

**APPEAL BEFORE THE APPEAL COMMITTEE OF
THE COUNCIL FOR THE BUILT ENVIRONMENT
(APPEAL COMMITTEE)**

In the matter between:

MILFORD MAPHUTI MOLOTO

Appellant

and

**THE SOUTH AFRICAN COUNCIL FOR THE
PROJECT AND CONSTRUCTION MANAGEMENT
PROFESSIONS (SACPCMP)**

Respondent

RULING

INTRODUCTION

1. The Appeal Hearing was held on the 10 October 2022 at the premises of the Council for the Built Environment ("CBE") in Pretoria.
2. The Appeal Committee was properly constituted in accordance with Section 21(3) of the Council for the Built Environment Act No. 43 of 2000

("CBE Act") read with paragraph 3.2 of the CBE's Policy on Conducting Appeals.

3. The Appeal Committee comprised of the following:

3.1 Mr Sydwell Sibongile Mketsu as Chairperson;

3.2 Dr Ron Watermeyer as Committee Member; and

3.3 Mr Shoayb Loonat as Committee Member.

4. Present at the Appeal Hearing were the following:

4.1 Mr Milfort Maphuti Moloto, the Appellant -representing himself;

4.2 Mr Benito Motitswe, Appellant team

4.3 Mr Curtis Mbhalati, an official of the CBE

4.4 Ms Meltonia Chiloane, an official of the CBE;

4.5 Adv Emmanuel Masombuka, Legal rep of the SACPCMP

4.6 Mr Nicholas Malebane, SACPCMP

5. This is a unanimous Ruling of the Appeal Committee –with all Committee Members in concurrence.

RULING

6. **The Appellant is Mr Milford Maphuti Moloto, an individual who applied to be registered as a professional construction manager in terms of Section 11 of the Project and Construction Management Professions, Act 48 of 2000 (PCMP Act)**
7. The Respondent is a regulatory body established in terms of Section 2 of the Act. When referring to the Respondent we include the Council, and the Appeal Panel as the context may indicate.
8. The Respondent is empowered to and deals with, inter alia, registration of, among others Construction Managers in terms section 19 of the Act. In the main, this matter stems from the council decision to refuse to register the appellant as a Professional Construction Manager.
9. The Respondent is enjoined to exercise its powers lawfully. This means that its conduct must adhere to the Constitution of the Republic of South Africa, No. 108 of 1996 ("the Constitution"), the Act, the Board Notices, and Appeal Procedures as set in the relevant legislation, the Promotion of Administrative Justice Act No. 3 of 2000 ("PAJA") and the common law. We refer to the aforesaid as the regulatory framework.
10. At the outset, and as a preliminary issue the Appellant raised issue of condonation objecting thereto and another issue being raised through a submission that was emailed in the evening of 9th October 2022. After preliminary discussions Appellant correctly abandoned the second issue and the Appeals Committee was therefore only called to decide one preliminary issue that is condonation application brought by the Respondent.

11. Appellant submitted that the late filling of the respondents Heads of Arguments have prejudiced him in that he had set 5 days for preparation and due to the late submission, his preparation time has now been curtailed.
12. Appellant submitted that the Respondent had ample resources to deal with situations like this.
13. Respondent argued that the Heads of Arguments are late only by 2 days and their lateness was caused by the fact that its previous legal representative was called to act as a judge in the Labour Court, which necessitated the appointment of a new team.
14. Respondent further argued that its new legal team had to go through the volume of the record in order to familiarise and prepare the necessary Heads of Arguments.
15. It is trite law the principles that guide condonation decisions are that the degree of lateness, reasons for the delay, prospects of success as well as the balance of convenience.
 - 15.1. in the case the Heads of Arguments are only late by 2 days, which is not an excessive period;
 - 15.2. the reasons for the delay are aptly stated in the later requesting condonation and are already summarised above;
 - 15.3. prospects of success, the Committee adopted the attitude that both the issue of condonation and the merits be argued together so as to enable the committee to make an informed decision on that is issue so as to ensure that no party is

prejudiced in arguing its case by the assessment of the prospects of success; and

15.4. the last issue is that of the balance of convenience which in our view after considering all the other issues becomes a deciding point.

16. The Committee finds no reason to reject the Heads of Arguments as it is also in the appellant's interests that an argument informed by the heads is better than the one simple based on the totality of the record

MERITS

17. The Applicant's case is based on the fact that he has been unfairly refused certification in the assessment of his application. He submitted that the scoring given to him was incorrect as in accordance to his own scoring using the criteria, he should have achieved a score of more than 60% which will then qualify him to move to the next stage/phase of assessment which is the oral interview.

18. The Respondents' case is that the Appellants application has been fairly assessed and he has failed on the criteria as advised.

THE CRITERIA

19. The assessment criteria is aptly stated in clause 1.3.1. of the Council's registration and policy guidelines. **"If Applicants are assessed and found to have accredited qualifications and to have the required relevant experience, they are then invited to attend a professional interview"**.

20. This criterion has 3 phases;
 - 20.1. Academic qualifications
 - 20.2. Relevant experience
 - 20.3. Professional interview
21. It was submitted by the Appellants that in a case where there is no consensus by the 3 assessors a moderator is brought in to assess to get the necessary consensus by previewing the 3 assessors scoring. The Appellant did not have problems with this except to disagree with the with the scoring by the assessors.
22. It was further submitted by the Respondents that the Appellant failed on the relevant experience criteria as he submitted projects which were executed more than 4 years ago whereas the policy requires relevant experience to be measured against projects executed with the four years preceding the submission of the application. The Appellant did not dispute that but submitted experience acquired in other areas than the actual professional construction management spheres like his work with CETA and other work that he does as a member of committees of other entities including the CBE.
23. This is obviously and clearly the main issue which Appellant failed to address and therefore his appeal cannot succeed on this issue.
24. It was further submitted that when the Applicant (Appellant in this case) succeeds in the first two components of the assessments he then gets invited to the professional interview where once more the relevant experience is tested, unfortunately, Appellant could not proceed to this stage as stated above.

25. The committee therefore finds no fault with the decision appealed and consequently cannot interfere with the Respondent Appeal Committee findings.

Accordingly: - The following order is made

25.1. The condonation for late filing of the Heads of Arguments is granted.

25.2. The Appeal is dismissed.

Sydwel Sibongile Mketsu



Chairperson

Date

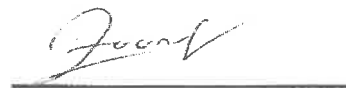
17 October 2022

Ronald Basil Watermeyer



Committee Member

Shoayb Loonat



Committee Member