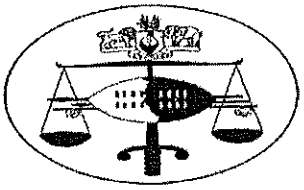


IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE Case No. 161/2022

In the matter between:

IRENE NXUMALO Applicant

And

ESWATINI ROYAL INSURANCE CORPORATION 1st Respondent

MUZIKAYISE MOTSA N.O. 2nd Respondent

Neutral Citation: Irene Nxumalo vs Eswatini Royal Insurance Corporation and Muzikayise Motsa N.O. (161/22) [2022] SZIC 92 (14 July 2022)

Coram: **L.L. HLOPHE–JUDGE**
(Sitting with Mr. M.P.Dlamini and Mr. E.L.B.. Dlamini – Nominated Members of the Court)

DATE DELIVERED: 14 July, 2022

SUMMARY: ***Labour- review of disciplinary Chairman's decision refusing to recuse himself-Whether case made for the recusal sought-employee undergoing a disciplinary exercise seeking to be allowed legal***

the disciplinary hearing-Whether case made for the relief sought-Applicant seeking a further order removing the chairperson of the disciplinary hearing convened to discipline her-Whether a case made for the relief sought-Interdict sought to restrain the Respondents from continuing with the disciplinary process- Whether case made for that relief.

JUDGMENT

INTRODUCTION

[1] The applicant, an employee of the 1st Respondent (Eswatini Royal Insurance Corporation) undergoing a disciplinary exercise following charges of gross neglect of duty resulting in a loss of about E780, 000, instituted the current proceedings under a certificate of urgency seeking the following reliefs:

a) **Reviewing, correcting and/or setting aside the ruling of the 2nd Respondent dated the 27th May 2022.**

b) **Removing the Chairperson of Applicant's disciplinary hearing with immediate effect and having a new Chairperson appointed to hear the disciplinary enquiry against the Applicant.**

c) **Directing the Respondents to Allow the Applicant legal representation in her said disciplinary hearing.**

d) **Granting Applicant leave to file a supplementary affidavit, should the said 2nd Respondent deliver his written ruling for legal representation during the course of these proceedings.**

e) **Interdicting and /or restraining the Respondents from proceeding with Applicant's disciplinary hearing.**

f) **That a record of proceedings be furnished to the Registrar of this court and the applicant within 3 days of service upon them of this application.**

g) **That prayers 4.5 and 6 above operate with immediate and interim effect pending finalization hereof.**

[2] It is important to record that this application is the third application arising from the same disciplinary process brought to this Court by the Applicant under a certificate of urgency. It is also important to record as well that the reliefs sought in all these applications are closely related with other such reliefs an overlapping between the various applications.

[3] These other applications were cases numbers 107/2022 and case number 63/2021.It suffices to mention as well that whereas in case number 63/2021 the applicant sought an order granting that access to certain documents for alleged use in her disciplinary hearing: in case number 107/2022 there had sought an order of this court in alia interdicting Respondents from proceeding with the disciplinary hearing scheduled for the 6th April 2022. There was also sought an order reviewing correcting and/or setting aside the ruling of the second Respondent delivered on the 31st March 2022.There had further been sought an order compelling the Respondents

her with at least six files and/or policies for various schemes issued under the 1st Respondent.

[4] It is noteworthy that from just the foregoing two paragraphs it looks like besides seeking to raise issues similar to those in the already decided matters, the Applicant appears to be seeking to have every decision of the disciplinary chairperson subjected to a review by this Court, which would be a regrettable step indeed. Such conduct on the part of a litigant turns to be a cause for serious concern as it tends to blur the lines between genuine applications aimed at indicating certain threatened rights and those aimed at either delaying the disciplinary exercise or to generally harass the other party.

[5] This comment we make taking into account that the relief seeking to have certain policies availed to the Applicant made in case number 63/2021 also found its way into case 107/2022 leading to the upholding of the point *in limine* on *res judicata* similarly most of the reliefs sought in the latter case are also repeated in the current matter. For instance whereas in case number 107/2022 there was sought the review correcting and setting aside of the decision or ruling made by the chairperson on the 31st March 2022,there is in the current matter a review of the decision or ruling made by the second respondent in his written ruling of the 16th May 2022 there was also sought an order interdicting the continuation of the disciplinary hearing of the applicant under case number 107/22 just as there is a similar order in the current proceedings.

BACKGROUND

[6] The Applicant says that the hereunder stated version is a basis for her case. That she was employed by the 1st Respondent on the 4th of September 2006 and is currently holding the position of Credit Life Officer. She was on the 19th November 2019, notified of charges of gross neglect of duty preferred against her by her aforesaid employer, which eventually led to her being subjected to a disciplinary process.

[7] She contends that her said disciplinary hearing was however being conducted in an unfair and grossly irregular manner which pointed to the chairperson being allegedly biased against her. She cited several specific incidents which according to her confirmed her contention that the Chairman of the disciplinary hearing was biased. Although it would be tidious and boring to mention all the instances she contends supported her conclusion that the chairman was biased, I can only give a brief summary of their nature for purposes hereof. It only suffices that all these instances are in the past and had been accompanying the necessary decisions taken by the 2nd Respondent which do not appear to have been challenged at the time of their alleged occurrence.

[8] She for instance claims that on the 31st March 2022 the 2nd Respondent conducted the disciplinary hearing in her absence and that of her representative, one Jabu Shiba, a member of the union she had joined at her work place. She said the two (2) of them had been taken ill at the time and to this end, she referred to annexure 'IR 3' and 'IR4', which are copies of the respective sick sheets.

[9] Despite that their said sick sheets gave them the 31st March, 1st ,6th and 13th April 2022 as sick leave days, on the Applicant's part and the 31st March together with the 1st April 2022 in the case of her representative, the 2nd Respondent had allegedly postponed her disciplinary hearing to the same dates. This she contended was a sign of bias on second Respondent's part.

[10] Although her matter had one way or the other been proceeded with on the 31st March 2022 and 1st April 2022, It could not be proceeded with any further because on the day preceding the one it was scheduled to be heard on, namely the 6th April 2022, she had on the 5th April 2022 approached the Industrial Court under case 107/2022 seeking *inter alia* the reliefs stated earlier in this judgment. This resulted in the matter being postponed to the 17th May 2022 together with an undertaking or order of Court directing that the disciplinary hearing was not going to be taken further pending judgment. The judgment in the matter was allegedly handed down on the 16th May 2022.Alleging not to have been aware of this development, the Applicant contends she attended the hearing believing it was to be postponed as according to her a judgment in case number 107/2022 had not yet been handed down. Also her representatives were not in attendance, as they had earmarked the day for something else. In their belief it was not ready for hearing, they not being aware the judgment in question had been handed down the previous day.

[11] Amidst her expectation the matter was to be postponed or delayed to enable her representatives who were not there to avail themselves, she claimed that the 2nd Respondent insisted on proceeding with the matter resulting in the first witness of the 1st Respondent being led in her evidence in chief

after which her testimony was postponed so as to enable her or her legal representative to cross-examine that witness on the return date.

[12] According to the Applicant the foregoing developments indicated bias on the part of the 2nd Respondent just as their exhibited conduct that was unlawful, unreasonable, and irregular and /or improper. This conclusion she says she reached because the 2nd Respondent had suggested he was not bound by her and her Respondent's sick sheets. This she contends meant that her right to a fair hearing, particularly that of her being heard and that of being represented by two representatives of her choice as guaranteed in the disciplinary code were being ignored. Her representatives were thus going to be unable to cross-examine the witness who had tendered his/her evidence in chief in the latter's absence. She further denied having ever waived her rights to being present during the hearing of her matter.

[13] Although she reacted to that development by asking, through her representatives, for the recusal of the 2nd Respondent, her Application in that regard was dismissed.

[14] It was partly in reaction to the ruling dismissing the application for recusal that this application was moved seeking the reliefs set out in the early paragraphs of this judgment as a basis for the prayer on review of the ruling refusing the recusal of the chairperson. She contends as herein after set out, that the 2nd Respondent committed an error of law and that he did not apply his mind fully on the issues. She says it was alleged for the first time in the ruling that her representatives had agreed that the matter would have to

proceed with or without her. She denies and maintains there never was such an undertaking.

[15] Even then she contends her hearing had been postponed to 31st March 2022 and 1st April on which dates she was not in attendance having herself been on sick leave. This issue of an agreement to proceed in the absence of her representatives she claims, had not been raised in case 107/2022 notwithstanding it was one of those matters where similar issues had indeed been raised. She contends it should have been acknowledged that she deserved to be present throughout her hearing irrespective of the business of the day inclusive of a judgment delivery or the delivery of evidence in chief.

[16] She maintained as well that had an impartial mind been exercised, her matter would not have been proceeded with on the 31st March and 1st April 2022.It would also have been realized she was entitled to be present together with her representatives whatever it is that was being done. She was also entitled to be represented only by the representatives of her choice in Gwebu and Shiba, hence it was improper for her to be represented by Shongwe and Nteteza as happened on the 17th May 2022. All the issues mentioned above were glaring, she contended and claimed that it was fair the second Respondent recused himself.

[17] As concerns her request to be legally represented, the Applicant stated the following in its support; the request was aimed at achieving justice on both sides. As the 1st Respondent was represented by two initiators who are lawyers by training, she felt she needed outside legal representation as well.

Her legal interests were therefore not considered at the same level as those of her counterparts. The issues raised above can best be confronted by a lawyer on her part, which will minimize the need for her to go to Court. She contends that the charge she is facing which speaks to a resultant loss of about E780, 000.00 (seven hundred and eighty thousand Emalangeni) to the Respondent is sufficiently serious and complex and warrants legal representation on her part. She contends that there was victimization at her workplace as only active union members were targeted and she feared losing her job over such a consideration. The charge can easily result in her dismissal hence her need for legal representation. Although not yet decided upon, she had already made this request to the 2nd Respondent and is thus awaiting a ruling. She requests to be allowed to file a supplementary affidavit should a ruling issue after she had filed the current application.

[18] It contended that the matter was urgent and that the Applicant stood to suffer an injustice if her matter was not dealt with as such. The hearing was already set to proceed on the 14th June 2022 which made it impossible to follow the normal procedure to have the reliefs sought dealt with. She needed some urgent relief so that she could be able to have her interest much sooner than later protected by a legally trained person. Unlike her, she submitted, the 1st Respondent stood to suffer no prejudice.

[19] She further claimed to be having a clear right to the order interdicting the Respondent's from continuing with her matter. She claimed to suffer irreparably if the matter was not heard as an urgent one. She also said she had no alternative relief save to approach this court. The balance of

convenience, she contended, favored that she be granted the relief she prayed for.

RESPONDENTS CASE

[20] For their part the Respondents started off by raising several points of law which they were at the time, obviously of the view, they be dealt with prior to the merits of the matter being considered. It is a fact that owing to the approach adopted, these points it was eventually agreed be dealt with together with the merits. This was obviously necessitated by the fact that all the papers had already been filed and would only delay the matter for it to be heard piecemeal. The idea is for the court to try and address each such point as may be necessary including the merits.

[21] Otherwise in its answer the to the Applicant's case as a whole, the Respondents denied the entitlement of the Applicant to any of the reliefs sought; it being contended further that this is a matter that should fail on the points of law without the merits being considered at all. It was argued that in so far as the Applicant sought a review of the decision of the second Respondent refusing to recuse himself, there was no established irregularity allowing the review of the decision concerned. It was contended that what can be deciphered from the Applicant's papers was more a dissatisfaction with the decision reached. That being the case, it was contended, the Applicants remedy lied in an appeal within the appeal structures provided than it was in a review before this court. Unlike an appeal, a review thrives on there being established irregularities committed in the cause of the decision.

[22] The facts as alleged by the Applicant were disputed. As a starting point, reasons had been advanced during the hearing and can be seen *ex facie* the ruling why the decision allegedly exhibiting bias was reached. It was denied that the matter was heard on the 31st March 2022, as well as on the 1st, 6th and 13th April 2022. While these dates were set in advance when they eventually arrived, the disciplinary inquiry only dealt with the aspect of it that did not necessitate a full blown- hearing. This was the handing down of a ruling in an objection previously made. This was on the 31st M[ar]ch 2022, otherwise on the 1st April 2022, it was postponed to the next hearing date the 6th April 2022.

[23] These developments were necessitated by the fact that on the 31st March 2022, 1st April, 6th April and 13th April 2022, the Applicant and her representative were both allegedly taken ill and were given sick leave in terms of their sick sheets. Rather strangely, the Applicants sick leave matched all the days meant for continuing with the hearing namely 31st March 2022, the 1st April, the 6th April and the 13th April 2022.Her Representative on the other hand had been given the 31st March 2022 and the 1st April 2022 as her sick leave days.

[24] It is common cause that whereas the 31st March 2022 was meant for continuation with the disciplinary hearing , it had also been earmarked for handing down a ruling to an objection previously raised by the Applicant, who had sought to be furnished with certain policies (it was a ruling pertaining to the application that the chair recuses himself from the hearing, he refused hence the application before court).It was decided that instead of postponing the matter as requested by the Applicant's representative, it

was fair to hand down the ruling by the 2nd Respondent. According to the 2nd Respondent's said ruling, it was felt that none of the parties would suffer prejudice including those who were not the particularly considering that two other representatives in Shongwe and Nteteza were there to note the developments.

[25] After the ruling the matter was postponed to the next day the 1st April for continuation. When the postponement was ordered to proceed with the matter on this latter day, the 2nd Respondent explained as follows;-

(i) As concerns the Applicant, it had allegedly been agreed as of the hearing of the 10th March 2022 that the matter would, on the days allocated on (which were the 31st March, the 1st April, the 6th April and the 13th April 2022), be proceeded with whether or not the Applicant or her Representative was in attendance. It was submitted that the handing down of the ruling in the Applicant's absence was partly because of the fact that no prejudice was going to be suffered and also partly because of the previous undertaking referred to above.

(ii) As concerns the Applicant's representative it was not immediately clear why she was not in attendance. On the 31st March 2022 the ruling was handed down considering that it was being reported by Shongwe and Ntenteza that she was going before a doctor to be treated. She was reportedly going to join the hearing at least some time later that morning. It was later postponed to be proceeded with on the 1st April 2022.Again this was in line with the previous arrangement and because she was going to avail herself at least no one on the dates concerned knew she has already been granted a sick leave.

[26] The dates to which the matter was postponed to were allegedly identified and were attached to the order for the postponement. What is important is that when this postponement was granted the current applicant and her representatives were put to terms that the matter would since then have to be dealt with and not be postponed again given the history of postponements it had been subjected to and that little progress had ever since been made. The Applicant and her representatives were allegedly told that part of the reasons for the postponements was to enable them or their alternative representatives take careful and in-depth instructions so that on the next occasion the matter would have to be dealt with. Further, that it should be avoided having the instructions concentrated only on the two representatives of the Applicant who had always been involved given that the matter was hardly progressing.(see paragraphs 40 and 49 of the 2nd Respondents ruling dated 27th May 2022 for these allegations, annexure IR6 to the founding affidavit) .The same advise was specifically directed to the Applicant who was advised to identify a fellow employee and brief him/her fully in this regard, so that on the next date he cannot raise as a reason the non-availability of his hitherto representatives.

[27] The matter could not proceed on various dates it had been set to proceed on between April 2022 and 17 May 2022 because of the Applicant not being properly represented.

[28] A significant step must be mentioned as having occurred on 10 March 2022, well before the postponement of the 1 April, 2022. It had occurred that whilst the disciplinary hearing was in full swing with one of the Respondent's witnesses being led, the Applicant was taken ill. When the

proceedings were adjourned and postponed on account of that sickness, an agreement was reached that in future the matter was going to proceed whether or not the Applicant or his representative was in attendance. This was allegedly reached on account of a realisation that the matter was not progressing as it should on account of the events outlined above, events or issues attributable to the Applicant. Her team was therefore to take careful instructions going forward so as to ensure that the delays where appropriate are minimised.

[29] The judgment under case 107/2022 was handed down on 16 May 2022, a day before the date allocated the disciplinary inquiry to proceed. Although the Applicant wants to suggest she was not aware same had been delivered, so as to clear the way for the hearing of the disciplinary matter to proceed on 17 May 2022, as allocated on 20 April 2022, Respondent argues it was impossible for the Applicant not to know that the disciplinary hearing was to be proceeded with on the 17 May 2022 because firstly it had been postponed specifically for that purpose on 20 April 2022. This fact was alleged to have been confirmed by the Applicant's representative Jimson Gwebu.

[30] It was therefore unreasonable for the Applicant's representative to have double booked the day of the 17 May 2022 so as not to be available for the disciplinary hearing which was previously ordered to continue. This was because unlike the Applicant and her representative who seemed to believe that a postponement was there for the asking, the real position was that same was only granted where there were compelling reasons necessitating the exercise of a discretion in that regard by the chairman. Clearly that

discretion would not be exercised in a case where despite all sorts of advices to the effect that the matter had to be finalised because it was taking forever and because the Applicant had to that end been warned to ensure she arranges with someone else to take the matter forward if the union representatives were not available including an allocation setting it down for continuation on the date, her representative still went on to double book the day with the Applicant apparently ignoring the advices given to her that the matter would be proceed with.

[31] So it was allegedly in the background of this consideration that the chairman of the disciplinary hearing refused a postponement of the matter and a standing down of it but ordered that it be proceeded with on the 17th May 2022. The other consideration was simply that proceeding with the matter was to be minimal in so far as only the finalisation or continuation with the evidence in chief of the 1st Respondent's witness on the stand was contemplated. There were three representatives of the Applicant present on that day and they would record the testimony of that witness to enable the one to cross examine on a subsequent date to do so. Even the electronic record could be sourced to enable such preparation.

[32] It was to this background that the application for the Chairman, the 2nd Respondent to recuse himself was moved with the Applicant alleging bias on his part for *inter .alia* ruling that the hearing of the disciplinary inquiry be proceeded with.

[33] The 2nd Respondent referred to law, particularly various decided cases on the circumstances under which a recusal would be allowed, a reference was

made to the judgment of **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS V THE SOUTH AFRICAN RUGBY UNION AND OTHERS 1994 (4) SA. 147 (C) AT PARAGRAPHS 36-39.** The question to be answered in such situations was, as therein recorded; *"whether, a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring about an impartial mind to bear on the adjudication of the case that is a mind open to persuasion by the evidence and submission of counsel."* We will revert to this aspect later on in this judgment.

[34] In response to the Applicant's prayer to be allowed legal representation, the representative contend mainly that, that prayer was prematurely sought before this Court. this is because an application to that effect had already been moved before the 2nd Respondent who was still considering same and he claims he was disrupted from issuing his ruling in that regard by the Applicant moving this application. All the motivation for Legal Representation done before this Court it was argued, ought to have been done before the chairperson of the disciplinary hearing who was fully equipped to deal therewith. The case of **GRAHAM RUDOLF V MANANGA COLLEGE INDUSTRIAL COURT CASE NO. 94/07** was cited in this regard.

ANALYSIS OF THE EVIDENCE AND THE CONCLUSION DRAWN

[35] With regards the Applicant's main prayer, namely the review of the ruling of the 2nd Respondent refusing to recuse himself, it is difficult to see the facts that establish the bias relied upon by the Applicant. The first difficulty with that particular issue is that it is based on previous incidents or encounters In which the chairperson ruled in a particular way at the time with no immediate challenge except to try later on to use them in reverse as pointing to bias on the part of the 2nd Respondent. Principally there are

two incidents which made the Applicant conclude that the 2nd Respondent was biased. In both of these incidents he had ruled against her. There are however numerous incidents in which he is shown to have decided in her favour as manifested in the numerous postponements granted her, so much so that a matter that a disciplinary hearing commenced in 2019 has still not gone beyond giving evidence in chief by the first initiator's witness some three years later.

[36] The two (2) principal incidents complained of and which form the foundation of the recusal are following;

(i) continuing to hand down a ruling on the 31st of March 2022 together with the postponement of the matter to the next day the 1st April 2022 for continuation and;

(ii) the refusal to postpone the matter on the 17th May 2022.

[37] If the handing down of the ruling on the 31st March 2022 in the absence of the Applicant and her representative who had curiously both been taken ill on the same date earmarked for the continuation of the matter is taken to be a sign of bias, we are convinced that the explanation put forth by the respondent and set out above to the effect that it was decided that the ruling be handed down in those circumstances because no one was suffering prejudice as a result and that it was to enable the parties postpone for the next hearing date so as to take the long suffering matter forward, was sufficient. The irregularity complained of in review proceedings of this nature is not the kind of irregularity pointing to the less than perfect conduct than it is one that points to an irregularity with consequences that are serious and prejudicial to the other side. That is perhaps why at times there is usage of the term gross irregularity. The point being made is that the conclusion of bias based march on the delivery of a ruling by the chair

of the disciplinary hearing without any prejudice occurring to the complaining party cannot stand. It is tenuous and cannot in our view lead to the reviewing and setting aside of a *bona fide* decision, made in the interest of progress without anyone suffering prejudice.

[38] On the second alleged irregularity so as to found the review namely that the 2nd Respondent postponed the matter to the next day the 1st April 2022, notwithstanding that that date was part of the Applicant and her representative's sick leave days, we do not think that one can really reach such a conclusion when confronted with the fact that the date in question was part of several other dates identified as far back as the 10th March 2022,as the dates on which the long suffering matter was to be proceeded with. It makes it stronger that unlike the patently false contention by the Applicant that it was known as of that day what their sick leave days were, the leave days of her representative were not known at the time given that her sick sheet was only handed up to the chairperson on the 1st of April 2022 during the hearing. Further, and this relates to both Applicant and her representative, it had been argued, that after the hearing of the 10th March 2022 referred to above that the matter would have had to be proceeded with whether or not any of the parties was present given that it was about first witness for the initiator after three (3) years, completing her evidence in chief and being possibly cross-examined: both of which procedures do not necessarily prevent the, continuation with a matter if the parties were agreed.

[39] It is stronger that other than the postponement to the 1st April 2022, which in itself was allegedly in line with earlier agreements and or undertakings,

nothing of consequence occurred to the prejudice of the Applicant. It is common course the matter was postponed to some later day without any prejudicial step having been taken against the Applicant. The facts in fact show the Chairman deciding the argument made at the time about the postponement or continuing with the hearing being decided in favour of the Applicant. That would ordinarily not show or prove bias against a party.

[40] As concerns the subsequent proceeding with the matter in the absence of the Applicant's representative because the latter had double booked the date for hearing the matter; we do not see how what happened there in its proper context can be taken to have indicated or proved bias. The Applicant's representative was the one to blame considering that the date had been set as a date for continuation with the matter in the context, where it had been accepted by all the parties, extra ordinary measures, such as proceeding in the absence of the parties or their representatives on a given date would have to be embarked upon to ensure the matter was being taken forward and closer to submission. This conclusion it is common cause, was reached on the 10th March 2022. It only makes it worse that the Human Resources Manager of the 1st Respondent had written to the concerned parties and confirmed that the hearing which had been set down with emphasis to proceed on the 17th May 2022, was indeed going to continue on that day at 0930 hours in the forenoon.

[41] That the Applicant's representative had unilaterally taken a decision to double book the date and give preference to another matter and decide to have the hearing set as a second matter for that day was irregular on the part of the Applicant and her representative. It cannot be used to benefit the author of the problem, the Applicant, particularly in the face of the

previous agreement that robust measures had to be embarked upon in order to take the matter forward.

[42] We are therefore of the firm view that the applicant has not shown any partiality by the 2nd Respondent in the manner he dealt with the application that he recuses himself. The 2nd Respondent has in our view established a credible case entitling him to have dealt with the matter in the manner he has done.

[43] We are bolstered in our view by the fact that even if the Respondent had not really been able to explain the supposed irregularities, a case had not been made in our view showing reviewable irregularities on the part of the 2nd Respondent. We say this because the Applicant is merely shown as one expressing dissatisfaction with the decisions reached by the 2nd Respondent than that they were irregular justifying a review. We dare say that even if it were to be shown that the 2nd Respondent was incorrect in the decision he had reached refusing to recuse himself that would certainly be a matter for appeal within the 1st Respondents' appellate structures as opposed to one for review. The position is now settled that it is an appeal that concerns itself with the correctness of a decision or ruling unlike a review which concerns itself with the validity of same. The then Swaziland court of Appeal judgment in ***TAKHONA DLAMINI V THE PRESIDENT OF THE INDUSTRIAL COURT AND OTHERS CASE NUMBER 23/1997*** is in support of this point.

[44] We cannot even consider whether in the circumstances of the matter we should order the 2nd Respondent to recuse himself as indicated above and as supported by numerous judgments of this court. This issue is a preserve

of a disciplinary Chairperson to decide it, with this court having to be approached via a review, where exceptional circumstances on why the question has to be decided by it having to be established. None have been established in this matter and the review on that question cannot succeed. See the judgment of **SAZIKAZI MABUZA V STANDARD BANK OF SWAZILAND LIMITED AND ANOTHER CASE NO.311/07.**

[45] We comment in passing that we find the submission by the Respondents' counsel plausible when he says that if the applicant had an issue with the second respondent's having allowed the matter to proceed in their absence, it was encumbent upon the Applicant to apply before the 2nd Respondent that what had been said in her Representative's absence be expunged from the record and that the witness, be allowed to commence *de novo*. That is for the Applicant to consider assuming she is advised that such a case can be made.

[46] On the prayer that the Applicant be allowed legal representation, we agree that it is a settled position in this jurisdiction that such a request should be directed to the Chairperson. We note that whereas that request was made to the 2nd Respondent, a ruling is still awaited. We agree that in such a case, it was premature for the Applicant to then rush this request on this court. There is value in allowing deserving questions to be addressed by deserving structures. The ***Graham Rudolf v Mananga College case is authority*** on who should decide the question of representation in internal hearings by a legal representative, including under what circumstances this court would intervene.

[47] On the prayer for an interdict to be granted, we find that prayer to be rather strange in the circumstances of this matter. This is because this Court per Ngcamphalala A.J. dealt with the same question in case 107/2022 where it was dismissed. We find it improper that this same question is being raised again which makes one ask the question whether such was being done to cause judges to publicly disagree. That is untenable, for that we do not see the clear right or even the *prima facie* right entitling the applicant to this remedy, We are convinced that in the context of this matter this Court is *functus officio* it having fully and finally decided this question and we feel we need say no more in this regard.

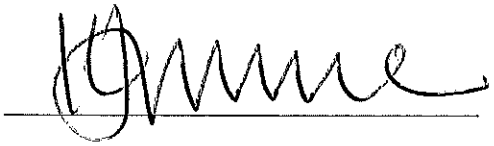
[48] Whereas we acknowledge that various points of law were raised, we are of the view that given the approach adopted by the parties of having the matter heard in its entirety taken against the nature of the points *in limine* which are the type that gets decided as one deals with the merits, there would be no need for us to deal individually with such points and even to deal with them outside the main application. It merits mention that the parties agreed as the hearing commenced that we should consider the point on urgency as having fallen away, we have adopted that approach.

[49] Consequently, we have come to the conclusion that the application cannot succeed. Given the repeated applications brought before this Court in circumstances which indicate total lack of merit including some reliefs being sought in all the applications which are indicative of an abuse of the Court process, it seems appropriate that we must warn the Applicant as the unsuccessful party that if a similar trend of abuse- of Court process is

followed, this Court shall not hesitate to slap her with costs which may even be at a punitive scale to express its disappointment.

[50] Accordingly Applicant's application is dismissed with no order as to costs.

The Members agree.



L. L. HLOPHE
JUDGE- INDUSTRIAL COURT

FOR APPLICANT: Mr. N. Dlamini
(BS Dlamini and Associates)

FOR RESPONDENT: Mr. S. Simelane
(SM Simelane and Company)