IN THE COUNCIL FOR THE BUILT ENVIRONMENT

HELD AT PRETORIA

In the matter between:

THAPELO MMUSINYANE **1st Appellant**

K G RAMOVHA **2nd Appellant**

and

S.A. COUNCIL FOR THE PROPERTY VALUERS PROFESSION **1st**

RespondentNGOEPE G N.O. **2nd**

Respondent

Heard on the 11 February 2022

RULING

APPEAL COMMITTEE MEMBERS:

M.I. Motala	Chairperson
S. Loonat	Member
T. Myers	Member

FOR THE APPELLANTS:

Advocate T. Mmusinyane

~~FOR THE 1st RESPONDENT~~:

Advocate L G P Ledwaba

IN ATTENDANCE:

M. Chiloane	CBE
G. Mashishi	SACPVP

1. INTRODUCTION:

The matter was initially heard on the 29 November 2019. At the hearing the 1st Respondent raised two points *in limine*. A written ruling was issued on the 13 December 2019. Both points were dismissed and the Committee ruled that the matter be set down for the parties to be heard on the merits of the matter. The matter was enrolled for hearing on the 14 February 2020.

The transcript of the disciplinary hearing was availed to the Committee prior to the 14 February 2020. Upon a reading of the transcript, it was apparent that it was of poor quality and in fact incoherent.

The parties were availed an opportunity to address the Committee on the approach to be adopted in the light of the poor quality of the transcript. Adv.Mmusinyane submitted *inter alia* that it would be possible to proceed if regard was had to the documents filed by both parties and which contained verbatim reference to parts of the evidence with respect to the issues in contention. Adv. Ledwaba had a different view and submitted *inter alia* that the transcript was fundamental to the hearing of any appeal and hence it would not be possible to proceed at this stage.

The Committee adjourned for it to consider the submissions and make a ruling.

On resumption the parties advised that they had engaged on the matter and were *ad idem* that the matter should be postponed. The parties confirmed that the audio recordings were of a good quality and that it would be possible to prepare a proper transcript. The parties agreed on certain processes and timeframes which constituted the order of the Committee.

The matter was postponed *sine die* to avail the parties an opportunity to follow certain processes encapsulated in the Committee's ruling of the 20 February 2020.

The matter was enrolled for hearing on the 11 February 2022. Oral submissions were made by the parties. At the conclusion of the submissions

the Committee directed that Heads of Argument be submitted within agreed timeframes. Heads were indeed received within the allocated timeframes. The replying Heads were received from the Appellants on the 11 March 2022.

The Committee convened on the 14 March 2022 to consider the matter with a view to making a determination. At it's meeting the Committee was informed by Ms. Chiloane that due to certain internal processes within the CBE relating to it's financial year end on the 31 March 2022 a ruling of the Committee had to be made by the 19 March 2022. In the circumstances given the complexity of the matter and the voluminous record the Committee resolved to discuss the matter and bring out a ruling without providing reasons at that stage. The latter would require an inordinate amount of time to draft and the deadline would not be met. The reasons would follow.

The members had familiarized themselves with the record and all relevant documents and resolved to bring out a ruling which was unanimous. The ruling was issued on the 16 March 2022. The ruling did not traverse the reasons and what follows is the substantive ruling of the Committee encapsulating it's reasons.

2. BACKGROUND:

Both Appellants were arraigned on 4 main counts and one alternative charge. All the charges alleged contravention of various provisions of the Code of Conduct. The disciplinary hearing ("the Tribunal") was chaired by Mr. G.P. Ngoepe and was finalized on the 18 June 2016. The latter is reflected on the written ruling of the Tribunal and will be consider as the date on which the hearing had been finalized. At the conclusion of the hearing both Appellants were acquitted on all the counts except charge 1. The charge on which both Appellants were convicted is, for purposes of convenience, quoted *verbatim* hereunder:

> **You are guilty of improper conduct in that during or around February 2011 and when doing an assignment from the City of Johannesburg, alternatively the City of Johannesburg/ Joburg Property Company (the City of Johannesburg) of valuing the property described as:- The Remaining Extent of the Farm Bedford**

68 IR, Gauteng, measuring 52, 7000 hectares (the property), you stated in your report that you used the comparative sales method, while to your knowledge you did not comply with the reporting standard and/or approach used In the comparative sales method In that among others you failed to provide a properly motivated market related research, analysis and proper motivation of the comparable sales.

Alternatively, your valuation report does not indicate how you provided proper market related research, analysis and proper motivation of the comparable sales thereby contravenlng: -

1.1. Clause 5(b) of the South African Council of the property Valuers profession Code of Conduct for Registered persons (the code), which provides that: In carrying on the property profession, a registered person shall order his/her conduct so as to uphold the dignity, standing and reputation of the property valuers profession by maintaining a high standard of the professionalism, honesty and integrity.

1.2. Alternatively, clause 5(g) of the code, which provides that: in carrying on the property profession, a registered person shall, when performing a property valuation in terms of any law, acquaints himself or herself with the provisions of such law relevant to property valuation and comply therewith.

The 1st Appellant was cautioned whilst the 2nd Appellant received a fine of R5 000 wholly suspended for a period of 2 years subject to certain conditions. The sanction hearing was finalized on the 5 December 2016. It should be noted that the appeal is confined to the finding of guilt with respect to count 1 for both Appellants. No appeal had been lodged with respect to the sanction.

The Appellants lodged an internal appeal which was dismissed. The Appellants then lodged an appeal with the Council. Various events followed which are recorded in this Committee's ruling dated the 13 December 2019. To avoid prolixity those events will not be repeated in this ruling save to state that this matter was characterized by an inordinate delay which could have been averted.

The Committee was finally placed in the position of concluding the matter on the 11th February 2022.

3. GROUNDS OF APPEAL:

The Appellants filed various documents with different titles purportedly to initiate an appeal to the Council. These purport to be notices of appeal as the latter is understood in legal nomenclature. They contain grounds of appeal but akin to Heads of Argument. The Committee indeed grappled to discern the precise grounds on which the Appellants rely in challenging the decision of the Tribunal. The expectation of the Committee was that a single document containing succinct grounds would have been submitted by the Appellants followed by Heads of Argument. Reciprocated by the Respondent with it's Heads of Argument. Of course, supplemented by bundles of documents by the respective parties for purposes of the proceedings before the Committee.

As noted in a previous ruling what was before the Committee is a mixed bag of grounds of appeal and review littered with argument the latter normally reserved for argument at the end of the proceedings.

The manner in which the record was prepared, which is the responsibility of the Appellants, also left much to be desired. Be that as it may the Committee ultimately after engaging Adv.Mmusinyane relied on p.4-5 paras.1-8 of a document entitled "Appeal against the Panel's Findings and Sanctions" (p.4-34 of Appeal Records 1) in order to discern the grounds of appeal. It was pointed out to the Appellants representative, Adv. Mmusinyane, that some of the grounds relied upon constituted those relating to review proceedings and a ruling in that regard had been issued by the Committee. He submitted that the grounds for purposes of these proceedings would be circumscribed and confined to paras.2,3,4&5.

For convenience purposes the grounds relied upon by the Appellants in these proceedings are the following:

3.1. The chairperson-demonstrated biasness when he found both Respondents guilty on charge 1 and blatantly failed to substantiate his finding on facts and the law before him. He misdirected himself

from the law and misconstrued the facts to the detriment of the Respondents.

3.2. His biasness Is also evident on his failure to provide justifiable reasons why he ignored the entire Second Respondents submissions on why he contended that he was Incorrectly charged under the same charge with the First Respondent despite him not to have done the Valuation as a Mentor.

3.3. Further, he has shown biasness by not providing justifiable reasons why he rejected evidence of Mr. John Cloete on the non-existence of a reporting standard/approach as corroborated by both Respondents. In that he attached more weight to the oral and documentary testimony of the Council's Investigator Mr Griffiths (hereafter the Second Witness) despite his evidence to have contested orally and with provided documentary evidence.

3.4. Lastly, he provided no justifiable reasons in law in rejecting the oral and documentary evidence Respondents referred to in challenging the second witness oral and documentary (Investigation report): In addition, he misdirected himself from the facts before him and made glaring inconsistent findings against the Respondents.

4. SUBMISSIONS:

Both parties were availed an opportunity to tender oral submissions on the 11th February 2022 which were followed by written Heads of Argument. In the normal course of events parties would have submitted Heads prior to the hearing and submissions from the bar would have been based on the Heads. The Appellants had done so *albeit* not a complete set of Heads. The Committee is nevertheless indebted to both parties for a set of comprehensive heads submitted after the hearing.

The following constitutes a summary of the arguments tendered by the respective parties:

4.1. Appellants: The thrust of the argument with respect to the first ground of appeal is that the Respondent had not complied with sections 18 and 19 of the South African Valuers Professions Act ("the Act") thereby rendering any proceedings grounded on the investigation void. Put

differently the pre-hearing process contemplated by the section was defective and hence the disciplinary hearing was a nullity. Based on the aforesaid the appeal should be upheld. In the alternative the Tribunal had not applied it's mind to the aforesaid pre-hearing procedural matter despite it having been raised and in the circumstances had misdirected itself.

In essence the Appellants' contention is that the Investigating Committee ("the Committee") as envisaged by the relevant provisions of the Act cannot be a one-person panel by virtue of section 18 which prescribes that it should have a Chairperson. Furthermore, that no evidence had been tendered at the hearing that the prescripts of the Act had been followed in the establishment of the Committee despite the Appellants having raised the matter. The Tribunal was not entitled to rely on oral submissions and Heads and in doing so had committed a procedural irregularity. In failing to consider this matter the Tribunal was not fair, impartial, independent and objective. It also failed to address this matter in it's findings. In the circumstances it utilized an investigation report drafted by a committee, which had not been established in terms of the Act, to find the Appellants' guilty.

The second ground on which the 2nd Appellant in particular relied was that he had not compiled the valuation report and hence should not have been arraigned on a charge which is the same as the one relating to the 1st Appellant. The Appellant contends that his evidence that the 1st Appellant had compiled the report remained uncontested. His role is clearly defined in terms of section 20(2)(a) read with section 19 of the Act. He had merely countersigned the report after conducting certain spot checks. In short, he was merely a mentor taking into account the provisions of the Act referred to and rule 6(1) of the Rules of the Respondent.

With respect to the third ground the Appellants contend that two valuation reports tendered in evidence for purposes of comparison at the hearing were indeed admitted despite Adv. Ledwaba's submission that they were excluded. The Appellants then proceed on the basis that

the Tribunal had indicated that it will deal with this evidence but failed to consider their probative value and relevance. The remainder of the submission on the admissibility issue is repetitive.

The argument then proceeds with reference to the well-established test in the field of Labour Law contained in the Good Practice on Dismissals. The latter is contained in the Labour Relations Act as a schedule. The argument seeks to draw on a principle namely that a person facing a disciplinary charge should have been aware of the existence of the rule alleged to have been contravened. They contend that they were found guilty on a test of a “reasonable valuer” which did not constitute an element of count 1. They were not aware of a rule based on a “reasonable valuer”.

The remainder of the submission on this ground concentrated on the absence of proof at the hearing of a standard on how a valuation report must be drafted. In this regard they referred copiously to the evidence of both the witness of the Respondent, Mr. Griffiths, and Mr. Cloete who testified on their behalf. In brief the Tribunal had misdirected itself by accepting the evidence of Griffiths. In addition, in the absence of a standard valuers rely on various methods and fault cannot be ascribed to the method adopted in compiling the report in question. Reliance was placed on the two valuation reports submitted as evidence by the Appellants to reinforce the argument that there was no established and adopted standard.

The Appellants did not make any specific submissions germane to ground four of their appeal. Their omission to do so is not fatal. The essence of this ground was however ventilated when dealing with the third ground.

The submissions conclude with reference to the applicable legal principles as they pertain to the evaluation of evidence, facts and the law in adjudicating contested evidence. In this regard reference is made to the Tribunal having misdirected itself in various respects *inter alia* by accepting the evidence presented by the Respondent without providing

a basis for doing so, rejecting the evidence of the Appellants, it dealt with the evidence in a fragmented manner.

4.2. Respondent: The Respondents Heads proceed from setting out the background and history of the matter. In it an argument is raised that the matter is not one of appeal but in essence a review. The said argument was also raised orally by Adv. Ledwaba on the 1 February 2022. The Committee directed that the arguments raised with respect to the nature of the proceedings had been dealt with in it's previous ruling. The Committee will not labour this ruling with what has already been traversed in it's previous ruling.

Adv. Ledwaba deals with the first ground of appeal in the latter part of his Heads.

On the merits the Respondent as it's departure point contends that an appeal court should not interfere with the factual findings and evaluation of the evidence by a trial court. It should do so only in exceptional circumstances where a there has been a material misdirection by the court of first instance. It also proffers the principle that how parties characterise the nature of the dispute is irrelevant. The Committee has to consider it's underlying nature.

The Heads set out the facts in a succinct manner and relate these to one of the grounds on which the Appellants challenge is based namely that they were not provided with the standard or approach to compile a valuation report. The Respondent submits that the crisp question is whether the refusal by the Tribunal to order the Respondent to produce the standard and/or approach in the comparable sales method constitutes a misdirection because count 1 is about their failure to follow the said standard or approach. The Respondent then refers to the evidence of Griffiths and concedes that there is no specific written standard. What is available are guidelines. The Appellants conduct was measured against these guidelines and found to be wanting. The test is one of a reasonable person in that position.

The Respondent then proceeds to deal with the issue raised by the Appellants regarding the establishment of the Investigation Committee. Reference is made to Griffiths testimony in which he stated that he had been appointed by Council. Reference is also made to certain parts of the testimony of the 1st Appellant and it is submitted that the latter had conceded that the committee may consist of one person. In addition, he was not part of Council meetings in which committees are established.

The Respondent in it's Heads also reflects on the admissibility of the two valuation reports tendered by the Appellants at the hearing and submits that in the absence of consent from the authors of those reports the latter are not admissible.

A further submission is that the 1st Appellant by virtue of his status as a Candidate Valuer could not validly sign off a report.

4.3. Appellants Reply: An attempt will not be made to summarise the Appellants reply save to state that the submissions merely re-iterate and emphasize their arguments in the main Heads.

5. LEGAL PROVISIONS:

In considering this matter the Committee relied on the following:

5.1. Council for the Built Environment Act 43 of 2000;

5.2. Property Valuers Profession Act 47 of 2000;

5.3. South African Council for the Property Valuers Profession Code of Conduct for Registered Persons 2004

5.4. Rules for the Property Valuers Profession 2008

6. THE APPEAL:

Appeal is one of the two forms of post-trial control in South African law. An appeal is appropriate when it is alleged that the court came to a wrong conclusion on the facts or misinterpreted the law.

The lodging of an appeal is a process whereby the order made by a judge or magistrate (*in casu* the Tribunal) can be overturned **if one can establish that the said judge or magistrate made an error in fact or law in ultimately**

arriving at the judgement and order. If this can be established, the order can be overturned on appeal.

The Committee in considering it's powers to determine this appeal had regard to the numerous judicial precedents contained in various *dicta* of our Courts. There is a litany of judicial precedent in this regard. Suffice for purposes of this ruling to refer to two:

In *Makate v Vodacom Ltd* [2016] ZACC 13; 2016 (4) SA 121 (CC) the Court quoted with approval the following extract from S v Hadebe and Others 1997 (2) SACR 642 (SCA) at 645:
"Before considering these submissions it would be as well to recall yet again that there are well established principles governing the hearing of appeals against the finding of fact. In short in the absence of ***demonstrable and material misdirection by the trial court,*** *its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong".* (our emphasis)

In *S v Malgas* 2001 (1) SACR 496 SCA *albeit* dealing with the question of sentence stated as follows:
"A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it was the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would usurp the sentencing of the trial court."

In considering this appeal the Committee is called upon to address a single question namely whether on the evidence before it and the application of the relevant legal prescripts the Tribunal had misdirected itself. Either with respect to the facts or the law or both.

In responding to this question, the Committee is confined to the grounds of appeal raised by the Appellants. This principle is qualified by the *dicta* espoused by our Courts that the Committee should *mero motu* take cognizance of a point of law which is apparent from the papers.
Prior to addressing the above, it would be prudent to dispose of a matter raised by both parties with respect to the admissibility of the two valuation reports

tendered by the Appellants at the hearing. These are reports compiled by Two Alfa Valuations CC and A&Sons Property Valuers. It should be noted that the appeal record did not contain the Alfa Valuations report. As part of Appeal Records 3 two reports are attached both compiled by A&Sons Property Valuers. These reports are relevant to the extent that they seek to advance the argument of the Appellants that in the absence of a standard valuers differ in their approach in compiling a valuation report. The Respondent in para. 2.9 of it's Heads argue that in the absence of permission having been obtained from the authors of the reports in question the reports are inadmissible. Adv. Ledwaba refers to page 488 of the transcript. It is apparent from the transcript that the Tribunal had availed both parties an opportunity to address it on the matter. On p.492 of the transcript it effectively rules that the documents had been admitted as part of the bundle. The Tribunal's ruling had effectively put paid to any further argument in this regard. From a reading of para. 2.9 of the Respondent's Heads it is not apparent that Adv. Ledwaba is arguing that for purposes of this appeal the Committee should not consider these reports. The Committee will in the circumstances, to the extent relevant, consider these reports.

It would also be helpful to make an observation at this stage with regard to the submissions of the Appellants. They suggest that the Tribunal had not provided sufficient and elaborate reasons for it's findings. The submissions are replete with phrases such as "blatantly failed to substantiate his findings on facts and the law", "failure to provide justifiable reasons", "not providing justifiable reasons" etc. Apparently, a reference to the written ruling issued by the Tribunal. Is the challenge then based on the Tribunal's failure, refusal or omission to motivate why it had come to certain conclusions on the facts and/or the law? The Committee reflected on this matter and is of the view that it should not be deflected in it's endeavour to respond to the crisp question enunciated above namely whether on the facts before it and the applicable law had the Tribunal misdirected itself. The findings of the Tribunal and the transcript constitute sufficient material for the Committee to make a decision. Suffice to state that the mere fact that the Tribunal in it's written findings had not, in terms of the expectations of the Appellants, elaborated with sufficient detail it's reasoning for making certain findings does not *per se* amount to a misdirection. To suggest otherwise would be ludicrous.

The Committee elected not to address each ground separately because there is an overlap. It can be discerned from the four grounds raised by the Appellants that there are essentially three matters in issue namely:

6.1. The pre-hearing procedural issue on the establishment of an Investigating Committee;
6.2. Whether it was competent to charge both Appellants with a contravention of the same provision in the Code of Conduct
6.3. Whether on the available evidence and the application of the law the Appellants had contravened clause 5(b) of the Code of Conduct. The latter presupposes the following subsets:
6.2.1. is there a standard or approach which valuers are bound to apply in compiling valuation reports;
6.2.2. in the absence of a codified standard or approach are there generally accepted guidelines;
6.2.3. were the Appellants aware of such a standard or approach or guidelines;
6.2.4. did the report meet the standard or approach or guidelines

In dealing with these issues what should be foremost in the mind of the Committee is whether or not the Tribunal in considering these matters had misdirected itself.

As a departure point the Committee considered the relevant provisions of the Act in determining whether the Respondent had complied with the relevant provisions relating to the establishment of the Investigating Committee. Reference is made to sections 18 and 29 of the Act. The former is a generic provision enabling the Respondent to appoint committees and makes reference to the Investigating Committee. The latter regulates the process with respect to the investigation of a charge of misconduct. It is noteworthy that the Act does not prescribe in section 18 nor elsewhere how it's committees should be established. In particular it does not constrain nor prescribe to the Respondent the number of persons that should constitute a committee. On an ordinary interpretation, in the absence of a clear provision in this regard, the Respondent is vested with a discretion to establish a committee as it deems fit based on the

exigencies of a particular matter.

The Appellants reliance on section 18(1)(b) to argue that the latter's reference to the appointment of a chair at a committee's first meeting implies that it was the intention of the lawmaker that committees should consists of more than one person cannot be countenanced. If that was the intention of the lawmaker it would have done so by employing the relevant language in this section. The Committee took cognizance of the fact that there is a plethora of similar legislation in which the relevant legislation prescribes the manner in which Committees should be established. Section 32(2) of the Act is but one example. Yet another is section 21(3) of the Council for the Built Environment Act 43 of 2000. In fact, upon a committee being constituted there is no peremptory provision in the Act that it appoints a chair. Sub-section 18(1)(b) states and we quote "the committee **may**, at it's first meeting, elect a chairperson……". Clearly, once again a discretionary matter. It can in fact be envisaged from a literal interpretation of this section that a committee can exist without a chair.

The second leg of the challenge is that no record exist that the Council appointed an Investigation Committee let alone Griffiths as a member of such a committee. It was argued that no record had been produced at the hearing in this regard. In essence the contention was that the Committee contemplated by section 18(1)(a) was not established and in the alternative Griffiths had not been appointed as a member. A perusal of the transcript and specifically from p.192 reveals abundantly that Griffiths was issued a letter of appointment. The letter is on p.18-19 of a bundle marked "Appeal Records 3". It was the same letter Adv.Mmusinyane in the hearing referred to in his cross-examination of Griffiths. On the face of it what is apparent is that the letter was signed by the Manager: Governance Support, Alicia Daniels. It clearly states that Griffiths is appointed by Council to conduct an investigation and the scope thereof. It is apparent that the Appellants misunderstood internal processes within the Council. Their insistence that certain records be produced to prove that Griffiths was indeed appointed is disingenuous. In fact, it is tantamount to stretching the onus on the Respondent to establish compliance to unreasonable lengths. It is common knowledge that when a governing structure takes a decision the relevant official seized with the function communicates the decision. Normally a Company Secretary and in this instance, it is apparent, given Daniel's designation, that her

role is akin to that of a Company Secretary. Implicit in the argument of the Appellants is an insinuation that Daniel's had without a Council resolution issued the letter of appointment. If they had such evidence, it should have been tendered at the hearing. Section 32(7)(c) of the Act was also available to the Appellants.

Having reflected on the above the fundamental question remains namely whether or not the Tribunal had misdirected itself with respect to the facts or law or both in dismissing the Appellants point in this regard. As noted previously the Appellants persistently argue that the Tribunal failed to reflect on these matters in it's ruling. That may be so in terms of elaborate detail but the argument that it did not apply it's mind to the evidence before it or apply the law in dismissing this point cannot be sustained. It is apparent from the transcript that the Tribunal had considered the arguments. A perusal of p.205 of the transcript reveals that the Tribunal in fact adjourned to apply it's mind. On resumption it dismissed the argument of the Appellants. This Committee is satisfied that the Tribunal had not misdirected itself with respect to the facts or the law.

In the circumstances the Appellants appeal on this ground fails.

Was it competent to charge both Appellants in terms of the same provision namely a contravention of clause 5 of the Code of Conduct? The 2nd Appellant argued that the 1st Appellant had drafted the report and he had merely countersigned it. The parties were *ad idem* factually that the 1st Appellant was a candidate valuer subject to the supervision of the 2nd Appellant. In other words, a relationship of mentor/mentee existed between the two Appellants. In addition, there was no factual dispute that the 1st Appellant had drafted the report.

The Appellant relies *inter alia* on section 20(2)(a) of the Act in support of his submission. A perusal of the said section reveals that it has no relevance with respect to the argument. It is a reference to the qualification requirements to be admitted as a professional valuer. It is, however, relevant to the extent that it sets the bar much higher for a professional valuer as opposed to a candidate valuer. The Committee will address this matter in more detail *ad seriatim*. The Appellant then relies on clause 6 of what he refers to as the Rules for South African Property Valuers Profession. The Appellant was in fact referring to

clause 6(2) of annexure C.1 of the Rules published as Board Notice 119 0f 2008 in Government Gazette 31604 dated the 21 November 2008(the "Rules"). It is apparent from the text of this clause that the 2nd Appellant was enjoined to supervise and sign off the work of the 1st Appellant. The submission of the 2nd Appellant boils down to arguing that his signature does not expose him to the implications of the Code of Conduct consequent upon the report being wanting in any respects. Crudely put he could blindly sign off a report and face no consequences. Not so on a reading of the report itself and the Rules and Code of Conduct holistically.

With reference to the former it is apparent *ex facie* the report that he had not merely countersigned the report. The report is replete with reference to the plural "we". For example, in para.1 of the report they state "we have inspected the subject property and report as follows". Yet again in the penultimate paragraph of the report they state "**we** trust that **we** have carried out our valuation……. please do not hesitate to contact **us**" (our emphasis). If the argument is sound a reference to the 2nd Appellant having signed as counter signatory is conspicuously absent in the report.

With respect to the Rules and Code of Conduct it would suffice to mention with reference to a professional valuer clause 4(h) of the Code of Conduct "sign all property valuation reports and other documentation relating to his or her work in the property valuers profession, prepared by **or for him** or her, and use his or her title as provided for in section 22(3) of the Act" (our emphasis). Cross reference this with clause 8(1)(b) of the Rules applicable to the 1st Appellant which provide as follows

shall accept an instruction to perform property valuation work only from a professional ("the instructing professional"), which instruction shall –

Reference is also made to sub-clause 2 of the Rule which provides that any fees accruing from the assignment should be invoiced by the professional.

A reading of the report and the relevant legal prescript leads one to the inescapable conclusion that the 2nd Appellant cannot merely rely selectively on the word "countersign" in delineating his role. It could never have been the intention of the lawmaker that by signing he would not assume any culpability for the content of the report bearing in mind the responsibilities attaching to his

calling as expounded in the Act, Code of Conduct and Rules read in tandem. To argue otherwise would lead to an absurdity. He probably had allegedly contravened other provision/s relating to a dereliction of duty with respect to his responsibilities as a mentor. The Committee shall not dwell on these as it is not a matter for determination before it.

What remains is a determination based on a reading of the transcript whether the Tribunal had misdirected itself either on the facts or the law or both in dismissing this defence of the 2nd Appellant. Reference is made to para.2.6 of the Tribunal's ruling (p.10 Appeal Records1). In summarizing the evidence led at the hearing the Tribunal makes reference to the evidence of the 2nd Appellant with respect to him having countersigned the report and could not account for it's contents. The Committee is satisfied that the Tribunal had paid attention to this specific defence raised by the 2nd Appellant. It may be that in it's analysis in para.3 (p.11 Appeal Records 1) it had not alluded to this specific matter in detail as would appear to be the expectation of the 2nd Appellant but that does not detract from the fundamental enquiry relating to whether or not the Tribunal had misdirected itself. On the facts there was no dispute. It was common cause that it was the 1st Appellant who had drafted the report. It was also common cause that the relationship of mentor/mentee existed between the two Appellants. Furthermore, that the 2nd Appellant had signed the report. Based on the Committee's exposition of the relevant provisions of the Act, Code of Conduct and Rules it is apparent that the Tribunal had not misdirected itself on this aspect.

For completeness the observation the Committee made is that there would have been merit in the 1st Appellant raising this defence namely that it was not competent to charge him under the said section. The reasoning of the Committee will be dealt with *ad seriatim*.

In dealing with this ground, and having dismissed the 2nd Appellant's contention that he was wrongly charged under the relevant provision, it would be apt to dispose of the 1st Appellant's appeal. The matters traversed above have a bearing on the 1st Appellant's matter. An elaboration of those matters in relation to the 1st Appellant would result in finality and the findings *ad seriatim* of the Committee on whether or not the report was consistent with a standard or

approach would be inconsequential with respect to the 1st Appellant.
In determining the 1st Appellants appeal the Committee considered the essence of charge 1. The charge is framed in the alternative namely in the main contravention of clause 5(b) and in the alternative 5(g) of the Code of Conduct. The finding of the Tribunal in para.4(p.12 Appeal Records 1) states that the Appellants are found guilty on charge 1. It must be a reference to clause 5(b). The essence of the charge is that the conduct of the 1st Appellant in compiling the valuation report fell short of upholding the dignity, standing and reputation of the property valuers profession by maintaining a high standard of the professionalism, honesty and integrity. Distilled further, in the context of this matter, it is about maintaining a high standard of professionalism. There is no allegation nor evidence of any impropriety such as dishonesty or a lack of integrity. The enquiry must then go beyond looking at the valuation report and whether it complied with a standard or approach and proceed to address the crisp question: in drafting the report did the 1st Appellant, given his status of a Candidate Valuer as opposed to a Professional Valuer, held to the same high and exacting standards in measuring professionalism as the latter?

In responding to this question, the Committee had regard to the provisions of the Act, Rules and Code of Conduct already referred to and certain additional provisions contained in the Rules to illustrate that the bar which has been set for a professional is far more exacting than that applying to a candidate.

Reference is made to section 20(2)(a) and (b). The former deals with the requirements for registration as a professional whilst the latter that of a candidate. It is instructive to note that the distinguishing criteria relates to the requirement that a professional “has gained practical experience in property valuations in the Republic which is of the prescribed scope, variety, nature and standard”. Not so in the case of a candidate. The latter’s requirement is confined to what one may refer to as academic qualifications.

Proceeding from this provision of the Act one has to consider the Rules which specify and define the standards each of the respective categories has to meet in order to qualify for registration. Annexure C.1 contains the details regarding compliance with the requirements contemplated by section 20(2)(a)(iii) and shall not be repeated for purposes of this ruling. Save to state that the relevant

provisions contained in the said annexure to the Rules makes it abundantly clear that a high standard is set for a professional.

Turning to the findings of the Tribunal and the question whether on the evidence it had misdirected itself either with respect to the facts or the law or both. Whether or not the Tribunal had erred factually in holding that the Appellants had not met the required standard *vis-à-vis* the valuation report will be addressed further on in the ruling when dealing with the 2nd Appellants appeal. For present purposes and purely for argument assume the report did not meet the required standard or approach can the 1st Appellant be held culpable for contravening clause 5(b) of the Code of Conduct. Bearing in mind what was stated earlier the charge revolves around the failure/omission of the 1st Appellant in upholding a high standard of professionalism. Relying on Rule 8(1)(b) the instruction to prepare the report emanated from the 2nd Appellant. The sum total of the conduct of the 1st Appellant consisted of preparing a draft. The ultimate and we would venture to suggest exclusive responsibility of ensuring that the final report met the exacting standards or approach remained that of the 2nd Appellant.

Whilst the Tribunal probably got bogged down with the hefty arguments around the report it lost sight of a critical matter regarding the responsibility of the 1st Appellant and his culpability. Having regard to the evidence and the legal prescripts referred to the Committee finds that the Tribunal had misdirected itself.

In *Bernert v Absa Bank Ltd* [2010] ZACC 28; 2011 (3) SA 92 (CC); 2011 (4) BCLR 329 (CC) at para 106.
‘What must be stressed here, is the point that has been repeatedly made. The principle that an appellate court will not ordinarily interfere with a factual finding by a trial court is not an inflexible rule. . . . It should be used to assist, and not to hamper, an appellate court to do justice to the case before it. Thus, where there is a misdirection on the facts by the trial court, the appellate court is entitled to disregard the findings on facts, and come to its own conclusion on the facts as they appear on the record. Similarly, where the appellate court is convinced that the conclusion reached by the trial court is clearly wrong, it will reverse it.’

In the circumstances the 1st Appellants appeal is upheld.

Turning to the 2nd Appellant's appeal the matter for consideration is the following:
Whether on the available evidence and the application of the law the 2nd Appellant had contravened clause 5(b) of the Code of Conduct. The latter presupposes the following subsets:

a) Is there a standard which valuers are bound to apply in compiling valuation reports;
b) in the absence of a codified standard is there a generally accepted approach or guidelines;
c) was the Appellant aware of such a standard or approach or guideline;
d) did the report meet the standard or approach or guideline

Is there a standard or approach? Whilst evidence led before the Tribunal refers to a standard it is apparent that at the time a standard had not been adopted by the Council and codified. A standard was adopted subsequent to the commission of the contravention. The Respondent's case relies on a standard and in the alternative an approach utilized in the sector in compiling valuation reports. The enquiry should then revolve around the question whether or not a common or standard approach existed in the sector. The Appellant's vehemently argued that neither a standard nor a uniform approach existed and he was left to his own devices to adopt an approach which he deemed the correct one based on various instruments at his disposal. In this regard he challenged the evidence of Griffiths and contends that Cloete's evidence and the two valuation reports underscores his argument. So much is conceded by the Respondent. In the second paragraph of para.2.3 of the Respondent's Heads, Adv. Ledwaba states, quoting Griffith's testimony, "no specific written standard or approach to be used to compare the conduct of registered members for the purpose of misconducts complaints". He continues "what is available are guidelines obtained from various sources, including court rulings and literatures. Mr. Griffiths quoted one of the sources as being the International Valuation Standard("IVS")." Adv. Ledwaba refers to the evidence of the 1st Appellant in which he confirmed that the he had referred to the IVS in compiling the report. It was therefore common cause that neither a codified standard nor a common approach existed in the sector. Only guidelines. Be that as it may the argument

that each valuer is at liberty to compile a report as he pleases cannot be sustained. On the Appellants version they had relied on various sources in compiling the report including the IVS *albeit* at that point in time as yet not adopted by Council.

The next question must necessarily be: on the evidence was it established that the 2nd Appellant was aware of these guidelines. On the version of the Appellants, it is apparent that they were indeed aware. The Appellants had in their evidence made reference to the various sources they had relied on when compiling the report. A professional valuer is also expected to undertake continued education and training (CET) for development and ongoing education and training. This is mandatory and a valuer has to submit to the Council on an annual basis that he/she has undertaken the training to ensure the validity of his/her right to practice.

The argument that the Appellant was not aware of any standard or uniform approach is sound. The Appellant did not dispute that in the absence of the former and latter certain guidelines existed.

The guidelines are known in the sector and if followed should produce reports which are relatively uniform. Whilst it may not be one size fits all it can surely not be chalk and cheese. There has to be certain distinguishing common and material features contained in the reports compiled by different valuers

Did the 2nd Appellant meet the standard? The meaning of “standard” in this context is not a reference to the valuation standard. It is a reference to the standard of **professional** conduct expected of a professional valuer in the position of the 2nd Appellant. That of a reasonable valuer. The matter cannot be addressed in isolation. It has to be addressed with reference to the factual averments in the charge and the elements contained in clause 5(b) of the Code of Conduct. At the risk of repetition one of the factual averments is that “you failed to provide a properly motivated market related research, analysis and proper motivation of the comparable sales”. Extrapolate the latter with the material element of clause(5)(b) namely “maintaining a high standard of professionalism”. In addressing this matter, the Committee must refer to the valuation report itself (p.1-13 Appeal Records 3). Griffiths testified at length on

why he considered the report having fallen short of the guidelines and by extension what was expected of a reasonable valuer in the position of the 2nd Appellant. Reference is also made to his report (p.15-17 Appeal Records 3) in which he sets out succinctly the motivation for his conclusions. The Tribunal had at it's disposal the testimony of Cloete as well who testified on behalf of the Appellants. It is apparent from the findings of the Tribunal that the evidence of Griffiths was accepted. Again, it's failure to address in elaborate detail it's reasoning cannot be construed that it misdirected itself. On the contrary if one has regard to the ruling as a whole and with specific reference to paras. 3.2-3.5(p.11-12 Appeal Records1) it is clear that the Tribunal had evaluated the evidence tendered by the respective parties and found on a balance of probabilities that the Respondent had discharged it's onus. At the risk of repetition, the onus was to discharge on a balance of probabilities that the 2nd Appellant had failed to provide a properly motivated market related research, analysis and proper motivation of the comparable sales and hence had failed to maintain a high standard of professionalism. The Committee's perusal of the report which is the subject matter of these proceedings confirms that the report did not meet the guidelines.

With reference to the two valuation reports tendered by the Appellants to bolster their argument that there is no standard or approach, a few comments will suffice. As noted previously the Committee is not privy to the report of Alfa Valuation CC as the two reports in the bundle were compiled by A&Sons Property Valuers. They contend that these reports "disprove such a standard or reasonable valuer standards" (para. 4.25 p.12 of the Appellants Heads.) The Committee will not dwell any further on this argument save to re-iterate that indeed there is no standard nor approach but guidelines. The second argument is that "Appellants were contending that their valuation report is similar in many ways……." (para.4.27 p.12 of the Appellants Heads). Seemingly, this argument suggests that because those reports are similar to the one compiled by the Appellants it follows that their report is beyond reproach. This argument presupposes that the two reports are compliant. Not so in the absence of any evidence.

After a reading of this record, this Committee has no doubt as to the correctness of the Tribunal's findings with respect to the 2nd Appellant. We can find no

misdirection which warrants this Committee disturbing the findings of fact or credibility or law that were made by the Tribunal. The Respondent proved the guilt of the 2nd Appellant on a balance of probabilities, and the Tribunal correctly rejected the version of the 2nd Appellant as not reasonably possibly true.

7. ORDER:

7.1. The appeal of the 1st Appellant is hereby upheld;

7.2. The appeal of the 2nd Appellant is hereby dismissed. Both the conviction and sanction are hereby confirmed.

Dated at Pretoria on this the 9 day of April 2022.

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M.I. Motala
Chairperson
Members T. Myers and S. Loonat concur