

BEFORE THE APPEALS COMMITTEE OF THE COUNCIL FOR THE BUILT ENVIRONMENT

HELD IN HILLCREST, PRETORIA

(Instituted in terms of section 21 of the Council for the Built Environment Act No.43 of 2000, read with section 33 of the Project & Construction Management Professions Act of 2000)

RULING

In the matter between:

Case No.: N/A

NJABULO NKOSI

(APPELLANT)

and

SOUTH AFRICAN COUNCIL FOR THE PROJECT & CONSTRUCTION

MANAGEMENT PROFESSION (SACPCMP)

(RESPONDENT)

RULING

TO:

NJABULO NKOSI

Appellant

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AND TO:

**THE REGISTRAR: SOUTH AFRICAN COUNCIL FOR THE PROJECT & CONSTRUCTION
MANAGEMENT PROFESSION (SACPCMP)**

Respondent

c/o Linda Maruma

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Erasmusrand, Pretoria

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AND TO: COUNCIL FOR THE BUILT ENVIRONMENT (CBE)

c/o Ms. Meltonia Chiloane
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Hillcrest, Pretoria
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1. APPLICABLE LAW

1.1 This appeals committee is constituted in terms of section 21 of the Council for the Built Environment (“CBE”) Act, hereinafter to be referred to as “the CBE Act”, read with clause 18 of the CBE’s Policy on Conducting Appeals as well as clauses 10, 11 and 14 of the CBE’s Standard Operating Procedure on Appeals.

1.2 This is an appeal decision in terms of section 21(5) of the CBE Act.

2. PROCEDURAL MATTERS

2.1 The appeals committee sat on 3 December 2025 at the offices of the CBE in Hillcrest, Pretoria, to hear this appeal.

2.2 Present there were: Members of the Appeals Committee, namely Adv. RN Gaoraelwe (Chairperson), Mr. Darryl Riley (Member) and Mr. Monde Hlamaphi (Member).

2.3 The Appellant represented himself. The Respondent was represented by Mr. Phillip Masilo (legal representative at Cheadle Thompson & Haysom Attorneys), assisted by Ms. Linda Maruma (Respondent’s Legal Manager).

2.4 Prior to the commencement of the appeal hearing, the appeals committee was favoured with the following documents related to the appeal:

2.4.1 Appeal Record 1: The Appellant’s Bundle;

2.4.2 Appeal Record 2: The Respondent’s Bundle;

2.4.3 Appeal Record 3: The Appellant’s Heads of Argument;

2.4.4 Appeal Record 4: The Respondent’s Heads of Argument;

2.4.5 CBE’s Policy on Conducting Appeals;

2.4.6 CBE's Standard Operating Procedure on Appeals; and

2.4.7 A notice of set down of the appeal hearing.

2.5 In addition, the appeals committee requested access to, or be provided by the Respondent with the following documents:

2.5.1 Gazetted rules dealing with the investigation and disciplining of applicants for registration found to be in violation of the Respondent's registration rules;

2.5.2 Signed minutes of the Respondent's committee meeting that found the Appellant guilty of wrongdoing (plagiarism), and signed minutes of the Respondent's Council meeting that imposed the sanctions of suspension and cancellation of the Appellant's second registration; and

2.5.3 A copy of the gazetted registration categories of the Respondent.

2.6 As at the date of submitting this appeal ruling, the appeals committee had, through the CBE secretariat for the appeals committees, received:

2.6.1 The unsigned minutes of the Respondent's committee meeting dated 25 July 2025 (that found the Appellant guilty of wrongdoing (plagiarism)), and the unsigned minutes of the Respondent's Council meeting that imposed the sanctions of suspension for two (2) years and the cancellation of the Appellant's second registration;

2.6.2 Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration);

2.6.3 Rules for Registration with the SACPCMP (effective date 1 August 2025); and

2.6.4 Criteria and Process for the assessment of competency for the purpose of registration (effective date 21 July 2022).

2.7 It is hereby confirmed that no member of the appeals committee had any prior involvement in, or association with this case or any aspect thereof. Declarations of Interest forms were completed and signed by the members of the appeals committee at the commencement of the appeal hearing.

2.8 At the commencement of the appeal hearing and during its subsistence, no objection was raised by either party to the proceedings regarding any procedural flaws leading up to and during that appeal hearing.

- 2.9 At the commencement of the appeal hearing, the chairperson sought and obtained clarity on whether there were any -preliminary issues that had to be dealt. None were raised.
- 2.10 The Chairperson outlined the order of the proceedings to be followed during the appeal, to which no party raised any objection.
- 2.11 At the conclusion of the appeal hearing the appeals committee informed the parties that a written appeal finding is to be prepared and will be received by all the parties through the CBE, in due course.

3. BACKGROUND TO THE DISPUTE

- 3.1 On 7 October 2025, the Appellant filed a notice of appeal with the CBE against the decision of the Respondent to cancel his application and subsequent registration as a Construction Health and Safety Officer (CHSO) (Limited Special Dispensation) and suspend his eligibility to register with that Council for a period of two (2) years. That decision was communicated to him per a letter dated 3 September 2025, but received by the Appellant on 9 September 2025.
- 3.2 That disciplinary outcome (which the Appellant was challenging through his appeal to the CBE) was based on the Respondent's investigation and conclusion/ finding that the Appellant was guilty of plagiarism/malpractice related to the submission of project reports in support of his initial application for registration.¹
- 3.3 The appeal was filed directly with the CBE by the Appellant, on the advice of the Respondent.
- 3.4 The CBE appeals committee hearing was set down for 3 December 2025, culminating in this appeal ruling/ outcome.

4. SUMMARY OF ARGUMENTS BY THE PARTIES AT THE APPEAL HEARING

- 4.1 On the date of the appeal hearing, both parties made oral submissions, in addition to the written submissions and heads of argument that were filed with the CBE prior to the appeal, and which were shared with the appeals committee before the appeal hearing.
- 4.2 The summary of the **Appellant's** oral presentation at the appeal hearing (on merits/ whether he is guilty of any wrongdoing or not), is as follows:
- 4.2.1 His appeal is based on the contradictions by the Respondent in its communication with him.

¹ The Appellant had submitted two applications for registration. The initial one was the one flagged for plagiarism, whereafter he submitted the second one, which culminated in him being registered, under the Limited Special Dispensation as allowed by SACPCMP. It is the second registration that was cancelled coupled with his suspension for two (2) years that he was challenging through this appeal.

- 4.2.2 He received a valid letter from the Respondent dated 19 May 2025 granting him permission to re-submit a revised project report (in support of his application to be registered as a CHSO).
- 4.2.3 He relied on that instruction/ permission in resubmitting his application for registration, and at no stage did he receive the withdrawal of that permission, until much later after he had sat (and passed) the examination to be registered in the relevant category as a CHSO. A letter granting him permission to resubmit his revised project report may be found on page 7 of his appeal bundle.
- 4.2.4 He, after the issue of him being flagged for plagiarism and being made aware thereof, and also after realising that his online profile with the Respondent (via its website) was empty, he decided to visit the Respondent's offices.
- 4.2.4.1 The reasons for visiting those offices were that firstly, his project manager at his workplace wanted to know how far he was with the registration process (and he asked for permission to physically go to the Respondent's offices to deal with that).
- 4.2.4.2 Secondly, he went there to enquire as to why his online profile was empty.
- 4.2.4.3 Whilst he was on his way to the Respondent's offices, he received an email from the Respondent notifying him that he was granted another opportunity to re-apply for registration, and he decided to still continue with the trip and go and see his brother.
- 4.2.4.4 Whilst at the Respondent's offices, he also met an administrator called Thalane, who informed him that there is an email granting him permission to upload documents, and further that his profile is unblocked.
- 4.2.5 He thereafter proceeded to re-submit or upload documents in support of his application for registration, and his profile was indeed open and he was able to do so.
- 4.2.6 He successfully wrote the CHSO examinations on 4 September 2025. At that time, his online profile on the Council website was still active and the Council had not cancelled his registration as CHSO.
- 4.2.7 It is only on 9 September 2025 that he received a letter of cancellation from the Respondent dated 3 September 2025 (which letter may be found on page 9 & 10 of his appeal bundle). At that time (of receipt of cancellation notice) he had already sat for his examinations.
- 4.2.8 On 11 September 2025, he received communication from the Respondent informing him that he had successfully passed his examinations. That written communication may be found on page 8 of his appeal bundle.

- 4.2.9 He maintains that he had acted in good faith at all times, and followed instructions of the Respondent in applying for his registration.
- 4.2.10 The Appellant, upon being asked to clarify the issue of plagiarism for which Council had acted against him, stated that:
- 4.2.10.1 He was introduced to some person (through safety officers group) who was supposed to assist him in compiling annexures that he had to submit in support of his application for registration. That person did not use the information that he had given him, and did a “copy and paste”, which he (Appellant) submitted as part of his application for registration, and which resulted in him being accused by the Respondent of plagiarism.
- 4.2.10.2 The initial profile in support of his application was uploaded in October 2024.
- 4.2.10.3 After he was notified by the Respondent in April 2025 of his suspected plagiarism, he confronted the person that had given him the documents.
- 4.2.10.4 He (Appellant) conceded that, because he is the one who was applying for registration, he takes full responsibility for submitting the information that he had submitted (prepared by that person who assisted him compiling the information).
- 4.2.10.5 He (Appellant) further conceded that the work that he submitted/loaded on the system in support of his application (which was detected as plagiarism), was not his work.
- 4.3 The summary of the **Appellant’s** oral presentation at the appeal hearing (on procedural irregularities in the handling of his case), is as follows:
- 4.3.1 His appeal is also based on procedural irregularities by the Respondent.
- 4.3.2 At no stage was he charged, invited to a disciplinary hearing or allowed to make representations before any enquiry or tribunal as required by the Respondent’s rules for enquiries.
- 4.3.3 He therefore requests that the appeal committee finds that there were procedural defects, inconsistencies and lack of fair processes against him.
- 4.4 The Appellant requested that the appeals committee set aside the decision by the Respondent to cancel his application/registration and suspend his eligibility to be registered or a period of two (2) years.

4.5 The summary of the **Respondent's** oral presentation at the appeal hearing (in support of the substantive reasons/ merits of its decision to act against the Appellant), is as follows:

4.5.1 Based on the admission/concession of wrongdoing/ plagiarism by the Appellant during the appeal, it is clear that there was plagiarism, "cut and paste", and the Appellant having been aided by a third party in preparing and submitting profiles in support of his application for registration as a CHSO.

4.5.2 This is therefore a serious matter involving fraud and needs to be looked at in that context.

4.5.3 This is a case of the Appellant having paid someone to prepare work for him and thereafter falsely indicating to the Respondent's Registrar that the work he had submitted (in support of his initial application) was work that belonged to him.

4.5.4 What the Appellant omits to mention, is how much money he had paid the third party that assisted him plagiarise, and who that third party is. Respondent is interested in who that third party is.

4.5.5 It is important to remind the appeals committee as to why people have to be registered against the professions that they practice in, and why professional councils exist. This is to protect the public against people such as the Appellant.

4.5.6 CHSO's play a critical role in the built environment industry. Construction accidents happen where people perish, because of people who are registered in a fraudulent matter.

4.5.7 In the application for registration, the Appellant was flagged along with two other people for plagiarism (see page 11 of the Respondent's appeal bundle). The assessor stated that the application is not approved as the Appellant had submitted similar work to that of two other applicants. Those documents may be found from page 12 all the way up to page 41 of the Respondent's appeal bundle (i.e. in respect of the Appellant, Mdluli and Mngomezulu). Those documents look the same, word by word.

4.5.8 Those two other applicants charged with the same transgression(i.e. Mdluli and Mngomezulu), readily admitted guilt (and received the same sanction).²

4.5.9 After this (plagiarism) was discovered and flagged, a letter was sent to the Appellant (see letter on page 42), where he was notified that he was flagged and further that he must respond to the allegations of plagiarism on his part. In his response, the Appellant denied, yet he knew that, that which he was being accused of, was true.

² See paragraph 1.10 (page 4 of the Respondent's appeal bundle).

- 4.5.10 On page 45 of the Respondent's appeal bundle, the Appellant, upon realising that he was caught, wrote an email to the Respondent and requested that he be allowed to resubmit a fresh application with new documents in support of his application. That raised the question as to why he would request to resubmit work when he had already submitted work, and which he had denied was plagiarised.
- 4.5.11 In April 2025, the Appellant was advised by the Respondent's Legal Manager, Ms. Maruma, by email not to proceed with the resubmission of a new application and paperwork in support of his registration. He, however, ignored that instruction and resubmitted the work anyway, uploading a new profile on the system. It is even doubtful and therefore questionable as to whether the work that he had resubmitted, was actually his work.
- 4.5.12 The system did not block him. That is why he was able to resubmit and upload new information after he was flagged. He even managed to sit for the examinations.
- 4.5.13 It must be noted that, when the Appellant resubmitted documents for his second application for registration, the documents were different from the initial ones that he had initially submitted (and for which he was flagged for wrongdoing). For instance, he submitted a CV different from the initial one, and annexures different from the initial ones.
- 4.5.14 A letter that the Appellant had received dated 19 May 2025 (page 47 of the Respondent's appeal bundle), authorising him to upload new information on the system, was issued to him erroneously. That letter was in fact intended for a different recipient and not him. When that error was detected, a letter on page 48 of the Respondent's appeal bundle was sent to him, informing him to ignore that earlier letter. This letter is dated 24 October 2025.
- 4.5.15 Therefore, that letter (authorizing him to upload new information on the system) was never approved by Council.
- 4.5.16 It was a pure administrative blunder/ error that it took so long for the Respondent to detect that the wrong letter was sent to Appellant on 19 May 2025. Those were standard letters on the system which the Administrative clerk erroneously/ wrongly sent to the Appellant. Their defence is that it is a small office dealing with the whole country.
- 4.5.17 The circumstances leading up to the Appellant erroneously receiving the letter allowing him to upload new information on the system (in support of his new application for registration) are as follows:
- 4.5.17.1 Those were system-generated letters. Examples of those letters were handed in during the appeal, and were included in the Respondent's bundle, numbered pages 76 (Mashimbye) and 77 (Lamola).

- 4.5.17.2 There were several people who had applied, and it was not only the Appellant that been flagged for possible plagiarism.
- 4.5.17.3 Some of those applicants were cleared. When the letters were sent, they were intended for those applicants that were cleared, and the Appellant was also erroneously sent that letter, despite that fact that he was yet to be cleared and was still under investigation.
- 4.5.18 The Respondent's Legal Manager was not even aware that the letter of 19 May 2025 had been sent to the Appellant. She only became aware when the Appellant enquired from her as to why his profile was empty. That is why the withdrawal letter was later sent to the Appellant (page 48 of the Respondent's appeal bundle). Therefore, the Appellant suffered no prejudice.
- 4.5.19 Had the Respondent become aware earlier, then it would have retracted the 19 May 2025 earlier.
- 4.5.20 The Respondent conceded that:
- 4.5.20.1 The passage of time from the Appellant erroneously receiving a letter on 19 May 2025 (clearing him to resubmit his application), and that letter being withdrawn in September 2025, was too long (over four months);
 - 4.5.20.2 Between erroneously receiving a letter clearing him to resubmit his application and that letter being withdrawn, the Appellant could not have known that there was a withdrawal of the letter and that he was not allowed to register (the error was detected by the Respondent on 3 September 2025);
 - 4.5.20.3 The Appellant, between erroneously receiving a letter clearing him to resubmit his application and that letter being withdrawn, was for all intents and purposes cleared to participate in the pre-registration processes (such as uploading of new paperwork, sitting for examinations, etc.);
 - 4.5.20.4 Between the Appellant erroneously receiving a letter clearing him to resubmit his application and that letter being withdrawn, there cannot be any wrongdoing ascribed to the Appellant (e.g. mala fides, mischief, etc.) by participating in the pre-registration processes.
- 4.5.21 The Respondent further contended/ argued that:

- 4.5.21.1 The Appellant should have checked with the office of the Registrar as to why he received a letter dated 19 May 2025 when he had earlier been notified that he was flagged for plagiarism and should not resubmit any profile to apply for registration.
 - 4.5.21.2 The Appellant, even before he received a letter of 19 May 2025 clearing him to resubmit documents in support of his application, had already submitted the documents in support of his second application.³
 - 4.5.21.3 It is further worth mentioning that, after the Appellant became aware that he was being flagged and investigated for plagiarism, he made a trip to the Respondent's offices around May 2025, where he met with the Registration Department personnel. He must therefore clarify and explain why he did that.
- 4.5.22 When applicants submit their work/upload their work, the system requires them to make a declaration that the work that they submit is theirs and is correct.
- 4.5.23 Coming to the examinations:
- 4.5.23.1 They are written online, and those that sit for examinations write wherever they are and log in online to write.
 - 4.5.23.2 The Appellant was allowed to sit for exams (despite an ongoing investigation against him, and despite the Respondent being aware that the Appellant was flagged for plagiarism), due to a system failure.
 - 4.5.23.3 An email was sent out by staff at the Respondent notifying candidates for exams on the date of the examination.
 - 4.5.23.4 The Respondent claimed that there is system fraud being investigated. The Appellant managed to write exams due to corruption.
 - 4.5.23.5 They claim that someone inside the Council, is helping people to corrupt the system, including why the system had initially blocked the Appellant but later, when the investigation was still ongoing, the Appellant received a letter, and the system was unlocked for him to access it.
 - 4.5.23.6 The Legal Department did not communicate with Registration Department to alert them to ensure that flagged people do not sit for examinations. This is regarded as an internal flaw.

³ The second upload was in fact 26 May 2025, after the 19 May 2025 letter

4.5.24 The Respondent conceded that:

- 4.5.24.1 It made an error by allowing the Appellant to resubmit his portfolio in support of his second application in May 2025. That letter received was due to fraudulent activities.
- 4.5.24.2 It made an error by allowing the Appellant to sit for examinations in September 2025.
- 4.5.24.3 It made an error by sending the Appellant notification that he was successfully registered.

4.5.25 The Respondent further claimed that:

- 4.5.25.1 The Appellant fraudulently managed to gain access to the system and fraudulently uploaded documents (in support of his second application for registration).
- 4.5.25.2 The Appellant fraudulently managed to sit for examination.
- 4.5.25.3 It is possible that the Appellant was working with a person inside Council who helped him unblock his profile.
- 4.5.25.4 The corruption above is still under investigation. That evidence is not available during the appeal.

4.5.26 The “cut and paste” submission of documents along with two other people (when he initially applied for registration), was fraudulent.

4.5.27 The sanction imposed by the Respondent against the Appellant was approved by the Respondent’s Council. That sanction was cancellation/revocation of his application and registration, coupled with a suspension penalty which entailed him having to wait for two (2) years before he could re-apply to register as CHSO.

4.5.28 The two years’ suspension is to allow the Appellant to be rehabilitated and thereafter he must convince the Registrar that he is rehabilitated before he can be allowed to register again.

4.5.29 In effect, the Appellant is through this appeal, asking the appeals committee to validate his second application, ignore the fraud that he had initially committed, ignore the third party that aided him to defraud the Respondent, and yet does not reveal who the third party is, and how much he paid for his services.

4.5.30 It is the duty of the Respondent and that of the CBE to protect the public from people such as the Appellant, many of whom may have in the past managed to slip undetected by the system and became registered.

4.6 The summary of the **Respondent's** oral presentation at the appeal hearing (in justifying the process and/ or procedure that it followed in dealing with the Appellant's conduct), is as follows:

4.6.1 What the appeals committee is seized with, in determining whether a fair procedure was followed by the Respondent in dealing with the Appellant's plagiarism, is whether the procedure as outlined/contained in page 74 of the Respondent's appeal bundle (i.e. Plagiarism Investigation Procedure) under par 2: "Plagiarism detection confirmation" from paragraph 2.1 up to 2.8, was followed to the letter.

4.6.2 Once the appeals committee has made that determination, then it will decide whether there was a fair, or unfair procedure followed by the Respondent.

4.6.3 There is also a flowchart of the plagiarism investigation. (page 75 of the Respondent's appeal bundle). A case like this one is a clear case plagiarism, unlike a case of a registered person to whom the Respondent's code of conduct applies.

4.6.4 The Appellant paid the application fee. He was then given a membership number. The membership number that the Appellant received after paying the application fee, becomes his permanent number and does not change to a different one post registration.

4.6.5 The Appellant is an applicant for registration and the code of conduct of the Respondent does not apply to him because he is not yet registered in one of the categories of registration in terms of section 18 of the Act. Only registered persons are taken to a disciplinary hearing in terms of the Project & Construction Management Professions Act of 2000 ("the Act").⁴

4.6.5.1 The powers of the investigation committee is to investigate registered persons. The Appellant is not registered and therefore not covered by the remit of section 33 of the Act that deals with the investigations against registered persons.

4.6.5.2 The Appellant is not a candidate because he is not registered as such. He is just an applicant.

4.6.5.3 The Appellant was "affected by the decision of Council" hence triggering section 35 of the Act, which states that a member of public affected by the decision of the Respondent may appeal to the CBE. The Appellant is a therefore member of the public and he even lodged his appeal as such (in terms of section 35 of the Act).

⁴ Section 30 and 31 of the Respondent's founding legislation- Project & Construction Management Professions Act of 2000.

- 4.6.5.4 The Malpractice Procedure (page 54 of the Respondent's appeal bundle) does cover the applicants for registration such as the Appellant. Council is empowered in terms of section 36 of the Act, to make its own rules, including rules for registration and the Malpractice Procedure.
- 4.6.5.5 The Malpractice Procedure emanates from the Respondent's registration rules and the criteria of competence, and applies to applicants for registration. When applicants for registration break the registration rules, the Malpractice Procedure kicks in.
- 4.6.6 The Appellant was therefore disciplined in terms of the Malpractice Procedure of the Respondent (see page 72 of the Respondent's appeal bundle).
- 4.6.6.1 The flowchart states that the screening of the application will take place, and should plagiarism (as in this case) be detected and confirmed, Administration will receive a malpractice report from the assessors, which will thereafter serve at a committee.
- 4.6.6.2 The committee that dealt with the Appellant's plagiarism, is constituted by internal people. Only where it is the disciplinary tribunal are external people involved. The chairperson of that committee is an external person and other members of that committee are members of the administration. This matter never served at Council's disciplinary tribunal.
- 4.6.6.3 That committee will then send its recommendations to Council on what action must be taken against the person found to have plagiarized. The penalties are contained in the malpractice document.
- 4.6.6.4 Minutes of a committee that sat and recommended that action be taken against the Appellant, as well as minutes Council that approved that committee's recommendation, are to be provided to the appeals committee.
- 4.6.7 Plagiarism is dealt with by the Respondent through a matrix (page 72 of the Respondent's appeal bundle). There is no hearing. Plagiarism can carry a warning or cancellation of the award. The Appellant's application was, through that procedure/process, cancelled, coupled with a suspension penalty which entailed him having to wait for two (2) years before he can apply to register as CHSO again.
- 4.6.8 The argument by the Appellant that he was not afforded a hearing is rejected. He was invited to respond in writing and he responded and denied any wrongdoing on his part.
- 4.7 It is accordingly the Respondent's prayer that the appeal be dismissed, and the sanction imposed by the Respondent against the Appellant be upheld.

5. ANALYSIS OF THE EVIDENCE

- 5.1 This is largely a factual dispute with some legal issues, and will be dealt with as such.
- 5.2 During this appeal, the appeals committee adopted a highly inquisitorial approach, the objective being to obtain clarity, through probing and clarity-seeking questions, on the matters it was seized with.
- 5.3 The appeals committee was seized with the following broad issues:
 - 5.3.1 Whether the correct procedure was followed in subjecting the Appellant to disciplinary action (resulting in the cancellation of his registration and his suspension for two (2) years); and
 - 5.3.2 Whether the Respondent had a fair reason, and therefore justified, to act against the Appellant and imposing the sanctions it had imposed.
- 5.4 It is therefore clear from the above that the appeals committee was seized with matters of procedure and matters of merit.
- 5.5 As a starting point, the appeals committee had to, in its analysis of the evidence and information before it, determine whether the conduct that the Appellant was accused of (and which triggered action by the Respondent), did indeed take place, or not.
 - 5.5.1 Our finding is that it indeed did, and the Respondent was not falsely accusing the Appellant.
 - 5.5.2 Although the Appellant initially denied any wrongdoing, during the appeal hearing he readily did so, and conceded that he, in his initial application, submitted work/documents that were not a true reflection of his own work, and further that he was aided by a third party.
 - 5.5.3 There is no doubt therefore that the Appellant's was guilty of wrongful conduct that bordered on gross dishonesty and did in fact bring his own council into disrepute by colluding with third parties to subvert and undermine its registration processes as alleged by the Respondent. We as the appeals committee condemn his conduct in the strongest possible terms.
- 5.6 Having established wrongdoing on the Appellant part, we went on to examine what the Respondent should have done (i.e. what steps it should have taken) under the circumstances that prevailed when the plagiarism was discovered/ detected.
 - 5.6.1 The Respondent was within its rights, to act and take the necessary steps against the Appellant.

- 5.6.2 There should be zero tolerance against dishonest people in the professions where the protection and safety of the public is at stake. Within the four corners of the law, the Respondent had the right, and an opportunity to decisively act against the Appellant and use him to set an example to others, and as a deterrent to others like him.
- 5.6.3 However, in doing so, it had to be done in a fair manner, and lawfully, reasonably and in terms of a fair procedure.⁵
- 5.6.4 We live in a country with a rule of law, where even the hardest criminals have rights and must be dealt with fairly, no matter how overwhelming or damning the evidence may be stacked against them.
- 5.6.5 Council is therefore expected to exercise care and diligence in handling registration-related matters (including transgressions) fairly, as they impact the livelihood of the members.
- 5.6.6 What does that fairness entail? It entails the Respondent acting within the authority that it has, strictly derived from its founding legislation as well as its prescribed/ gazetted rules.
- 5.6.7 Taking action against errant members outside the regulatory remit and prescripts, could undermine an otherwise very good case that the Respondent may have against those found to be cheats, or who breach its registration rules.
- 5.7 The appeals committee noted with the concern the manner with which the Respondent went about handling the issue involving the Appellant's dishonest conduct. To be precise, it baffles the mind as to why Respondent:
- 5.7.1 Did not put in place solid, effective precautionary measures to ensure that, pending the finalisation of its investigation against the Appellant, the Appellant was totally barred and excluded from any activities related to the conduct he is accused of (e.g. he is blocked from accessing the system; he is not allowed to resubmit work in support of his application, he is not allowed to sit for examinations, etc.);
- 5.7.2 Failed to timeously detect a myriad of administrative errors related to this matter, and rectified those with the requisite speed; and
- 5.7.3 Ensure that the investigation and action against the Appellant is concluded swiftly and with speed. This is especially so as the evidence against the Appellant was overwhelming.
- 5.7.4 Took a period of no less than four (4) months, from April 2025 when the misconduct was discovered, up to September 2025, over such a straightforward case of misconduct where there

⁵ This is in terms of section 33 of the Constitution of SA Act of 1996

was overwhelming evidence that the Appellant and two other accomplices had submitted similar work and tried to cheat their way through the Respondent's registration process.

It was not clear during the appeal, and the Respondent in fact failed to provide a valid explanation as to why it took so long to deal with such a straightforward matter.

In fact, no investigation was needed. The case was fairly straightforward and there was nothing complex or complicated that could have warranted a passage of such a lengthy period of time before the Respondent finally acted.

It therefore appears from the attitude of the Respondent in handling this matter, that it somewhat did not accord this matter the seriousness that it deserved/ did not take it as seriously as it should have.

To compound this situation further, the very person that was accused of dishonest conduct in seeking to get registered, was allowed (whether erroneously or intentionally) to resubmit work in support of his application for registration, and later allowed to sit for exams, and even later received a letter notifying him that his registration was approved.

Those omissions brought about other complications (which we deal with herein) which could simply have been avoided had the Appellant been blocked right at the start.

5.8 In addition to the above, the rules of the Respondent in dealing with the conduct of its members, also came into our closer scrutiny. The wrong application of those rules undermined the regulatory power and authority of the Respondent, and may continue to do so unless immediate action is taken to address the gaps that we have identified, and which we deal with extensively herein.

5.8.1 The contention by the Respondent that an applicant for registration is not a member is also a matter of grave concern to the appeals committee.

5.8.2 No member of any professional council may be subjected to disciplinary action outside the remit of the Act.

5.8.3 The power to discipline can only be exercised on members. That the Respondent sought to, on the one hand, regard the Appellant as a non-member but also discipline the appellant on the other, was confusing to say the least.

5.8.4 That the Respondent took action against the Appellant, has allocated the Appellant a registration/ membership number, allowed him access in its portal, took fees from him, etc. is its implied admission/ acknowledgement that the appellant was its member as contemplated in section 18 of the Act(read with section 1, i.e. definition of registration).⁶

⁶ Section 1 defines "registration" as "(a) a process of assessment of competency of applicants for the purpose of registration under the Act"

5.9 We also had to make a determination as to whether action was indeed taken against the Appellant, and if so, by whom.

5.9.1 We were provided (by the Respondent) with two sets of unsigned minutes of meetings where, according to the Respondent, a decision to act against the Appellant were taken.

5.9.2 The first is a copy of the unsigned minutes of special meeting of the regulatory matters committee that took place on 25 July 2020 (three months after the Appellant's dishonest conduct was detected).

5.9.2.1 On item 8.3.1 of those minutes, under the heading **Malpractice of Examinations and Assessments**, it is recorded that *"Management presented the Malpractice of Examination and Assessments, which was included in the pack, taken as read, and highlighted the following points: The Purpose of the submission was to request the Regulatory Committee to review the recommendation and the Malpractice Investigation Report for recommendation to Council for approval"*.

5.9.2.2 Under item 8.3.1 of those unsigned minutes, under the sub-heading **Plagiarised reports**, it is recorded inter alia that: *"The following applicants submitted applications to the Council for the purpose "The project reports submitted by Njabulo Nkosi, Nomathemba Mdluli and Phethile Mngomezulu were also found to be similar. All three are CHSO applicants"*.

5.9.2.3 Further down under the same sub-heading it is recorded that *"The Malpractice Investigation Panel recommended that all five applicants implicated in plagiarism be suspended for a period of one year"...."The committee agreed that plagiarised project reports should result in one-year suspension, after which applicants may re-apply"*.

5.9.2.4 At the end of that item, it is recorded that **"RECOMMENDATION 03 OF 25 JULY 2025:** *A motion was made for the recommendation of the penalties for Malpractice of Examinations and Assessments by several applicants as highlighted in section 11 of the submissions, to Council for approval, proposed by Mr. Steyn and seconded by Mr. Swana"*.

5.9.3 The second is a copy of the unsigned minutes of special meeting of Council that took place on 26 August 2020 (four months after the Appellant's dishonest conduct was detected).

5.9.3.1 Under Item 8.4.3.3 of those minutes, titled **EXAMINATION AND ASSESSMENT MALPRACTICE**, it is recorded that *"Management requested Council approval for the recommended penalties in cases of examination and assessment malpractice, as detailed in two distinct submissions under the same agenda item."*

Nature of Malpractice.

The cases fell into two categories....Assessment Malpractice: Involving plagiarism of reports(5 cases) representing a severe violation of submission integrity.

Basis for Recommended Penalties. The proposed penalties are guided by the Council's established Malpractice Procedure, which outlines specific sanctions for different types of violations. All accused individuals were given an opportunity to submit statements prior to a determination of guilt.

Recommended Penalties for Council Approval... For Plagiarism(Assessment malpractice): A penalty of either a formal warning with a requirement to revise and resubmit the assessment, or cancellation of the application award.

RESOLUTION 08 OF 26 AUGUST 2025: IT WAS RESOLVED that Council APPROVE the recommended penalties as specified in paragraph 11 of the submission documents to enable their immediate implementation, proposed by Ms. Shunmugam and seconded by Mr. Tshombe".

5.9.4 The summarised outcomes of the two meetings do confirm that the matter involving the Appellant was presented at those two meetings. However:

5.9.4.1 What is unclear is why the recommendations of the regulatory matters committee are presented differently at Council meeting from how they were recorded at the committee meeting(as a resolution).

5.9.4.2 What is further unclear is why the sanction imposed by the Council on the Appellant is not the same as that which was recommended to Council. Nowhere in those Council minutes is it recommended that the Appellant receive a sanction of a 2-years' suspension plus revocation of his second application for registration (including the outcome of his examinations and his registration, as per the letter dated 11 September 2025).

5.9.4.3 The above anomalies raises questions as to who took a decision to impose the sanctions meted out against the Appellant.

Regulatory/ Legislative Environment

5.10 Section 33 of the SA Constitution of 1996 states that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair; that everyone whose rights have been adversely affected by an administrative action has the right to be given written reasons.

- 5.10.1 The work of the Respondent's regulatory matters committee (that dealt with the Appellant's plagiarism charge/accusation) and the work of Council is administrative in nature. Council and its committees therefore need to be consistently vigilant and cognisant of section 33 of the Constitution.
- 5.10.2 Section 33 states that, for any administrative action to be adjudged as fair, it must pass a three-legged test, namely: lawfulness; reasonableness; and procedural fairness. The question that therefore arises is, if we momentarily put aside the unacceptable conduct of the Appellant: did the Respondent (through its Administration, Committee and Council), in dealing with the conduct of the Appellant, act within the spirit, purport and object of section 33 of the Constitution?
- 5.10.3 Any administrative action that is found to have failed one or all the three legs of the test embedded in section 33 above (i.e. lawfulness; reasonableness; and procedural fairness), will be unfair, and cannot escape scrutiny and censure when challenged (as the Appellant now has). Non-compliance with section 33 could therefore severely undermine the Respondent's regulatory authority and power.
- 5.10.4 It therefore becomes important for the appeals committee to, in determining what the outcome of this appeal should be, carefully and strictly examine compliance with the administrative actions listed above, with the exacting standard prescribed by section 33 of the Constitution. This is so irrespective of how gravely serious the Appellant's conduct was.
- 5.10.5 Should it be found that one or all the three legs of section 33 are failed, then the appeal will be upheld (in favour of the Appellant). However, if the Respondent has complied with all three legs of section 33, then the appeal has to fail (in favour of the Respondent).
- 5.10.6 The courts (constitutional court)⁷ have laid out the test for determining the reasonableness of an administrative action. That test is also guiding the appeals committee in its determination of this appeal.

5.11 Promotion of Administrative Justice Act 3 of 2000

- 5.11.1 This legislation (hereinafter to be referred to as "PAJA") exists to give effect to section 33 of the Constitution (that is dealt with above). It gives greater detail to the three-pronged test already referred to above.

⁷ Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Tourism 2002 (2) SA 391 (D). The test is 'the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and well-being of those affected.'

5.11.2 In terms of this Act, there are five mandatory procedures that must be followed when performing an administrative action that has a particular impact on a person or persons: They are:

5.11.2.1 Step 1: The affected person must be given adequate notice of the nature and purpose of the proposed administrative action before the action is taken. “Adequate notice” means more than just informing a person that an administrative action is being proposed. The person also needs to know enough information about the proposed administrative action to be able to work out how to respond to the proposed action. They need to know the nature of the action (what is being proposed) and the purpose (why is the action being proposed).

5.11.2.2 Step 2: The affected person must be given a reasonable opportunity to make representations. The person must be given enough time to respond to the planned administrative action.

5.11.2.3 Step 3: A clear statement of the administrative action after the decision is taken must be communicated to the affected person.

5.11.2.4 Step 4: Adequate notice of any right of review or internal appeal must be communicated to the effected person; and

5.11.2.5 Step 5: Adequate notice of the right to request reasons in terms of section 5 of this Act, must be communicated to the effected person.

5.11.3 The crux of PAJA is as follows:

5.11.3.1 Wherever there is an actual or alleged infraction, a decision and conclusion (by whoever makes that accusation or investigates it) that there was an infraction involves two steps, firstly to ascertain the veracity of the infraction, and thereafter to make a finding thereon and take appropriate action. Irrespective of how compelling evidence or the circumstances might be pointing to the existence of wrongdoing or an infraction, failure to follow due process invalidates same completely.

5.11.3.2 Due process achieves two seminal goals, namely: the other side is afforded an opportunity to state their version prior to a decision being taken, but secondly, it verifies facts, and eliminates reliance on one version, or on falsities. PAJA therefore exists to achieve these fundamental goals.

5.12 Lawfulness Test:

- 5.12.1 Lawfulness of an administrative action/decision refers to actions that are duly authorised by law, ensuring compliance with statutory or regulatory requirements. This test therefore examines whether all the actions taken by the Respondent in dealing with the Appellant, were lawful.
- 5.12.2 Many actions/ decisions were taken by the Respondent in the course of it dealing with the Appellant's plagiarism. However, for the sake of brevity and narrowing of issues, the appeals committee focused only on the actions (decisions) that the Appellant has, in his appeal, decried. They are the following:
- 5.12.2.1 Being allowed to re-submit paperwork in support of his application for registration; being allowed to sit for examinations; and after a more than four months of doing these activities, being informed that his pre-registration activities were null and void and therefore withdrawn; and
- 5.12.2.2 Being notified that he was registered and then later, his registration being summarily cancelled, coupled with a summary suspension of his eligibility to register for a period of two (2) years.
- 5.12.3 In determining the lawfulness or otherwise of the two actions/decisions broadly outlined above, the question that arises is, on what authority/legal basis did the Council act in the manner that it did?
- 5.12.4 Section 19 of the Respondent's Act states that a person wishing to be registered with the Respondent, may apply, in a prescribed form, to be registered and pay the prescribed fee. Once any person applies to the Respondent for registration (as the Appellant did), then the Respondent's rules for registration kick in.⁸
- 5.12.5 During the appeal, the Respondent stated that its prescribed (Gazetted) rules dealing with registration and all matters incidental thereto (such as registration-related misconduct) are: Malpractice Procedure (page 54 of the Respondent's appeal bundle); Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration) read with the Rules for Registration with the SACPCMP (effective date 1 August 2025); and Criteria and Process for the assessment of competency for the purpose of registration (effective date 21 July 2022).

⁸ Section 36 of the Act states that the Respondent by, by way of a Gazette, make rules on any matter that is permitted by the Act. Registration is one of those matters.

- 5.12.5.1 Section 36 of the Respondent's Act states that any rule that it makes, must be gazetted. The only gazetted rules amongst those that are listed above, is Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration), read with the Rules for Registration with the SACPCMP that came into effect on 1 August 2025. None of the other rules listed above, are valid because there is no evidence that was presented to the appeals committee that they are gazetted.
- 5.12.5.2 Because the other rules listed above are not gazetted (as required by section 36 of the Respondent's own Act), we placed no reliance thereon as lawful, valid rules on the basis of which any decision by the Respondent against the Appellant, was taken.
- 5.12.5.3 Coming to Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration), read with the Rules for Registration with the SACPCMP that came into effect on 1 August 2025, it is trite that the alleged misconduct by the Applicant was detected in April 2025. At that time, the above rules were not gazetted yet, or had not come into effect, and only came into effect in August 2025. They are therefore not valid rules as well, as the conduct of the Appellant precede their coming into effect.
- 5.12.5.4 The Respondent vehemently argued that because the Appellant was not registered, sections 30 and 31 of its Act (dealing with disciplinary process against registered persons) do not apply to him.
- 5.12.5.5 It is worth noting that, despite the Respondent's argument that sections 30 and 31 do not apply to the Appellant because he is not "registered", its own Act (in section 1), defines "registration" as *"(a) a process of assessment of competency of applicants for the purpose of registration under the Act"*.
- 5.12.5.6 When the Applicant submitted both his first and second application for registration, paid a fee and received a registration/ membership number, he was for all intents and purposes involved in *"a process of assessment of competency of applicants for the purpose of registration under the Act"*. Therefore, he was registered with the Council and a member. Tatis why he was even allocated a registration/ membership number, and why the Council could take action against him(as it had jurisdiction over him).
- 5.12.6 Therefore, based only on the reasons advanced in the preceding paragraph, it is self-evident that:

- 5.12.6.1 The legal basis upon which the Respondent acted against the Appellant, is flawed on the basis that it either relied on invalid rules (ungazetted), or on the basis of a rule (Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration) that was not in existence when the Appellant was suspected of misconduct, investigated and later sanctioned.
- 5.12.6.2 It is unclear (and was not presented to the appeals committee) as to what gazetted rules were in place before (Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration), and whether those rules expressly included and/ or made express reference to, a disciplinary procedure reserved for applicants for registration.
- 5.12.6.3 The actions against the Appellant on the basis of/ reliance on all the rules listed above, and which the Respondent purports to have relied upon, were unlawful.
- 5.12.6.4 On the basis of this finding alone, the Appellant has to succeed (on the unlawfulness of actions against him) and the Respondent has to fail.
- 5.12.7 Moving on (and still examining the lawfulness test), it is also important that it must be remembered that there were two registration applications at play in this matter:
- 5.12.7.1 The first application for registration is the one which, at its assessment stage, the Appellant was flagged for plagiarism. That application process was immediately halted, and subjected to an investigation which culminated in a special meeting of the regulatory matters committee that sat on 25 July 2025 (three months after the plagiarism was detected).
- 5.12.7.2 The last time the Appellant heard from the Respondent (on that initial application), was in April 2025, when he was asked to make written representations on 15 April 2025 and he responded by email on 25 April 2025, then followed by an email from Ms. Maruma dated 29 April 2025 that he must not re-submit paperwork for the second application until the internal processes were finalised.
- 5.12.7.3 The second application for registration is the one where the Appellant formally received a go-ahead on 19 May 2025 to initiate a second application and re-submit paperwork in support thereof, which he did. He later sat for exams on 4 September 2025 and passed, and even received communication on 11 September 2025 that his registration as a CHSO (under Limited Special Dispensation) was approved.
- 5.12.7.4 Arising from the existence of two, distinct registration processes alluded to above, a cardinal question therefore arises: the decision by Council to suspend the

Appellant and cancel his registration, is in respect of which of the two applications?

5.12.7.5 It cannot be in respect of both, because these were two, distinct administrative (registration) processes, with the first one having been halted and subjected to an internal investigation, and the second one having proceeded unimpeded up to finality.

5.12.7.6 Wrongful conduct was detected (and acted upon) only in respect of the first application and not the second one. The second application was not the continuation of the first one. Even the documents uploaded by the Appellant were different in respect of both.

5.12.7.7 No evidence was presented before the appeals committee of any irregularities detected in respect of the second application (and action taken to deal with those irregularities). Instead, the second application process was allowed to proceed and be concluded by the Appellant, culminating in him receiving a congratulatory letter that his application for registration was “approved”.

5.12.7.8 In the absence of any evidence of any irregularity or wrongdoing in respect of the second application, it will be difficult for the appeals committee to justify the lawful basis for the Respondent to treat, and deal with the second application for registration as if it is a continuation of the first one (when their query and investigation was triggered not by the second application but the initial one).

5.12.7.9 Phrased differently, it is difficult to justify the lawful basis for punishing the Appellant for his role in the second registration process in the absence of any evidence of wrongdoing on his part in respect thereof. The Respondent cannot therefore arrogate to itself the power to cast its net wide enough to punish the Appellant for the second successful registration application (which it erroneously gave him permission to partake in and never halted until its conclusion), when his conduct squarely to the first instance of application for registration.

5.12.8 The Appellant being allowed to re-submit paperwork in support of his application for registration; being allowed to sit for examinations; receiving a letter notifying him that his registration was approved, and later informing the Appellant that his pre-registration activities were null and void and therefore withdrawn, are all administrative decisions that fall within the remit of section 33 of the constitution.

5.12.8.1 Legal authorities state that, where internal administrative decisions have no effect on the rights or interests of third parties, then the decision may be varied or

revoked.⁹ However, where decisions have been made, affects the rights and interests of third parties, and in the absence of express legislation permitting a variation or revocation of such decision, the administrator would have to (if they reverse/revoke those decisions) follow a fair procedure.¹⁰

5.12.8.2 In this case it is trite that no procedure or due process was followed before a decision dated 24 October 2025 to withdraw the letter of 19 May 2025 was received. It was an arbitrary decision taken without first affording the Appellant the opportunity to make representations on why the letter of 19 May 2025 should not be withdrawn.¹¹

5.12.8.3 Affording the Appellant the opportunity to make representations on why the letter of 19 May 2025 should not be withdrawn was important on a number of fronts. For instance, it was through no fault of his that he was allowed to re-submit paperwork in support of his application for registration; being allowed to sit for examinations; receiving a letter notifying him that his registration was approved, etc.. It was purely the errors of the Respondent.

5.12.8.4 During the appeal, it became evident that the Respondent committed a myriad of administrative errors in relation to the Appellant:

5.12.8.4.1 He was allowed, in writing, to resubmit work in support of his application for registration;

5.12.8.4.2 The online system was not blocked (hence the Appellant's ability to log in and re-submit work);

5.12.8.4.3 His second resubmission/application was processed without any detection that he was the same registration applicant that was the subject of an ongoing plagiarism investigation, despite having the same membership/registration number;

5.12.8.4.4 He was allowed to sit for the examinations the subject of an ongoing plagiarism investigation (and not being red flagged);

5.12.8.4.5 He received an outcome/ congratulatory letter confirming approval of his registration

⁹ Burns and Henrico Administrative Law 271 and De Ville Administrative 79

¹⁰ Hoexter Administrative Law 279; Burns and Henrico Administrative Law 271; and De Ville Administrative Action 79.

¹¹ The argument by the Respondent that the Appellant was afforded an opportunity, was in respect of him accepting or denying wrongdoing for plagiarism, and not why he should not be punished.

5.12.8.5 In this case, due to the above multiple administrative blunders by the Respondent, the Appellant was adversely impacted in that all the hard work put in his second registration application, culminating in successfully passing exams and qualifying for registration, affected his rights to be accorded a status of a CHSO and attendant benefits that go with that (recognition, status and possibly financial incentives). He was therefore severely prejudiced, and doing so without first affording him an opportunity to make representations, was unlawful.

5.12.9 It is accordingly self-evident that the action of the Respondent failed to pass the lawfulness leg of fair administrative justice.

5.13 Reasonableness

5.13.1 During the appeal, the explanation presented for the multiple administrative errors by the Respondent was initially that there were administrative blunders.

5.13.2 However, the version of the Respondent later changed (during the appeal) to alleged fraudulent activities involving the Appellant and without any evidence of fraud being presented before the appeals committee.

5.13.3 It then became unclear to the appeals committee as to whether the reasons for the administrative bungles has since changed from administrative errors to systemic corruption, or both.

5.13.4 Effectively, the Respondent, during the appeal, changed the goalposts. Upon realizing that the administrative bungling justification was inadequate, it then introduced the corruption/fraud argument, without presenting any evidence of the role of the Appellant in all those errors (e.g. 19 May 2025 letter allowing him to re-apply for registration and submit portfolio of evidence in that regard).

5.13.5 The Respondent further argued that the Appellant suffered no prejudice arising from the erroneous decisions it took and later withdrew or cancelled. That is far from the truth. To be stripped of the registration status based on errors of the Council he seeks to be registered with, is indeed prejudicial. That prejudice could have been minimised, or even eliminated, had the retraction come much earlier even before the Appellant was erroneously allowed to resubmit his new portfolio in support of his second application.

5.13.6 The Respondent's argument that the Appellant ignored the instruction not to resubmit work is factually incorrect. The issue of the Appellant ignoring the instruction not to re-submit paperwork in support of his registration does not arise, as he was in receipt of a letter dated 19 May 2025 allowing him to re-apply for registration. If indeed the Appellant had defied

the Respondent and submitted paperwork anyway, then the expectation is that the Respondent should have taken action to discipline him.

- 5.13.7 The Respondent treated the Appellant as if he was guilty of any wrongdoing and had an ulterior motive when he re-submitted his portfolio for registration. Yet, the Appellant asked for permission first, which was granted. No wrongdoing, or ulterior motive, could be ascribed to the Appellant for his submission of registration paperwork in May 2025, and later sitting for examinations as he was rightly labouring under the impression that he was cleared to participate.
- 5.13.8 That letter of 19 May 2025, whether issued in error or not, triggered a reasonable expectation on the Appellant's part that he may participate in the pre-registration process as he was cleared to do so.
- 5.13.9 The argument that the Appellant should have checked with the office of the Registrar as to why he was receiving a letter dated 19 May 2025 when he had earlier been notified that he was flagged for plagiarism is rejected. That he never decided to do so, cannot point to any mischief, or intentional conduct on his part.
- 5.13.10 The issue raised by the Respondent that the Appellant resubmitted a CV that was different from the initial one that he had submitted (and for which he was flagged for wrongdoing) and further that his initial CV had indicated a different company from the company in the second CV, was noted by the appeals committee with concern.
- 5.13.10.1 Those CVs were not presented to the appeals committee as evidence in order for us to see that indeed that is what the Appellant did. Therefore, this could not be confirmed.
- 5.13.10.2 Even if it was indeed true that the Appellant had resubmitted a CV that was different from the initial one, our expectation is that, as part of due diligence, pre-assessment and vetting of applications for registration, the Respondent had a duty to, when it detected that anomaly with the CVs, again flag that second submission and investigate why the CVs were different, and act on it.
- 5.13.10.3 That it failed to do so, allowed the Appellant to complete the entire process and only raised that allegation during the appeal, does not take its case anywhere.
- 5.13.11 The Respondent allowing an Appellant to sit for exams despite an ongoing investigation against him, and despite being aware that he was flagged for plagiarism, was ascribed (by the Respondent during the appeal) to a systems failure.

5.13.11.1 That the Appellant was able to log in, and write exams, triggered yet another reasonable expectation that he was cleared to apply for registration, and that expectation could simply have been eliminated had the system blocked him as he was flagged and under investigation, which it did not do.

5.13.11.2 Therefore, the conduct of the Respondent falls short of the reasonableness test. On the reasonableness test alone or looked at in conjunction with the lawfulness test above, the overall conduct and decision-making by the Respondent against the Applicant, was manifestly unfair.

5.14 Procedural fairness: This test examines how the decision maker went about taking the action/decisions that they took, and which adversely affected the other person. In this instance:

5.14.1 The Respondent, during the appeal, made a submission that the appeals committee is seized with (in determining whether a fair procedure was followed by the Respondent in dealing with the Appellant's plagiarism), determining whether the procedure as outlined/contained in page 74 of the Respondent's appeal bundle (plagiarism detection confirmation from paragraph 2.1 up to 2.8) was followed or not, and only where it is found that the procedure was not followed, could the Respondent be adjudged to have acted unfairly in dealing with the Appellant's conduct.

5.14.2 The Respondent further stated that its Malpractice Procedure emanates from its registration rules and the criteria of competence, and applies to applicants for registration. When applicants for registration break the registration rules, the Malpractice Procedure kicks in.

5.14.3 The above submissions are rejected.

5.14.3.1 The Respondent cannot confine the appeals committee's determination of procedural fairness to what it deems to be the test for procedural fairness.

5.14.3.2 The test for procedural fairness is much wider, and examines all the prescripts that the Respondent, in acting against the Appellant, relied upon. Those prescripts/rules must comply with section 36 of the Act, and must be gazetted.

5.14.3.3 During the appeal, the Respondent relied on the following prescripts in dealing with the Appellant's conduct:

5.14.3.3.1 Malpractice Procedure (page 54 of the Respondent's appeal bundle):
This document is not gazetted or linked to any gazetted rule;

- 5.14.3.3.2 Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration) and Rules for Registration with the SACPCMP(effective date 1 August 2025): These rules make no reference to disciplinary procedures. In addition, these rules only came into effect long after the Appellant was accused of misconduct; and
- 5.14.3.3.3 Criteria and Process for the assessment of competency for the purpose of registration (effective date 21 July 2022): This document is not gazetted or linked to any gazetted rule.
- 5.14.3.4 There is therefore no valid, gazetted rule applicable to the period that the Appellant was found cheating.
- 5.14.3.5 It is untrue that the Malpractice Procedure emanates from the Respondent's registration rules and the criteria of competence, and applies to applicants for registration.
- 5.14.3.6 Even if the Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration) and Rules for Registration with the SACPCMP(effective date 1 August 2025) were applicable, there is nowhere where these make any reference to the malpractice procedure. The closest that those Rules for Registration come to issues of discipline, is where they, under clause 5, cite section 19(3)(a) of the Act and state that *"The Council may refuse to register an applicant ... for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under the Act"*.
- 5.14.3.7 In this case, the Respondent has distanced itself from *"any punishment imposed on him or her (meaning Appellant) under the Act"* by arguing that the Appellant is not covered by any of the categories of registration in section 18 of its Act, hence he was not subjected to the disciplinary process contemplated by section 35 of the Act, which according to it, applied only to registered people and further that, it can only act against people that are registered with it. It argued that it does not have locus standi to act against people that are not registered with it. Yet, we know that the Appellant was registered with the Respondent and even has a membership/registration number.
- 5.14.3.8 For as long as the Respondent operates outside the remit of section 36 of its Act, by disciplining its members based on ungazetted rules, it will be challenged and it will lose cases, based on this procedural flaw.

6. CONCLUSION

- 6.1 It is quite unfortunate that the appeals committee has to come to a finding that an organ of state of the stature and strategic importance as the SACMCMP has, through its officials, a committee and its Council, intentionally or inadvertently flouted and subverted legislation.
- 6.2 Regulation is not synonymous with arbitrariness or impunity. To underscore this point, Government enacted legislation through which built environment professions council could regulate their business. Sections dealing with disciplinary matters in the Respondent's Act, are extremely detailed, precisely to aid the Councils to operate within the four corners of the law.
- 6.3 Based on what happened to the Appellant culminating in this appeal, stricter measures must be put in place in the SACMCMP to eradicate non-compliance, to strengthen its rules and to make sure that it holds errant members fully accountable.
- 6.4 The Respondent has to fall on its sword. Its handling of this matter has left much to be desired, and cannot be condoned in any manner or form.

7. FINDING

- 7.1 The appeals committee, based on all the submissions and evidence analysed above, and on a balance of probabilities, is satisfied that there exist valid grounds for this appeal, and further that the Appellant has made out a compelling case as to why this appeal should succeed.
- 7.2 There is rampant unfairness and violation of section 33 of the Constitution of the Republic by the Respondent.
- 7.3 Although the Appellant is guilty of wrongdoing in respect of his first registration application, the manner with which his case was handled has resulted in undue unfairness against him. This cannot be ignored.
- 7.4 It is manifestly unfair to punish the Appellant for his second registration when no evidence of any wrongdoing was presented, and whatever wrongdoing (if any) was not investigated by the Respondent.
- 7.5 It appears that the decision of Council is not consistent with what was recommended to it by the regulatory matters committee.
- 7.6 The period it took for the Respondent to act and finalise the misconduct of the Appellant, and the many administrative and system errors that happened under its watch, stripped it of the authority to cancel and withdraw the Appellant's registration status arising from his second registration application, or suspend his membership.

7.7 On the validity of the Respondent's rules/prescripts:

- 7.7.1 No valid rules existed entitling the Respondent to act against the appellant for conduct that was discovered during the month of April 2025.
- 7.7.2 Malpractice Procedure (page 54 of the Respondent's appeal bundle); and Criteria and Process for the assessment of competency for the purpose of registration (effective date 21 July 2022) are not valid rules in the absence of any evidence that these were gazetted as rules.
- 7.7.3 Board Notice (Gazette) No. 810 of 2025 (Amendment Gazette to Board Notice 802 of 2025: Rules for Registration) read with the Rules for Registration with the SACPCMP (effective date 1 August 2025) has no relevance to disciplinary action/powers by the Respondent as there is no reference to any such procedure in those rules.

8. DECISION

- 8.1 Sanctions imposed against the Appellant by the Respondent (i.e. 2-year suspension coupled with cancellation of his registration) are invalid and must be set aside. The Appellant's letter dated 11 September 2025 notifying him of the approval of his registration as a CHSO (Limited Special Dispensation) remains valid, and the Appellant must finalise all processes necessary to complete his registration.
- 8.2 No further disciplinary action may be taken against the Appellant based on his admission of wrongdoing during the appeal. The conduct of the Appellant has already been subjected to an investigation and disciplinary action (albeit one that failed the section 33 test).
- 8.3 The Appellant is directed to confidentially (but by way of a sworn affidavit) disclose to the Respondent the identity and related details (e.g. contact details) of a third party that is aiding applicants for registration to submit fraudulent and plagiarized portfolios of work in support of their registration, by 30 January 2026. Should the Appellant fail to cooperate with this directive, the Respondent shall be entitled to institute whatever measures necessary to deal with that conduct.
- 8.4 The Appellant is also strongly warned against any actions that may bring the image of the SACPCMP into disrepute, failing which the Respondent may institute steps against him.
- 8.5 The Respondent must take steps to ensure that all the rules that it relies upon in executing its regulatory/statutory mandate, are in line with the requirements of section 36 of its founding legislation.
- 8.6 Respondent is hereby ordered to reimburse all costs incurred by the CBE in respect of this appeal, subject to the following conditions:

8.6.1 50% of those costs incurred by the CBE is payable on/before 30 January 2026 alternatively, on the terms that the CBE may impose to the Respondent, which terms must be regarded as part of this decision.

8.6.2 The remaining 50% of the costs incurred by the CBE in respect of this appeal is suspended, subject to:

8.6.2.1 Payment of the other 50% on/before 30 January 2026 alternatively, on the terms that the CBE may impose to the Respondent; and

8.6.2.2 Arrange a workshop for all members of its committees dealing with improper conduct, and ensure that all of them avail themselves to attend. That workshop will be arranged by the CBE, and a facilitator arranged by the CBE. The costs of the workshop to be borne in full by the Respondent, and to take place before 27 February 2026, at the CBE.

8.6.2.3 After the satisfaction by the Respondent of the two conditions above, the suspended payment of 50% of the costs incurred by the CBE in respect of this appeal, shall fall away. Should the Respondent fail to meet one or both of the two conditions above, then the remaining/suspended payment of 50% of the costs incurred by the CBE shall become due and payable by 27 February 2026.

SIGNED AT CENTURION ON THIS 9th DAY OF DECEMBER 2025



ADV. REBAONE GAORAELEWE

For THE APPEALS COMMITTEE

Mr. Monde Hlamaphi (Member) **Concurring** & Mr. Darryl Riley (Member) **Concurring**