

SOUTH AFRICA / JUDGMENT

Tlale v North West University and Others (UM157/2022) [2023]

ZANWHC 175 (21 September 2023)

[2023] ZANWHC 175

COURT

North West High Court, Mafikeng

BEFORE

S Gura

CASE / FILE NUMBER

UM157/2022

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION –
MAHIKENG
CASE NO: UM157/2022

Reportable:	YES / NO
Circulate to Judges:	YES / NO Circulate to
Magistrates:	YES / NO Circulate to Regional
Magistrates:	YES / NO In

the matter between:	THABANG TLALE Applicant And NORTH WEST UNIVERSITY 1st Respondent DR BISMARK TYOBEKA N.O 2nd Respondent INDEPENDENT STUDENT ELECTORAL COMMISSION 3rd Respondent ADV TSHEPISO MPHAHLANE N.O 4th Respondent BOZANE ZUMA 5th Respondent CONSTANCE BALOYI 6th Respondent
Heard:	19 AUGUST 2022
Delivered:	This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be 21 SEPTEMBER 2023. ORDER The following order is
made:	1.THAT: The forms and services provided for in the rules of the above honourable court are dispensed with and that the matter is treated as an urgent application in terms of the provisions of Rule 6(12) of the Uniform Rules of Court. 2. THAT: The sanction which was imposed by the Deputy Vice Chancellor on 10 August 2022 against the Applicant is declared unlawful and is set aside. 3. THAT: The Vice Chancellor is ordered to impose the sanction de novo. 4. THAT: The disqualification of the Applicant from participating and contesting the Student Campus Council 2022/2023 Elections is declared

unlawful and set aside.

5. THAT:

The decision to qualify the Fifth Respondent as the sole candidate eligible for

election to the position of Chairperson of the First

Respondent's Mafikeng Campus's Student Campus Council

2022/2023

elections is declared unlawful and set aside.

6. THAT:

The First to Third Respondents are interdicted from permitting voting or elections

of the Chairperson of the Mafikeng Campus' Student

Campus Council
2022/2023 until:

6.1

A sanction has been passed afresh; and

6.2

If the Applicant takes his case on review or appeal after sentence, then after a judgment

or ruling has been given in such review/appeal.

7. THAT:

The First Respondent is ordered to pay costs.

JUDGEMENT

Introduction

[1] In this application the applicant prays for the following relief:

1.1 that the implementation of the first and second respondents' sanction issued on 10 August 2022 against the Applicants be declared unlawful and set aside.

1.2 That the first to third Respondent decision to disqualify the Applicants from participating and contesting the Student Campus Council 2022/2023 elections be declared unlawful and set aside.

1.3 That it be declared that the Applicant is eligible for election at the Student Campus Council 2022/2023 elections of the first Respondent.

1.4 That the first to third Respondents be ordered to include the Applicant in the voting ballot for the Student Campus Council 2022/2023 elections.

1.5 That it be declared that the first to third Respondents' decision to qualify the fourth Respondent as the sole candidate eligible for election for the position of Chairperson at the first Respondent's Mafikeng Campus Student Campus Council 2022/2023 elections is unlawful and set aside.

1.6 That first to third Respondents be interdicted from permitting voting to commence for the impugned position of Chairperson at the first Respondent's Mafikeng Campus, for the Student Campus Council 2022/2023 elections until the Applicant has been included in the ballot.

1.7 The first to third Respondents are ordered to postpone and/or extend the Students' Campus Council election schedule so as to allow the Applicant an equal opportunity to campaign for the position of chairperson with the fifth Respondent in the upcoming Students' Campus Council Elections of 2022/2023.

1.8 In the alternative to the above prayers and in the event that the abovementioned Honourable Court finds that the noting of an appeal/ review by the Applicant does not suspend the implementation of the disciplinary sanction issued on the 10 August 2022, the Applicant seeks the following order:

1.8.1 That pending the finalization of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, the first and second Respondents be interdicted from implementing the sanction issued on the 10 August 2022.

1.8.2 That pending the finalization of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, the first to third Respondents decision to disqualify the Applicant from participating and contesting the Student Campus Council 2022/2023 elections be declared unlawful and set aside.

1.8.3 That pending the finalization of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, it is declared that the Applicant is eligible for the election at the Student Campus Council 2022/2023 elections.

1.8.4 That pending the finalization of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, the first to third Respondents be ordered to include the Applicant in the voting ballot for the Student Campus Council 2022/2023 elections.

1.8.5 That pending the finalization of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, that it be declared that the first to third Respondents' decision to qualify the fourth Respondent as the sole candidate to be elected for the position of Chairperson at the first Respondent's Mafikeng Campus Student Campus Council 2022/2023 elections is unlawful and set aside.

1.8.6 That pending the finalization of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, the first to third Respondents be interdicted from permitting voting to commence for the impugned position of Chairperson at the first Respondent's Mafikeng Campus, Student Campus Council 2022/2023 elections until the Applicant has been included in the ballot.

1.8.7 That pending the finalisation of the Applicant's review/appeal of his disciplinary verdict and sanction issued on the 10 August 2022 by the first and second Respondents, the first to third Respondents be ordered to postponed and/or extend the Student's Campus Council election schedule so as to allow the Applicant an equal opportunity to campaign for the position of chairperson with the fifth Respondent in the upcoming Students' Campus Council Elections of 2022/2023

Factual background

- [2] The applicant is a registered student at the first respondent's Mafikeng Campus ("the university") and he is currently registered for an Honours Degree in Education Management and Leadership for the academic year 2023. On the 7 December 2021 the office of the Student Judicial Services ("SJS") of the university served applicant electronically with a notice to attend a disciplinary hearing scheduled for 13 December 2021, however, the disciplinary hearing could not proceed on the scheduled date due to unforeseen circumstances. The matter was only scheduled for hearing on 21 April 2022, when proceedings commenced. The disciplinary hearing committee consisted of three panel members, Adv Tshepiso Mphahlane (fourth Respondent) leading the committee as the chairperson. The committee finally reached a verdict on the 25 July 2022, in terms of which applicant was found guilty as charged. The guilty verdict was communicated to the parties verbally by the chairperson of the disciplinary hearing.
- [3] After the verdict was returned the parties then submitted mitigatory or aggravating factors orally to the committee on the same day (25 July 2022). The chairperson then informed the parties that the committee was unable to agree over the appropriate sanction. For that reason, the chairperson promised the parties that the sanction would be issued and communicated to the parties in writing on that very same day before close of business. The applicant thereupon requested the chairperson that when they issue the sanction it should be accompanied by written reasons for conviction. Indeed, the chairperson promised to do that but as at date when this application

was lodged, such written reasons were still outstanding.

- [4] On 28 July 2022 the applicant was nominated for the position of chairperson to contest the 2022/2023 Student Campus Council ("SCC") elections of the university. In the afternoon of the same day, the university was informed in writing about applicant's nomination.
- [5] On 2 August 2022, Dr Jim Molautsi, the director student life of the university addressed an email to the applicant in terms of which he required him to produce his academic progress report of his research. This related to applicant's nomination to contest in the upcoming elections. The applicant provided the university with his progress report on 2 August 2022.

- [6] On 8 August 2022, the third respondent issued a preliminary list of nominated candidates deemed not eligible for election to the SCC of the university's Mafikeng Campus. In terms of the preliminary list, applicant had been disqualified from contesting elections based on paragraph 7.1.3 read with paragraph 7.5.3 of the Institutional Rules on Student Governance ("the Institutional rules"). Paragraph 7.1.3 and paragraph 7.5.3 of the Institutional Rules stipulates:

"7.1 General eligibility criteria for election as a member of an SCC

7.1.3 complies with the academic conditions set out in paragraph 7.5;

7.5 Academic conditions

ISEC must, in its discretion, determine whether the student nominated for election to an SCC or as the SRC Distance Students' Officer have exemplary academic records and continuous academic engagement, assessed according to the following guidelines:

7.5.3 where a candidate has been admitted and registered for a postgraduate programme. The candidate must present official proof of satisfactory progress made in the current year of registration and obtained from the relevant faculty."

- [7] The applicant says the university and third respondents did not hesitate to disqualify him notwithstanding his compliance with paragraph 7.5.3 of the institutional rules. According to the applicant he provided the university, the second to third respondents, with the progress report that they had requested on the 2 August 2022, according to his supervisor Dr E D de Klerk:

"Mr Tlale can be regarded as a dedicated student, who work hard (and smart). He is vigorous, intelligent and a person aiming at completing

his tasks correctly. Mr Tlale is currently busy to work towards completing Chapter 2 for his research project and it is anticipated

that his final submission will be in October 2022. It is further expected that his study will make a useful contribution to the

knowledge corpus, and to school leadership in particular because Ubuntu leadership has become of greater significance, especially in the post pandemic era. I am happy to indicated that it is indeed a huge privilege to be the study leader for this particular

mini-research project."

- [8] According to the election schedule issued by the Registrar of the university, Prof Marlene Verhoef, the objection period on nominated candidates was for the period 8-11 August 2022. Therefore, applicant was entitled until the 11 August 2022 to file his objection to disqualification. Whilst he was busy contemplating and preparing his appeal to his disqualification which was communicated on 8 August 2022, on 10 August 2022 the SJS office per Mr NL Makoro issued a sanction on behalf of Prof Verhoef, the Registrar of the

university on behalf of the committee in terms whereof the university issued a sanction against applicant as follows:

“SANCTION

1. Expulsion from the NWU, the expulsion shall be suspended for the duration of your studies at NWU on condition that you do not commit a similar misconduct or misconduct involving sexual abuse/harassment during the period of your suspension.
 2. You are expelled from the NWU Residences.
 3. You are no longer allowed to hold any office in the NWU structures.
 4. You are only allowed to access the Campus only for academic purposes until the end of 2022 Academic year.
 5. Your academic record shall be endorsed accordingly.”
- [9] Subsequent to receiving the sanction issued by the university on the 10 August 2022, the applicant addressed an email on 11 August 2022 to the fourth respondent in terms of which he indicated that he had received a sanction from the university and not from the fourth respondent and reminded the fourth respondent in the said email that he undertook to issue a written verdict, on the 25 July 2022, which has since not been received from him. He concluded the aforementioned email of 11 August 2022 by requesting the fourth respondent to clarify whether he sent the university a written verdict and sanction without directing same to him. To date the fourth respondent has failed to respond to his email.
- [10] The NWU Policy on Student Discipline (“the disciplinary policy”), stipulates at paragraph 3.1.3.26 and 3.1.3.27 as follows:

“3.1.3.26 The chairperson informs the student verbally or in writing of the hearing committee’s recommended sanction and gives reasons for the said outcome. The chairperson also explains the sanction, and the

opportunity to the student to review/the decision, in terms of paragraph 7.6 of the Statute.

3.1.3.27 The hearing committee may order that the lodging of an appeal does

not suspend the guilty finding or the recommended sanction to be imposed upon the student. Such a request is to be put forward by the pro forma prosecutor to the disciplinary hearing committee for consideration. Upon consideration of all facts, the chairperson

includes the outcome of the request in the pronouncement of the sanction.”

- [11] According to the applicant, it goes without saying that the fourth respondent has neither informed applicant verbally or in writing of the hearing committee’s recommended sanction nor has given reasons for the said outcome. If one has regard to the purported sanction issued by the SJS office of the university on 10 August 2022, no reference is made to any written verdict attached thereto. The applicant has therefore neither been advised of his

rights in terms of paragraph 3.1.3.26 of the disciplinary policy to lodge a review or to appeal the decision in the terms of paragraph 76

of the Statute. The first and second respondents are therefore in breach of their own policy which governs student disciplinary

issues.

- [12] It follows that the fourth respondent could not have issued an order in terms of paragraph 3.1.3.27 of the disciplinary policy, to the effect that the lodging of an appeal does not suspend the guilty finding or the recommended sanction to be imposed upon the applicant. The record of proceedings at applicant's disciplinary hearing will reflect that the pro forma prosecutor on behalf of the first respondent did not make any such a request that the fourth respondent make an order that any appeal shall not suspend the guilty finding or the recommend sanction to the disciplinary hearing committee for consideration.
- [13] On 11 August 2022 at around 09:47 Mr Malan, the secretariat of the third respondent, addressed an email to applicant in terms of which the third respondent informed him that it received the outcome of his disciplinary proceedings and that he should make representations before 12:00 midday on 11 August 2022 as to why he should not be declared to be not eligible for election at the upcoming SCC elections to be held from 22 August 2022 to 25 August 2022.
- [14] The applicant lodged an internal review/ appeal on 11 August 2022 mindful of the provisions paragraph 3.1.8.3 of the disciplinary policy, which stipulates:

"3.1.8.3 A written notice of the request for the review must be submitted to the office of the Registrar within five (5) days of the decisions in regard of which the review is requested, excluding Saturdays, Sundays and public holidays indicating whether it is aimed against the finding or sanction or both, and indicating the grounds on which the request for review is based."

The applicant submitted to Mr Malan on behalf of third respondent his lodged review/ appeal and submitted same to be his written representation as requested.

- [15] On the 12 August 2022, the third respondent, per Mr Malan, addressed correspondence informing applicant that his objection had been dismissed and therefore he is disqualified in terms of paragraph 7.4.5 of the Institutional Rules. According to the third respondent, the lodging of an appeal/ review does not stay the implementation of the disciplinary hearing outcome pending the outcome of the review. Consequently, the third respondent dismissed the applicant's appeal and sustained his disqualification. The respondent dismissed the applicant's appeal against his disqualification, this notwithstanding their expertise and the clear provisions of paragraph 3.1.3.27 of the disciplinary policy, which clearly prescribes that the lodging an appeal/ review suspends the guilty finding and its recommended sanction unless the hearing committee orders that the lodging of an appeal does not suspend the guilty finding or the recommended sanction to be imposed upon the student.

The applicant submits that his disqualification by the third respondent is unlawful and stands to be set aside by this Honourable Court.

[16] On Saturday 13 August 2022, applicant went to the Mafikeng Campus of the university where he is registered. He was informed by the security personnel at the gates that he has been barred from entering the premises of the university, consequently he addressed correspondence to the university's protection services, Mr Fortune Letshele, raising this concern. Mr Letshele in his email response on Sunday, 14 August 2022 informed applicant that the decision to bar him from Campus was communicated by Adv Molemane of the SJS offices of the university. The applicant says the first to third respondents have implemented the sanction issued against him on 10 August 2022 notwithstanding a clear prohibition to do so in terms of their own policies and rules.

[17] On 16 August 2023 at around 12h17 the fourth respondent eventually replied to the applicant's email of 11 August

2022. According to the fourth respondent:

"... after hearing submission in respect of the sanction, I, as the Chairperson, informed all the parties that the committee would need some time to consider the appropriate sanction and that it would, however, not be necessary to reconvene the hearing but instead the recommendations of the Committee in respect of sanction would be set out in the Committee's report to the Deputy Vice Chancellor (DVC)"

The applicant avers that he can verily confirm that the record of proceedings of disciplinary hearing will reflect that Adv Mphahlane is simply not telling the truth. The correct position is that which applicant has set out in this founding affidavit and the recordings will vindicate him in this regard.

[18] Adv Mphahlane went on further to state at paragraph 3 and 4 of his email as follows:

"3. In terms of the NWU Policy on Student Discipline, a Disciplinary Hearing Committee is required to submit a report with its recommendations to the DVC for consideration. The DVC would accept or reject the Committee's recommendations after which the affected student would be informed of the DVC's decision (Outcome). Our Committee followed this procedure.

4. I have noted from your email below that you have received the "Outcome". The reasons for our Committee's verdict and recommendations are set out in the Committee's Report and I think, subject to NWU Policy, it would be within Mr Tlale's rights to request a copy of the Report from the DVC office."

[19] The applicant submitted that in terms of paragraph 3.1.3.26 of the disciplinary policy, the chairperson informs the student verbally or writing of the hearing committee's recommended sanction and gives reasons for the said outcome. The chairperson also explains the sanction and the opportunity to the student to review/ the decision, in terms of paragraph 76 of the Statute. Nowhere is the said relevant policy does it states that Adv Mphahlane is required to submit a report with its recommendations to the DVC for

consideration.

- [201] On the 8 July 2019, the fourth respondent emailed his written verdict in a disciplinary hearing involving the university and four of its accused student to both the pro forma prosecutor, Mr Makoro and to Mr Karabo Kau, the representative of the said students. The timing of the fourth respondents reply to applicant email of the 11 August 2022 on the 16 August 2022 after he had threatened the university with Court action is suspicious.

The respondent's defence

- [211] The application is opposed by the first three respondents and the Registrar (Ms Maria Verhoef) has deposed to the opposing affidavit on behalf of the university and the third respondent. In limine it should be emphasized that applicant has been convicted of gender based misconduct after a full disciplinary hearing should applicant

be elected as chairperson of the Mafikeng Student's Campus Council ("SCC") whilst remaining so convicted, the

message conveyed to the student community shall be shocking and extremely disturbing.

- [221] The Vice Chancellor had delegated the authority to dispose of such disciplinary action to Prof Sonia Swanepoel, the Deputy Vice-Chancellor ("the DVC"). The relief sought does not dispose of the conviction and sanction of applicant per se but only the implementation thereof. Regardless of the outcome of the present application, such conviction and sanction remain subject to internal review procedures that have not yet been exhausted by the applicant.

- [231] The chairperson furnished brief verbal reasons for the verdict at the hearing as confirmed by the prosecutor Adv Mamokete Ramoshaba as per annexure MV3 to the answering affidavit. The chairperson informed the parties that the Committee needs some time to consider the sanction and that the recommended sanction shall be set out in the report to the DVC, who could accept or reject such recommended sanction. The chairperson in addition conveyed that full reasons for the conviction

shall be contained in the said report. Such report was submitted by the chairperson to the DVC on 5 August 2022.

- [241] The university submits that in terms of the NWU Policy on Student Discipline (Annexure "MV5") ("the Policy"), there is no prescript governing the notice to be given to the student of the sanction imposed by the DVC (paragraph 3.1.4.21). Such notice was in casu given on behalf of Verhoef functionary in respect of all such communications on behalf of the university. In addition, all disciplinary procedure or actions are managed by the manager Student Judicial Services (see Annexure "MV5"), who had signed this notice of outcome on behalf of Verhoef. It is accordingly submitted that a proper and valid notice of the sanction had been given to applicant.

[25] As alluded to earlier, fourth respondent furnished verbal reasons for the conviction at the time. The written verdict is attached to the answering affidavit as annexure from which the recommended sanction appears. Applicant was advised of his right to further redress as per the last paragraph of annexure FA10 to the opposing affidavit. There has been substantial compliance with paragraph 3.1.3.26 and that applicant had suffered no prejudice.

25.1 verbal reasons had been given for the outcome, amplified in terms of the above.

25.2 The Committee only commends the sanction, which recommendation may be followed or not, as in casu (see items 2 and 4 of Annexure “AF10” compared to paragraph 47 and 47.2 of Annexure “MV4”). As this recommendation is not final, any reasons or not do not assist such student.

25.3 Any explanation of the sanction by the chairperson or not is therefore of no consequence for the student and further exercise of his rights, as the functionary taking the decision on the sanction is the VC or his delegate, in casu the DVC.

25.4 In fact, no opportunity is afforded the student to at that stage respond to any such report, with no prejudice should the same only be furnished subsequently.

25.5 The applicable Policy does not require the VC or his delegate to furnish any reasons for the final sanction imposed (see paragraph 3.1.4.21).

25.6 Applicant was informed of his further rights and in any event applicant had been aware at all relevant times: after receipt of the outcome on 11 August 2022 (Annexure “FA11”) already referred to this right

[26] In view of the above, the university submits that applicant has not been prejudiced by any potential technical non-compliance in this regard, with no grounds for review therefore established. Applicant only lodged an internal review. In such event the conviction and sanction are not suspended, both in terms of paragraph 3.1.3.27 and the common law. Only in the case of an appeal is the operation of the conviction and sentence suspended pending the outcome of the appeal. In terms of Policy (paragraph 7.4.5) the operation of the sanction remains in force, the applicant therefore remains correctly and lawfully disqualified.

Legal principle

[27] In applications for interim interdictory relief, the proper approach to be taken by the Court when determining the facts of the matter is to take the facts set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant, then the applicant cannot succeed in obtaining interim interdictory relief. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the applicant’s right protected in the interim.[1]

[28] In *L F Boschhoff Investments (Pty) Ltd v Cape Town Municipality*[2] the court formulated the requirements of an interim interdict as follows:

“Briefly these requirements are that the applicant for such temporary relief must show:

- (a) That the right which is the subject matter of the main action and which he seeks to protect by means of interim relief is clear or, if not clear, is *prima facie* established, although open to some doubt;
- (b) That, if the right is only *prima facie* established, there is well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right.
- (c) That the balance of convenience favours the granting of interim relief; and
- (d) That the applicant has no other satisfactory remedy.”

[29] A well-grounded apprehension of injury is one which a reasonable man might entertain on the facts. Injury in this sense does equate to the harm or damages which will be suffered by the applicant. The test for “a reasonable apprehension” is objective in nature.[3] To the balance of convenience the Court must weigh up the prejudice which the applicant will suffer if the interim interdict is not granted against the prejudice to the respondents and to decide which of the parties will be least seriously inconvenienced by being compelled to endure what may prove to be a temporary injustice until the just answer can be found at the end of the trial.[4]

[30] The applicant must establish that he does not have another satisfactory remedy to the interim interdict. Any such other satisfactory remedy must be a legal remedy.[5] The satisfactory remedy must be the one which will achieve the same results for the protection of the applicant.[6]

Analysis

[31] Paragraph 3.1.3.26 of the university disciplinary policy reads:

“The chairperson informs the student verbally or in writing of the hearing committee’s recommended sanction and gives reasons for the said outcome. The chairperson also explains the sanction and the opportunity to the student to review/ the decision, in terms of paragraph 76 of the Statute”

[32] It is common cause that the chairperson of the committee never informed the applicant of the recommended sanction, that he did only when the applicant was already before this court in the current application. That notice was attached to the respondent’s answering affidavit. In other words the sentence (sanction) was imposed on the applicant by or on behalf the Vice Chancellor before the chairperson of the disciplinary committee could inform the applicant of the recommended sanction. The sanction was imposed on 10 August 2022 on the applicant and the chairperson communicated his recommended sanction and his reasons for such on 18 August 2022. This the chairperson did despite the applicant’s

reminder to the university dated 11 August 2022 where he enquired when would the chairman furnish him with his recommended sanction in writing. In my view the first person who should know the recommended sanction is the applicant who stood accused in the disciplinary hearings. In this case this was not done but instead the Vice Chancellor was the first to be informed contrary to paragraph 3.1.3.26 of the disciplinary policy. The matter does not end there.

[33] After the finalisation of the enquiry, the chairperson has a duty to explain to the person who stands accused his/ her opportunity to review/ the decision. In casu the chairperson not only failed to communicate the sanction timeously to the applicant but he failed also to explain to him his rights. Such failure or omission, on the part of the chairperson, constituted an irregularity which tainted the legality of the subsequent sanction which was imposed by the Deputy Vice Chancellor.

[34] Paragraphs 3.1.8.1 to 3.1.8.3 of the disciplinary policy provide:

“3.1.8.1 A student who has been sanctioned with misconduct, may request a review of or an appeal against the findings and sanction, or against both the findings and the sanction by the disciplinary body by lodging a review or an appeal.

3.1.8.2 A student may be assisted by another person in preparing such a request for review or/and appeal.

3.1.8.3 A written notice of the request for the review must be submitted to the office of the Registrar within five (5) days of the decisions in regard of which the review is requested, excluding Saturdays, Sundays and public holidays indicating whether it is aimed against the finding or sanction or both, and indicating the grounds on which the request for review is based.”

[35] The applicant received a notice of his sanction from the DVC on 10 August 2022 but he only received the chairperson reasons and the recommended sanction on 18 August 2022 after launching this urgent application. This non-observance of the prescribed procedure effectively negated the applicant’s rights to review or to appeal the outcome of the disciplinary hearings. The upshot of this whole omissions is that the five days in which he had to note an appeal or review expired on 17 August 2022, that is, a day before he could receive the chairperson’s recommended sanction and reasons. This is yet another irregularity which marred the legality of the whole disciplinary sanction against the applicant. It was due to the aforesaid reasons that after listening to argument on the day of hearing of this matter, I issued the following order:

Order

[36] Consequently the following order is made:

1.THAT: The forms and services provided for in the rules of the above honourable court are dispensed with and that the matter is treated as an urgent application in terms of the provisions of Rule 6(12)

of the Uniform Rules of Court.

2. THAT: The sanction which was imposed by the Deputy Vice Chancellor on 10 August 2022 against the Applicant is declared unlawful and is set aside.

SAMKELO GURA

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING: 19 AUGUST 2022

JUDGMENT

RESERVED: 22 AUGUST 2022 DATE OF REASONS: 21 SEPTEMBER 2023 COUNSEL FOR THE PLAINTIFFS: MR B ZISIWE COUNSEL FOR THE DEFENDANTS: ADV J J PRETORIUS

- [1] Webster v Mitchell 1948 (1) SA 1186 (W) at 1189; Shoprite Checkers Ltd v Blue Route Property Managers (Pty) Ltd & Others 1994 (2) SA 172 at 183C-E
- [2] 1969 (2) SA 256 (C) at 267 A-F.
- [3] Free State Gold Areas v Merriespruit (OFS) Gold Mining Co Ltd 1961 (2) SA 505 (W) at 518; Diepsloot Residents and Landowners Association and Others v Administrator, Transvaal and Others 1993 (3) SA 49 (TPD) at 60E.
- [4] VSA Motor Distributors (Pty) Ltd v Rossman and Another 1980 (3) SA 1164 (D); Multi Tube Systems (Pty) Ltd v Ponting and Others 1984 (3) SA 182 (D) at 190C to D.
- [5] Francis v Roberts 1973 (1) SA 507 (RA) at 512.
- [6] Wyne and Goldonton NNO v Mitchell and Another NNO 1973 (1) SA 283 (E) at 285.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2023/175.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/tlale-v-north-west-university-and-others-unknown-topic-anwhc-2023>

Prepared on 11 October 2026 · Esheria