IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No. 45/2014

In the matter between:

THE PRINCIPAL SECRETARY, MINISTRY OF	
PUBLIC SERVICE	**1st Applicant**
THE MINISTER OF PUBLIC SERVICE	**2nd Applicant**
THE MINISTER OF FINANCE	**3rd Applicant**
THE ATTORNEY GENERAL	**4th Applicant**
And	
XOLILE SUKATI	**Respondent**
In re:	
THE P. S. FINANCE	**1st Respondent**
MINISTER OF PUBLIC SERVICE	**2ndRespondent**
THE MINISTER OF FINANCE	**3rd Respondent**
THE ATTORNEY GENERAL	**4th Respondent**
And	
XOLILE SUKATI	**Respondent**

Neutral Citation: *The Principal Secretary, Ministry of Public Service & 4 Others v Xolile Sukati In re: The Principal Secretary, Ministry of Finance & 3 Others (45/2014)* [2015] SZSC 38 (29 July 2015)

Coram: DR. B J ODOKI JA, JP ANNANDALE AJA, QM MABUZA AJA, R CLOETE AJA and SA NKOSI AJA

Heard: 29 June 2014

Delivered: 29 July 2014

JUDGMENT

S. A. NKOSI, AJA

[1] The Applicant in this matter brought an application by way of Motion for review of the decision of this court handed down on the 3rd December 2014 by Moore JA sitting with Ebrahim JA and Dr. Twum JA.

[2] In terms of the said application the Applicant seeks the order from this court as follows:

"1. Staying the execution of the judgment of the above Honourable Court, handed down on Wednesday 3rd December 2014, pending the finalization of the review application.

2. Reviewing, correcting and setting aside the judgment of the above Honourable Court handed down on the 3rd December 2014 in the matter between the Principal Secretary, Ministry of Public Service and 3 others vs Xolile Cynthia Sukati, Supreme Court Case No. 45/2014.

3. Calling upon the respondent to show on a date to be fixed by the above Honourable Court, why the decision of the Supreme Court of Swaziland made on 3rd December, 2014, should not be stayed pending the finalization of the application for review.

4. Directing that prayer 1 operate as an interim order, and that a *rule nisi* hereby issue returnable on a date to be determined by the above Honourable Court.

5. Cost of the application in the event the application is opposed.

[3] When the matter was argued before us Mr. Kunene for the Applicants did not bother to pursue prayers 1, 3 and 4 but rightfully concentrated his argument on prayer 2 of the application.

The Applicants' Case

[4] In support of the application for review the 1st Applicant, Mr. M. E. Madlopha filed an affidavit dated the 5th January 2015. In this affidavit

the 1st Applicant outlines, at paragraphs 2 to 6 thereof, the background facts to the matter from its inception at the High Court to the current application.

[5] At paragraph 8 of the Founding Affidavit the 1st Applicant states:-

> **"The application for the review and setting aside of the decision of the Supreme Court is brought in terms of 148 (2) of the Constitution of the Kingdom of Swaziland which provides:-**
>
> > **"(2) The Supreme Court may review and set aside any decision made or given by it on such grounds and subject to such conditions as may be prescribed by an Act of Parliament or Rules of Court".**

[6] The 1st Applicant goes on at paragraph 11 to say that:

> **"It is submitted that good cause exists for the Supreme Court to exercise its discretion and grant a stay of execution of the judgment of the Supreme Court on the basis that serious injustice would result if the judgment of the Supreme court were to be enforced" (My underlining).**

[7] The 1st Applicant's contention that the Supreme Court made a fundamental error of judgment pertaining to the issue of the jurisdiction of the High Court to hear the matter is to be found at paragraphs 12 and 13 of the Founding Affidavit. The point as argued was to the effect that the High Court did not have jurisdiction to entertain the matter as it arose from an employer and employee relationship and in the cause of such

employment. Further that the grading and payment of salary is governed by the Employment Act.

[8] Much is said by the 1st Applicant on the issue that the Cabinet does not employ civil servants. Thus, the argument goes, it was wrong for the Supreme Court to have found that Cabinet was the approving authority for the appointment of the Respondent into the position of Senior Personal Secretary at Grade B7. Tied up to this the 1st Applicant makes an interesting statement relevant to the approval of the Respondent's new post by Cabinet. At paragraphs 14.2 and 14.3 of his affidavit he says:

> **"While this was done within the context of the employment relationship, it does not imply that Cabinet is the appointing authority…The authority that was obtained from Cabinet then enabled the appointing authority, which is the Civil Service Commission in this case, to effect the promotion of the officer to a position that exists in the Establishment Register on Grade B6. Only the Civil Service Commission could correct the error that was made on the grading of the position, after having confirmed the correct grade from the Establishment Register".**

[9] In his assertions the 1st Applicant doggedly pursues his line of reason at paragraph 15 where he states:

> **"15. The Supreme Court further erred and misdirected itself in holding that a legitimate expectation had been made to the applicant about her salary grade. The Respondent ought to have been aware that the grade of Senior Personal Secretary is an established position that exists in the Establishment Register on Grade B6. This grade was arrived at after a**

proper evaluation of the job worth of Senior Personal Secretary had been carried out. All other Personal Secretaries within the Public Service are on Grade b6. There is therefore no way in which the Respondent could have expected her position to be graded differently from the others.

15.1 The court failed to consider the fact that the error in the grading of the Respondent's position was rectified by the appointing authority within a reasonable period of three weeks.

16. The Justices never took into consideration any of the submission by the applicant which is grossly unreasonable under the circumstances.

17. The Supreme Court committed a gross irregularity in finding that the Cabinet decision remains valid and executable in the absence of any authority higher than the cabinet undoing the decision of the Cabinet.

18. It is correctly and humbly submitted that the decision by the Honourable Justices is with respect misleading and gross irregular for failing to consider the viral evidence that the matter was referred to Cabinet to request the filling of the grades which only the line Ministry knew".

[10] The rest of the contents of the Founding Affidavit are of no consequence at this stage as they are submissions on an application for a stay of the execution of the Supreme Court's judgment. This application was interlocutory and never did see the light of day. Hence I shall not deal with such application in this judgment.

[11] The Respondent, who in this matter is now represented by an Attorney pull no punches as, she answers the Applicant's contentions in her Answering Affidavit. The Respondent firstly raises certain points *In Limine* as follows:-

> **"4.1 The application by the Applicants is defective for failing to disclose any irregularity or misdirection in the judgment of the SUPREME COURT. If anything, the Applicants are only seeking to have a second bite to the cherry, being unhappy with the judgment of the Supreme Court.**
>
> **4.2 The JUDGMENT of the Supreme Court is clear and unambiguous. What the Honourable Court stated in simple language is that the matter and/or dispute between the parties is not one that <u>involves an employer and employee</u> which would have necessitated that the matter be resolved by the Industrial Court in terms of Section 8 (1) of the Industrial Relations Act, 2000 (as amended).**
>
> **4.3 Accordingly, if there was no dispute between employer and employee, then it was unnecessary to refer the matter to the Industrial Court for determination as required by the Industrial Relations Act, 2000. The High Court was therefore competent to determine the dispute between the parties herein.**
>
> **4.4 There is no dispute between the employer (Civil Service Commission) and the employee (Respondent). The dispute is between the present Applicants who are refusing and/or declining to <u>implement</u> a decision taken by the employer in favour of the employee (Respondent in present proceedings). It will be submitted during the hearing of the matter that what is important to note is the complex structure in which the CIVIL SERVICE**

and/or GOVERNMENT operates. There are those tasked (by the Constitution) to take decisions, in this case the CSC, and the decision already taken lawfully. This is a case where those tasked with the responsibility of implementing decisions (Applicants herein are simply declining to recognize and give effect to lawfully taken decisions. It is therefore not a dispute between employer and employee.

4.5 The Supreme Court Judgment was delivered on the 3rd December 2014 and the present application was only launched in March 2015, almost 3 months later. For all the 3 months, the Applicants have been willfully and knowingly refusing to comply with the Supreme Court Judgment and thus acting in contempt of the very same Court in which they are now coming to seek redress. The Applicants are therefore in contempt and are approaching the above Honourable Court with dirty hands".

[12] In my view it seems that the Respondent's case revolves around these issues. The balance of the contents of her affidavit are direct answers which tell a contrary view from the allegations contained in the Applicant's Founding Affidavit.

[13] At this juncture it may well be the time to look to the power conferred upon this court by Section 148 (2) of the Constitution whilst taking into consideration the issues raised by the parties in their respective affidavits.

[14] Before we explore this aspect, it will be well worth the effort to look into the initial argument by the Respondent that, apart from the merits,

> **"Section 148 (2) of the Constitution anticipated that these would be an Act of Parliament of Rules of Court to regulate the circumstances under which a judgment of the Supreme Court can be reviewed".**

[15] This a rather novel argument particularly because the Respondent goes on to intimate that this court cannot apply the Rules of the High Court. Respondent simply states that:-

> **"The Supreme Court is an independent and Superior Court and cannot be bound by rules of the High Court. It is therefore submitted that since the Supreme Court is the highest and final Court of Appeal in Swaziland, the common law grounds of review applicable at the High Court cannot find application under Section 148 (2) of the Constitution, unless special grounds which are to be stated in the yet to be promulgated Act of Parliament and Rules of the Supreme Court are alleged".**

[16] The Respondent's argument in summary concludes quite logically, that the end result of the lack of Act of Parliament or Rules of this Court to regulate the review power vested by Section 148 (2) of the Constitution is that this Court cannot exercise the power to review its own decisions. This is so, as the argument goes, because in order for the Court to invoke the provisions of Section 148 (2), somewhat the tools to implement such provisions must be availed to this Court prior to it being able to exercise any review power.

[17] As I have observed this approach is original yet unconventional. However, I have no doubt that innovative though it may be, it is not legally sound nor is it a true reflection of our law. This Court is invested with the inherent power/jurisdiction to initiate, examine and consequently confirm or set aside any decision that it has previously made. To suggest that the High Court can revisit its decisions in terms Rule 42 of the High Court Rules, yet deprive this court of any such power is not a legally sound argument.

[18] For purposes of completeness let us examine certain authorities and compare the experiences of other jurisdictions on this particular question of review as per Section 148 (2) of our Constitution. This may as well enable us to break ground and begin formulating our own jurisprudence (theory and practice) that may develop the body of law in this legal sphere of review. Not only is it the power or jurisdiction derived from the constitution but also emanates from the common law principles which have always existed prior to Section 148 (2) being promulgated.

[19] For the purposes of the inquiry I shall draw heavily (almost verbatim) from my previous research conducted in respect to another matter where this Court dealt with the same points, the question being when and how

does this Court exercise its inherent jurisdiction to review its own decisions from a statutory and a common law perspective.

[20] The power of this court to review its own decision is predicated on the old Roman *exceptio res judicatae* as espoused in ***Betram v Wood (1893) 10 SC 172***. The doctrine of *res judicatae's* salient features are that, as a matter of broad principle, once a matter has been adjudged, effect must be given to that final judgment. In the Betram Case, the Supreme Court of the Cape of Good Hope at page 180 observed;

> **"The meaning of the rule is that the authority of res judicata includes a presumption that the judgment upon any claim submitted to a competent court is corrected and this presumption being juris et de jure excludes every proof to the contrary. The presumption is founded upon public policy which requires that litigation should not be endless and upon the requirements of good faith which, as said by Gaius, does not permit of the same thing being demanded more than once. On the other hand, a presumption of this nature, unless carefully circumscribed, is capable of producing great hardship or even positive injustice to individuals. It is in order to prevent such injustice that the Roman law laid down the exact conditions giving rise to the exceptio rei judicatae"**

[21] It is thus competent to rationalize Section 148 (2) as an exception to the *res judicatae* doctrine. The section must as of necessity be applied with caution as it goes against the underlying principle that the court must prevent the recapitulation of the same action and must always endeavour to put a limit to needless litigation. It must ensure that certainty is

maintained in cases which have been decided by the courts. Therefore where any cause of action has been prosecuted to finality between the same parties, any attempt by one party to bring the matter to the court on the same cause of action should not be permitted. "The rule appears to be that where a court has come to a decision on the merits of a question in issue, that question, at any rate as a *causa petendi* of the same thing between the same parties, cannot be resuscitated in subsequent proceedings" per **Herbstein and Van Winsen The Civil Practice Of The High Courts And The Supreme Court Of Appeal Of South Africa, 5th ed, Vol 1, 2012 at page 610 footnote 149. See National Sorgum Breweries v International Liquor Distributors 2001 (2) SA 232 (SCA), African Farms and Townships v Cape Town Municipality 1963 (2) SA 555 (A)**

However the principle must be applied in a manner which delimits and prevents hardship and actual injustice to a party.

[22] Having said that it's without doubt that the Constitutional provision on review, i.e., Section 148 (2), constitutes a vital statutory departure from the doctrine of *res judicata*. There is substantial authority to the effect that the doctrine must not be applied rigidly as if it were an entrenched and unyielding rule in all circumstances. In ***Smith v Porritt and Others***

2008 (6) SA 303 (SCA) at paragraph 10 Scott JA gave an outline of the gist of the exception to the *res judicata* doctrine;

> **"The ambit of the *exceptio rei judicata* has over the years been extended by the relaxation in appropriate cases of the common – law requirements that the relief claimed and the cause of action be the same…in both the case in question and the earlier judgment …Each case will depend on its own facts and any extension of the defence will be on a case-by-case basis…Relevant considerations will include questions of equity and fairness not only to the parties themselves but also to others. As pointed out by de Villiers CJ as long ago as 1893 in Betram…unless carefully circumscribed [the defence of res judicata] is capable of producing great hardship and even positive injustice to individuals".(As quoted by THERON AJ in the case of Thembekile Molaudzi v The State [2015] ZACC 20 at para 23)".**

[23] From the foregoing the position is that the doctrine of *res judicata* must for all intents and purposes be upheld unless there is a very real likelihood that a litigant will be denied access to the courts and the net result will be an injustice to that litigant. See ***Bafokeng Tribe v Impala Platinum Ltd 1999 (3) SA 517,*** and also see ***Kommisaries van Binnelandse Inkomste v Absa Bank Bpk 1995 (1) SA 653 (SCA).***

[24] In the case of ***Molaudzi, Theron AJ*** explores the theme of exceptions to the res judicata as represented in other jurisdictions. His research is highly instructive and worth noting as this court seeks to develop its own jurisprudence on the *exeptio res judicata*:-

"In the United Kingdom, res judicata is known as cause of action estoppel or issue estoppel. In rare instances the court may reconsider its own pervious judgments. In Pinochet, the House of Lords observed:-

> **In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this house. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered.**

However, it should be made clear that the house will not reopen any appeal save in circumstances where, through no fault of a party, he has been subjected to an unfair procedure. Where an order has been made by the house in a particular case there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong.

Lower courts have later made similar findings. In Taylor, the civil division of the Court of Appeal held that:-

> **The need to maintain confidence in the administration of justice makes it imperative that there should be a remedy. The need for an effective remedy in such a case may justify this court in taking the exceptional course of reopening proceedings which it has already heard and determined. What will be of the greatest importance is that it should be clearly established that a significant injustice has probably occurred and that there is no alternative effective remedy. The effect of reopening the appeal on others and the extent to which the complaining party is the author of his own misfortune will also be important considerations.**

After Taylor, the Civil Procedure rules were adapted to explicitly provide for the reopening of "a final determination".

In Singapore, the Court of Appeal distinguishes between its powers regarding criminal and civil appeals. With regard to criminal appeals it appears to consider itself a creature of statute and not equipped with the power to revisit

any final criminal decisions. In respect of civil matters, it finds that it has inherent jurisdiction to achieve a variety of results. This distinction has been criticised as artificial and without basis.

In India, article 137 of the Constitution provides:-

> **Subject to the provisions of any law made by Parliament or any rules made under auricle 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.**

The Supreme Court of India has held that this power is reserved for the correction of serious injustice. It is for the correction of a mistake, not to substitute a view. The ordinary position is that a judgment is final and cannot be revisited. The power to review is statutory. It can be exercised when there is a patent and obvious error of fact or law in the judgment. The injustice must be apparent and should not admit contradictory opinions.

The general thrust is that re judicata is usually recognized in one way or another as necessary for legal certainty and the proper administration of justice. However, many jurisdictions recognize that this cannot be absolute. This is because "[t]o perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience"

[25] The constitutional provision that empowers this court to review decisions made by this very court is very similar to that of India. The Indian experience is instructive and provides this court with sufficient reason to adopt similar guidelines for the invocation of Section 148 (2). This court has inherent jurisdiction which anyhow has always cloaked the court with the power to invoke the *exeptio res judicata* as a common law principle. The statutory jurisdiction to revisit its own decisions under the

constitution is merely an extension of the court's inherent jurisdiction. It is thus clear that in order for the court to exercise the statutory jurisdiction it must exercise similar caution so as not to open the gates to a flood of proceedings which are by their nature appeals disguised as reviews. The constitutional provision certainly was not promulgated to allow litigants to have limitless opportunities of re-opening cases which have been adjudicated to a finality.

[26] It is therefore imperative that the law be laid down to reflect current and burgeoning legal theory and practice. The statutory power to review must be exercised when there is a patent and obvious error of fact or law. In the judgment ***A.T. Sharma v A.P. Sharma A.J.R 1979 SC 1047*** the Supreme Court of India held:-

> **"It is true there is nothing in article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be provoked by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits" (M/s Northern Indian Caterers (India) Ltd v Lt Governor of Delhi AIR 1980 SC 674)".**

[27] It is instructive that Counsel for the Applicants addressed the Court on the applicable law and in their Heads of Argument the Applicants state:-

> **"A court on review will only 'correct' the decision of the original decision-maker in exceptional circumstances. Hiemstra J in the Johannesburg City Council case mentions three circumstances where 'correcting' would be justified. These are that the end result is a foregone conclusion, and it would be a waste of time to remit the decision to the original decision-maker; where further delay would cause unjustifiable prejudice to the applicant; and where the original decision-maker has exhibited bias or incompetence to such a degree that it would be unfair to ask the applicant to submit to its jurisdiction again".**

[28] I agree with Counsel, but only in so far as to maintain that thus court must bring this matter to a finality, one way or another.

[29] Having dealt with the true legal position it is now evident that this court can and has an entrenched obligation to review its own decisions in circumstances where the dictates of equitable justice demand that it does so. This is so in terms of common law principles and Section 148 (2).

[30] Given that is the position, in *casu*, the question becomes, have the Applicants made out a case for review in terms of their Notice of Application and founding papers?

[31] In order to find out the answer, it will be well worth it to look at the reasoning behind the applicant's argument that they are entitled to review the decision of this Court as handed down by the learned S.A. Moore J.A. on the 3rd December 2014.

[32] The first complaint advanced by the Applicants is that the high Court did not have the jurisdiction to hear the matter. The question of jurisdiction was argued by Counsel for the Applicants at some length. With due respect I cannot see the need to labour the issue of jurisdiction as it was adequately dealt with by the court in its judgment of the 3rd December 2014. The Court a quo on the merits determined that the matter was not one as between employer and employee. At paragraphs [10] to [12] of the judgment Simelane J, states:-

> **"[10] It is clear that the CIVIL SERVICE COMMISSION is the one tasked with the employment relationship between it and the Applicant. In the matter at hand it does not feature nor is there any prayer sought against it.**
>
> **[11] The cause of Applicant's argument centres CABINET DECISION which comes from a body that does not employ public officers.**
>
> **[12] It follows from the foregoing consideration that I dismiss this point".**

[33] Moore J.A., again on the merits, considers this argument and comes to the conclusion that the matter arose due to a decision of cabinet. In fact the

finding would seem to be that premised on **The Lesotho Case, Attorney General & Others v Makesi & Others [2000-2001] LAC 38**:-

> **"The Friedman JA (Gauntlett JA and Ramodibedi JA concurring) in the Attorney General case (supra) held as follows:**
>
> > **This appeal must accordingly be approached on the basis that the Cabinet decision remained unchanged. I interpose here to point out that had not been the case, i.e. had the Cabinet reversed its decision, applicants would have been entitled to contend that they had a legitimate expectation that the decision would not be altered without affording them a hearing. They were not given a hearing. Consequently, had the decision been changed, applicants would have been entitled to have the decision to reverse the earlier decision set aside and an order that it be reconsidered after having given applicants a fair hearing on an issue which clearly adversely affected their rights. See *Attorney General of Hong Kong v Ng Yuen Shiu [1983] 2 All ER 346 (PC)".***

[34] The Applicant in their Heads of argument states as follows:-

> **"17. The Applicants' case had always been that the respondent's matter falls within the exclusive jurisdiction of the Industrial Court. The jurisdictional point is predicted on the fact that the amendment in the respondent's grade B7 to B6 was affected by the CSC *qua* employer and not by anyone of the applicants. The respondent's case was that B7 March 2013 the CSC through form 7 (a) promoted her to grade B7 in the post of Senior Personal Secretary with effect from 1 November 2011 and this court made an order to that effect (See paragraph 22 (ii) and (iii) of the judgment-page 34**

of the book). On 15 March 2013 the CSC amended Form 7 (a) by changing the grade to read B6 instead of B7. It is this amendment which prompted the respondent *qua* employee to seek redress from the High Court.

18. This court granted a declaratory order that Cabinet had approved the filing of Post Title Senior Personal Secretary (Judiciary) at Grade B7. We submit that the CSC is substantially interested in the filling of this post. This interest is derived from Section 187 of the Constitution.

19. The court further ordered that the respondent was promoted to the post of Senior Personal Secretary on Grade B7. The effect of this order is to set aside the CSC's decision to change the grade from B7 to B6. This order cannot be carried into effect without prejudicing the interests of the CSC".

[35] The Applicants here fail to clearly articulate to this Court as to why it should interfere with a finding on the merits. It seems to me that the cause of action regarding the validity of the appointment was duly argued. I re-iterate that in terms of the law as stated at paragraph 21 herein, this matter cannot be allowed to be resuscitated in these subsequent proceedings. The learned Moore J. A. considered this aspect as per the above quote. Further how is it that the Applicants cannot appreciate that as a matter of fact the ultimate decision regarding the promotion was indeed taken by Cabinet. If the Civil Service Commission's decision to change the Respondent's grade from B7 to B6

is to be given validity, why then did such decision not go to Cabinet for approval of the down grading.

[36] What about the context of a legitimate expectation. Given that Cabinet had approved the promotion and the B7 grading, would it not have been proper, in any event, to afford the Respondent a fair hearing on the issue as it clearly does have an adverse effect on her rights. I believe that this is the position. However since the Civil Service Commission and the Applicants for that matter have had a long time to obtain the approval of Cabinet for the downgrading of Respondent to B6, but have not obtained such approval and since she was not given her right to be heard at that level when the Civil Service Commission purported to downgrade her, these issues tend to be moot. No value can be achieved by further discussion.

[37] I cannot see any further valued in addressing the issue of joinder. Surely the onus could not have been on the Respondent to join the Civil Service Commission in her initial application. Her contention is, rightly so, that the issue is that the Applicants are failing to execute an executive decision of the Cabinet. Even if the Chairman of the Civil Service Commission had been made a party by either party, we can only speculate as to whether anything would have turned on this joinder.

[38] This Court is however grateful to Counsel for the Applicants for highlighting that:-

> **"The decision which prompted the initial proceedings was taken more than two years ago on 15 April 2013. An order that this Court reconsider the Applicants appeal will add to the delay in the resolution to this case, add to an already congested Court roll and escalate the [Respondent's] costs".**

[39] This Court is not prepared to prolong this matter any further. The Respondent was entitled to a justiciable and to this saga a long time ago. As I have pointed out it was the duty of Applicants to obtain Cabinet approval for the rectification of the Respondent's grade having had regard to her rights in that context. That did not happen not has this Court been afforded any facts as to the Applicants failed to do so.

[40] Finally, what the Applicants ultimately want this Court to do is to interfere with the workings of the Executive Branch of Governance on the grounds that there was some irregularity in the manner that Cabinet approved the promotion and grading of the Respondent. This cannot be so. There was nothing in the present application to show that the approval of Cabinet was irregular and, as such, an administrative error corrects its own mistakes so, to speak. Therefore I find that the review powers of this Court cannot be invoked as to set aside the finding of this

Court in exercise of its appellate jurisdiction. The application for review is therefore dismissed with costs and the order of this Court handed down on the 3rd December 2014 is hereby confirmed.

S. A. NKOSI
ACTING JUSTICE OF APPEAL

I Agree

DR. B. J. ODOKI
ACTING JUSTICE OF APPEAL

I Agree

J. P. ANNANDALE
ACTING JUSTICE OF APPEAL

I Agree

Q. M. MABUZA

ACTING JUSTICE OF APPEAL

I Agree

R. CLOETE
ACTING JUSTICE OF APPEAL

For the Applicant: Attorney General's Chambers

For the Respondent: B. S. Dlamini Attorneys