

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

In the matter between:

REYNOLD MAKHATHINI

Appellant

And

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

Respondent

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RULING

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For Appeal Committee:

Ms Nomveliso Ntanjana – Chairperson  
Mr Ishaak Ebrahim - Appeal member  
Mr Leighton Bennett: Appeal member

Parties' representations:

For Appellant – In person

For Respondent - Mr Phillip Masilo: Cheadle Thompson & Heysom Inc  
Ms Linda Marumo: SACPCMP

For CBE:

Ms Meltonia Chiloane  
Ms Semakaleng Sekoboane  
Ms Jennifer Jeni

Date of Hearing – 5 April 2024

Date of Decision – 12 April 2024

## **BACKGROUND**

1. This is an application by Mr. Reynold Makhathini (Mr Makhathini), the applicant in this matter appealing against the decision of the South African Council for Project and Construction Management Professions (SACPCMP), a regulatory body established through section 2 of the Projects and Construction Management Profession Act 48 of 2000, whilst Mr Makhathini is a member and subscribed to the rules and prescripts of the act and of the SACPCMP.
2. The appeal emanated from the refusal by the SACPCMP of Mr Makhathini's application for endorsement as a Professional Construction Health and Safety Agent (PrCHSA). As a result of the said refusal, Mr Makhathini appealed to the SACPCMP's internal appeal ("internal appeal") committee in October 2023.
3. The grounds for his internal appeal included a complaint on the conduct of Ms Alida Reyneke (Ms Reyneke), an employee of the SACPCMP, alleging that Ms Reyneke told him of how to behave during the interview, to be mannered when answering to panel members and respond formally to asked questions, that included telling him not to respond with terms such as "it's obvious". She questioned and negatively commented on the quality of Mr Makhathini's presentation that he submitted two days prior to the interview day, as not impressive nor professional for endorsement to the level he applied for.

4. Ms Reyneke provided Mr Makhathini with a laptop to use for the interview and linked him to panel members virtually, a laptop that Mr Makhathini allege wasn't working properly as he alleges that he struggled to manage the fast scroll button of the laptop during his interview presentation session to the panel. As a result Mr Makhathini allege that Ms Reyneke may have tempered with the outcome of his interview results and failed him as he was confident that he did well at the interview.
  
5. Of note is that Mr Makhathini did not appeal the decision of SACPCMP of declining his application for endorsement as PrCHSA nor that of the internal appeal in this regard, but the conduct of Ms Reyneke and the laptop that malfunctioned during the presentation, among others. He expressed his view of the SACPCMP interview panel as "fair and professional as they asked appropriate questions based on CHSA scope of service" and that he answered all questions accordingly. The said interview panel's decision not to approve his application was upheld by the internal appeal, both basing their reasons on that Mr Makhathini:
  - a) "a. failed to demonstrate adequate competence in your presentation as you have omitted sequential steps required in the deliverables and the explanation thereof.
  - b) You demonstrated inadequate competence in the deliverables of stage 1-3, the construction risk profile, designers Health and Safety accountability, Health and Safety input in the tender documentation, Construction Work Permit conditions, fall risk management, close out reporting and the contents of the Construction Regulations 2014.

c) *You did not demonstrate competence in stage 4 deliverables for agents as you could not demonstrate knowledge of relevant documents you need to develop to include into the tender document”.*

6. The internal appeal further emphasized that Mr Makhathini obtain a professional mentor to mentor, whom Mr Makhathini claim to have used two already in the past two years.
7. Mr Makhathini opted to appeal to the CBE Appeal Committee the above decision against the appeal decision of 6 February 2024. In the current appeal he pleads to the Appeal committee to disregard the outcome of the interview panel as it may have been tempered with by Ms Reyneke and that the Moderator to his interview failed to come testify before the Appeal Committee.
8. The interview outcomes and examination of this nature are of utmost importance as one is tested for competence and fitness to offer services in the regulated industry. Such envisaged approval and endorsements are to save the public from eminent dangers caused by unqualified service providers and from reputational damage of the industry.
9. Competence approval is a necessary required step that must be well defined, and every candidate must undergo such endorsement. It is therefore prudent to develop clear rules and regulations relating to such processes and standards that are fair, transparent and consistent for one to be able to communicate and account to all applied rules within such expectation.

## **CONDONATION OF LATE FILING OF SACPCMP'S OPPOSING STATEMENT**

10. This application was not opposed by Mr Makhathini where the SACPCMP filed a day later the statement. Advanced reasons for late filing were associated to adhering to internal supply chain process in securing legal representation to represent the SACPCMP at tis appeal.
  
11. In this regard, the council considered that the lateness did not negatively impact on this appeal, Mr Makhathini did not express any opposing view to this request and therefore the Council is convinced that the lateness is not prejudicial nor pose such to the appeal. Instead, in not granting the said condonation may impede reaching the conclusion of this appeal.

## **GROUND OF APPEAL**

12. The core of Mr Makhathini's grounds of appeal can be summarized as being governance and procedural aspects that lay as basis to him failing the interview. He was not legally represented at any stage of his complaint and lacked legal guidance to a greater extent on how to engage on these steps.
  
13. This will to a reasonable extent advance proper governance, transparency, fairness for simplified clarity to their processes and elimination of randomness of decision- making and misconstrue what should constitute a fact on processes. These are addressed on the later sections of this decision.

## **THE LAPTOP USAGE**

14. Whilst this point was never raised at the interview and or any point thereafter, we have noted that Mr Makhathini is one-handed using a laptop that is not his, as he had to be provided a laptop at SACPCMP for the interview, a device he was not familiar with. His struggle to comfortably scroll on the laptop screen can be attributed to his unfamiliarity with its controls and no instruction on its use nor testing of the same laptop in his presence.
  
15. The SACPCMP has confirmed that there is no policy nor formal prescription on use of laptops for interviews and related decisions, also as such is done randomly. It is not clear what led to a decision of a virtual interview to be taken for Mr Makhathini, who is from KZN to have his interview virtually in Pretoria SACPCMP offices. It is prudent for the SACPCMP to have guiding policies and procedures in place guiding members and candidates for interview process.

## **THE ALLEGED CONDUCT OF MS REYNEKE**

16. She is an employee of the SACPCMP with senior designation of a senior employee. Even though she was not a member of the interview panel that interviewed Mr Makhathini, she facilitated the interview process, including receiving the presentation slides from Mr Makhathini, distributing same to interview panel members and receiving him on the date of the interview and providing him with a laptop to use for interview presentation.
  
17. In this regard, Mr Makhathini's complaint of her conduct warranted attention of the SACPCMP as there was face-value interaction poses indicative of the need

to investigate such allegations, in line with accepted prescript of the employer - employee relationship. This matter transpired during the SACPCMP appeal, at Mr Makhathini's grounds for his appeal and the SACPCMP was accordingly aware of such, as they were served or notified of such appeal content.

18. It is expected of any complaint against an employee to the employer be attended to within the prescribed laws and policies of the investigation. There is no exception to such rule also in this matter, as complainants need not be employees of the SACPCMP in this regard.
19. The fact of the said complaint appearing on Mr Makhathini's appeal does not exonerate the SACPCMP to accordingly investigate such matter, as such still need to be investigated.

**THE MODERATOR: MS LIZ WHITE**

20. There seems to be no guiding policy nor guide on the appointment of the moderators, save to mention that they feature in moderating the outcomes of the interviews during applications of this nature. As mentioned earlier, the moderator was present during Mr Makhathini's Interview together with the four members of the interview panel.
21. During his presentation of his appeal submission, Mr Makhathini did not know details of the Moderator as such detail was not written on the moderation report she gave and accepted by the SACPCMP. Her details were only divulged by the SACPCMP during this appeal hearing as Ms Liz White. The SACPCMP

representative confirmed that Ms White was present at the interview with interview panel members, only as an observer.

22. Her presence was explained by the SACPCMP as that of being an observer of the interview process, uncommon of her practice. Thereafter she moderated the same work of the candidate she observed during interview.
23. The said roles of the interview panel and the moderation roles are two distinct as they are meant to respectively on such two different roles, without any direct or indirect influence of the other.
24. Her report that was submitted not approving Mr Makhathini did not have her names, not signed nor dated. Such detail was only provided by the SACPCMP when we requested at our appeal, where we got to know of her as Ms Liz White. As a result, Mr Makhathini correctly questioned the role of Ms White in his interview and moderation stages to the SACPCMP appeal and at this instance.
25. The SACPCMP submitted that the implementation of the moderator role is not standard but used for certain instances of application processes with no prescribed guide on when and how to appoint a moderator. In this instance was based on Mr Makhathini's poor performance as it was his third seating for the same examination.
26. That being the case independence on the role of a moderator is integral to ensuring the fairness, impartiality that is free from bias, reliability that result in validity of such assessments. Moderators must remain independent from the



initial assessment process, with an impartial mindset that is independent of any other form of external influence.

27. It is also expected of her to manage any form of conflict of interest by declaring any potential conflicts of interest that could compromise their independence in reviewing assessments, this in respecting the rights of candidates under assessment, upholding the integrity of the assessment process and ensuring that candidates are evaluated fairly and accurately.
28. Ms White was not a member of the interview panel and should not have sat at the interview. Having sat at the interview room and observed, she should have declared that during the interview and on the assessment report. This scenario is an acceptable practice that should be applied regardless of the outcome of moderation.
29. Ms White's seating at the interview equated to conflict of interest and undermining the very purpose of moderation and of SACPCMP appointing her for such role. In *Harksen v Lane NO and Others*<sup>1</sup>. In this case, the Constitutional Court held that public officials have a duty to avoid conflicts of interest and to act impartially and in the best interests of the public. The judgment emphasized the importance of transparency and accountability in public office, establishing a precedent for addressing conflicts of interest in the context of government officials and public servants.

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<sup>1</sup> *Harksen v Lane NO and Others* [1998] ZACC 12; 1998 (7) BCLR 779 (CC); 1998 (11) BCLR 1489 (CC); 1999 (1) SA 300 (CC); 1998 (12) BLLR 1391 (CC)

30. In *SADTU and Others v Minister of Education and Another (2007)*<sup>2</sup>. In this case, the court considered the conflict of interest arising from the appointment of a teacher who was also a member of the South African Democratic Teachers Union (SADTU) as an exam moderator. The court ruled that such a conflict of interest compromised the integrity of the examination process and undermined public confidence in the education system. This case highlighted the importance of ensuring impartiality and integrity in educational assessment processes by avoiding conflicts of interest among examination moderators.
31. Conflict of interest can by nature be perceived, in this regards this would include her not declaring nor explaining her purpose of presence at the interview room, at least to the interview candidate Mr Makhathini, nor declaring the dual roles she played by observing the interview of Mr Makhathini and moderating the results. At moderation she failed to disclose the earlier seating at the said interview of Mr Makhathini and provided a moderation report that did not display her names, signature and date.

### **THE MENTORSHIP PROGRAM**

32. Mr Makhathini has repeatedly explained that prior to the interview he had undergone mentorship by two qualified and reputable mentors who for almost two years towards preparing for his interview assessment for this qualification. His mentorship was independent from the SACPCMP as it was not managed nor done with necessary approvals of the latter.

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<sup>2</sup> *SADTU and Others v Minister of Education and Another* [2007] ZACC 21; 2008 (3) BCLR 297 (CC); 2008 (2) SA 288 (CC)

33. As a result, the interview panel suggested Mr Makhathini to attend mentorship, whilst Mr Makhathini insisted that he did. During the interview, no reports were requested from Mr Makhathini's mentors and his mentorship was thus disregarded for this purpose.
34. The mentorship program by the SACPCMP is currently substantially and procedurally not structured properly to know when and how candidates can subject themselves to the process. Thus the interview and internal appeal asked that he undergo the mentorship and not consider nor asked for reports of the one that he had with his mentors. There must be a regulatory framework that regulates mentorship.

#### **DELAY IN ISSUING MR MAKHATHINI RESULTS**


35. Mr Makhathini sat for the interview on 12 July 2023 and received his results in September 2023, this after inquiries that he made in various offices of the SACPCMP as he believed the wait was long and not common. The SACPCMP submitted that the standard time of issuing full results was a month including the moderated results.
36. No explanation was given for such delay thus a need to prescribe such timeframes for candidates.
37. In conclusion the council endorses the internal appeal outcome of his acceptance of the interview outcome that failed him.
38. However, the council recommends a reconsideration by SACPCMP of its internal processes that were constantly laid by Mr Makhathini during this appeal and at

internal appeal. Those include the governance frameworks regulating the examination process to include the adopting a managed mentorship program, moderation frameworks, to name a few.

## **ORDER**

39. Having considered all the above, the following order is made:

- The condonation for late filing of the Respondent's opposing statement is granted;
- That the SACPCMP mentorship be developed within the necessary frameworks that enhance the management of the said program;
- The appeal is dismissed;
- No order on costs;

  
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Ms Nomveliso Ntanjana – chairperson  
Date: 12 April 2024

Concur



Mr Ishaak Ebrahim - Appeal member

Date: 12 April 2024

Concur



Mr Leighton Bennett: Appeal member

Date: 12 April 2024