

Reportable:	Yes/No
Circulate to Judges:	Yes/No
Circulate to Magistrates:	Yes/No

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

*CASE NO.: 1118/2019
Date heard: 19-10-2020
Date delivered: 16-04-2021*

In the matter between:

Douglas High School
The School Governing Body of Douglas
High School

1st Applicant

2nd Applicant

and

The Head of the Department of
Education, NC
MEC for Education NC
Mr F J Waldeck
Ms. C Myburgh
Ms J Erasmus

**1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent**

CORAM: WILLIAMS J et

JUDGMENT

WILLIAMS J:

1. In this review application the 1st applicant, Douglas High School (the school) and the 2nd applicant, the School Governing Body of the school (the SGB), seek the following relief against the 1st

respondent, the Head of Department of Education, Northern Cape (the HOD):

- “1. That the first respondent’s administrative decision to decline the recommendation by the second applicant for the appointment of the third respondent as Departmental Head in post number 201807/0242 at first applicant be reviewed, remedied, and set aside.
 2. That the first respondent be directed and ordered to appoint permanently to the first respondent’s employ at first applicant, Douglas High School in Douglas, third respondent, **Mr F J WALDECK**, persal no 55384268 as the Departmental Head in Physical Sciences Grade 10-12; Agricultural Technology Grade 10 – 12 & Agricultural Sciences Grade 10-12 (post number 201807/0242), as per the recommendation of the second applicant dated 17 September 2019, such appointment to be made within 7 days of the court order.
 3. That the first-and second respondents be directed to pay the costs of this application jointly and severally, the one paying the other to be absolved.”
2. The 2nd respondent is the Member of the Executive Council for Education in the Northern Cape (the MEC). The MEC is cited in his official capacity as political head of the Department of Education in the Northern Cape (the Department) because he may have an interest in the application. Although the relief sought in the Notice of Motion quoted above includes a cost order against the MEC, the applicants have in both their founding and replying affidavits stated that this was a mistake and that no relief is sought against the MEC.

3. The 3rd respondent is Mr F J Waldeck an educator at the school and the SGB's preferred candidate for the vacant post of Departmental Head as more fully described in the second prayer of the Notice of Motion cited above.
4. The 4th and 5th respondents, Ms C Myburgh and Ms J Erasmus are also educators at the school and were respectively the SGB's second and third ranked candidates for the vacant Departmental Head post. These parties are also cited merely for the interest they may have in this matter.
5. It appears to be common cause that educators who have experience in teaching agricultural subjects at high school level are difficult to find. This dearth of suitable agricultural educators led the SGB to headhunt Mr Waldeck during 2017. At the time he was the internally appointed Acting Departmental Head agricultural subjects at the Northern Cape Agricultural High School in Jan Kempdorp. He had also previously been appointed by the Department to act in the same position at that school during 2015.
6. Mr Waldeck was amenable to a transfer to the school, which was formalised by the Department during April 2017, where he was appointed as a post-level 1 educator in agricultural subjects.

7. When the Departmental Head post came into existence at the school during 2018 the Department appointed Mr Waldeck to act in this post at the school.
8. After the vacant post was advertised and the initial sifting, shortlisting and interviewing proceedings were completed, the SGB made its recommendations to the HOD as described in paragraphs 3 and 4 above on 17 September 2018.
9. On 11 December 2018 the HOD, in a letter addressed to the SGB, declined to make an appointment. The letter reads as follows;

"After thorough consideration of your recommendation, my office has come to the conclusion that same must be declined in terms of section 6(3) (e) of the Employment of Educators Act 76 of 1998 (the Act).

The documents at my disposal reveal that your office has not complied with section 6 (3) (b) (iii) of the Act in that your preferred candidate does not meet the profile of the post. Your office must appreciate that in the provision of quality education we must promote educators into the correct positions provided they meet the requirements for such promotion. Sadly, this is not the case in the current matter, my office would advise you place the mentioned preferred candidate(s) in the correct position so as to ensure that we do not jeopardise future upward mobility.

My office has further considered all applications for the said vacancy and is not satisfied that we would be able to comply with section 6 (3) (g) (iii) of the Act.

Given the above, it is my decision that the mentioned post will be re-advertised in the next gazette."

10. On 4 February 2019, the applicants, through their attorneys of record, Horn & Van Rensburg Attorneys, requested the HOD to provide in terms of s5 of the Promotion of Administrative Justice Act, Act 3 of 2000 (PAJA), full and adequate reasons in writing, within 90 days, for the decision to decline to appoint Mr Waldeck in the post.
11. After the expiry of the 90 day period within which to provide reasons on 6 May 2019 and with no reasons forthcoming the applicants launched this application on 20 May 2019.
12. On 10 June 2019, the attorneys for the 1st and 2nd respondents, Mjila & Partners, wrote a letter to the applicants attorneys elaborating on the reasons why the HOD declined the appointment of Mr Waldeck. The relevant portion of this communication reads as follows:
 - "3. *Firstly, it is our instruction that, your clients were informed exactly why your clients' preferred candidate was not appointed. The first Respondent in its letter of 18 December 2018 clearly advised your clients that they have not complied with section 6(3) (b) (iii) of the Employment of Educators Act, No 76 of 1998 ("the Act") in that your preferred candidate did not meet the profile of the post. You will appreciate that in order to meet the profile of post a candidate must meet the minimum professional qualifications for the post. Your clients' preferred candidate and the other recommended candidates*

did not meet the profile for the post since they failed to comply with provisions of clause B.3.2.1 (a) and/or (b) of the **Personnel Administrative Measures** (herein after referred to as PAM).

4. To demonstrate the failure of the 3rd, 4th and 5th Respondents to satisfy the requirements of the position, you will note that according to the advertisement, the Respondents would be required to teach the following subjects: "Fisiese Wetenskappe" (Physical Science) Grade 10-12, "Lanboutegnologie" (Agricultural Technology) Grade 10-12 and "Landbouwetenskappe" (Agricultural Science) Grade 10-12.

When regard is had to the academic qualifications of the 3rd to 5th Respondents it is abundantly clear that your client's preferred candidate did not demonstrate that the subjects listed herein above form part of his professional qualification (a degree or diploma at tertiary educational level). Neither did any of the other recommended candidates demonstrate that all of the aforementioned subjects form part of their professional qualification. Accordingly, as a minimum, the recommended candidates had to demonstrate that their professional qualifications reflect that they have a basic knowledge of the aforementioned subjects, which their professional qualifications failed to do.

5. We further wish to draw your attention to **section 6 (b) (iii) of the Educators Employment Act**, (should be section 6(3)(b)(iii)) which reads as follows:

"In considering the applications, the governing body or the counsel, as the case may be, must ensure that the principles of equity, redress and representivity are complied with and the governing body or council as the case may be, must adhere to:

(iii) *any requirements collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators which the candidate must meet”*

6. *It is our submission that the First Respondent was correct in declining to appoint any of the recommended candidates on the grounds enumerated above.*
7. *Lastly, we submit that, the fact that the 3rd to 5th Respondents were not eliminated at the sifting stage, may possibly have been an oversight and does not therefore translate into them satisfying the minimum requirements of the post.*
8. *In addition to the above, we reserve the right to raise any other point which we consider to be relevant. Accordingly, we humbly propose that the applicants withdraw the current application and tender our party to party costs at this stage.”*
13. The applicants refused to withdraw this application and a complete set of papers was filed as well as supplementary affidavits by both sides which we, at the hearing of this matter, allowed.
14. At this stage I pause to mention that it is a matter of concern that the HOD appears to persists in providing catch-all reasons for declining recommendations of SGBs. S6 (3)(b)(iii) covers everything from equity, redress and representivity to qualifications. Requests for more specific reasons have been met with lengthy delays and eventual clarification by the HOD's legal representatives. A similar situation arose in the matters of

Kathu Primary School and Another and Seodin Primary School and Another v Head of Department of Education, Northern Cape and Others (308/2018, 516/2018 [2019] ZANCHC 50 (6 September 2019). While the court in that case rejected contentions of *ex post facto* reasons being provided, it is inevitable that such accusations will arise, as it has *in casu*. This state of affairs could have the effect of giving rise to unnecessary litigation. If the HOD takes the time to give clear reasons from the start or provide such without delay, there will definitely be a decline in the number of matters of this nature on our court rolls.

15. Be that as it may, the applicants rely on the following grounds of review:

15.1 That the action was taken because irrelevant considerations were taken into account or relevant considerations were not considered and/or taken in bad faith;

15.2 That the action is not rationally connected to:

15.2.1 the purpose for which it was taken and/or;

15.2.3 the reasons given for it by the administration;
and

15.3 that the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.

16. The HOD opposes the relief sought on the following grounds:

16.1 A preliminary point that only two candidates were recommended for the post by the SGB instead of three candidates as required by s 6(3)(c)(i) of the Employment of Educators Act, No 76 of 1998 (the EEA); and

16.2 Mr Waldeck did not meet the minimum professional qualification for the post and consequently did not meet the profile for the post since his appointment would have been inconsistent with the provisions of s 6(3) (e) and b (iii) of the EEA read with the provisions of clause B.3.2.1.1 (a) and/or (b) of the Personnel Administrative Measures, Government Notice 170 of 12 February 2016, published in Government Gazette No 39684 (PAM). The 4th and 5th respondents also did not comply.

17. I deal first with the point *in limine* relating to the issue of no proper recommendation having been made. S6(3) (c) of the EEA reads as follows:

“(c) The governing body must submit, in order of preference to the Head of Department a list of -

- (i) at least three names of recommended candidates: or
- (ii) fewer than three candidates in consultation with the Head of Department.”

18. At issue here is the recommendation of the 5th respondent Ms Erasmus, the SGB’s third ranked candidate. The NCK 15 and 16 forms motivating the recommendation of Ms Erasmus as third preferred candidate for the post state the following:

“Sy is ook ‘n goeie onderwyser maar beskik nog nie oor die nodige ondervinding om op te tree as departementshoof nie. Sy sal wel as ‘n goeie leier ontwikkel soos was sy ondervinding opdoen.”

19. The applicants deny that there is any merit in this contention and refer to this defence as contrived and *ex post facto* as it was never raised by the HOD as a reason for the refusal to appoint Mr Waldeck at the time when the decision was taken.
20. The argument of Mr Petersen, on behalf of the HOD, is that it matters not that the flaw in the recommendation was only raised in the answering affidavit since it is a legal point which can be raised at any time. He referred to the judgment in *Kimberley Junior School and Another v Head of Northern Cape Education Department and Others* 2010(1) SA 217 (SCA). In that matter a similar issue arose where the SGB had put up the names of three candidates for the appointment as principal of the school as required to do in terms of s 6(3)(c)(i), but in effect only recommended one candidate for the position. In a letter

separate from the NCK 2 form, the SGB informed the HOD that the second and third ranked candidates lacked *inter alia* the administration and management skills required of a principal of a primary school. The HOD nevertheless appointed the third ranked candidate in the post.

21. In dealing with the issue of whether the HOD had a discretion to appoint the third ranked candidate, the SCA held *inter alia*:

21.1 That the HOD's power to appoint under s (6)(3)(f) is dependant on the objective jurisdictional fact of a recommendation by the SGB. Objective jurisdictional facts include the type of fact or state of affairs that must exist in an objective sense before the power can validly be exercised (paragraphs 11,12);

21.2 That "*section 6(3)(c)(i) plainly requires a governing body to recommend at least three candidates. For the recommendation of a lesser number it must consult the head of the department with a view to invoke the procedure under s 6(3)(c)(ii). What the SGB tried to do in this instance, namely to nominate or put up the names of three candidates, but to recommend only one, is simply not permitted by s 6(3)(c)*" (at paragraph 18); and

21.3 That in that case there was no proper recommendation by the SGB as envisaged by s6 (3)(c) and that in the absence of the jurisdictional fact of a recommendation by

the SGB the HOD had no authority to make an appointment (paragraph 19).

22. In applying the above dicta to the matter *in casu* it is clear that the SGB's failure to recommend three candidates left the HOD with no authority to make an appointment.

23. Mr Merabe for the applicants argued with reference to *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye Lazer Institute* 2014(3) SA 481 (CC) where it is stated at paragraph 99 thereof that,

“ . . . the absence of a jurisdictional fact does not make the action a nullity. It means only that the action is reviewable, usually on the grounds of lawfulness (but sometimes also on the grounds of reasonableness). Our courts have consistently treated the absence of a jurisdictional fact as a reason to set the action aside, rather than as rendering the action non-existent from the outset. The absence of jurisdictional facts did not entitle Mr Boya to withdraw the approval, but only to approach a court to set it aside.”,

that it was incumbent on the HOD to have the flawed recommendation reviewed and set aside, in the absence of which the recommendation stands. The short answer to this contention is that a recommendation is not a decision which can be set aside on review. It has no binding effect. There is no merit in this argument.

24. The application stands to be dismissed solely on this preliminary point. For the sake of completeness however, I intend to deal with the further defence raised by the HOD.

25. In his letter of 11 December 2018, the HOD gives the reason for declining Mr Waldeck the position of Departmental Head as

non-compliance with s 6(3)(b)(iii) of the EEA, in that he does not meet the profile of the post.

S 6(3) (b) (iii) reads as follows:

- 3 (a)
- (b) *In considering the applications, the governing body or the council, as the case may be, must ensure that the principles of equity, redress and representivity are complied with and the governing body or council, as the case may be, must adhere to –*
- (i)
- (ii)
- (iii) *any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators; ”*

26. In the letter of 10 June 2019, the attorneys for the HOD explain that in order to meet the profile of a post the candidates must meet the minimum professional qualifications for the post in compliance with clause B.3.2.1.1 (a) or (b) of the PAM.
27. Clause B3.2.1.1 (a) provides the minimum requirements for a school-based educator: general classroom teacher. The clause relevant to a Departmental Head post (school-based educator: manager) for which the SGB recommended Mr Waldeck, is clause B.3.2.1.1 (b) which requires of the candidate to have:

27.1 A recognised three-or four-year qualification, which includes professional teacher education;

- 27.2 Registration with SACE (South African Council for Educators) as professional educator;
- 27.3 Advanced knowledge of teaching as provided for in the professional qualification;
- 27.4 Good teaching and assess skills, good extra-and co-curricular skills, good people management, good administrative skills and good communication skills; and
- 27.5 Three years of actual teaching experience.
28. The obstacle identified by the Department and which affects all three of the recommended candidates, is the requirement under paragraph 27.3 above. The Department is of the view that the requirement of *“advanced knowledge of teaching as provided for in the professional qualification”* means that the applicant must demonstrate by means of his/her professional qualification (diploma or degree at tertiary level), that he/she possesses advanced knowledge of the subjects listed in the advertised post.
29. The intention, according to the Department's Acting Chief Director: District Operations, Mr Kistoo, and the Acting Deputy Director: Recruitment and Selection, Ms Jansen, is that the subjects listed in the advertisement for the post i.e. Physical Science, Agricultural Technology and Agricultural Science, which the appointee is also required to teach, must be reflected in his/her degree or diploma at tertiary level.

30. Mr Waldeck, who completed a B.Ed. in Senior and Further Education and Training Phase, majored in Business Studies and Educational Economics. None of the advertised subjects form part of his degree course. As a result Mr Kistoo, who has been delegated by the HOD to perform the function of the appointment of Departmental Heads at schools, was of the view that Mr Waldeck should not be appointed. The letter of non-appointment was signed by the HOD after he had satisfied himself that the non-appointment was justified.
31. The HOD also relies on the Vacancy Circular, published by the Department on 20 July 2018, in which the specific vacancy was advertised and in which clause 7.1 of the circular specifically provides that the requirements for educators are specified in the PAM. Clause 9.2.7 of the Vacancy Circular states specifically that one of the criteria for the shortlisting of Departmental Head posts are to be *“qualifications (relevant to the post)”*.
32. In addition, the HOD relies on Departmental Circular 50/2018. This circular was issued on 30 October 2018, after the closing date for applications for the post in issue, and relates to the 2019 vacancies. However the deponent to the answering affidavit Mr O Mogatle, the Director: Legal Services of the Department, states that a Departmental Circular which was issued in 2017 and which had identical content to that of the 2018 circular was sent to the schools in the province and the SGBs, including the applicants. A copy of the 2017 circular

could not be obtained due to the fact that space had to be made for new circulars on the Department's internal server. Copies of the 2018 and 2019 circulars are however attached to the answering affidavit. In both these attached circulars paragraphs 6.5 to 6.8 read as follows:

- "6.5 Schools must not advertise posts with an unreasonable combination of subjects, e.g. Mechanical Technology and Life Orientation or Mathematics and Physical Sciences and Setswana. Schools should note that if you advertise this combination then the applicant must have passed all subjects in his/her diploma/degree.*
- 6.6 Schools must also not advertise posts with a myriad of subjects that applicants would most probably not have offered and passed in their qualification like Mathematics and Life Orientation and Technology and Social Sciences and English Home Language. If a school advertises such a post then the appointed educator must have passed all five subjects in his/her qualification.*
- 6.7 If a school lists the subjects as Accounting or Life Orientation, then it implies that the school must short list all persons who have Accounting in their qualification and all persons that have Life Orientation in their qualification. This could result in the school appointing a Life Orientation educator instead of and Accounting educator.*
- 6.8 Similarly, if a school advertises the post as Mathematics and/or Physical Sciences, then it implies that the school must short list educators who have **both** these subjects or **only one** of these subjects in their qualification and the school is satisfied to accept the best educator that has both subjects or only Mathematics or only Physical Sciences in their qualification."*

33. From the above, and with specific reference to paragraph 6.5 of the Circulars, the argument is that it is clear that the

“qualification” referred to (presumable in PAM), is a diploma or a degree and not a series of short courses offered by the Department or the experience in teaching a particular subject.

34. Whilst the applicants do not dispute the applicability of the PAM and specifically clause 3.2.1.1(b) thereof, they dispute the interpretation of the requirement of *“advanced knowledge of teaching as provided for in the professional qualification”* as contended by the Department and the approach adopted at arriving at such interpretation. They accuse the Department of reading into the requirement *“advanced knowledge of the subjects listed in the advertised post”*, which does not in any way accord with the ordinary grammatical meaning of the words used. All that is required according to Mr Merabe is that the candidate has *“advanced knowledge of teaching”*, which Mr Waldeck as a qualified educator, with experience in teaching agricultural subjects and a clear interest and self-developed passion for these subjects, clearly possesses.
35. The applicants criticise the HOD’s reliance on the opinions of Mr Kistoo and Ms Jansen without them having been qualified as experts in the interpretation and application of the PAM document. In this regard they contend that the HOD took into account irrelevant considerations and acted unreasonably and irrationally when he took the impugned decision.
36. There is however nothing unusual or contentious about a Head of Department relying on the assistance and advice of qualified

and experienced officials within the Department. It cannot be expected of the HOD to be involved in every single aspect of the Department's affairs. As long as the HOD makes an informed and independent decision based on the facts and information before him, there can be no basis for complaint in this regard.

37. Mr Merabe argued, in addition, that the use of departmental circulars as aids to the interpretation of the PAM cannot be allowed since it cannot be used as instruments to interpret primary legislation such as s6 (3)(b)(iii) of the EEA which brought about the PAM document. Though the issue here is not the interpretation of the primary legislation, I take cognisance of the gist of the argument at the hand of *Sebola and Another v Standard Bank of SA Ltd and Another* 2012(5) SA 142 (CC) at paragraph 62 thereof, that regulations cannot be used to interpret an Act.
38. The notion advanced, by the applicants, that a reader has to confine himself to the *ipsissima verba* of a document in interpreting any provision thereof, is however not sustainable. It also does not find support in the matter of *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012(4) SA 593 (SCA) which Mr Merabe referred to. In that matter Wallis JA deals extensively and authoritatively with the current state of our law with regard to the interpretation of statutes, statutory instruments and documents generally. The learned judge of appeal expresses it as follows at paragraph 18 of the judgment.

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

39. What is clear is that one has to look at the language used in the context of the particular document if there is any uncertainty as to the meaning of the particular provision.
40. The argument of the SGB is that the nub of the requirement and the intention of the lawmaker is clear, and that is *“advanced knowledge of teaching”* – without any reference to specific subjects. Speaking in general, this interpretation would effectively mean that an educator, without ever having studied, passed or taught any of the subjects falling under the Departmental Head post, would qualify for the position, as long as such educator has a recognised three or four year

qualification, is registered with the SACE as professional educator and has 3 years of actual teaching experience.

41. On the other hand, an entry level general classroom teacher is required in terms of the PAM to have a recognised three year qualification, registration with the SACE and basic knowledge of the subject/programme/phase.
42. It can surely not be the case that the Departmental Head of a particular subject is not required to have any knowledge of the subject whilst the general class teacher requires a basic knowledge of the subject. The duties of the Departmental Head as described in the vacancy circular include *inter alia* class teaching, to assess and record assessment of learners, to be in charge of subjects and phase, to provide guidance of content and to control the work of educators and learners in the department. Without knowledge (basic or advanced) of the subjects within the department, it is extremely difficult to comprehend how a Departmental Head would be able to perform the duties listed above.
43. The further issue is that whilst the SGB admits that the professional qualification referred to in PAM refers to a diploma or degree at tertiary level, which enables a person to teach, it urges us to extend the meaning of professional qualification to include the training courses and in-service training which Mr Waldeck has completed and his experience relating to the agricultural subjects.

44. While the irony is not lost on us that we are urged to consider only the *ipsissima verba* of the first part of the requirement i.e. “*the advanced knowledge of teaching*” and to give an extended meaning to the second part of the requirement which relates to “*as provided for in the professional qualification*”, the interpretation as relied on by the SGB may, on the face of it appear to be reasonable, taking into account the motivation and ability shown by Mr Waldeck regarding the agricultural subjects. I may just mention at this stage that Mr Waldeck has attended skills training courses in agriculture presented by the Department, he received a certificate of appreciation for achieving 2nd place in the Northern Cape for the 2016 National Senior Certificate exams, a certificate of appreciation for being the quintile winner in Agricultural Technology for the 2017 and 2018 National Senior Certificate examination, he was also chief marker in the Northern Cape for an agricultural subject in the National Senior Certificate examinations and had been marking matric agricultural papers in the Northern Cape for some years.
45. The problem with the SGB’s interpretation however becomes apparent when applied to the Physical Sciences component of the post. Mr Waldeck has no experience or apparent basic knowledge of Physical Sciences. Therefore, even if one would be willing to accept, for arguments sake, that Mr Waldeck is “*sufficiently*” qualified to head the Agricultural component of the department at the school, he in all respects lacks the qualifications to head the Physical Sciences component. It can then in these circumstances hardly be said that the HOD’s

decision not to appoint Mr Waldeck was irregular or unlawful for any of the reasons mentioned by the applicants.

46. A further issue to be addressed is that of the sifting of the candidates. The sifting process of the candidates is handled by the Department. The relevant provision of the PAM Reads as follows:

- "B.5.3 Sifting (school-based and office-based educator posts)*
B.5.3.1 The employing department must acknowledge receipt of all applications by:
B.5.3.1.1 Informing all applicants in writing of receipt.
B.5.3.1.2 Clearly indicating whether the application is complete or not.
B.5.3.1.3 Indicating whether the applicant meets the minimum requirements for the post and that such applications have been referred to the institutions concerned.
B.5.3.2 The employing department must handle the process of eliminating applications of those candidates who do not comply with the requirements for the post(s) as stated in the advertisement.
.....
B.5.4.4 All applications that meet the minimum requirements and provisions of the advertisement must be handed to the SGB responsible for that specific institution."

Mr Petersen conceded that the Department had erred in not eliminating the 3rd to 5th respondents during the sifting process due to their failure to meet the minimum requirements for the post. This failure on the part of the Department has no effect on the outcome of the application but should in my view have a bearing on the costs.

47. Had the 3rd to 5th respondents been eliminated at the sifting stage, this application may never have seen the light. On the

other hand, the applicants persistence in pursuing this application, after having been alerted to the full reasons for the HOD declining their recommended candidate, has also resulted in unnecessary litigation. In my view a fair and equitable order is one that each party pay its own costs.

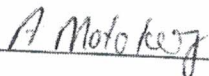
The following order is made:

- a) **The application is dismissed.**
- b) **Each party is to pay its own costs.**



CC WILLIAMS
JUDGE

I concur



A M MOFOKENG
ACTING JUDGE

For Appellant:

Adv. M J Merabe
Horn & Van Rensburg Attorneys
c/o Elliot, Maris, Wilmans & Hay

For Respondent:

Adv. F Petersen
Mjila & Partners