industrial Court, herein referred to as the court *a quo* in respect of orders granted against him in the following terms:

1.1 Appointing Attorney Cyril Maphanga, herein referred as the sixth respondent, to be chairperson of the disciplinary hearing instituted against the applicant by the Chief Executive officer of the fourth respondent, and that attorney Titus Mlangeni be removed as the Chairman.

1.2 Mandating the fourth respondent to appoint any of the Chief Executive Officers of the country's Municipalities to act on the recommendations of the sixth respondent at the conclusion of the disciplinary hearing against the applicant.

1.3 That the disciplinary hearing of the applicant should proceed without any further delay or within ten working days from the date of judgment, the 4th March 2014.

1.4 Dismissing the prayer by applicant to interdict the implementation of the new organisational structure pending proper consultations.

[2] The applicant contends that the decision of the court *a quo*, if not reviewed, corrected and set aside would result in a miscarriage of justice. He argued that the court *a quo* committed a gross irregularity by ordering the disciplinary hearing to proceed and mandating the Chief Executive Officer of his choice to make a final determination on the chairperson's recommendation. He further argued that the decision has far-reaching implications on the basis that by the time the disciplinary proceedings are concluded it is likely that the first respondent would have already implemented the new organisational structure notwithstanding that he was not consulted as required by law. He further argued that the first respondent has admitted that meaningful consultations on the new organisational structure will only be done once the Minister has approved. He also argued that the fourth respondent has admitted that his position as Inspector of Works has been changed to that of Assistant Town Engineer without his input. To that extent he argued that the court *a quo* did not properly apply its mind in the matter and consequently committed an irregularity on the basis that the fourth respondent continues to be actively involved in the disciplinary process to the extent of setting dates for hearing.

[3] In the papers filed in the court *a quo* the applicant had set out the alleged unfair labour practice as follows. He stated that on the 20th December 2012 the Chief

Executive Officer of the fourth respondent personally approved additional construction of four units at plot 82 of Farm 51 Bhubhudla Estate, Mantenga at Ezulwini; and, that he did this by giving a verbal permission to the property developer Nqaba Dlamini to construct and further endorsed his signature on the plans brought to him by the property developer. Pursuant thereto and on the 9th September 2013, the Chief Executive Officer of the fourth respondent suspended the applicant without affording him a right to be heard and further preferred charges against him for misconduct and dishonesty. The applicant was invited to attend a disciplinary hearing scheduled for 11 October 2013. The hearing was postponed at his instance by the Chairperson at the time Manene Thwala. On the 7th November 2013 the hearing reconvened and he applied for the recusal of the chairperson Mr. Manene Thwala on the basis that Chief Executive Officer of the fourth respondent was involved in his appointment notwithstanding that he had a direct and personal interest in the outcome.

- [4] After Mr. Thwala had refused to recuse himself, applicant's attorneys advised the fourth respondent that they had instructions to institute court proceedings to have Mr. Thwala removed as Chairperson; hence, the fourth respondent removed Mr. Thwala as chairperson. However, the Chief Executive Officer of the fourth respondent without the consent of applicant's attorneys appointed Attorney Titus Mlangeni as Chairperson of the disciplinary hearing scheduled for 19 December 2013. On the 19 December 2013 and during the hearing

proceedings, the applicant's objection to Mr. Mlangeni as chairperson was dismissed.

[5] On the 14th February 2014 the applicant lodged an application seeking the following orders: firstly, that the fourth respondent be and hereby restrained from implementing the new organisational structure without consulting the applicant; secondly, setting aside the charges preferred against the applicant and/or interdicting the fourth respondent from proceeding with the disciplinary enquiry; and, in the alternative, that Attorney Titus Mlangeni be removed as chairperson of the fourth respondent. Fourthly, that the fourth respondent be and hereby ordered to appoint a committee of Council to handle the disciplinary hearing of the applicant. Fifthly, that the committee of Council be and hereby ordered to appoint a new chairperson of the disciplinary hearing of the applicant. Sixthly, that the disciplinary hearing should commence under the chairperson to be appointed by the committee of Council.

[6] It is common cause that when the matter first appeared in court, the fourth respondent made an undertaking that the disciplinary hearing would not proceed pending finalization of the application. The court *a quo* accordingly entered an order that pending the finalisation of the application, the fourth respondent be and is hereby interdicted from proceeding with the applicant's disciplinary hearing. Furthermore, that the implementation of the restructuring process is hereby interdicted.

- [7] During a further hearing of the application, the first respondent made a finding that the disciplinary hearing was tainted by the involvement of the Chief Executive Officer of the fourth respondent who is also implicated in the charges faced by the applicant. The first respondent further noted that the disciplinary process was tainted by the involvement of the Chief Executive Officer in initiating the charges, giving evidence, appointing a chairperson and further wanting to implement the decision of the chairperson that he has appointed. Consequently, the first respondent issued an order barring the Chief Executive Officer of the fourth respondent from playing an active role in the disciplinary hearing save for being a witness of the fourth respondent.
- [8] The disciplinary charges are that the applicant was dishonest to the employer by stating that the building plans for development had been approved whereas they had not been approved. The applicant's contention is that the building plans were actually approved by the Chief Executive Officer of the fourth respondent; and, that he further appended his signature on the building plans and also affixed the Council's stamp.
- [9] The applicant contends that the first respondent has usurped the powers of the employer by appointing attorney Cyril Maphanga to chair the disciplinary hearing. He argued that this is a prerogative of the employer which cannot be assumed by the courts. He reminded the court that he had previously objected to the appointment of Mr. Maphanga.

[10] The first respondent further mandated the Chief Executive Officer to appoint any of the chief executive officers in the country to make a final determination on the recommendations made by attorney Cyril Maphanga in his capacity as the disciplinary chairman. The applicant contends that the present dispute is between the fourth respondent as the employer and himself as the employee, and, that it would be wrong to have a final decision made by a third party, particularly when such a matter is still being dealt with internally. He argued that a special committee of Council would be better qualified to deal with the matter and make its findings particularly because they rank higher to the Chief Executive Officer. To that extent he argued that the court *a quo* committed an irregularity by taking away the prerogative of the employer.

[11] The applicant contended that the court *a quo* committed an irregularity by dismissing the prayer seeking a stay on the implementation of the new structure pending a consultation between the fourth respondent and the applicant. It is not disputed that the fourth respondent has already approved the new structure without consulting the applicant. It is further not in dispute that the structure now awaits the approval of the Minister pending implementation. The applicant contends that the first respondent committed an irregularity leading to a miscarriage of justice by finding that proper consultation had taken place. He further argued that it was an irregularity for the Chief Executive Officer of the fourth respondent to contend that meaningful consultation would only be done once the Minister has approved the new structure.

[12] The applicant argues that he has good prospects of success in the matter on the basis that the charges preferred against him by the Chief Executive Officer are a sham. His contention is that the Chief Executive Officer is directly implicated in the said charges on the ground that he approved the additional construction on the development.

[13] The application for review is opposed by the fourth respondent in an opposing affidavit filed by the Chief Executive Officer of the fourth respondent Vusi Matsebula. He contends that there is no irregularity committed that might result in a miscarriage of justice. He argues that the applicant is merely abusing the court process with the objective of stalling and frustrating a legitimate process. However, at paragraph 14 of the opposing affidavit, he contends that “save to admit that the disciplinary hearing was irredeemably tainted, the contents are not denied”. That was in response to paragraph 19.5 of the founding affidavit, where the applicant stated the following:

“19.5 On 7th November 2013, the disciplinary hearing reconvened at the commencement of the hearing, I applied for the recusal of the chairperson of the day, Mr. Manene Thwala. The basis for asking for his recusal was the fact that the disciplinary hearing was irredeemably tainted by the involvement of the Chief Executive Officer in the matter where he also has a direct and personal interest in the outcome. I also raised the issue of his apparent bias in the manner he was handling the hearing. Mr. Thwala refused to recuse himself.”

[14] In his replying affidavit the applicant denies that the review for the application is intended as a delaying tactic for the holding of a disciplinary hearing. He contends that the object of the review is to ascertain that he receives a fair hearing when he attends the disciplinary hearing instituted against him by the Chief Executive Officer of the fourth respondent. He reiterated his earlier contention that the Chief Executive Officer of the fourth respondent intends to use him as a scapegoat for his acts of misconduct that he has committed. He further contended that the Chief Executive Officer intends to manipulate the hearing with a view to absolve himself from his own misconduct, and, that he intends to get rid of him using an unfair restructuring process which could ultimately render him redundant.

[15] The applicant reiterated his contention that the court *a quo* committed an irregularity by usurping the powers of the employer and exercising them on behalf of the employer in two respects: first, by appointing the chairperson, and, secondly, by divesting the employer of his powers and handing them to the Chief Executive Officer of another municipality at the prejudice and detriment of the applicant. A further irregularity alleged by the applicant relates to the appointment of the chairperson who was tainted by virtue of being nominated by the Chief Executive Officer of the fourth respondent.

[16] The applicant further contends that there is no evidence that the Chief Executive Officer of the fourth respondent has been authorised to depose to

the opposing affidavit of the fourth respondent in the absence of a resolution of Council in that regard. The applicant further decried as irregular the appointment of a third party to make a final determination on the recommendations by the sixth respondent, attorney Cyril Maphanga who is not the employer. He emphasized that the disciplinary proceedings were an internal process arising out of the contractual relationship between the parties which have to be dealt by the parties themselves. To that extent he argued that the decision of the court *a quo* in dismissing the prayer for a stay of the restructuring process was irregular, and reviewable on the basis that the applicant was not consulted notwithstanding that he was personally affected by the process.

[17] The decision of the court *a quo* which the applicant seeks to review appears at pages 32 and 33 of the Record of Proceedings, and, it was issued by Justice Abande Dlamini on the 4th March 2014.

“COURT ORDER

Having heard counsel for the applicant and respondent and having read papers filed of record:

It Is Hereby ordered that:

- 1. Attorney Titus Mlangeni be and is hereby removed as a Chairperson of the disciplinary hearing.**
- 2. In his stead, Attorney Cyril Maphanga is hereby appointed as Chairperson of the disciplinary hearing.**

- 3. The Ezulwini Town Council is hereby ordered and mandated to appoint any of the Chief Executive officers of the Country's Municipalities or Town Councils to act on the recommendations of Attorney Cyril Maphanga at the conclusion of the disciplinary hearing against the applicant.**
- 4. The Town Clerk of the Ezulwini Town Council, Mr. Vusumutiwendvodza Matsebula, shall play no role whatsoever in the present disciplinary hearing against the employee, Mr. Dumisa Zwane, except as a witness.**
- 5. The disciplinary hearing against the applicant employee should proceed without any further delay or within ten working days from the 4th March 2014.**
- 6. The rest of the prayers in the Notice of Motion are dismissed.**
- 7. No order as to costs."**

[18] The prayers which were dismissed by the court *a quo* were as follows: firstly, that the fourth respondent be and is hereby restrained from implementing the new organisational structure without consulting the applicant. Secondly, setting aside the charges preferred against the applicant and/or interdicting the fourth respondent from proceeding with the disciplinary enquiry. Thirdly, that the fourth respondent be and is hereby ordered to appoint a committee of Council to handle the disciplinary hearing of the applicant. Fourthly, that the committee of Council be and hereby ordered to appoint a new chairperson of the disciplinary hearing of the applicant, and that the disciplinary hearing should commence under the chairperson to be appointed by the committee of Council.

[19] The first ground of review relates to the decision of the court *a quo* in appointing attorney Cyril Maphanga as chairperson of the disciplinary hearing and to order that any of the chief executive officers of the other municipalities should act on the recommendations of the chairperson at the conclusion of the hearing. It is the applicant's contention that in so doing the court *a quo* usurped the functions and/or powers of the employer to hold a disciplinary and/or to discipline its employees which power extends to appointing a Chairperson and acting upon the recommendations of that person. It was argued that such was a prerogative of the employer and could not be taken away without the consent of the employer, and that the duty of the court when intervening in disciplinary proceedings is limited to ensuring that the employer exercises this power in a fair and just manner and not divest the employer of its powers. It was further argued that in appointing attorney Cyril Maphanga, the court ignored that the name was amongst the nominations made by the Chief Executive Officer of the fourth respondent; and that his nomination was tainted in the same way as the previous chairpersons, being Mr. Manene Thwala and Mr. Titus Mlangeni.

[20] The second ground of review relates to the decision of the court *a quo* in dismissing the applicant's prayer for an order restraining the fourth respondent from implementing the new organisational structure without consulting him. It was argued that the questionnaire given to the applicant with regard to the restructuring exercise did not constitute consultation. It was further argued

that the fourth respondent had actually conceded that consultation will only be done once government had approved the proposed new structure.

[21] Section 19 (5) of the Industrial Relations Act No. 1 of 2000 provides the following:

“19. (5) A decision or order of the court or arbitrator shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at Common law.”

Corbett JA dealing with Common law grounds of review in the case of *Johannesburg Stock Exchange v. Witwatersrand Nigel Ltd* 1988 (3) SA (AD) at 152 said the following:

“Broadly, in order to establish review grounds it must be shown that the president failed to apply his mind to the relevant issues in accordance with the behests of the statute and the tenets of natural justice. . . . Such failure may be shown by proof, *inter alia*, that the decision was arrived at arbitrarily or capriciously or *mala fide* or as a result of unwarranted adherence to a fixed principle or in order to further an ulterior or improper purpose; or that the president misconceived the nature of the discretion conferred upon him and took into account irrelevant considerations or ignored relevant ones; or that the decision of the president was so grossly unreasonable as to warrant the inference that he had failed to apply his mind to the matter in the manner aforestated.”

[22] *Tebbutt JA* in the case of *Takhona Dlamini v. The President of the Industrial Court and Another* Civil Appeal case No. 23/1997 approved and followed the *Johannesburg Stock Exchange and Another v. Witwatersrand Nigel Ltd and Another* (supra) at PP 10-11 of the judgment:

“It is quite clear from the foregoing that the legislature was conscious of the difference between an appeal and a review and although it created an Industrial Court of Appeal, it confined its jurisdiction to hear appeals from the Industrial Court to questions of law only and specifically retained by section 11 (5) of the Industrial Relations Act, 1996 which was repealed and replaced by section 19 (5) of the Industrial Relations Act 1/2000 the jurisdiction of the High Court to review decisions of the Industrial Court on common law grounds. Those grounds embrace, *inter alia*, the fact that the decision in question was arrived at arbitrarily or capriciously or *mala fide*, or as a result of unwarranted adherence to a fixed principle, or in order to further an ulterior or improper purpose, or that the court misconceived its functions or took into account relevant ones, or that the decision was so grossly unreasonable as to warrant the inference that the Court had failed to apply its mind to the matter. See *Johannesburg Stock Exchange and Another v. Witwatersrand Nigel Ltd and Another* 1988 (3) SA 132 (AD) at 152 A-E. Those grounds are, however, not exhaustive. It may also be that an error of law may give rise to a good ground for review (see *Hira and Another v. Booyesen and Another* 1992 (4) SA 69 (AD) at 84 B.”

[23] *Tebbutt JA* in the *Takhona Dlamini* case (supra) at p. 12 further approved and followed the South African Court of Appeal case of *Hira and Another v. Booyesen and Another* (supra) at p. 93-94:

“To sum up, the present-day position in our law in regard to common law review is, in my view, as follows:

- (1) Generally speaking, the non-performance or wrong performance of a statutory duty or power by the person or body entrusted with the duty or power will entitle persons injured or aggrieved thereby to approach the Court for relief by way of common law review. See the Johannesburg Consolidated Investment case, supra, at 115.)**
- (2) Where the duty/power is essentially a decision-making one and the person or body concerned (I shall call it "the tribunal") has taken a decision, the grounds upon which the Court may, in the exercise of its common law review jurisdiction, interfere with the decision are limited. These grounds are set forth in the Johannesburg Stock Exchange case, supra, at 152 A-E.**
- (3) Where the complaint is that the tribunal has committed a material error of law, then the reviewability of the decision will depend basically upon whether or not the Legislature intended the tribunal to have exclusive authority to decide the question of law concerned. This is a matter of construction of the statute conferring the power of decision.**
- (4) Where the tribunal exercises powers or functions of a purely judicial nature, as for example where it is merely required to decide whether or not a person's conduct falls within a defined and objectively ascertainable statutory criterion, then the Court will be slow to conclude that the tribunal is intended to have exclusive jurisdiction to decide all questions, including the meaning to be attached to the statutory criterion, and that a misinterpretation of the statutory criterion will not render the decision assailable by way of common law review. In a particular case it may appear that the tribunal was**

intended to have such exclusive jurisdiction, but then the legislative intent must be clear.

- (5) Whether or not an erroneous interpretation of a statutory criterion, such as is referred to in the previous paragraph (i.e. where the question of interpretation is not left to the exclusive jurisdiction of the tribunal concerned), renders the decision invalid depends upon its materiality. If, for instance, the facts found by the tribunal are such as to justify its decision even on a correct interpretation of the statutory criterion, then normally (i.e. in the absence of some other review ground) there would be no ground for interference. Aliter, if applying the correct criterion, there are no facts upon which the decision can reasonably be justified. In this latter type of case it may justifiably be said that, by reason of its error of law, the tribunal "asked itself the wrong question", or "applied the wrong test", or "based its decision on some matter not prescribed for its decision", or "failed to apply its mind to the relevant issues in accordance with the behests of the statute"; and that as a result its decision should be set aside on review.
- (6) In cases where the decision of the tribunal is of a discretionary (rather than purely judicial) nature, as for example where it is required to take into account considerations of policy or desirability in the general interest or where opinion or estimation plays an important role, the general approach to ascertaining the legislative intent may be somewhat different, but it is not necessary in this case to expand on this or to express a decisive view."

[24] With regard to the first ground of review, the court *a quo* committed an irregularity by usurping the powers of the employer to conduct a disciplinary hearing of the employee when appointing a chairperson to conduct the hearing. The court further committed an irregularity when making an order that any of

the other municipalities should act on the recommendations of the chairperson upon the conclusion of the hearing. It is trite law that disciplinary powers over employees is the prerogative of the employer, and, this includes appointing the chairperson and acting on the recommendations made. The duty of the court when intervening in disciplinary proceedings is to ascertain whether the employer has exercised procedural fairness during the disciplinary hearing:

[25] *Justice Peter Dunseith in Graham Rudolph v. Mananga College & Another* Industrial Court case No. 94/2007 at para 46 had this to say:

“46. The court has often expressed its reluctance to interfere with the prerogative of an employer to discipline its employees or to anticipate the outcome of an incomplete disciplinary process. See *Bhekiwe Dlamini v Swaziland Water Services Corporation* (ICA Case N. 13/2006); *Thobile Bhembe v Swaziland Government and Others* (IC Case No. 5/2001); *Swaziland Electricity Board v Michael Bongani Mashwama & Others* (ICA Case No. 21/2000). At the same time, the court will interfere to prevent an unfair labour practice which may cause the Applicant irreparable harm. The outcome of the disciplinary hearing will have a significant impact on the Applicant’s future career as a school principal. Having resigned from the college, the result of the enquiry will determine whether he leaves with the stigma of dishonesty. He is entitled to expect a fair hearing under the chairmanship of an independent person whose independence and impartiality is beyond suspicion.”

See also: “Dismissal”, 2002 edition by Juta & Co. Ltd, John Grogan, at pp 133-135; *Mondi Timber Products v. Tope* (1997) 18 ILJ 149 (LAC)

[26] It is well-settled that procedural fairness is the yardstick to determine whether the employer has conducted the hearing fairly and justly before imposing the penalty. The requirements of procedural fairness were developed by the courts from the rules of natural justice, and, they have nothing to do with the merits of the case. Procedural fairness requires the employer to act in a semi-judicial manner before imposing a disciplinary penalty on the employee. This involves an investigation by the employer to determine whether grounds exist for dismissal, and whether the employee was notified of the allegations against him. The employee should be entitled to a reasonable time to prepare a response including legal representation. In addition the employee should be allowed the opportunity to state his case before an impartial presiding officer or tribunal.

See: *Mjaji v. Creative Signs* (1997) 3 BLLR 321 (CCMA)

Mahlangu v. CIM Deltak; Gallant v. CIM Deltak (1986) 7 ILJ 346 (IC) i.e. this is the leading case on the general requirements of procedural fairness.

[27] As stated in the preceding paragraphs, procedural fairness also requires that the presiding officer must be impartial. This requirement enables the presiding officer to weigh up the evidence and to make an informed and considered decision on the guilt or otherwise of the employee, and, if necessary on the appropriate sanction. The presiding officer should keep an open mind and not exhibit bias or gives an impression of being biased. Similarly, if an allegation

of bias is raised and the presiding officer is asked to recuse himself, such an application should be carefully considered and not rejected out of hand: *Anglo-American Farms t/a Boschendal Restaurant v. Komjwayo* (1992) 13 ILJ 573 (LAC).

At page 512 of *Anglo- American Farms* case (supra) the court had this to say:

“The principles seems to be this: while allowance will be made for the unavoidable practicalities of prior conduct, personal impression and mutual reaction in the employment relationship, any further feature which precludes the person hearing the complaints from bringing an objective fair judgment to bear on the issues involved such as bias or presumed bias stemming from a closed or prejudiced mind or from a family or other relationship will render procedure unfair. The importance of appearances in this area must not be left out of account and it is submitted that where an employee has reasonable suspicion for believing that something more than merely the traces unavoidably left by prior contact in the employment relationship is present and this precludes fair hearing, a complaint on the grounds of bias should be upheld.”

[28] It is common cause that the applicant objected to the appointment of attorney Cyril Maphanga as chairperson on the basis that he was nominated by the Chief Executive Officer of the fourth respondent; however, the court *a quo* proceeded and appointed him as the chairperson much against its own findings that the Chief Executive Officer was implicated in the charges levelled against the applicant. The court *a quo* further made a finding that the disciplinary process was to that extent tainted by his involvement in initiating the charges, giving

evidence, appointing a chairperson and further awaiting to implement the decision of the chairperson. The court made an order that the Chief Executive Officer of the fourth respondent should play no role whatsoever in the present disciplinary hearing against the applicant except as a witness for the fourth respondent. The applicant succeeds in the first ground of review.

[29] The second ground of review related to the decision of the court *a quo* in dismissing the applicant's prayer for an order restraining the fourth respondent from implementing the new organisational structure without consulting the applicant. It is apparent from the evidence that the questionnaire given to the applicant was for general information and did not constitute consultation with regard to the terms and conditions of the applicant's contract of employment. The court *a quo* made an irregularity by ignoring evidence made by the fourth respondent that consultation will only be done once the Government had approved of the new structure. Such evidence constitutes a concession by the fourth respondent that it had not yet consulted the applicant. It is not in dispute that the fourth respondent has approved the new structure. The court *a quo* ignored the relevant consideration that once government approves the new structure, only the implementation of the new structure will be left, and, there will be no room for further consultations. Accordingly, the applicant succeeds in respect of the second ground of review.

[30] Accordingly, the following order is made:

- (a) The decision of the court *a quo* made on the 4th March 2014 is reviewed and set aside with regard to the following orders:
 - (i) The appointment of Attorney Cyril Maphanga to be the chairperson of the disciplinary proceedings instituted by the fourth respondent against the applicant;
 - (ii) Mandating the fourth respondent to appoint any of the chief executive officers of the country's municipalities to act on the recommendation of attorney Cyril Maphanga at the conclusion of the disciplinary hearing against the applicant;
 - (iii) Directing the re-hearing of the disciplinary hearing within ten (10) working days from the 4th March 2014;
 - (iv) Dismissing the applicant's application calling upon the first respondent to be restrained from implementing the new organizational structure.
- (b) The fourth respondent is ordered to pay costs of suit.

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

For Applicant
For Fourth Respondent

Attorney Zweli Shabangu
Attorney S. Mdladla