



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 500/2017

In the matter between:

STEPHEN ZUKE

APPLICANT

and

SWAZILAND ENVIRONMENTAL AUTHORITY

1ST RESPONDENT

MINISTER OF TOURISM AND ENVIRONMENTAL AFFAIRS

2ND RESPONDENT

ATTORNEY GENERAL

3RD RESPONDENT

Neutral Citation : Stephen Zuke v Swd. Environmental Authority & Minister of Tourism and Environmental Affairs and Attorney General (500/2017) [2017] SZHC 235 (10 NOVEMBER 2017)

Coram : Q.M. MABUZA – PJ, T DLAMINI -J, J. MAGAGULA -J

Heard : 01/08/2017

Delivered : 10 NOVEMBER 2017

SUMMARY

Law of Contract – Contract of employment of Applicant not renewed – 1st Respondent failing to issue notification of termination timeously – 1st Respondent in breach of terms of contract – Contract held to be tacitly renewed.

Civil Law – Rules of natural justice – 2nd Respondent in breach of the *audi alterem partem* rule – Decision to terminate employment contract – Without giving Applicant a hearing – Decision held to be unlawful and set aside.

JUDGMENT

The Court

[1] In this matter which came by way of urgency the Applicant seeks an order in the following terms:

1. Condoning the Applicant for the non-compliance with the Rules with respect of manner of service and time limits and enrolling this matter to be heard as one of urgency.
2. That a *rule nisi* do hereby issue calling upon the Respondents to show cause on a date to be fixed by the Court why the following orders should not be made final.

- 2.1 The unilateral decision of the 2nd Respondent of not renewing the Applicant's contract of employment without the consultation with the Cabinet Standing Committee is set aside and declared unlawful.
 - 2.2 The 2nd Respondent is directed to refer the issue of the renewal of the Applicant's contract of employment to the Cabinet Standing Committee.
 - 2.3 The decision of the 2nd Respondent with regards to reasons for the non-renewal of the Applicant's employment contract contained in the letter dated the 23rd of November 2016 is hereby reviewed and set aside as the Applicant was not afforded the right to be heard before the adverse decision was taken.
 - 2.4 The respondents are ordered to pay the costs of this application.
 - 2.5 Granting the Applicant further and/or alternative relief.
3. Pending finalization of this matter the recruitment of the Chief Executive officer of the 1st Respondent is hereby interdicted and/or restrained.

[2] The matter is opposed by the Respondents.

- [3] The Applicant is the Executive Director of the 1st Respondent.
- [4] The 1st Respondent is, the Swaziland Environmental Authority, a statutory body duly established in terms of section 9 of the Swaziland Environmental Authority Act of 1992 with the power to be sued on its own name, carrying on business at RHUS Office Park, Karl Grant Street Mbabane.
- [5] The 2nd Respondent is, the Minister of Tourism and Environmental Affairs, cited in his position as such, a position currently held by Mr. Christopher Gamedze, carrying on business at Second Floor, Income Tax Building, Mhlambanyatsi Road, Mbabane.
- [6] The 3rd Respondent is, Attorney General of the Kingdom of Swaziland, carrying on business at Fourth Floor, Justice Building, Mhlambanyatsi Road, Mbabane cited herein as the official legal representative of the 2nd Respondent.
- [7] The Applicant commenced legal proceedings in the Industrial Court seeking a review and setting aside the decision of the 2nd Respondent not to renew his contract of employment. The basis of the application was that the 2nd

Respondent had no right in terms of section 8 (1) of the Public Enterprises (Control and Monitoring) Act 8 of 1989 to take that decision unilaterally and that the 2nd Respondent did not afford the Applicant a hearing in contravention of section 33 of the Constitution of the Kingdom of Swaziland. The citation of the parties in that Court is the same as before us.

[8] The matter was opposed in that Court by the 2nd Respondent, through the office of the Attorney General, wherein he raised a point of law challenging the jurisdiction of the Industrial Court in hearing the review application.

[9] Pursuant to hearing the parties, the Industrial Court delivered its judgment on the 30 March 2017. Its summary is couched as follows:

“Administrative Law – Industrial Relations – Applicant seeks to review and set aside the 2nd Respondent’s unilateral decision of not renewing his contract of employment without affording him a right to be heard. Respondents raising point *in limine* on jurisdiction of the Industrial Court to determine the present application. Held – In the exercise of his statutory powers in terms of the Public Enterprises (Control and Monitoring) Act 1989, the 2nd Respondent exercises administrative powers derived from the Act. Held Further – Constitutionally it is only the High Court which has original jurisdiction to hear and determine any application in pursuance of section 35 (1) of the Constitution of the Kingdom of Swaziland.”

[10] At paragraph 29 of his judgment Dlamini J. (sitting with D. Nhlengethwa and P. Mamba nominated members of the Court who agreed with the learned judge) wrote:

“29. For these reasons the Court will accordingly make an order as follows:

- A) The point *in limine* on the lack of jurisdiction of this Court to hear and determine this dispute be and is hereby upheld.**
- B) The issue of the unilateral decision of the 2nd Respondent of not renewing the Applicant’s contract of employment without affording him (Applicant) the right to be heard in terms of section 33 of the Constitution is hereby referred to the High Court for determination. This is in terms of section 35 (3) of the Constitution.**
- C) Pending the final determination of the issue referred to the High Court by this Court, the recruitment of the Chief Executive Officer of the Swaziland Environmental Authority is hereby interdicted and/or restrained.**

[11] The application before us was not couched as a referral in terms of the order (s) granted by the Industrial Court. Instead it appeared as a fresh application which was misleading as the prayers sought in the Industrial Court are identical to those sought from this Court.

Jurisdiction

- [12] A close reading of the Industrial Court Judgment referred to supra is that the order it granted was that it had no jurisdiction to hear the matter because it had *inter alia* no review powers and that the application by Mr. Zuke was one of review of the 2nd Respondent's decision. See **Alfred Maia v The Chairman of the Civil Service Commission and 2 Others** (High Court case No. 1070/2015 unreported). Hence the present application before us.

Contract of Employment

- [13] The contract of employment (Annexure "SV1") was entered into between Swaziland Environmental Authority (1st Respondent) represented by the Chairman of the Board and the Applicant.
- [14] The contract provided as follows:

2. EMPLOYMENT

2.1 POSITION

The employer shall employ the employee and the employee shall serve the employer as its full time executive director based at its office in Mbabane. Swaziland subject to terms and condition contained in this contract and subject to the requirements and provisions of the Environment Management Act, the Public Enterprise Act and the Employment Act.

2.2 DUTIES

The employee shall perform the duties outlined in the Environment Act and the job description attached to this contract. These duties may be modified and updated by the employer from time to time following agreement with the employee, although the employer retains the right to change the contents and nature of the work to be done by the employee. The employee agrees to perform all reasonable duties and comply with reasonable instructions issued by the employer.

3. REPORTING RELATIONSHIP

The employee shall report directly to the Chairman of the Board and will be subject to the authority of the Chairman and the Board on all matters provided for in the Environment Management Act.

4. PERIOD OF EMPLOYMENT

The employment period in terms of this contract shall be for a period of 36 months with effect from 21 August 2013 and will persist until 21 August 2016, at the end of this period the contract will automatically terminate and the term of office of the employee will thus terminate. The employer shall notify the employee of such termination 6 six months prior to the termination date.

5. RENEWALS

This contract may be renewed at termination thereof for a further period not exceeding 36 months on terms and condition to be agreed upon between employer and employee.

6. PERFORMANCE CONTRACT

The employer will issue a performance contract to the employee at the beginning of each 12 months of the contract, the performance targets and

associated weightings. The performance contract shall be agreed and signed by both parties. Performance against targets will be assessed and reviewed at periodic appraisal interviews by the chairman and the board or sub-committee board.

7. PERFORMANCE MANAGEMENT

The employer and employee will agree on very specific performance outputs to be delivered by the employee at the beginning of each 12 months of the contract period. This defined performance outputs will identified in the format of a performance agreement to be signed by both parties once agreement is reached between them. The employer will regularly assess the performance of the employee relative to the agreed performance outputs and the employee will be provided feedback from the assessment.

18. TERMINATION

The employer may terminate the employment hereunder subject to the appropriate procedure provided for in the Swaziland Environment Authority's Human Resources Procedures Manual, the Employment Act or the Public Enterprise Environment Act as follows:

- a) Forthwith without notice in the event of willful or breach of any of the Terms hereof or refused by the Employee to carry out the lawful instructions of the Employer or of the Employee becoming bankrupt or being guilty of misconduct.
- b) Forthwith in the event of the Employee incapacitated by ill-health or otherwise and thus prevented from performing his/her duties. For the purpose of this sub-clause an illness or other injury which has lasted or which in the opinion of a registered medical practitioner approved by the Employer is likely to last for twelve consecutive weeks or longer shall be deemed to be incapacity.

- c) **Prematurely by either employer or employee for reasons that are in compliance with the laws of Swaziland, specifically in terms of the Employment Act (No. 5) 1980 as amended, at any time.**
- d) **Prematurely by freely giving mutual consent of the Employer and the Employee, provided that such consent is given in writing and signed by both parties. Either party intending to terminate contract shall give one month calendar notice of such intention to terminate this contract.**
- e) **The notice referred to in sub-section D above shall take effect from 1st day of the month following that in which the notice was given and shall not run concurrently with the annual leave or sick leave.**

[15] It is critically to note that the sources of interpreting this contract are: the Environment Management Act, the Public Enterprises Act and the Employment Act (See Clause 2.1 of the contract supra). In terms of Clause 4, the contract was due to automatically terminate on the 21st August 2016. However, there is a precondition built into this clause that the employer shall notify the employee of such termination six (6) months prior to the termination date. This means that a notification to terminate the contract should have reached the Applicant on or before 21st February 2016. The duty to write this notification is placed on the employer who has been defined as the First Respondent in the contract.

[16] This notification is peremptory as the contract uses the term **shall**. However, the **mandatory** notification by the 1st Respondent never took place. This was a breach of the contract, and the failure to do the notification by the 1st Respondent meant that the contract was renewed by implication and was tacitly renewed. The termination clause also refers to the employer and employee; not the Principal Secretary nor the 2nd Respondent.

[17] Instead it was Applicant who wrote a letter to the 1st Respondent on the 9th May 2016 (Annexure “SV4”) seeking the renewal of his contract. There was no immediate response to this letter. The Applicant was not obliged to write any letter to the 1st Respondent. The contract does not provide for such action.

[18] The Applicant received a letter from the Principal Secretary (Annexure “SV5”) dated 2nd May 2016. Annexure “SV5” is reproduced hereunder:

“2nd May 2016

**The Executive Director
Swaziland Environment Authority
P.O. Box 2602
Mbabane
Attention : Mr. Steven Zuke**

RE: NOTICE OF EXPIRATION OF YOUR CONTRACT OF EMPLOYMENT

The above matter refers.

After receipt of your contract which you recently submitted, the Ministry has since learned that the contract requires that the employer issues a notification 6 months before its termination date. This notification is issued owing to the absence of the Board in office as you may be aware that the new Board has not yet been launched to resume its duties.

By this communication, be notified that in terms of your contract of engagement, the contract automatically terminates on the 21st August 2016.

Your cooperation is always highly appreciated.

Yours sincerely

**EMMANUEL D. DLAMINI (MR.)
PRINCIPAL SECRETARY”**

[19] Annexure “SV5” does not comply with Clause 4 of the contract. It is written too late and gives the Applicant less than three month’s notification instead of six months. The short period given as notification to the Applicant is another breach of the contract.

[20] Clause 4 further states that “the employer shall notify the employee of such termination...” The employer of the Applicant in terms of the contract is the 1st Respondent and it is the 1st Respondent that should have communicated the termination to the Applicant. It did not. It was the Principal Secretary who did. This in our view is another breach of the contract.

[21] In Annexure “SV5” the Principal Secretary boldly states:

“This notification is issued owing to the absence of the Board in office as you are may be aware that the new Board has not yet been launched to resume its duties.”

[22] The absence or other otherwise of the Board is not the concern of the Applicant. The renewal of his contract is not contingent on the absence or otherwise of the Board.

[23] There were significant breaches by the employer which are contrary to the spirit of the Employment Act, 1980 (as amended) the requirements and provisions to which the contract is subjected to in terms of Clause 2.1 of the contract.

[24] After the 21st August 2016 (being the expiry date of the Applicant’s contract) certain events occurred between the parties which gave extended life to the “dead” Contract.

[25] On the 22nd September 2016, the 1st Respondent (the true employer) passed a resolution to have the Applicant’s contract renewed for a further three years. The resolution is reproduced hereunder:

[26] Thereafter the 1st Respondent wrote to the 2nd Respondent recommending the renewal of the contract of the Applicant for a further three years. This letter is dated 23rd September 2016 (Annexure “SV8”).

23rd September 2016

Our Ref:
The Honourable Minister
Ministry of Tourism and Environmental Affairs
P.O. Box 2652
Mbabane

Dear Honourable Minister – Mr. Jabulani C. Mabuza

Accept Sir, my highest consideration and greetings.

The Honourable Minister will recall that the contract of the Executive Director. Mr. Stephen Zuke, came to an end on the 21st August 2016. The Board has been working on the matter since its appointment.

The Board in its meeting of the 22nd September 2016, finally came to the conclusion of the matter.

In terms of the Environmental Management Act and the Public Enterprise Act, the Board shall recommend to the Minister on the appointment of the Executive Director. The Board therefore resolved to recommend that the contract of the Executive Director, Mr. Stephen Zuke, be renewed for a further period of three years.

In coming to the resolution, the Board conducted an end of contract evaluation and came to the conclusion that the Executive Director performed satisfactory in his first term of office and therefore can be awarded another term of office.

A copy of the signed Board Resolution is attached hereto.

I am and remain your humble servant.

Yours sincerely,

William N. Ndlela
SEA Board Chairperson

“Resolution: The Board resolved that the contract of the Chief Executive Director be renewed for a further period of three years. Management was tasked with ensuring that the Board’s recommendation is forwarded to the Honourable Minister for his consideration and onward transmission to the Standing Committee on Public Enterprise (SCOPE).”

[27] Our attention was drawn to section 8 (1) of The Public Enterprise (Control and Monitoring Act, 1982 which states:

“Except in the case of the University of Swaziland, the governing body of each category A public enterprise shall nominate the Chief Executive Officer who shall be appointed, or who may be dismissed, by the Minister responsible acting in consultation with the Standing Committee.” (Emphasis added)

[28] This section makes no reference to a renewal of the Chief Executive Officer’s contract. It merely talks about the **appointment** and **dismissal** of a Chief Executive Officer and not the renewal of a contract of an incumbent Chief Executive Officer. We think that this is so in *casu* because the contract itself has adequately dealt with the issue of renewal. The renewal clause in the contract states:

“This contract may be renewed at termination for a further period not exceeding thirty-six (36) months on terms and conditions to be agreed upon between Employer and Employee”

[29] It is our considered opinion therefore that the 1st Respondent was misguided and erroneous when it forwarded the resolution to the Minister for his consideration and onward transmission to the Standing Committee on Public Enterprise (SCOPE). The resolution should have read **“The Board resolved that the contract of the Chief Executive Director be renewed for a period of three years. (fullstop)”** That is in line with the renewal clause of the contract which was between the employer and employee and not any other third party.

[30] Subsequent correspondence was exchanged between the 2nd Respondent and the 1st Respondent which culminated in a letter dated 23rd November 2016 (“Annexure “(SV11)” from the 2nd Respondent. The Applicant says that Annexure “SV11” made serious findings and or allegations and or conclusions against him without affording him the right to be heard. And that the 2nd Respondent took the decision not to renew his contract unilaterally without consultation with SCOPE and it must be set aside and declared unlawful.

[31] We have already indicated that the 1st Respondent erred in its reading of the renewal clause by involving other parties in the renewal of the contract. In terms of the contract the Minister and the Principal Secretary have no right of input to the renewal except to be informed that it has been renewed and given a copy thereof.

[32] Having rendered our interpretation of the renewal contract prayer 2.1 and 2.2 of the Notice of Motion must fall away. The Contract in our view stands tacitly renewed. Subsequent events after the 21st August 2016 are in our view irrelevant.

[33] Our attention was also drawn to section 17 (1) of the Environment Management Act of 2002. This Act repealed the Swaziland Environment Authority Act of 1992 that established the 1st Respondent. See **Section 88 (1) of the Environment Management Act, 2002**. Section 17 (1) of the Act provides as follows:

“17. (1) The Minister, in consultation with the board, shall appoint a Director of the Authority.”

- [34] As mentioned in paragraph [15] above, and in line with the applicant's contract of employment, the sources of interpreting the contract are the Environment Management Act, the Public Enterprises (Control and Monitoring) Act and the Employment Act.
- [35] The Environment Management Act defines "*Director*" to mean the Director of the Swaziland Environment Authority appointed under section 17. See: **section 2**. This is the position that is being held by the Applicant whose office term is now the subject for determination by this court.
- [36] The appointment and dismissal of the Director is therefore provided for in two separate Acts or legislations. These are the Public Enterprises (Control and Monitoring) Act and the Environment Management Act, sections 8 (1) and 17 (1) respectively. The former Act requires the Minister responsible for Environmental Affairs to appoint the Director in consultation with SCOPE whilst the latter Act requires the same Minister to appoint the Director in consultation with the Board of the 1st Respondent.

[37] In as much as section 17 refers to ‘appointment’ only, the power to appoint includes the power to suspend or to dismiss. See: **Section 14 of the Interpretation Act No.21 of 1970.**

[38] As a result, the appointment of the Director of the 1st Respondent is provided for in two legislations whose provisions are inconsistent. The Public Enterprises Act requires consultation with SCOPE whilst the Environment Management Act requires consultation with the Board of Directors of the 1st Respondent.

[39] In determining which legislative provision prevails over the other, it has been held that the recently enacted provision supersedes and prevails, particularly when the earlier provision is contained in an enactment that is of a general nature and is inconsistent with the later provision that is contained in an enactment of a special nature. See: **Elias V. Dlamini v Principal Secretary in the Ministry of Agriculture and Another (12/2000) [2000] SZSC 9 (12 December 2000)** where **Beck J.A** stated as follows:

“... it is an accepted principle of statutory interpretation that where there is a conflict between two statutes dealing with the same subject (in this case, the power to delegate) the general rule is that the later statutory provision should prevail (in this case, the Civil Service Order of 1973). This is more

particularly so when the earlier provisions are contained in an enactment that is of a general nature and are inconsistent with later provisions that are contained in an enactment of a special nature.”

[40] The Environment Management Act was enacted in 2002 whilst the Public Enterprises Act was enacted in 1989. The 1989 Act is of a general nature because it makes provision for the appointment of a Director for each, and in respect of all, the parastatals of the Kingdom. The 2002 Act on the other hand makes provision for the appointment of the Director specifically for the 1st Respondent. For this reason, the provision that supersedes and prevails regarding the appointment of a Director for the 1st Respondent is section 17 of the Environment Management Act of 2002.

[41] Subsections (2) and (3) of section 17 clothes the Board with the power to make decisions and the role of the Minister appears to be merely an administrative formality. In terms of subsection 2 the Director is **“appointed on terms and conditions specified by the Board.”** (emphasis added)

[42] In terms of subsection (3) the Director is the chief executive of the 1st Respondent and is responsible for the management of the affairs of the 1st

Respondent and the fulfilment of its functions **“in accordance with policies and directions established by the Board.”** (emphasis added)

[43] On the basis of the above stated responsibility, there is no justifiable reason, in our view, why the Minister must be considered and held to have the power and be permitted to overrule the Board on issues pertaining to the Director of the 1st Respondent. Their decision is final and must stand.

[44] For the sake of completion, we address prayer 2.3 of the Notice of Motion herein under. The relief sought (in prayer 2.3) is couched in the following terms:

“2.3 The decision of the second respondent with regards to reasons for the non-renewal of the applicant’s employment contract contained in the letter dated the 23rd November 2016 is hereby reviewed and set aside as the applicant was not afforded the right to be heard before the adverse decision was taken;”

[45] The Applicant states in paragraphs 24 and 25 of the founding affidavit that serious findings and conclusions about himself were made by the 2nd Respondent without affording him the right to be heard. He states as quoted hereinunder:

“24. The second respondent responded in a letter dated the 23rd of November 2016 and made serious findings and / or allegations and/or conclusions against me without affording me the right to be heard.

25. In the letter, the second makes (sic) a serious accusation or finding that I have committed an act of fraud, dishonesty and misled the Board regarding my evaluation....”

[46] In answering this allegation, an answering affidavit of the 1st Respondent deposed to by William Ndumiso Ndlela who is the Chairperson of the Board, does not deny the allegation. His answer is quoted hereunder:

“25. AD PARAGRAPH 23 and 24

Contents therein are noted.

26. AD PARAGRAPH 25

Contents therein are noted. I wish to state that as the new Board we were of the opinion that we could not assess or appraise the Applicant for the period when the current Board was not in place.”

[47] A confirmatory affidavit deposed to by Emmanuel Dlamini states *inter alia* the following:

6.

“I confirm that as the Principal Secretary of the Ministry of Tourism, I sit in the Board of the 1st Respondent. I state that I was part of the meeting of the 2nd August 2016 wherein we made a resolution to appraise the Applicant solely to recommend the renewal of his contract.

I confirm further that despite the resolution stating that there was a sanction imposed on the Applicant in the minutes of the Board, we never at any stage of the meeting or any future date constituted ourselves as a disciplinary panel for hearing the alleged fraudulent conduct of the Applicant arising from his earlier false representation that he had been appraised by the predecessor Board.

I also sit on the HR Committee and I confirm that we never charged the Applicant with any misconduct.” (emphasis added)

[48] An answering affidavit deposed to by the 2nd Respondent in response to the allegation states the following:

22.

AD PARAGRAPH 24 – 27

The contents of this paragraph are denied. The nature and the extent of the misconduct by the Applicant was introduced to me by the Board in its Brief, including a Disciplinary code which states clearly the internal policy provisions regarding such conduct and the seriousness it attracts... (emphasis added).

Regarding whether or not the Applicant did in fact commit this misconduct, I submit that the Board thoroughly briefed me, and hence the finding. ... (emphasis added).

According to the Board’s brief, there were appraisals wrongly and illegally undertaken and dubbed to be authentic by the Applicant.”

[49] From the above quoted depositions, it is apparent, undisputed and without any doubt that the findings and conclusions by the 2nd Respondent that the applicant committed acts of fraud, dishonesty and misled the Board regarding his evaluation were made without affording him the right to be heard. It was on the basis of these findings and conclusions that the 2nd Respondent found the Applicant unfit for the position of Director. He therefore decided for the non-renewal of his contract much against a recommendation by the Board.

[50] The 2nd Respondent's letter addressed to the Chairman of the Board dated 23 November 2016 confirms the above finding. It *inter alia* states the following:

23 November 2016

**The Chairman of the Board
Swaziland Environmental Authority
P. O. Box 2602**

Dear Sir

RE: EXECUTIVE DIRECTOR'S POSITION AT THE SWAZILAND ENVIRONMENT AUTHORITY

1. ...
2. ...
3. **Having read the papers furnished, I am convinced that the Executive Director, either with bad intend or not, did in fact commit acts of**

fraud, dishonesty and misled the Board regarding his evaluations. I refer to your brief dated 17th November 2016, in particular paragraph 2 and the Disciplinary Code.

4. The fact that the Board did not actually charge him with these offences is another anomaly that I pick from reading the information. I therefore, wish to caution the Board to expose itself wider to policies as such issues can lead to governance challenges within any organization if not carefully handled.
5. ...
6. ...
7. ...
8. ...
9. ...

In view of the foregoing, I find it difficult to continue with instructing cabinet to renew the contract of the Executive Director. ...

I therefore advise the Board to move on in this matter and forthwith initiate the recruitment process to fill the existing vacancy of the Executive Director.
...

Your support and advice in this regard will be highly appreciated.

Yours Sincerely

CHRISTOPHER M. GAMEDZE (MP)
MINISTER

[51] The authors **Hugh Corder** and **Tiyanjana Maluwa** in their book **Administrative Justice in Southern Africa**, 1997, at page 107, state as quoted below:

“The first ground on which courts intervene to question administrative decisions is that the authority whose decision is being challenged acted contrary to the rules of natural justice. The purpose of their intervention is to ensure that the authority gave all the parties likely to be adversely affected by her decision a fair hearing, and that she was not biased or had no interest in the subject- matter of her decision.” (emphasis added)

[52] In the case of **Secretary to Cabinet and 2 others v Ben M. Zwane** (2/2000) [2000] SZSC 17 (12 December 2000), the Supreme Court confirmed a decision of the High Court setting aside the interdiction of the Respondent with half pay because the Appellants had not afforded the Respondent an opportunity to be heard before interdicting him. **Stein JA**, with **Browde JA** and **Beck JA** concurring, held that the right to be heard **“maxim expresses the principle of natural law justice which is part of our law.”**

[53] It is our view that the Applicant herein has the right, and was entitled to be heard, before the decision affecting his employment status was taken. This right was clearly violated by the 2nd Respondent.

[54] It is our finding that it was irregular for the 2nd Respondent to find and conclude that the Applicant committed acts of fraud, dishonesty and misled the Board regarding his evaluation without affording him an opportunity to be heard regarding these allegations.

For the foregoing, the Applicant has successfully made a case for prayer 2.3 to be issued in his favour.

[55] It was also submitted on behalf of the Applicant that the findings and conclusions made by the 2nd Respondent without first affording the Applicant the opportunity to be heard violates section 33 of the Constitution. In our opinion, the application is resolvable without the need to have recourse to section 33 of the Constitution. This being the case, we shall not ventilate the question of whether or not section 33 was violated.

[56] For the foregoing, we issue the following order:

- (a) The Applicant's contract was tacitly renewed. The order and subsequent agreement between the parties interdicting and or

restraining the recruitment of a new Chief Executive Officer is hereby discharged.

(b) The decision of the 2nd Respondent with regard to reasons for the non-renewal of the Applicant's employment contract stated in the letter dated the 23rd of November 2016 is hereby set aside.

(c) The 1st and 2nd Respondents are ordered to pay costs of this application.

Q.M. MABUZA
PRINCIPAL JUDGE

I agree

T.L. DLAMIN
JUDGE

I agree

J.S. MAGAGULA
JUDGE

For the Applicant : Mr. N. D. Jele

For the 1st Respondent : Mr. N. Manzini

For the 2nd & 3rd Respondent : Mr. N. G. Dlamini