

BEFORE APPEAL COMMITTEE OF THE COUNCIL FOR THE BUILT ENVIRONMENT

(APPEAL COMMITTEE)

In the Appeal between:

ATHOLL MITCHELL

THE APPELLANT

And

ENGINEERING COUNCIL OF SOUTH AFRICA (ECSA) THE RESPONDENT

BACKGROUND OF FACTS

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The Appellant is a **Professional Engineering Technologist (Pr. Tech Eng)**.

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On or about 06 May 2024, there was a structural collapse of a building under construction at 75 Victoria Street, George, Western Cape Province. Whereby 34 people lost their lives.

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Subsequent to a collapse on 08 May 2024, the Appellant as an Engineer responsible for design and construction, was notified by the Respondent via email that a third party complaint has been received against him.

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On or about 23 May 2024, the Appellant submitted a request that his registration held by the Respondent should be cancelled. The Respondent then invoked **Section 20(3) of Engineering Profession Act 46 of 2000 (EPA)** which provides as follows,

“The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded”.

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The Appellant was then invited by the Respondent to appear before Disciplinary Tribunal on 29 and 30 May 2025.

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The Appellant through his Legal Representatives served the Respondent with a letter dated 07 March 2025 mentioning,

“...elects not to exercise his rights in terms of section 31(6)(a) of the Engineering Professions Act 46 of 2000 and shall not be present, personally nor through a representative, at the abovementioned disciplinary hearing.

Our client confirms that the hearing may proceed, and the disciplinary tribunal may make a decision in terms of in his absence and we record that the election of our client not to participate before the disciplinary tribunal should not be construed as an admission pertaining the allegations level against him”.

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On or about 25 June 2025, Disciplinary Tribunal made a ruling in a form of recommendation that, registration of the Appellant should be cancelled and a fine of R40 000 be imposed on him.

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Then on or about 31 July 2025 the Appellant through his Legal Representatives, filed an appeal with Governing Council of the Respondent against the aforesaid ruling on paragraph 7 above, whereby on 07 October 2025 an appeal was dismissed and ruling of Disciplinary Council was confirmed by the Governing Council.

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The Appellant then invoked **section 33(3) of EPA** as well as **section 21 of Council for the Built Environment (CBE) Act 43 of 2000**.

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Matter was then set for a hearing on 12 December 2025 before Appeal Committee of CBE.

EVIDENCE BY THE APPELLANT

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During a hearing the Appellant was represented by Adv J P Steenkamp

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He started making a reference to **Rules for inquiry into alleged improper conduct** particularly **Rule 3.1.1** which provided as follows:

“Any person lodging a complaint of improper conduct against a registered person with the Council must lodge a complaint in the form of an affidavit or an affirmation, which must detail the specific act or acts relating to the alleged improper conduct, and must submit evidence in support of it”.

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He emphasized the use of word “must” in **Rule 3.1.1**. He indicated that, in the present case, there is no affidavit therefore there is no valid proceedings before the Appeal Committee. According to Adv Steenkamp, the Respondent has failed to comply with **Rule 3.1.1**.

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Adv Steenkamp also said, it was incorrect for the Respondent to allow Mr Moffat to testify as a sole expert.

He made a further reference to **section 28(1)(a) and 36(1) of EPA** which provides as follows respectively:

Section 28(1)(a) *“The council must refer any matter brought against a registered person to an investigating committee contemplated in section 17 if, the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct”.*

Section 36(1) *“The council may, by notice in the Gazette, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act”.*

According to Adv Steenkamp there is no contrast between the two provisions, in fact the Respondent was compelled to comply with **section 36(1)**.

He argued further that, the Appellant did not participate in the proceedings before Disciplinary Tribunal, but did not waive his rights. He also said that you cannot waive the law.

Adv Steenkamp indicated that a report of Mr Moffat was biased, because he (Mr Moffat) contacted son of the Appellant and advised him to inform the Appellant to plead guilty.

He also said that the Appellant was denied a right to state his case. And reference in support of this statement was made to **Msiza’s case**.

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Adv Steenkamp requested Mr Moffat to come and testify before the Appeal Committee. But request was rejected by the Appeal Committee based on the fact that, the Appellant had elected not to form part of the proceedings before Disciplinary Tribunal.

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In closing he requested the Appeal Committee to order the proceedings before Disciplinary Tribunal to commence *de novo* or be set aside. Citing that the proceedings were flawed as per submissions above.

EVIDENCE BY THE RESPONDENT

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During the proceedings the Respondent was represented by Mr F Jassat.

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According to him the Appellant rejected an opportunity to state his case before Disciplinary Tribunal, as a result he (the Appellant) cannot be allowed to exercise this right at a later stage.

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He also argued that, **Section 28(1)(a) of EPA** permits the Respondent to act on its own accord without receiving a third party complaint.

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An argument of the Appellant surrounding a third party complaint had to be addressed to Disciplinary Tribunal, but the Appellant opted not to do so.

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The Appellant had an opportunity to produce his own evidence challenging evidence of Mr Moffat or call his own witnesses. But elected not exercise his rights before Disciplinary Tribunal. In support of his submissions reference was made to ***The Foschini Group case***.

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Mr Jassat also stated that based on the available evidence, sanction imposed by the Respondent was appropriate to the charges levelled against the Appellant.

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He highlighted that the Appellant cooperated with an investigation of Mr Moffat. But on the contrary the same Appellant is now disputing evidence Mr Moffat.

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In closing Mr Jassat requested the Appeal Committee to confirm decision of Disciplinary Tribunal, and dismiss an appeal.

FINDINGS BY THE APPEAL COMMITTEE

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Issue of cancellation of registration was introduced by the Appellant as per paragraph 4 above. But the same Appellant is now disputing a sanction accompanied with a cancellation of registration.

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The Appellant did not receive an affidavit ought to accompany a third party complaint. Therefore an inference can be drawn that such an affidavit does not exist.

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The Appellant made his intention clear, that he does not want to exercise his rights as contained in **Section 31(6)(a) EPA** which provides as follows:

“At a hearing the registered person charged,1 may personally be present at the hearing of the proceedings,2 may be assisted or represented by another person in conducting the proceedings,3 has the right to be heard,4 may call witnesses,5 may cross examine any person called as a witness in support of the charge,6 and may access to documents produced in evidence”

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On his own accord the Appellant offered to redesign, a conclusion can be drawn that, he knew his design was not correct.

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The Appellant is not a first time transgressor, on 31 July 2024 he was found guilty of an offence involving design.

JUDGEMENT ORDER

Having heard submissions from both Parties, and after carefully analyzing evidence before the Appeal Committee. The following order is made,

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The Appellant was responsible for a design and construction of a building that collapsed, at 75 Victoria Street, George, Western Cape on 06 May 2024.

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A total of 34 People lost their lives as a result of collapse.

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The Respondent then summoned the Appellant to a disciplinary hearing. The Appellant made his intention clear that he elect not to attend a hearing. And a hearing proceeded in his absence.

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The Appellant was found guilty by Disciplinary Tribunal, with a recommendation of cancellation of his registration plus R40 000 fine.

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He appealed to a Governing Council. Whereby a decision of Disciplinary Tribunal was confirmed and appeal was dismissed. He made a further appeal to the Appeal Committee.

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Based on available evidence the Appellant has failed to prove that decision Disciplinary Tribunal was incorrect and inappropriate. Because prior collapse of the building he had offered to redesign meaning he knew all along his design was wrong.

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The Appellant has also failed to prove why proceedings before Disciplinary Tribunal should commence from the beginning. Because he refused to raise the procedural disputes he is now raising at Disciplinary Tribunal, by allowing a hearing to proceed in his absence.

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The Appellant denied himself a right to be heard and he is now seeking a revival of the same right he elected not to exercise.

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Based on the fact that, the Appellant is a second time transgressor, read together with paragraph 6, 7 and 8 of this order, a sanction imposed by Disciplinary Tribunal confirmed by the Governing Council, is deemed to be correct and appropriate.

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Therefore decision of Disciplinary Tribunal supported by the Governing Council is hereby confirmed and appeal is dismissed.

No order as to costs is made.



Chairperson M I Mokotjo
Date: 17 December 2025

For the Appeals Committee

Member Ms Alpha Nhambure Concurring and Member Adv Thabiso Njokwana Against