INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO.41/2017

In the matter between:

SIBUSISO SIBANDZE Applicant

And

SWAZILAND PUBLIC PROCUREMENT

REGULATORY AGENCY 1st Respondent

MAKHOSI VILAKATI N.O. 2nd Respondent

BONGANI MDULI N.O. 3rd Respondent

Neutral citation: Sibusiso Sibandze vs Swaziland Public Procurement Regulatory Agency and 2 others (41/2017) [2017] SZIC 40 (2017)

Coram: MAZIBUKO J,

(Sitting with A.Nkambule & M.Mtetwa

Nominated Members of the Court)

Last Heard: 21st March 2017

Delivered 21st March 2017 (*Ex Tempore*)

Summary: *Applicant called to a disciplinary hearing. Applicant who is an accused – employee in a disciplinary hearing was represented by an attorney. Applicant dissatisfied with certain interlocutory rulings made by chairman during the hearing. Applicant applied for chairman to recuse himself. Chairman dismissed application for his recusal. Applicant applied to Court to review chairman's refusal to recuse himself.*

Held: *No sufficient grounds exists for chairman to recuse himself.*

Held further: *There is no evidence to prove that the decision by chairman wherein he refused to recuse himself was irregular or illegal. Therefore application for review of the chairman's decision dismissed.*

REASONS FOR EX TEMPORE RULING

8TH JUNE 2017

1. The Respondent is Swaziland Public Procurement Regulatory Agency, a body corporate with power to sue and be sued, established in terms of the Public Procurement Act of 2011.
2. The 2nd Respondent is Mr Makhosi Vilakati an attorney practicing in Swaziland who is also initiator in a disciplinary hearing that is referred to hereinafter.
3. The 3rd Respondent is Mr Bongani Mdluli an attorney practicing in Swaziland who is chairman in the aforementioned disciplinary hearing.
4. The Applicant is Sibusiso Sibandze an employee of the 1st Respondent.
5. About the 17th June 2016 the 1st Respondent suspended the Applicant from work by letter – annexure SS1. The suspension was made pending finalization of investigation into an alleged misconduct. The Applicant was subsequently called to a disciplinary hearing on the 12th July 2016. The Applicant attended the hearing and was

represented by attorney B. Gamedze. The disciplinary hearing proceeded. The Applicant faced the following charges:

"Count 1

You are charged with gross misconduct in that on or about the 16th day of June 2016, you intimidated one Phephile Dlamini, an employee of the Agency by asking her in a confrontational manner and outside the office why she had attended an interview for the position of Personal Assistant to the Executive Director. Your intimidatory utterances left the employee confused, feeling senseless and questioning her ability to make sound decisions regarding her future career aspirations.

Count 2

You are hereby charged with intimidation and ill-treatment of fellow employees in that in a staff planning meeting held on or about the 6th June 2016, you and one Sindisiwe Simelane intimidated the employees of the Agency in attendance by telling them that they were failing to deliver in terms of work because their professional exposure is limited since they had not been employed outside Swaziland like yourselves.

In that meeting you ordered employees who had worked outside Swaziland to raise their hands.

Count 3

You are charged with breach of contract in that despite you making an undertaking in your employment contract clause 3.1 that you conduct your affairs with probity, you have failed to do so by teaming up with other employees to make the Agency ungovernable."

(Pleading pages 20-21)

6. On the 13th February 2017 the Applicant filed an urgent application before Court seeking an order on the following terms:

"1. Dispensing with the normal Rules of Court with respect of time limits and manner of service 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 set by this Honourable Court why orders set out below should not be made final.

3. *That the 1st, 2nd and 3rd Respondents be interdicted from proceeding with the disciplinary hearing against the Applicant: pending finalization of the matter before Court.*

4. *That the 3rd Respondent's decision refusing to recuse himself be reviewed/corrected and/or set aside.*

5. *Calling upon the 1st Respondent to provide this Honourable Court and the Applicant with a full and comprehensive record of the disciplinary hearing proceedings.*

6. *That prayers 3, 4 and 5 operate with immediate and interim effect.*

7. *That the 1st Respondent pays the costs of this application.*

8. *Granting the Applicant further and/or alternative relief."*

7. The 1st Respondent opposed the application, raised a point of law and further pleaded over on the merits. Inter alia, the 1st Respondent

challenged the alleged urgency in the matter. The 1st Respondent argued that the application did not qualify to be enrolled as urgent and should therefore follow the normal time limits that are stipulated in the rules. The 1st Respondent urged the Court to dismiss the urgent application, for lack of urgency.

8. The Applicant had a grievance which he reported to the board of directors of the 1st Respondent. The grievance was presented in writing on the 26th January 2017 and is marked annexure – SS3. In that grievance the Applicant requested intervention of the board to remove the 3rd Respondent as chairman of the disciplinary hearing on allegation of bias.

9. The board declined to intervene in the Applicant's disciplinary hearing and notified the Applicant of its decision – by letter dated 7th February 2017. That letter is annexure SS5. The Applicant admitted receiving the letter (SS5) on the 8th February 2017. The 1st Respondent's argument is that if the application was indeed urgent the Applicant could and should have filed same in Court by the 9th

February 2017 or shortly thereafter. The Respondent found the delay from 8th to 13th February 2017 unjustifiable.

10. The application appears to have been registered in Court on the 13th February and was set down for the 15th February 2017. There was therefore a delay of about 4 (four) calendar days in bringing the matter to Court. The Court, in the exercise of its discretion, condoned that delay and allowed the matter to be enrolled on urgency basis. The parties proceeded to argue the merits of the application.

11. The disciplinary hearing has not been completed yet. In the cause of the hearing the Applicant applied to the chairman to recuse himself. According to the Applicant the chairman had committed a number of irregularities in the course of the hearing which led the Applicant conclude that he was biased in favour of the 1st Respondent. The chairman prepared a written ruling on the application for his recusal. The chairman dismissed the application. The written ruling is dated 20th January 2017 and marked SS4. The Applicant then filed an

urgent application (which is currently serving before Court), to challenge the ruling.

12. About the 16th June 2016 the 1st Respondent conducted interviews with candidates who had applied for the position of Personal Assistant to the Executive Director. Among the 1st Respondent's employees who attended the interview was a certain Ms Phephile Dlamini who was Legal Secretary at the 1st Respondent's establishment. In the course of the day (after the interview had been completed), Ms Phephile Dlamini was confronted by the Applicant within the work premises. The Applicant questioned Ms Dlamini about the sense in her applying for the position in question. Ms Dlamini felt that the Applicant's approach was both confrontational and critical of her capability to carry out the duties in the office she had applied for. Ms Dlamini decided not to discuss the matter with the Applicant and proceeded to her work station. On arrival at the office the Applicant realised that her colleagues had already been made aware of the Applicant's criticism of her competency or capability to work in the

office of Personal Assistant to the Executive Director. According to Ms Dlamini she was hurt by the Applicant's conduct.

13. The Applicant's counsel referred the Court to an extract of the record where Ms Dlamini gave evidence in chief. The Applicant's counsel had objected to certain evidence that Ms Dlamini had presented. The chairman overruled that objection. The Applicant's counsel argued that the chairman's decision to overrule his objection was irregular. An extract of the record on this point which also contain a detail of the said objection reads thus:

"Chair *Okay, if I may ask, is the position above your current position or what?*

PW1 *Thank you for the question. The feeling I had was that I was not fit for the position and that I was far below it.*

RC *Mr Chairperson I would object to that because it seems to give us her thoughts. That is not what transpired. This is because she has stated that in their conversation she did not respond to what Mr Sibandze*

was asking but now she is giving us her thoughts on the whole story, which is not what transpired.

CO.REP *Mr Chair, we are of the considered view and it is our submission that the hearing emanates from utterances that were made by Mr Sibandze. So on our side we state that that evidence is what will help our case because she is narrating how she felt. It is not her thoughts. It is the feeling that she went through that resulted in this disciplinary hearing.*

Chair *Let me allow that Mr Gamedze. Then its weight will be another issue. Mr Vilakati you may proceed."*

(Record page 8)

14. Ms Dlamini (who is referred to in the record as PW1) testified at the hearing on how she felt – as a result of the Applicant's aforesaid conduct. The Applicant's counsel objected to that evidence being admitted. The basis of the objection was that the witness was testifying on how she felt as a result of the treatment she had been subjected to by the Applicant yet the Applicant denied that he conducted himself in the manner alleged. The Applicant had denied

that he had undermined or illtreated Ms Dlamini. The chairman allowed that evidence but indicated that its weight was yet to be considered. The Court does not find any illegality or irregularity in the manner the chairman ruled on that objection. The chairman acted within his mandate in the manner he delivered the ruling.

15. The Applicant's counsel referred the Court to another portion in the evidence where he raised another objection, without success. The relevant evidence reads thus:

"Co.Rep In the charge you state that you were intimidated. In your evidence you touched an issue that Mr Sibandze discussed this issue with Mimi and Nosipho. How did you feel when you heard this?

PW1 Okay. After I had talked to Mr Sibandze I was hurt, like I said. I was not happy. But when I got to the office and found that he had discussed the issue with other people before myself I think that is when I felt intimidated. But at first when I talked to him I didn't know that he had already discussed it with someone else besides me.

RC *Mr Chairperson, I think he is getting a second bite to re-argue this case. All this was said in examination-in-chief. The Mimi issue [sic]was even raised in examination-in-chief. Had it been very vital and crucial in this because the charge is centred around it then it was going to be raised. Now they are trying to make their case under re-examination. Such should not be allowed, not unless we will be given an opportunity to cross-examine on that. Because I do believe that in re-examination you deal with issues that arose in cross – examination. I object to this, Mr Chairperson.*

Co. Rep *Mr Chair, I believe the rules of a disciplinary hearing are not as stringent as the rules in a court of law. So here we are extracting the truth and to assist you to reach a decision in this matter.*

...

Chair *Okay. I will make a ruling on this one. I do not want to be seen to be closing the gates for any evidence at the end of the day. Can I allow them to continue and if you*

<u>feel there are issues where you feel you can cross [cross examine] then you will be allowed to</u>?"

(Underlining Added)

(Record pages 24-25)

16. The Applicant's objection was two (2) pronged. When the witness (Ms Phephile Dlamini) stated in her evidence that she was hurt by the Applicant's conduct, the argument from the Applicant's counsel was that: the witness was stating her opinion. Since Ms Dlamini had been allowed to state her an opinion in her evidence, the Applicant should also be permitted to extract opinion from other witnesses which may be of assistance in the Applicant's case.

17. The Applicant's counsel argued further that when Ms Dlamini stated that she felt intimidated when she was confronted by the Applicant, that evidence should not be allowed because it was presented in re-examination. The 1st Respondent should not be allowed to build its case at the stage of re-examination unless the Applicant would also

be permitted to cross examine Ms Dlamini on the new evidence that she had delivered in re-examination.

18. The chairman allowed Ms Dlamini to continue to testify on how she had been intimidated, but indicated that the Applicant's counsel would also be permitted to cross examine Ms Dlamini on such issues as he may deem necessary as per request from the Applicant's counsel.

19. At the end of re-examination of Ms Dlamini, the chairman called upon the Applicant's counsel to again cross examine Ms Dlamini. The Applicant's counsel stated that he had no questions to ask. Ms Dlamini was thereafter excused from the witness box.

20. The objection that was raised by the Applicant's counsel was conditional. The condition was that: in order for justice and fairness to be realised with regard to the evidence of Ms Dlamini, the Applicant's counsel must be given another chance to cross examine Ms Dlamini, especially on the aspect, where she claimed she had been intimidated by the Applicant. In his ruling, the chairman

granted the request. At the end of the re-examination, the Applicant's counsel was invited to re-open the cross examination but he failed to exercise that right. The record states as follows at the end of the re- examination:

> *"Co. Rep I think that is all, Mr Chairperson.*
>
> *Chair Any questions Mr Gamedze?*
>
> *RC No questions.*
>
> *Chair Ms Dlamini, thank you for your time and I think I can excuse you …"*
>
> (Underlining added)
>
> (Record page 27)

The Court does not find any irregularity in the manner the chairman dealt with this objection.

21. A third objection that was raised by the Applicant's counsel was based on the contention that the initiator was assisting his witness in giving evidence during the trial. The witness concerned is named Ms Cebsile Vilane. Ms Vilane was asked by the initiator to narrate events that took place in a meeting of the 1st Respondent's employees

which was held at the workplace on the 6th June 2016. The witness was also asked to list the names of those who attended the meeting. The witness listed names of eleven (11) employees. The initiator asked whether a certain employee named Ms Futhi Ginindza was also present at that meeting. Ms Vilane answered in the affirmative. The Applicant's counsel objected to that question on the basis that the initiator was assisting the witness. The objection was overruled. The chairman explained that the names of the 1st Respondent's employees who attended the said meeting was common cause.

22. It is a fact that in a trial or disciplinary hearing, evidence of matters that are common cause is treated differently to that of matters in dispute. The latter requires proof, yet with the former proof may be dispensed with. There is no indication in the record that the Applicant's counsel challenged the chairman's assertion that the presence of Ms Futhi Ginindza at the meeting was common cause. There was also no indication in the disciplinary charges that the presence or absence of Ms Futhi Ginindza at the said meeting was an issue that was subject of dispute and therefore required proof to

establish the fact. The Court does not find any irregularity in the manner the chairman dealt with the said objection.

23. Another objection raised by the Applicant's counsel concerned a question that the initiator asked Ms Cebsile Vilane – in chief. The narrative reads thus:

> "*Co. Rep How then did you feel intimidated after the meeting of the 6th?*
>
> *RC Mr Chair that is a leading question.*
>
> *Co. Rep How then did you feel after that meeting?*
>
> *PW2 As someone who had been with the organisation for two months I felt small. I felt out of place …"*

(Record page 32)

24. It appears from the record that immediately after the Applicant's counsel raised an objection, the initiator withdrew the question and approached the matter from another angle. When the initiator abandoned the question which had attracted an objection he thereby released the chairman from making a ruling thereon. It appears the Applicant's counsel was satisfied with the abandonment of the

question and did not insist on his objection. There was therefore no objection before the chairman on which he could make a ruling - since the offending question had been withdrawn, alternatively paraphrased.

25. The initiator called another witness namely Mr Motsa who was the 1st Respondent's Executive Director. While cross examining the witness the Applicant's counsel raised the following objection or complaint:

"RC *I am sorry Mr Chairperson, I have a challenge here. We are cross- examining here and the witness is being written notes to. How do we cure that Chairperson? Are we conducting our affairs with probity now?*

Chair *We will adjourn for 5 minutes.*

[ADJOURNMENT]

Chair *We can resume.*

RC *Mr Chair we seem to be having problems here. I ask for a postponement. The witness is under oath here and he is still a witness. In terms of procedure he cannot go outside with the Prosecutor and then come*

back to give more evidence. There is no probity here. It is procedurally unfair.

Chair *Unfair in what sense Mr Gamedze. Are you saying they were discussing the same matter or what?*

RC *How can we take that away?*

Chair *I do not know. Are you speculating that they were discussing it?*

RC *It goes to the issue of bias.*

Chair *No. Let me hear from the Company Representative.*

Co. Rep *If he is postponing then what would happen next.*

RC *I didn't talk about any postponement of the hearing I talked about this witness. I said it's an adjournment. You cannot be having a witness and then he be seen talking to me. I complained to you Mr Chair that they are passing notes whilst under cross-examination. They then ask for an adjournment. They go outside together.*

Chair *So you are implying that they were discussing the case.*

RC *Exactly Mr Chair.*

Co. Rep. We were not discussing the case.

RC *My application is that the witness be disqualified from testifying in this matter Chair. You cannot have him discuss with my learned friend outside.*

Chair *Do you have evidence that they were discussing this issue?*

RC *Then it becomes a challenge, Chair. That is why I said it goes to the issue of bias. You do not need to prove that he was biased because … (interrupted)*

Chair *Mr Gamedze, do you want us to conduct a trial within a trial in this issue or what? Do you want to bring an application in respect of that or maybe you are just raising it as a concern or …*

RC *I am raising it as a concern Chair. I expect the Chair not to say I am speculative [sic]. Already the Chair has dismissed me on that."*

…

(Underlining added)

(Record pages 90-91)

26. The objection was two (2) pronged. First, the Applicant's counsel complained that while Mr Motsa was under cross examination someone wrote him a note. The Applicant's counsel does not however state –

    26.1 who exactly wrote the witness a note? and

    26.2 who witnessed the said note being delivered to the witness,? and

    26.3 at the time the objection was raised where exactly was the note, so that the chairman could read it.?

    Shortly after the Applicant's counsel had raised his objection the chairman adjourned the proceedings for a few minutes.

27. The second leg of the complaint is that during the adjournment the witness (Mr Motsa) went out of the enquiry –room with the prosecutor (initiator). The argument was that it was irregular for the two (2) gentlemen to go outside the enquiry –room together. The chairman asked whether the assertion by the Applicant's counsel that the two (2) gentlemen went out of the enquiry – room together:

he was thereby implying that they were discussing the case. The Applicant's counsel answered with an emphatic '*Exactly Mr Chair'*.

28. Thereafter the Applicant's counsel applied that the witness (Mr Motsa) be disqualified from giving further evidence on the basis that he allegedly discussed the matter with the initiator. The chairman called for evidence to support the allegation that the said gentleman did discuss the matter. The Applicant's counsel failed to provide the requisite evidence. The Applicant's counsel was then directed to file a written application supported by authority on the issue of disqualification of the witness. The matter was postponed to a future date (2nd November 2016) in order to enable the Applicant's counsel to prepare his application and set it down for argument.

29. The chairman was entitled to demand proof that the initiator and his witness (Mr Motsa) did discuss the case- before the chairman could make a ruling on that complaint. The chairman was further entitled to demand that a formal application be filed and be supported by authority, for the disqualification of the witness, before he could decide on the matter. There is no evidence of irregularity in the

manner the chairman made his ruling. The objection by the Applicant's counsel was accommodated when the chairman ruled that a formal application for the disqualification of the witness be filed together with supporting authority.

30. The disciplinary hearing was re-convened on the 2nd November 2016 but the Applicant failed to present his application for the disqualification of the witness (Mr Motsa). The chairman could not therefore make a ruling on that issue. The matter was postponed to the 10th November 2016.

31. On the 10th November 2016 the hearing resumed. The Applicant's counsel mentioned that he was no longer proceeding with the application to have the witness (Mr Motsa) disqualified. Instead, he applied for the recusal of the chairman from the disciplinary hearing.

32. The application for the recusal of the chairman was predicated on the ground that the chairman had allowed a witness, (Ms Phephile Dlamini), to testify in re-examination that she had been intimidated

in the manner the Applicant had approached her, as aforementioned. Under cross examination the same witness had stated that she had been hurt by the Applicant's conduct. The complaint was that the 1st Respondent was building its case in re-examination because Ms Phephile Dlamini did not mention under cross examination that she had also been intimidated. As aforesaid, the chairman allowed that evidence but added that the Applicant's counsel would be granted his request to re-open cross examination of the witness (Mr Motsa). When the chairman gave the Applicant's counsel an opportunity to cross examine the witness, he declined.

33. The Applicant's counsel argued that the chairman's ruling was irregular such that it indicated a clear bias – in favour of the 1st Respondent. It was further argued that the chairman's refusal to recuse himself was also irregular and should be set aside.

34. A disciplinary hearing cannot be equated with a trial in Court. It is not expected that in a disciplinary hearing the rules of Court as well as Court procedure should be invariably and inflexibly applied. A certain amount of discretion and flexibility is allowed the chairman -

provided there is no miscarriage of justice. The parties are yet to make submissions and therefore evidence that has allegedly been presented irregularly or improperly can still be challenged. The Court does not find irregularity in the manner the chairman made his ruling on this objection.

35. Another ground for recusal is that the chairman made a statement which, according to the Applicant's counsel, unfairly limited him in his cross examination of a particular witness namely – Mr Motsa. The Court was referred to two (2) statements which read thus:

"*35.1 Chair* *But I will definitely rule out a question, for instance, which seeks an opinion.*

RC *It is not an unfair question Mr Chairperson. A question that seeks on opinion is not an unfair question.*

Chair *It depends Mr Gamedze.*

RC *Exactly.*

Chair *That is why I am saying it depends on the Chairperson to decide or use his discretion. So*

that is why I am saying Mr Gamedze, please proceed with your cross-examination."

(Record pages 83-84).

36. The argument here is that the chairman conducted himself irregularly when he directed that a witness should not give his opinion but rather should give evidence of facts that are within his knowledge. The chairman further directed that a witness must give evidence and not speculation.

37. The general rule is that a witness's opinion is inadmissible, and the rule is subject to certain exception. The learned authors Hoffman and Zeffertt in support of the general rule quoted the following passage:

> *"The general rule is that the evidence of opinion or belief of a witness is irrelevant because it is the function of a court to draw inferences and from opinion from facts; the witnesses give evidence as to facts, the court forms its opinion from those fact."*

HOFFMANN LH and ZEFFERTT DT: THE SOUTH AFRICAN LAW OF EVIDENCE, 4th edition, Butterworths, 1988 ISBN 0 409 03325 1 at page 83.

38. The learned authors continued to state that:

> *"A witness's opinion may assist the court <u>if the witness is better qualified to form an opinion than the court</u>: if the court is in as good a position to form an opinion as the witness, the witness's opinion is unhelpful, irrelevant and, consequently, inadmissible."*
>
> (Underlining added)
>
> HOFFMANN LH and ZEFFERTT (supra) at page 85.

39. When the chairman mentioned at the hearing that: he would rule out a question that sought an opinion, he was thereby stating his understanding of the general rule as stated by the authorities – aforementioned. However that statement did not mean that the chairman was therefore biased. The chairman was entitled to assess evidence and make a determination –

    39.1 whether or not the evidence presented was an opinion of the witness or a fact that was within the personal knowledge of the witness,

39.2 and if the witness was giving an opinion, to further determine whether such opinion was admissible.

40. If the Applicant's counsel intended to introduce in the evidence, an opinion of a witness, he had a duty to justify the admission of such opinion in accordance of the rules and provisions of the law of evidence. It is not every witness's opinion that is admissible in law. There is no indication in the record that the Applicant's counsel presented reasons to justify the admission of the opinion of a witness as opposed to facts which the witness had himself observed. The Court does not find irregularity in the manner the chairman expressed the general rule relating to the admission of opinion evidence.

41. The Applicant stated the following in the heads of argument:

> "*13 The chairperson during the course of the disciplinary hearing made it clear that he was not going to allow opinion, despite the fact that the general rule is subject to exceptions."*
>
> (Underlining added)

What is missing from both this submission and the record is the exception under which the Applicant's counsel intended to introduce opinion evidence of the witness (Mr Motsa).

42. The duty to prove bias, in the presiding officer, is on the party alleging it. The fact that the chairman in a disciplinary hearing has made a statement or ruling which one of the parties does not agree with, does not mean that he is biased and will not therefore bring an objective and fair judgment to bear on the issues before him. The Court is not persuaded that the chairman has shown bias in the manner he has, so far, handled the disciplinary hearing, be it actual or apparent bias.

43. Among the leading cases in Swaziland on the subject of bias - is the case of: MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS VS SAPIRE 2000 - 2005 SLR (1) 196, a Supreme Court judgment. The Honourable Judges applied the '*double reasonableness test'* to determine bias as follows:

"*Can it be said that in those circumstances a properly informed reasonable man might reasonably apprehend that a judge hearing this matter might be biased?"*

(At page 205)

This Court is unable to find that a reasonably informed man might reasonably apprehend that the chairman under the present circumstances might be biased. The Applicant has consequently failed the test for bias.

44. The learned author Grogan J gave an instructive comment on recusal, as follows:

"If employees have reason to doubt that a presiding officer is impartial, they may apply for the presiding officer's recusal. A presiding officer is duty bound to consider an application for recusal, but not necessarily grant it. An unsubstantiated allegation of bias is not in itself sufficient to warrant recusal …"

(Underlining added)

GROGAN J: WORKPLACE LAW, 10th edition, Juta, 2009 ISBN 13: 978-0-7021-8185-6 at page 243.

The underlined portion of the quotation is on point.

45 The Court has been asked, inter alia, to review the decision of the chairman wherein he refused to recuse himself from the disciplinary hearing. In the matter of DAVIES VS CHAIRMAN, COMMITTEE OF THE JSE 1991(4) SA 43, the Court explained the purpose of a review as follows:

45.1 *"A Court on review is concerned with irregularities or illegalities in the proceedings which may go to show that there has been 'a failure of justice'."*

(At page 48)

45.2 "*The issue before this Court on review is not the correctness or otherwise of the decision under review. Unlike the position in an appeal ..."*

(At page 46)

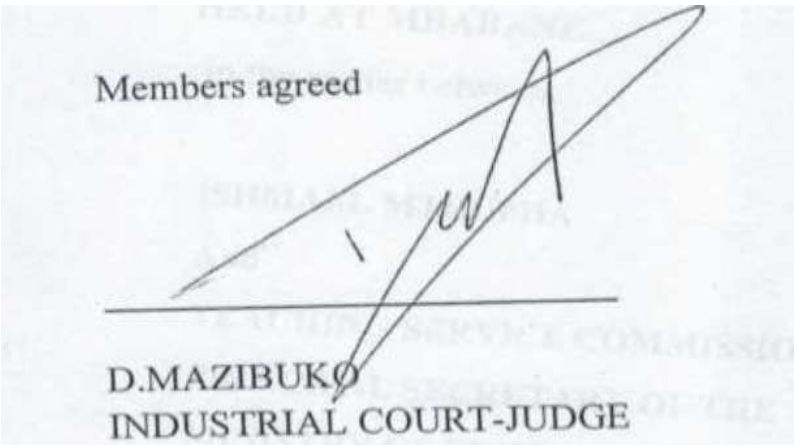
46. The principle that is expressed in the Davies case was reiterated in the matter of LIBERTY LIFE ASSOCIATION OF AFRICA VS KACHELHOFFER NO AND OTHERS 2001 (3) SA 1094. The Court restated the principle as follows:

"Review and appeal are dissimilar proceedings. The former concerns the regularity and validity of the proceedings, whereas the latter concerns the correctness or otherwise of the decision that is being assailed on appeal …"

(At pages 1110-1111)

47. The Court has not been able to identify illegality or irregularity in the manner the chairman has dealt with the recusal application. The Court is not concerned with the merits of the disciplinary hearing. The fact that the application for recusal was unsuccessful did not mean that, that decision was illegal or irregular. The application to review, correct or set aside the decision of the chairman could not therefore succeed, and was consequently dismissed.

48. On the 21st March 2017 this Court issued an *Ex Tempore* order in which it dismissed the application with no order as to costs. The Applicant subsequently requested written reasons which are hereby delivered.



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