
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR, ADV B MKHWEBANE**

I, the undersigned,

VUSSY SONNYBOY MAHLANGU

do hereby make oath and say that:

1. I am an adult male currently residing in Gauteng.
2. The contents of this affidavit are true and correct and fall within my personal knowledge, unless otherwise stated or clear from the context.
3. I was contacted by the evidence leaders and informed that there was a motion currently serving before Parliament and that in respect of one of the complaints under the heading Charge 4, I was named as a person who had intimidated, harassed and victimised a number of staff members whilst I was in the employ of the Public Protector South Africa ("PPSA") in the capacity of Chief Executive Officer ("CEO"). I was provided with a copy of an extensive record in excess of 10 000 pages which I have not fully traversed. The relevant allegations were pointed out to me and I agreed to meet with the evidence leaders. My position then was – and I made it clear to the evidence leaders at such meeting – that I was not prepared to appear before a Parliamentary Committee and give evidence in this matter.

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4. I do, however, make this affidavit for the purposes of clarifying the misconceptions that prevail, and in order to clear up misrepresentations that have been made in respect of myself and which have appeared in the public domain. I do so, though I have no wish to give evidence before a Parliamentary Committee. I will nevertheless by way of this affidavit provide information and answer any other questions as honestly as possible.

5. Let me at the outset say that I vehemently deny having intimidated, harassed or victimised any staff members whilst I was employed as the CEO at the PPSA, nor was I, as I am informed I am referred to, "*the enforcer*" of the Public Protector ("*the PP*"), Adv Busisiwe Mkhwebane ("*Adv Mkhwebane*"). It may also be appropriate for me at this juncture to point out that prior to my employment at the PPSA, I did not know Adv Mkhwebane.

A. BACKGROUND

6. I had previously been employed as the Deputy Director-General: Land Reform in the Department of Rural Development and Land Reform. This was so until 2016 when I faced allegations of misconduct. For the sake of transparency and openness and so that the context of my employment at the PPSA can be properly be elaborated upon, I attach the charges which I faced at the time, marked "**VSM1**".

7. Pursuant to the disciplinary hearing I was found guilty and I was summarily dismissed on the basis of having been found guilty of charges 1 to 5 as set out in the charge sheet, relating to the acquisition of the Bekendvlei Proactive Land Acquisition Strategy Project. I was not found guilty of corruption, nor

V.S. Mkhwebane

was I found guilty of having misappropriated any funds, or having personally benefitted at all. I mention these specifically because in the narrative about me that is peddled either by the Public Servants Association (PSA) or the media, it is said that I was found guilty of such charges. This is not true.

8. I sought to have the findings of the disciplinary enquiry reviewed and set aside in the Labour Court. The review proceedings were filed on 12 April 2018. The proceedings were opposed.
9. There was an issue about the review having lapsed and an application had to be brought for the application to be reinstated. This was done and the Department's opposition thereto was unsuccessful. A copy of that judgment is annexed hereto, marked "VSM2". It was handed down on 12 August 2021, the application having been brought on 26 November 2020 already. There were hence delays, not of my doing, in having the review in the Labour Court determined. I am still awaiting a date for the hearing of these proceedings.

B. MY EMPLOYMENT AT THE PPSA

10. I applied in response to an advertisement for the position of CEO. As far as I was concerned, on the basis of my dismissal, I was not precluded under any statutory provision from being re-employed in the public service. The relevant statutory provision is annexed, marked "VSM3".
11. I was appointed as the CEO at the PPSA during the period 1 May 2018 to 31 January 2020, at which stage I resigned. My employment was initially for a few months at a time.

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12. However, I concluded a fixed-term contract of employment with the PP, dated 24 June 2019 for the position of CEO with effect from 1 August 2019 to 30 April 2023. In terms thereof, *inter alia*, I was for the duration of the agreement, as well as after the termination thereof, not to disclose or make public to any third party confidential information as defined in the agreement and to keep such secret and confidential.
13. As CEO I was tasked to be an Accounting Officer and to provide support to both the PP and the Deputy PP.
14. At the time there were various ongoing cases involving the PPSA in the courts. I had no involvement in litigation decisions or strategy. The Senior Investigator in the PP's private office at the time was Mr Tebogo Kekana ("*Mr Kekana*") (responsible for Quality Assurance) and the person who dealt with litigation matters was the Senior Manager: Legal Services Mr Nemasisi who later resigned and replaced by Mr Alfred Mhlongo.
15. A public furore erupted about my appointment at the PP's office because the circumstances of my dismissal from the Department of Rural Development and Land Reform were linked to the responsible Minister, Mr Gugile Nkwinti. The Sunday Times had picked up on the story and published it, after which it was picked up by political parties in particular the Democratic Alliance (DA) and the PP was requested to investigate the then Minister Nkwinti.
16. In her report the PP made adverse findings with regard to Minister Nkwinti's role in the Bekendvlei Proactive Land Acquisition Strategy Project. Minister Nkwinti later applied for a review of the PP's report in the North Gauteng High

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Court, and was unsuccessful. A copy of the judgement is attached marked **"VSM3A"**

17. However, I had made a full disclosure of what had occurred in my previous employment when I was interviewed for the position at the PPSA. I passed the competency assessment and I had the requisite qualifications to occupy the position as CEO. I did not know anybody on the interview panel, nor did I have any ties or connections with Adv Mkhwebane before I joined the PPSA.
18. I was aware that I required security clearance. I believed that it was a prerequisite for employment for certain positions in the public service and it was not uncommon for positions of director upwards to require a security clearance. I had previously had the requisite security clearance. The level of security requirements, to the best of my knowledge, depended on the hierarchy one would occupy in the organisation and I was informed that as CEO I was required to have top secret security clearance.
19. To the best of my recollection I was not refused security clearance. I was informed by the State Security Agency responsible for conducting security clearance investigation and issuing relevant clearance certificates, that the requisite security clearance certificate would not be issued to me until such time as I had resolved my labour dispute then pending against the Land Affairs Department at the Labour Court, regarding my dismissal. A copy of this letter is annexed marked **"VSM4"**. For the sake of completeness I point out that up until today I have not received a set-down date for the matter to be heard in the Labour Court, and this leaves me in an invidious position in relation to

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employment at my rank in the public service. I have not been able to secure employment in the public service since I left the PPSA, I believe because of the pending Labour Court matter and the *'dark cloud'* hanging over me as a result of that unresolved matter.

20. I was well aware that if the Labour Court dismissed my review application, then I would no longer be eligible to be employed at the PPSA if that meant my security clearance would not be granted. It was a condition of my employment that I would obtain such security clearance. There was no issue in relation thereto on my part.

21. In the PPSA I attended monthly Executive meetings where case management was discussed and every Executive Manager ("EM") came. I also attended the Dashboard meetings, which to the best of my recollection occurred monthly and which dealt with case management. The reason I was at these meetings was to provide administrative support and at the Executive meetings I would present on administrative matters. Legal Services would deal with legal matters. The COO would present on investigations and the CFO on financial and procurement matters.

22. With reference to the persons referred to in the complaint that is currently before this Committee,

23. In relation to Mr Samuel I point out the following:

23.1. The issues relating to Mr Samuel were brought to my attention. The PPSA was being sued for R350 000.00 in Limpopo as a

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consequence of an altercation which had occurred between a civilian and Mr Samuel.

- 23.2. To the best of my recollection, the information available to me at the time indicated that Mr Samuel had paid an admission of guilt fine for assault, in the amount of R2000.00 in the criminal proceedings that ensued as a result of the altercation. This was brought to the attention of the Executive (i.e., the PP, DPP and CEO) given that this was not conduct to be associated with the PPSA. As I recall, it was recommended that appropriate disciplinary steps be taken against Mr Samuel.
- 23.3. To the best of my recollection I was not apprised of any steps having previously been taken, or Mr Samuel's assault charge and conviction having been discussed and resolved with the previous PP and her Exco as alleged by Mr Samuels in his affidavit to the Speaker; and there was nothing put before me to suggest that the matter had already been dealt with by the relevant authorities in the PPSA.
- 23.4. I no longer have access to any documentation at the PPSA. I cannot currently independently verify this.
- 23.5. I do not recall having directly dealt with Mr Samuel in that, given the hierarchy in the office, it would have been dealt with by the then Acting COO, who was either Mr Stoffel Fourie ("*Mr Fourie*") or Acting CEO, Mrs Nthoriseng Motsisi ("*Mrs Motsisi*") or the newly appointed

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COO, Ms Basani Baloyi ("Ms Baloyi"). I cannot recall who was then in that position.

24. As far as the Manager: Security, Mr Baldwin Neshunzhi, was concerned, when steps were taken to put him on suspension, it related to the leakage of documentation or information received from the Office of the President which thereafter appeared in the media. After investigation it was found that no leak had taken place. After Mr Neshunzhi's return to the office, having been exonerated in the investigation, I briefed him on the outcome and he returned to his employment. There was nothing untoward or deliberate or personal in relation hereto. This leakage of documents was investigated by the Human Resources Department and not myself.
25. There was a further leak of documents from the PPSA in relation to the fact that I had not obtained security clearance from the SSA. This too was investigated by HR in conjunction with Legal Services, which obtained the services of a consultant to conduct the investigation. It was pursuant to this report that Mr Neshunzhi, who was found not to be at fault but lacked certain skills, was shifted from Security to Customer Services. He was not dismissed, nor did he earn less money.
26. With reference to the matters relating to Mr Kekana, I point out that by virtue of my position as CEO and given that the PP was a board member of the International Association of Ombudsman, when there was a sitting I was to be present together with the PP. The administrative process of obtaining the requisite travel authorisation was left in the hands of the PP's PA and Mine.

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In processing the travel authorisation, My PA erroneously sent the email to Mr Tebogo Kekana, who then publicised it as constituting fraud on the PPSA. It was not my doing as I was not completing the forms to obtain authorisation.

27. With reference to Mr Isaac Matlawe ("*Mr Matlawe*"), I did not know him prior to coming to the PPSA. He had read about my labour woes at my previous employment and pertinently raised the issue at a Staff meeting soon after my appointment. Mr Matlawe was clearly of the view that my appointment was irregular and he made it known at this meeting.

28. I did not charge Mr Matlawe with anything subsequent to this interaction. He came to be charged when there was a reason for him to be charged – for being complicit in the leakage of confidential documentation. As far as I was aware the trade union, the PSA, had initially indicated that they would assist him and subsequently declined to do so because, to the best of my recollection, it had been discovered that he had lied to them. As I recall, Mr Matlawe then left the employ of the PPSA before disciplinary proceedings could run to fruition. I cannot recall the specific dates involved.

29. The matters of Mr Kekana and Mr Matlawe were intertwined. Again, the actions taken against them were informed by external reports obtained by legal representatives engaged by the PPSA.

30. In relation to Ms Ponatshego Mogaladi, Mr Abongile Madiba and Ms Lesedi Sekele who are mentioned in the fourth complaint against the PP, this related to their negligence in respect of preparation of a Rule 53 record in the Financial Sector Conduct Authority (FSCA) matter involving Adv Tshidi, where they

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failed to acknowledge their culpability for the incomplete record. Again, the steps taken against them were consistent with appropriate labour standards. The dereliction that occurred in respect of the insufficient Rule 53 record caused huge embarrassment to the PPSA. As a result, the PPSA was unable to defend the review proceedings in that matter, and was advised by senior counsel that it had no prospects of success in doing so.

31. With specific reference to Ms Baloyi, she was employed with a probationary period of six months. A quarterly review process had taken place at eight months and not sixth months due to practicalities, as we were not able to meet prior thereto. She was not performing in her capacity as COO, which was apparent at the performance appraisal to determine whether her probation should be terminated and she should be employed permanently or whether her appointment should not be confirmed. The decision was taken that her appointment would not be renewed. The PP acted based on a recommendation made to her, as far as I can recall.
32. The foregoing was not of a personal nature and I did not intimidate, harass or victimise any of the aforementioned. I had no reason to do so, and I got no instructions from the PP to do so. The aforementioned matters were not related. It was, I suppose, pure coincidence that they occurred at around the same time period.

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(Handwritten signature)

**VUSSY SONNYBOY
MAHLANGU**

I certify that the above signature is the true signature of the deponent and that he has acknowledged that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at Lyttelton on this 11 day of **JULY 2022**, in accordance with Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.

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COMMISSIONER OF OATHS

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SAPS LYTTELTON
2022 -07- 11
COMMUNITY SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE



& land reform

Department
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

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DIRECTORATE: LABOUR RELATIONS
Private Bag X833 Pretoria 0001 Tel 012 312 9680 Fax 012 321 2873

Reference SP

Mr Vusi Mahlangu
Deputy Director General Land Reform
Department of Rural Development and Land Reform
PRETORIA

BY HAND

Dear Mr Mahlangu

ALLEGATIONS OF MISCONDUCT AND NOTICE TO ATTEND DISCIPLINARY HEARING IN TERMS OF CHAPTER 7 OF THE SENIOR MANAGEMENT SERVICE HANDBOOK

1. You, Mr Vusi Mahlangu, Deputy Director General: Land Reform, of and being employed by the Department of Rural Development and Land Reform and therefore an Officer of the Public Service of South Africa and a member of the Senior Management Service (SMS) are hereby charged with misconduct in terms Chapter 7 of the SMS Handbook for the acts of misconduct as set out in this charge sheet. You are hereby given notice to attend a disciplinary hearing in terms of clause 27(1) of the Disciplinary Code (Chapter 7 of the SMS Handbook)
2. The facts on which the allegations are founded are set out in this charge sheet and follow from the failure to properly execute your duties as Deputy Director General: Land Reform of the Department of Rural Development and Land Reform
3. The disciplinary hearing is set down for 4 April 2016 at 09:00 and will be held at National Office, 184 Jeff Masemola Street, Pretoria. The exact office number will be confirmed later
4. If you do not attend and cannot give reasonable grounds for failing to attend, the hearing will be held in your absence

Die inliggende dokument is 'n afskrif van 'n oorspronklike dokument wat in die besit van die Suid-Afrikaanse Polisiediens is. Dit is 'n afskrif van 'n oorspronklike dokument wat in die besit van die Suid-Afrikaanse Polisiediens is. Dit is 'n afskrif van 'n oorspronklike dokument wat in die besit van die Suid-Afrikaanse Polisiediens is.



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- 5 Under normal circumstances you would only be entitled to representation by a fellow member/employee or a representative of a recognised union in the disciplinary hearing. The employer however intends using an external legal representative and therefore extends to you the opportunity to similarly make use of any representative of your choice, including a legal representative, at your own cost. Your attention is drawn to the fact that the charges against you are of a serious nature, and should you be found guilty on the charges, the appropriate sanction could be dismissal. Should you, however, object to legal representation for both parties please inform the Employer of such objection within 2 working days of this notice and charge sheet being delivered to you
- 6 You may give evidence to the hearing in the form of documents or through witnesses. You will be entitled to question any witness introduced by the employer
- 7 If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction
8. Should you be found guilty of this misconduct the employer would request the chairperson for your dismissal due to the gravity of the allegations against you
- 9 The bundle of the documents that the Department intends to use in the disciplinary hearing will be sent to you before the hearing. The Department reserves the right to supplement the bundle
- 10 The charges and the facts relied upon follow below

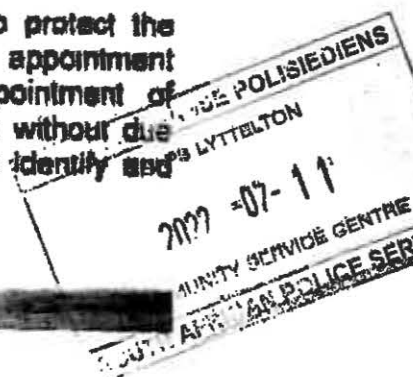
IN RESPECT OF THE ACQUISITION OF THE BEKENDVLEI PROACTIVE LAND ACQUISITION STRATEGY PROJECT

CHARGE 1

You are charged with misconduct in that during 2011 you failed to protect the interests of the State by identifying, selecting and appointing ~~alternatively~~ approving the identification, selection and appointment of beneficiaries for the Bekendvlei PLAS Project without due adherence to the policy and procedure which required the PLRO to identify and select beneficiaries

IN THE ALTERNATIVE:

You are charged with misconduct in that during 2011 you failed to protect the interests of the State by preventing the identification, selection and appointment ~~alternatively~~ the approval of the identification, selection and appointment of beneficiaries for the Bekendvlei PLAS Project by the National Office without due adherence to the policy and procedure which required the PLRO to identify and select beneficiaries



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CHARGE 2:

You are charged with misconduct in that, in perpetrating the conduct described in Charge 1 above, you identified, selected and appointed alternatively approved the identification, selection and appointment as beneficiaries such persons that did not meet the requirements as set out in the PLAS Framework since neither of the appointed beneficiaries fell within the stipulated categories of beneficiaries

CHARGE 3:

You are charged with misconduct in that you personally by your conduct and instructions precluded the Limpopo Provincial PRO from following due process and procedure in the acquisition of the Bekendvlei PLAS Project, the identification, selection and appointment of beneficiaries, the allocation of funding or to perform its oversight and monitoring functions alternatively you failed to prevent personnel of the National Office from precluding the Limpopo Provincial PRO from following due process and procedure in the acquisition of the Bekendvlei PLAS Project, the identification, selection and appointment of beneficiaries, the allocation of funding or to perform its oversight and monitoring functions

CHARGE 4:

You are charged with misconduct in that you abused your authority over various officials involved in the acquisition and allocation process inter alia by forcing Ms Cachalia to comply with your unlawful instructions to make available funding for the acquisition of the Bekendvlei PLAS Project when there were insufficient funds available alternatively budgeted therefore in the Limpopo Province PRO

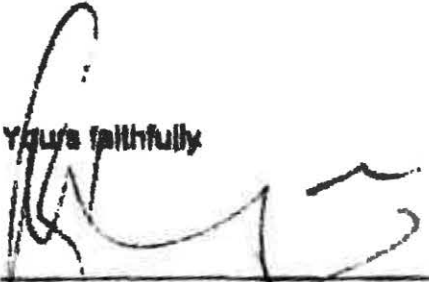
CHARGE 5:

You are charged with misconduct in that you abused your position as Deputy Director General Land Reform to prioritise and bypass the applicable processes and procedures for acquisition of a farm or farms, namely the Remaining Extent Portion 1 of Smaaldeel, the farm Uitkomst the Remaining Extent, Portion 7 & 8 of the farm Bekendvlei, the Remaining Extent of Byzonder, the Remaining Extent of Ponon 8 & 10 & 15 of the farm Conterberg, Portion 3 of the Farm Smaaldeel, the Remaining Extent of Portion 2 & 5 of Smaaldeel, Portion 3 of the farm Wilgeboomsdrift Portion 4 of the farm Blinkwater, and the farm Magalakynsoog by the Department of Rural Development and Land Reform

CHARGE 6:

You are charged with misconduct in that you unlawfully caused funds budgeted for other projects in the National Office to be allocated to the acquisition of the Bekendvlei PLAS Project



Yours faithfully

EMPLOYER REPRESENTATIVE
DATE: 11-03-2016

Receipt acknowledged


MR V MAHLANGU
DATE:
Ered: 0015:

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SAPS LYTTTELTON
2022-07-11
COMMUNITY SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR608/2018

In the matter between:

VUSI MAHLANGU**Applicant**

and

P.M. NGAKO N.O.**First Respondent****GENERAL PUBLIC SERVICE SECTORAL****BARGAINING COUNCIL****Second Respondent****DIRECTOR GENERAL: DEPARTMENT OF RURAL****DEVELOPMENT AND LAND REFORM****Third Respondent****Heard: 12 August 2021**

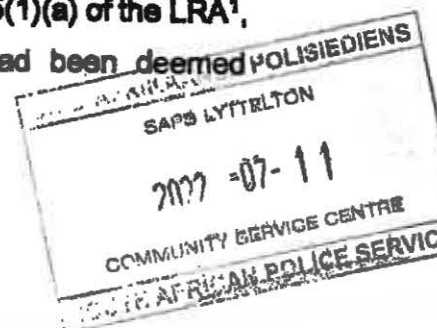
Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 8 December 2021 at 10h00.

JUDGMENT

TLNOTLHALEMAJE, J**Introduction:**

- [1] This matter initially came before this Court on 26 November 2020. In the light of the Court being of the view that the review application was not served and filed on time in accordance with the provisions of section 145(1)(a) of the LRA¹, and further to the extent that the review application had been deemed

¹ Labour Relations Act 66 of 1995.



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withdrawn by virtue of the provisions of Paragraph 11.2.3 of the Practice Manual of this Court, the applicant was granted leave to file and serve applications for condonation for the late filing of the review and also for the reinstatement of the review application. All the applications before the Court are opposed by the third respondent.

- [2] For the purposes of the applications to be determined, it is sufficient by way of background to highlight that the applicant was initially employed as a Deputy Director, Land Distribution and Development by the third respondent, with effect from May 2012. Following a disciplinary enquiry into multiple allegations of misconduct, his services were terminated.
- [3] Having referred an alleged unfair dismissal dispute to the second respondent (GPSSBC), the matter could not be resolved at conciliation. It was then referred for arbitration where it came before the first respondent (Arbitrator), who had issued an award on 5 February 2018, in which the dismissal of the applicant was found to be substantively and procedurally fair. In the main, it is this award that the applicant seeks to have reviewed and set aside.
- [4] The review proceedings were filed on 12 April 2018, even though it was the applicant's contention that it was served on the third respondent on 26 March 2018. The second respondent had filed a notice in terms of Rule 7A(2)(b) on 18 April 2018, and the Registrar served a Notice on the applicant in terms of Rule 7A(5) on 20 April 2018. The applicant subsequently filed the transcribed record in compliance with Rule 7A(6) together with Rule 7A(8)(a) Notice on 12 July 2018. The third respondent's answering affidavit was then filed and served on or about 18 January 2019.

Application for the reinstatement of the review application.

- [5] The relevant provisions related to the archiving and retrieval of review applications are to be found in paragraph 11.2 of the Practice Manual² of this Court. Thus, for the purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the Registrar that the

²Para 11.2

'Applications to review and to set aside arbitration awards and rulings'

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record has been received³. Where the applicant party was unable to file the transcribed record within the prescribed period, the review application will be deemed to have been withdrawn, unless the respondent's consent for an extension of time is granted. Where no consent is granted, the applicant may approach the Judge President by way of an affidavit to request an extension of timeframes⁴.

- [6] Flowing from the interpretation of the above provisions, the approach endorsed in *Zono v Minister of Justice and Correctional Services In re: Minister of Justice and Correctional Services v Zono and Others (Zono)*⁵ and the authorities referred therein⁶, is that it ought to be accepted that an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the Court Rules, time frames and directives. The Court should therefore consider such applications in accordance with the normal principles that apply to condonations, which requires of the applicant to show good cause why the record of the proceedings under review was not filed within the prescribed time limit.
- [7] It was further held in *Zono* that where the application for reinstatement of the application is refused, the status of the review application remains one of an application withdrawn by the applicant, meaning that there is no application before the Court, and any other interlocutory applications in relation to the review application are rendered moot. It is in line with this approach that it is deemed necessary to first deal with the application for revival.
- [8] In applications for condonation, it is required that good or sufficient cause be shown by the party seeking condonation for a delay. The Court in the exercise of its discretion will consider factors such as the length and a full explanation for the delay, and whether there are reasonable prospects of success on the merits of the main claim. It has further been held that an insignificant delay and

³Para 11.2.2

⁴Para 11.2.3

⁵(PR193/2019) [2020] ZALCJHB 215; [2020] 11 BLLR 1160 (LC) at paras 7 – 11; and paras 17 - 21

⁶*Overberg District Municipality v IMATU obo Spangenberg and Other* C157/18 (08 June 2020); *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC); *Mecsteel Trading Wadeville v Van der Merwe N.O and others* (2019) 40 ILJ 798 (LAC)

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good explanation for that delay may compensate for weak prospects of success, and further that good prospects could make up for a long delay. Other factors to be considered include the prejudice to the either of the parties to the dispute should condonation be granted or refused, the importance of the matter, the convenience of the Court and avoidance of unnecessary delays in the administration of justice. In the end, the interests of justice upon a consideration of these factors will ordinarily dictate whether condonation should be granted or refused ⁷.

- [9] In this case, there is a dispute as to whether the transcribed record of proceedings was filed out of time or not, necessitating that the provisions of paragraph 11.2.3 of the Practice Manual be invoked. The applicant acknowledged that upon the record being made available on 18 April 2018, he therefore had until 18 July 2018 within which to file and serve the transcribed record.
- [10] The applicant averred that after the disks of the record were sent to the transcribers, he received the transcription on 29 May 2018. Upon perusal of the transcribed record, various material typographical errors were discovered by the applicant's counsel. In the light of the problems with the transcribed record, the applicant's attorneys of record then sent correspondence⁸ to the Office of the State Attorneys, advising of these problems, and requesting time until 12 July 2018. The applicant contends that no response was received to the request.
- [11] A corrected version was made available by the transcribers on 9 July 2018, and was subsequently served on the third respondent on 11 July 2018, and on the Registrar the following day by electronic means. Hard copies of the transcribed record were then filed and served on the third respondent on 18 July 2018. On 14 August 2018, the applicant had served the third respondent with the outstanding portion of the record, which constituted a bundle of documents that served before the Arbitrator during the arbitration proceedings.

⁷ See *Department of Agriculture, Forestry & Fisheries v Baron & others* 2019) 40 ILJ 2290 (LAC) at para 2304 para 41; *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) at para 10

⁸ Annexure 'CondVM30'

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- [12] To the extent that the provisions of paragraph 11.2.3 of the Practice Manual may have been invoked, it is however apparent that given the time period between 18 April 2018 and 11 July 2018, it cannot be said that the applicant did not meet the 60 days deadline. Even in its own application (Notice in accordance with paragraph 11.2.3 of the Practice Manual of the Labour Court of South Africa)⁹, the third respondent acknowledged that the basis of that application was *inter alia* that the bundle of documents served before the Arbitrator were not included in the record. That application was filed and served on the applicant on 1 August 2018, and at a time when the transcribed electronic record of the proceedings was already served.
- [13] It is accepted that the record when initially served on the third respondent on 11 July 2018 was not complete, and that the complete record was only filed and served on 14 August 2018. Since the only portion of the record outstanding were bundles of documents served before the Arbitrator, the applicant is correct in pointing out that there could not have been any prejudice to the third respondent through this omission, as the very same arbitration bundles were already in its possession. This is not a case where it can be said that there was no attempt by the applicant to obtain an indulgence from the third respondent, or where it can be said that there was any delay in filing the main transcribed record.
- [14] Upon the applicant having served notices in compliance with Rule 7A(6) together with Rule 7A(8)(a) Notice on 12 July 2018, the third respondent had filed and served its answering affidavit on or about 18 January 2019. At that time, the applicant had as per what he deemed to be an 'agreement' between the parties, by implication, not raised any objection to the late filing of the answering affidavit. Even though the applicant could not have relied on the same 'agreement' insofar as the late filing of the review application is concerned, the third respondent's late filing of the answering affidavit was however consented to through that 'agreement', as such consent is

⁹ Annexure 'CondVM25'



contemplated within the provisions of paragraph 11.4.2 of the Practice Manual¹⁰.

- [15] In summary therefore, the review application could not have been deemed withdrawn by virtue of the provisions of paragraph 11.2.3 of the Practice Manual as both the electronic and hard copies of the transcribed records were filed and served on time. To the extent that there was any delay in the light of the evidence bundle not having been served simultaneously, that delay in any event is not excessive, nor could it have caused any prejudice to the third respondent. I do not therefore deem it necessary to deal with other factors pertained to such applications in the light of the conclusions to be made in regards to the late filing of the review application as discussed below. To this end, I am satisfied that good cause has been shown why any delay in the filing of the record should be condoned.

The late filing of the review application:

- [16] The arbitration award having been issued on 5 February 2018, the applicant averred that a copy thereof was only served on his attorneys of record on 12 February 2018. The *dies* then were to expire on 26 March 2018. The applicant contends that the review application was successfully served electronically on the respondents on 26 March 2018. Proof in that regard was attached to the founding affidavit¹¹, and he contends that the third respondent as represented by the State Attorney had acknowledged receipt of the review application. The applicant nonetheless conceded that the review application was only filed with the Registrar of this Court on 12 April 2018. This therefore makes the delay about twelve days, which is hardly excessive.

- [17] The delay in filing the review application with the Registrar was according to the applicant, attributed to the fact that on the date that the review application was

¹⁰ Which provides;

11.4.2 Where the respondent or the applicant has filed its opposing or replying affidavits outside the time period set out in the rules, there is no need to apply for condonation for the late filing of such affidavits unless the party upon whom the affidavits are served files and serves a Notice of Objection to the late filing of the affidavits. The Notice of Objection must be served and filed within 10 days of the receipt of the affidavits after which time the right to object shall lapse.

¹¹ Annexure 'CondVM3'

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served on the third respondent, unsuccessful attempts were similarly made to send it by fax to the office of the Registrar and also on 27 March 2018. It was only on 12 April 2018, that the application was successfully transmitted.

- [18] It is correct as pointed out on behalf of the third respondent that the applicant does not explain the 12 days' delay in full, particularly between 27 March 2018 and 12 April 2018. The third respondent further correctly pointed out that the applicant ought to have filed an application for condonation upon becoming aware of the need to do so.
- [19] A further issue to be quickly disposed of is the applicant's reliance on what he termed an 'agreement' with the third respondent that the parties should settle all interlocutory applications related to the late filing of affidavits¹². I have already indicated the effect of that 'agreement' insofar as it related to the late filing of the answering affidavit. That 'agreement' however is meaningless in regards to the late filing of the review application, in that non-compliance with the legislative timeframes goes to its jurisdiction, which is an issue that is not for the parties to decide on.
- [20] Inasmuch as I agree that the applicant failed to give a full account of the 12 days' delay, and further to the extent that there was a delay in filing the application for condonation, on the whole however, I agree that since the review application was served on the third respondent timeously, coupled with further attempts between 26 and 27 March 2018 to serve the application on the Registrar, this cannot be a case where it can be concluded that non-compliance with time frames was excessive or that the applicant was supine. In my view therefore, the explanation, *albeit* insufficient, is nonetheless accepted as reasonable by the Court.
- [21] In regards to prospects of success, it was common cause that the allegations against the applicant leading to his dismissal by the third respondent related to *inter alia*, corruption and abuse of his authority as Deputy Director – General of the third respondent. The allegations pertained to his involvement and

¹² As per the correspondence of the State Attorney dated 17 January 2019 at annexure 'CondVM6(a)' to the founding affidavit

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processing of a transaction and the sale of a farm in Limpopo in the amount of R97M.

- [22] Clearly the allegations against the applicant are serious. It is however not necessary at this stage to set out the applicant's defences to these allegations and the grounds upon which he contended that the Arbitrator's award ought to be reviewed and set aside. What needs to be stated however is that in *Samuels*,¹³ it was confirmed that in addressing prospects of success, it was not a requirement that the applicant should deal fully with the merits of the dispute to establish reasonable prospects of success, and that it was sufficient if facts were set out which, if established in the main, would result in his success.
- [23] In this case, having had regard to the applicant's averments in regards to his prospects of success and the third respondent's responses thereto, I am satisfied that he has indeed set-out such facts if established, would result in his success, and that this on its own was sufficient:
- [24] I am further in agreement with the submissions made on behalf of the applicant that indeed the matter is important on various fronts, particularly in the light of the seriousness of the allegations against him and the clear public interest in the outcome of the matter.
- [25] In the end, in the light of the insignificant nature of the delay and the explanation proffered in that regard, the third respondent can hardly complain of any prejudice, particularly since it was common cause that the pleadings have closed. In these circumstances, clearly the interests of justice dictate that condonation for the late filing of the review application be granted.
- [26] I have further had regard to the requirements of law and fairness in relation to an award of costs. Given the interlocutory applications the Court was compelled to dispose of, and further taking into account the facts and circumstances of this case, it is deemed unnecessary for any award of costs to be made.
- [27] Accordingly, the following order is made;

¹³*Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC);



Order:

1. The Applicant's review application deemed to have been withdrawn is reinstated.
2. The late filing of the review application is condoned.
3. The Registrar of the Court is directed to set the matter down on an expedited basis for the determination of the review application.
4. There is no order as to costs.

Edwin Thothalemaje

Judge of the Labour Court of South Africa

LABOUR COURT



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Appearances:

For the Applicant:

**M.I. Motimele, instructed by MacRoberts
Attorneys**

For the Third Respondent:

**T.P. Kruger SC, instructed by the State
Attorney, Pretoria**

LABOUR COURT

SUID-AFRIKAANSE POLISIEDIENSTE
SAPS LYTTTELTON
2022-07-11
COMMUNITY SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

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dismissed in terms of section 17 (2) (d) of the Act for misconduct listed below shall not be re-appointed in the public service for the applicable period from the date of dismissal in relation to the kind of misconduct indicated in the table below:

	ACT OF MISCONDUCT	PERIOD OF PROHIBITION
1.	(a) The offering or receipt of any undue gratification or the facilitation of such offering or receipt; or	Five years
	(b) Committing theft or fraud; or	
	(c) Conducting business with any organ of state or being a director of a public or private company conducting business with an organ of state; or	
	(d) Misconduct resulting from a criminal conviction where an employee has been sentenced for two or more years imprisonment, without the option of a fine.	
2.	(a) Sexual harassment; or	Four years
	(b) Unfair discrimination against others on the basis of race, gender, disability, sexuality or other grounds prohibited by section 9 (3) of the Constitution.	
3.	(a) Financial misconduct as contemplated in section 81 or 82 of the Public Finance Management Act; or	Three years
	(b) Misconduct resulting from a criminal conviction where an employee has been sentenced for less than two years imprisonment, without the option of a fine.	
4.	Contravention of any provision of regulations 11 to 14 of Chapter 2 of these Regulations other than misconduct referred to in items 1 to 3.	One year

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(2) If an employee is dismissed for more than one act of misconduct, the prohibition on re-appointment shall run concurrently.

(3) An employee who is deemed to have been dismissed in terms of section 17 (3) (a) of the Act and who is not reinstated in terms of section 17 (3) (b), shall not be re-appointed in the public service for a period of one year after the effective date of his or her deemed dismissal.



J) MUC

- (a) be faithful to the Republic and honour and abide by the Constitution and all other law in the execution of his or her official duties;
- (b) put the public interest first in the execution of his or her official duties;
- (c) loyally execute the lawful policies of the Government of the day in the performance of his or her official duties;
- (d) abide by and strive to be familiar with all legislation and other lawful instructions applicable to his or her conduct and official duties; and
- (e) co-operate with public institutions established under the Constitution and legislation in promoting the interest of the public.



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VSM4

Private Bag 287, PRETORIA, 0001 State Security Agency Headquarters, Maseru, Delmas Road, PRETORIA
Tel: (012) 427 4000, Fax: (012) 427 4651, www.ssa.gov.za

SBANDG01(VA40)NEN/14/112

Office of the Director-General

31 October 2018

The Public Protector
Adv B Mkhwebane
Public Protector
Private Bag 2877
PRETORIA
0001

For attention: Mr G Mhoko

Security Clearance: Mr Mahlangu VS: ID 7208275342089

1. Your request for a security clearance on the above-mentioned individual refers.
2. A security clearance investigation to the level of TOP SECRET was conducted on Mr MAHLANGU VS and could not be concluded due to the following reason:
 - 2.1 It was discovered that Mr MAHLANGU VS was dismissed by his former employer in 2016. Mr MAHLANGU VS has appealed his dismissal and his matter is in the Labour Court; he has also made a request to the Minister for a review of his dismissal.
3. In view of the above, the State Security Agency (SSA) cannot, at the present time, make a determination on the security clearance of Mr MAHLANGU VS. Instead, it is requested that the appeal process be given a chance until it is finalised.
- 3.1 Once the appeal process is finalised, the results should then be forwarded to the SSA immediately following which the determination on the request for clearance will be considered.
4. Thank you for your attention.



L. Jafra
Acting Director-General

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