



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR375/12

In the matter between:

**THE NATIONAL COMMISSIONER OF
POLICE**

First Applicant

**THE PROVINCIAL COMMISSIONER OF
POLICE**

Second Applicant

and

APPEALS AUTHORITY

First Respondent

COLONEL B.D. MBHELE N.O

Second Respondent

CONSTABLE T MAGADE

Third Respondent

Heard: 31 August 2016

Delivered: 27 October 2017

JUDGMENT

TLHOTLHALEMAJE, J.

Introduction:

- [1] The applicants seek an order reviewing, correcting and setting aside the decision of the second respondent (Colonel Mbhele), acting in his capacity as

chairperson of the first respondent, (Appeals Authority). The findings are dated 25 November 2011, and had followed upon an appeal lodged by the third respondent (Constable Magade), against a decision of the internal disciplinary chairperson who had dismissed him following upon allegations of misconduct. The Appeals Authority had set aside that decision and reinstated Magade.

- [2] The review application is opposed, and it is common cause that it was launched outside the time periods stipulated in section 145(1)¹ of the Labour Relations Act 66 of 1995 (The LRA). The Applicants accordingly sought condonation in that regard. The condonation application is also opposed.

Condonation:

- [3] The decision under review is dated the 25 November 2011. The applicants (through the founding affidavit of the Section Head: Legal Support Services, Adriaan Samuel Basson) in support of the application for condonation averred that they only became aware of the decision on 07 December 2011. The application for review therefore ought to have been launched on or about the 20 January 2012.
- [4] The Notice of Motion was filed and served on 24 April 2012, and the applicants contended that the delay is about one (1) month and three (3) weeks outside the time period prescribed by the LRA². Magade, in the answering affidavit deposed to on his behalf by Ms. Monica Monyela of POPCRU, does not dispute the period of the delay. When the application for review was filed and served however, it was not accompanied by an application for condonation for its late filing. From the papers it appears that the application for condonation was only filed and served on 16 August 2013, and the application itself is signed and dated 3 July 2013.

¹ Section 145: **Review of arbitration awards**

(1) Any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award -

(a) within six weeks of the date that the award was served on the applicant, unless the alleged defect involves the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004;

² Para 6 of the Answering Affidavit.

- [5] The principles applicable to applications for condonation are trite as well articulated in *Melane v Santam Insurance Co. Ltd*³ in the following terms;

'In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects may tend to compensate for a long delay. And the Respondent's interests in finality must not be overlooked'

- [6] Flowing from *Melane* and other authorities, the Constitutional Court in *Brummer v Gorfil Brothers Investment (Pty) Ltd*⁴ and *Grootboom v National Prosecuting Authority*⁵ confirmed that in considering whether condonation should be granted, the test to apply is that of the interest of justice. The interests of justice must be determined with reference to all relevant factors including those identified in *Melane*. The various factors it was stressed, are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.

- [7] In *Khosa v Absa Bank Limited*⁶, Dlodlo AJA in confirming the test of interests of justice went further and stated that to the extent that the factors to be considered were individually related, even if it was found that the explanation put forth did not constitute a reasonable explanation, it would not necessarily be regarded as an absolute bar to condonation, as what was needed was

³1962 (4) SA 531 (A) at 532B-E

⁴ 2000 (2) SA 837 (CC).

⁵2014 (2) SA 68 (CC) at para 50 - 51

⁶ Khosa v Absa Bank Limited (JA55/2013) [2015] ZALCJHB 1 (15 January 2015)

indeed an objective conspectus of all the facts, as the importance of the issue and strong prospects of success may compensate for a long delay⁷.

- [8] In applying the above principles to the facts of this case, as already indicated above, the delay in launching the review application is one month and three weeks, and it cannot be said that such a delay is egregious.
- [9] The applicants explained the delay as being attributable to the bureaucracy within SAPS in that upon receipt of the decision of the Appeals Authority, the Provincial Head of Personnel Services had to request legal opinion on whether a review should be pursued or not. The legal opinion was received on 13 December 2011. The Provincial Head of Personnel Services then on 23 December 2011 wrote to the Provincial Head and Divisional Commander to request permission to launch review proceedings.
- [10] It is not stated in the founding affidavit as to when such permission was granted, or when the office of the State Attorney was approached. It is also not explained as to when Counsel was briefed or when any consultations were held with Counsel. Monyela in her answering affidavit averred that the explanation proffered by the applicants was not satisfactory at all.
- [11] It is trite that even if the period of the delay in launching the application might not be excessive, an application for condonation still ought to be launched as soon as the need to do so becomes apparent⁸. In this case, the application for condonation was launched some 16 months after the review application. The applicants nonetheless did not proffer an explanation for this inordinate delay.
- [12] Ordinarily, in the light of these serious lapses on the part of the applicants, the first inclination would be to dismiss the application for condonation, and automatically, this would also dispose of the review application. This is particularly so in the light of the prejudice claimed by Magade as a result of these delays.

⁷ (JA55/2013) [2015] ZALCJHB 1 (15 January 2015) at para 10

⁸ *CWIU and Another v Ryan and Others* [2001] 3 BLLR 337 (LC)

[13] This however is not an ordinary case in the light of merits of the review application as shall be dealt with below. On the face of it, it cannot be said that the applicants' prospects of success on the merits are weak as contended on behalf of Magade. Upon a consideration of the merits and the circumstances of this case, the importance of the issues to be dealt with, the importance of this case to employment relations within the SAPS and to the public interest, and the strong prospects of success, I am of the view that these should compensate for the time delays. Accordingly, the overall considerations of the interests of justice should dictate that the merits of the review application be ventilated.

The application for review:

[14] Magade is employed by the South African Police Service as a Detective since 2003 and is stationed at the Hanover Police Station, Northern Cape. On or about 23 December 2009, allegations related to extortion were levelled against him and a criminal case was accordingly opened, with his docket being investigated by the ICD in Kimberley.

[15] Flowing from the criminal investigations, disciplinary proceedings were also instituted against Magade in terms of section 40 of the South African Police Act⁹. The allegations were:

"...You are hereby charged with misconduct, in that, you allegedly contravened:

- (1) Regulation 20(z) commit any common law or statutory offence in that you have committed extortion by colluding with two females to have charges or complaints of sexual assault laid against Richard Wedgewood withdrawn and unduly influencing and extorting the complaint to pay an amount of R60 000 to have the charges withdrawn against him on 2009-12-23 at Hanover. (Sic)
- (2) Regulation 20(z) commit any common law or statutory offence in that you have committed theft by stealing R20 000 from Mr Richard Wedgewood on 2009-12-23 at Hanover

⁹ Act 68 of 1998

- (3) Regulation 20(f) prejudices the administration, discipline or efficiency of a department by unduly influencing Bianca Parks to lay false charges against Richard Wedgewood between June and July 2009 at Hanover”

[16] An internal disciplinary hearing was thereafter scheduled for 9 and 10 December 2010 and 14 January 2011¹⁰. As appears from the record of proceedings¹¹, the hearing was postponed at the instance of Magade as he was booked off sick.

[17] The hearing was thereafter rescheduled for 14 January 2011. Magade is accused of having staged a walk out at that hearing and was issued with a Regulation 18 (5)¹². The hearing was then rescheduled for 09 March 2011. There was an agreement between the parties that the hearing would be postponed to 19, 20 and 21 April 2011. When the matter was supposed to proceed on 19 April 2011, Mr Eric Gengwana on behalf of Magade raised five (5) preliminary points. The Chairperson of the hearing Lieutenant Colonel Prinsloo, had considered the preliminary points and dismissed them.

¹⁰ Held in accordance with the provisions of Regulations for the South African Police Service, issued under section 24 (1) of the Act in Agreement 1/ 2006.

¹¹ Page 17 of the record of internal hearing

¹² **18. Securing the attendance of an employee at a disciplinary hearing**

- 5 (a) In the event that the employee fails to appear at the disciplinary hearing on any date to which the disciplinary hearing has been postponed, or a date to which it was postponed in terms of subregulation (3) -
 - (i) the employee shall, from the date of such failure to appear or remain in attendance, be deemed to be suspended without remuneration; and
 - (ii) the chairperson must postpone the disciplinary hearing indefinitely, and the disciplinary hearing shall only reconvene at the instance of the employee concerned, after liaising with the employer representative, as contemplated in subregulation (l)(b): Provided that in the event that the employee fails to take steps to reconvene the hearing within two (2) months of such date, the chairperson must record such failure on the record of the disciplinary hearing, and the employee shall forthwith be deemed to be discharged from the Service in terms of regulation 15(l)(e).
- (b) In the event of a hearing being reconvened in terms of subregulation (5)(a)(ii) the chairperson must summarily inquire into the reasons for the employee's failure to appear or remain in attendance at the disciplinary hearing and confirm or set aside the suspension as contemplated in subregulation (5)(a)(i).
- (c) Notwithstanding paragraphs (a) and (b), the chairperson may, on good cause shown, at any time set aside a suspension contemplated in subregulation (5)(a)(i).
- (d) Notwithstanding paragraphs (a) and (b), the chairperson may, upon good cause shown, decide that the employee must not be suspended and that the hearing be postponed to a later date.

- [18] Upon the ruling on the preliminary points, Magade submitted a request to the Chairperson of the hearing that his brother should be allowed to sit in the hearing as an observer. The request was opposed by the representative of the applicants and was accordingly refused by the Chairperson. Gengwana then withdrew as Magade's representative and left the proceedings.
- [19] Magade was then afforded an opportunity to secure alternative representation. When the proceedings resumed, he had not found an alternative representative and had requested a further postponement. That application was opposed by the applicants in view of the matter having been postponed on several occasions before and the fact that witnesses had been brought in from Cape Town to come and testify.
- [20] The Chairperson refused to grant a further postponement and proceeded with the hearing. Magade had protested that he was unable to meaningfully participate in the proceedings as he was unrepresented. He had refused to participate in the proceedings and declined to cross-examine the three witnesses called upon to testify on behalf of the applicants, or to call his own witnesses or present his own defence. He had only entered a plea of not guilty in respect of all the charges against him. Magade was nonetheless warned by the Chairperson of the consequences of his decision not to participate in the proceedings.
- [21] The nub of the allegations against Magade based on the evidence of three witnesses called by the SAPS can be summarised as follows:
- i. Ms. Priscilla Absolon had an affair with Richard Wedgwood, then 62 years old, and were living together at the latter's residence. Priscilla's sister, Hazel, came to visit her in September 2009. The allegation against Wedgwood is that he had inappropriately touched Hazel, which conduct constituted a sexual assault. This did not sit well with Priscilla, who had in turn discussed the matter with Magade in confidence. At some point she happened to pass the Hanover Police Station where Magade was based, and the latter had approached her and asked her if Hazel wanted to 'make some money'. When she

replied in the positive, Magade had remarked that 'they' were going to have a 'good Christmas'.

- ii. The next day Magade came to Priscilla's house and took her and Hazel to the police station where they found Wedgewood waiting. Magade then informed Wedgewood that Hazel was going to lay a case of sexual assault against him, at which stage Wedgewood had started sobbing and said that he could not go to jail. It is at that stage that Magade had suggested to Wedgewood that he should pay the sisters to avoid going to jail, to which Wedgewood had agreed.
- iii. Magade and Wedgewood then drove to De Aar to a bank for the latter to withdraw money. Wedgewood's testimony was that he withdrew R82 000.00. Upon their return at the police station, an amount of R20.000.00 was given to Priscilla and Hazel, which they had counted in front of Magade.
- iv. After this incident, Priscilla had gone to Cape Town and was at some stage called by Magade, who had informed her that she should stay in Cape Town as the police were looking for her. Wedgewood had also contacted her and informed her that indeed the police were looking for her, but only to make a statement regarding the incident.
- v. Hazel Absolon had repeated the allegation that Wedgewood had inappropriately touched her. She also confirmed that Magade had suggested to them that they could make money out of the alleged sexual assault claim. She further confirmed having received an amount of R20.000.00 after Magade and Wedgewood had returned from the bank in De Aar. Magade had also requested R100.00 from each of them.
- vi. Wedgewood, the alleged perpetrator of the sexual assault confirmed having been called to the police station on 23 December 2009 by Magade, where he had met Hazel and Priscilla. The two sisters wanted R50.000.00 from him in order to withdraw the charges of sexual assault against him. Wedgewood was well acquainted with Magade, having

spent holidays with him in Port Elizabeth, Johannesburg and Witbank. According to Wedgewood, Magade had suggested to him that to get the 'problem' sorted, he (Wedgewood) should pay Hazel and Priscilla, failing which he could spend time in jail. Petrified at the thought of spending time in jail over the Christmas period, Wedgewood had then agreed to pay the two sisters.

- vii. Wedgewood was then accompanied by Magade to a bank in De Aar where he withdrew an amount of R82 000.00. Along the way from the bank, Magade had then said to Wedgewood that if he gave him R20 000.00, he would negotiate with the sisters to reduce the amount they had demanded. Wedgewood had obliged. Upon returning to the police station, Wedgewood handed all the money he had withdrawn from the bank to Magade, who had in turn handed over R20 000.00 to the two sisters;

[22] At the conclusion of the hearing, Magade was found not guilty on charges 2 and 3. He was however found guilty on charge 1, that is, the charge of extortion, in contravention of Regulation 20(z). A hearing on mitigation and aggravation of sanction was thereafter held on 16 May 2011. Magade had participated in those proceedings and pleaded for a lesser sanction¹³. At the conclusion of the proceedings, a sanction of dismissal was imposed.

[23] Aggrieved at the findings and sanction of the internal disciplinary hearing, Magade then through POPCRU approached the South African Police Service Appeals Authority with an appeal¹⁴. In summary, the grounds of appeal were

¹³ Page 67 of the record

¹⁴ Clause 17 of the Regulations for the SAPS provide that;

Appeal

- "(1) An appeals authority is hereby established.
- (2) The appeals authority comprises of a person or person appointed by the National Commissioner to consider appeals or a specific appeal in terms of these Regulations.
- (3) An employee may appeal a finding or sanction in the form determined by the National Commissioner.
- (4) The employee must, within ten (10) working days of receiving the notice of the final outcome of the hearing, submit the appeal to the administrative office of the appeals authority
- (5) The appeals authority may on good cause shown condone the late lodging of an appeal.

that; there was no independent investigation into the allegations against him; his Union POPCRU, was not informed or consulted prior to charges being laid against him; there were delays in finalising the disciplinary hearing; he was denied representation; the chairperson of the hearing was biased; and that his mitigating circumstances were not considered¹⁵.

[24] The Appeals Authority considered the matter and issued a ruling on 25 November 2011 in terms of which it was found that it was not proven on a balance of probabilities that Magade was guilty of misconduct as charged. It was found that the dismissal was both procedurally and substantively unfair, and Magade was then reinstated. The reasoning of Mbhele on behalf of the Appeals Authority was as follows;

- i. To find that a misconduct was committed under Regulation 20(z), a statutory offence or common law offence must have been committed, and the simplest way of proving this was by a mere production of a charge sheet which will have a case number. In the absence of a case number or proof of criminal charges being laid against Magade, the Appeals Authority could not test the available evidence in respect of the charges against him;
- ii. There was a 'discrepancy' in the employer's case in view of Hazel and Priscilla having mentioned different amounts they had received, with one saying R10 000.00 whilst the other said R20 000.00. The difficulty also arose in respect of the amount of R60 000.00 mentioned in the

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- (6) The appeals authority must consider the appeal and, in the event that the appeals authority decides that a hearing is required, the appeals authority must notify the appellant of the date and place of the hearing
 - (7) The appeals authority may –
 - (a) uphold the appeal; or
 - (b) reduce the sanction to any lesser sanction allowed in terms of regulation 15 (1); or
 - (c) confirm the outcome of the disciplinary hearing.
 - (8) The employer must immediately implement the decision of the appeals authority. Where the appeals authority decides to reduce the sanction or to confirm the outcome of the disciplinary hearing, the sanction will be implemented by the employer from the date of the decision of the appeals authority.
 - (9) The appeals authority must finalise an appeal within (30) working days from the date of the receipt of the appeal, failing which in cases where the employee is on precautionary suspension or temporarily transferred, he or she must resume duties immediately and await the outcome of the appeal."

¹⁵ Pages 106 – 109 of the Record

charge sheet, which amount was not proven by the employer or its witnesses;

- iii. The fact that Magade was not represented
- iv. The charges against Magade were poorly crafted, making it impossible to make a finding of misconduct on a balance of probabilities.

The Grounds for Review:

- [25] The Applicants contended that the Appeals Authority failed to apply its mind when it made the conclusions outlined above, and contended that the decision could not stand in circumstances where three witnesses' testimony went unchallenged; where a Captain Mostert of SAPS had testified that there was a breach of honesty and trust between Magade and the employer as a result of the misconduct in question, and further where Magade's representative chose to leave the proceedings.
- [26] It was further submitted that Magade still worked within the community where he had committed the offence of which he was found guilty of, that he had to interact with the same members of the community who have to trust him enough to allow him to investigate their complaints. The Applicants further submitted that the charging of Magade with contravention of Regulation 20 (z) did not require a different procedure.
- [27] Magade in opposing the review application denied that he had committed any misconduct and that as such, the Appeal Authority properly, rationally and justifiably applied its mind to the facts and evidence of both parties in making a finding that his dismissal was procedurally and substantively unfair.

Evaluation:

- [28] The starting point is that flowing from section 23 of the Constitution of the Republic and as further entrenched in the provisions of section 185 of the Labour Relations Act¹⁶, every employee has a right not to be unfairly

¹⁶ Section 185 (a) provides that;

dismissed or be subjected to unfair labour practices. The purpose of the Regulations as set out in clause 3 is, *inter alia*, to support constructive labour relations in the police service, to ensure that supervisors and employees share a common understanding of misconduct and discipline, to provide a user-friendly framework in the application of discipline, and to prevent possible arbitrary actions by supervisors towards employees in the event of misconduct.

- [29] It follows from the above that disciplinary proceedings conducted under the provisions of the Regulations must both be procedurally and substantively fair. To be more precise in respect of the matter at hand, the merits of an appeal should always be considered by the appeal authority in terms of the principles of fair and sound labour relations, taking into account in particular, the Code of Good Practice: Dismissal, Schedule 8 as found in the Labour Relations Act. It follows that functionaries conducting those proceedings must do so in conformity with the purpose and objectives of the Regulations and other prescripts referred to, failing which any decision made would be susceptible to a review. Crucially however, the disciplinary action must be lawful, and procedurally fair, and the final decision must pass the test of rationality and reasonableness¹⁷
- [30] Applying the above principles to the facts of this case, the starting point is that the evidence of the three witnesses against Magade went unchallenged. On the face of it, it can be accepted that Magade colluded with Hazel and Priscilla Absolon to extort money out of Wedgewood by making allegations of sexual assault against him, and by giving him an impression that he would spent time in jail, especially over the Christmas period. Evidence presented at the disciplinary hearing further demonstrated that Magade accompanied Wedgewood to a bank where the latter withdrew money which was distributed between Magade, Hazel and Priscilla.

"Every employee has the right not to be unfairly dismissed and subjected to unfair labour practice."

¹⁷ *Ntshangase v MEC for Finance: KwaZulu-Natal* (2009) 30 ILJ 2653 (SCA) at para 14 at 2660 - 2661

- [31] Significant with the Appeals Authority's decision was that since Magade was charged with contravening Regulation 20 (z), the charges could not be proven in the absence of a criminal case having been opened and a case number being available. In the first place, this was not a ground of appeal raised by Magade, and it is inexplicable as to how the Appeals Authority could have *mero motu* raised it. It is further trite that nothing prevents an employer from charging and dismissing an employee for an offence that is criminal in nature without the necessity of criminal charges having been laid. The fact that criminal charges have not been preferred against an employee is not a bar to disciplining that employee in terms of the employer's own disciplinary code and procedures. The conclusion to be reached in this regard is that the Appeals Authority concocted a case for Magade, from which favourable conclusions were made. Such conduct is grossly irregular.
- [32] The Appeals Authority's contention that the charges preferred against Magade were poorly crafted is further an issue that was not raised by the latter in his appeal. The fact of the matter is that Magade had entered a plea of not guilty after the charges were read to him in the presence of his representative Gengwana before the latter excused himself from the proceedings¹⁸. The mere fact that Magade had pleaded not guilty to the charges can only be an indication that he understood what they were all about. Again, the Appeals Authority made up a case on behalf of Magade.
- [33] Further to the extent that the Appeals Authority made a finding that Magade should be exonerated because a discrepancy related to how much Hazel and Priscilla had received from Magade, again, this was not a ground of appeal raised by him, and this 'discrepancy' in any event could not have detracted from the fact that such payments were indeed made in return for Hazel and Priscilla not pursuing a criminal case against Wedgewood. At most, that evidence remained unchallenged, and the Appeals Authority had no reason to ignore it nor poke holes in it for the benefit of Magade when he had not challenged it.

¹⁸ Page 40 of the Record

- [34] In regard to the finding that the dismissal was procedurally unfair, the Appeals Authority had recorded that Magade had contended that he was denied representation after Gengwana could not carry on with the proceedings after a 'procedural disagreement' over the presence of his brother in the hearing. It was also recorded that Magade had complained that he could not cross-examine the witnesses as he did not know how, and he had blamed the chairperson for the withdrawal of Gengwana from the proceedings.
- [35] The Appeals Authority further noted that the fact that Magade was not represented was not his fault, nor that of the employer or chairperson. It was however reasoned that the chairperson ought to have properly guided Magade or 'got some other police officer to assist him'.
- [36] The difficulty with the Appeals Authority's findings that the dismissal was procedurally unfair on account of Magade being unrepresented is that it clearly failed to have regard to the record of the proceedings and the chairperson's detailed report in regards to the history of the matter. Under Regulation 15.15, the disciplinary proceedings must as far as practically possible, be finalised within sixty (60) calendar days. The Chairperson had recorded that initially the hearing was scheduled to commence on 9 and 10 December 2010. The chairperson of that enquiry, Lt Col Schreuder for reasons unknown, recused himself after two sittings. Lt Col Prinsloo took over as chairperson on 9 March 2011 and again there were various postponements. Significant with the chairperson's comments is that at some stage, the proceedings were postponed 'for the sake of representation and preparation upon request by the employee'.
- [37] In the light of these various postponements, the recusal of the previous chairperson and the raising of spurious preliminary points, one can appreciate the Chairperson's frustrations at the lack of progress in the matter. It is appreciated that Magade had a right to representation in the disciplinary proceedings, especially in view of the serious allegations against him. The issue however is what was expected of the Chairperson to do where, as recorded by the Appeals Authority, Gengwana had withdrawn from the proceedings on the basis that the Chairperson had refused permission for

Magede's brother to sit in the proceedings? It is apparent that Gendwana had every intention to scupper the proceedings, and the rulings made by the chairperson could not have been a sole reason for him to withdraw from the proceedings.

[38] The only conclusion to be reached in line with the legal principles referred to elsewhere in this judgment, the merits of the case as before the chairperson of the disciplinary enquiry, and the manner in which the proceedings had unfolded, is that it cannot by all accounts, be said that the decision of the Appeals Authority to set aside the decision of the initial proceedings passed the test of rationality and reasonableness. It therefore follows that the review application should succeed.

[39] Further having taken account of the circumstances of this case, and in view of the alternative prayer sought in the applicants' Notice of Motion, it is deemed appropriate that the matter should be remitted to the Appeals Authority for a fresh determination. I am further of the view that upon a consideration of the requirements of law and fairness, a cost order in this case is not warranted.

Order:

[40] In the premises, the following order is made;

1. The late filing of the review application is condoned.
2. The decision of the First and Second Respondents dated 25 November 2011 is reviewed and set aside.
3. The matter is remitted to the First Respondent for a re-determination of the appeal by persons other than those who comprised the initial Appeals Authority.
4. There is no order as to costs.

E. Tlhotlhemaje
Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the First and Second Applicants: Adv. M Lusenga

Instructed by: State Attorney, Kimberley

For the Third Respondent: Mr. Malose Latoka of CHSM
Inc Attorneys

LABOUR COURT