THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 796/2017

In the matter between:

ATTWELL SIBUSISO MAKHANYA	**APPLICANT**

and

MINISTER OF WATER AFFAIRS AND SANITATION	**FIRST RESPONDENT**
DUDUZILE MYENI N.O	**SECOND RESPONDENT**
MUSA ZULU N.O.	**THIRD RESPONDENT**
POPPY DLAMINI N.O.	**FOURTH RESPONDENT**
FREDERICK BOSMAN N.O.	**FIFTH RESPONDENT**
NONHLANHLA KHUMALO N.O.	**SIXTH RESPONDENT**
AMITA BADUL N.O.	**SEVENTH RESPONDENT**
BRIAN RAWLINS N.O.	**EIGHTH RESPONDENT**
NICA GEVERS N.O.	**NINTH RESPONDENT**
THEMBINKOSI MADIKANE N.O.	**TENTH RESPONDENT**
BONGI MSHENGU N.O.	**ELEVENTH RESPONDENT**
SIMO CHAMANE N.O.	**TWELFTH RESPONDENT**
MHLATUZE WATER	**THIRTEENTH RESPONDENT**

Neutral citation: *Makhanya v Minister of Water Affairs & others* (796/2017) [2018] ZASCA 172 (30 November 2018)

Coram: Tshiqi, Makgoka and Schippers JJA and Mokgohloa and Mothle AJJA

Heard: 05 November 2018

Delivered: 30 November 2018

Summary: Administrative Law – s 8 of Promotion of Administrative Justice Act 3 of 2000 (PAJA) read with s 172(1) of the Constitution – court's powers to declare law or conduct inconsistent with the Constitution invalid to the extent of its inconsistency and to make any order that is just and equitable – order – suspension of declaration of invalidity of decision to initiate a disciplinary hearing against applicant not a just and equitable remedy in the circumstances – Applicant precluded from performing his duties as CEO of Umhlatuze Water pending decision of a properly constituted Board

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ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Pietermaritzburg (Mbatha J sitting as court of first instance):

1 The application for leave to appeal is granted to the Supreme Court of Appeal.

2 The application for leave to adduce further evidence relevant to the developments at Umhlatuze Water after Mbatha J's order, is granted.

3 The appeal is upheld to the extent set out herein below:

3.1 Paragraph 3 of the order of the court a quo insofar as it relates to the applicant's suspension and disciplinary proceedings against him, and paragraph 4 of the order, are set aside and substituted as follows:

'(a) A properly and legally appointed Board of Umhlatuze Water or the Minister of Water and Sanitation, acting in terms of s 73(1)*(f)* of the Water Services Act 108 of

1997 must consider the report compiled by Edward Nathan, Sonnenbergs Forensics and decide whether to suspend and initiate disciplinary proceedings against the applicant, which decision must be taken within 30 calendar days from the date of this order.

(b) Pending the decision referred to in (a) above, the applicant is precluded from reporting to his office at Umhlatuze Water and from performing his duties as the Chief Executive Officer of Umhlatuze Water.'

4 Each party to pay its own costs.

JUDGMENT

Tshiqi JA (Makgoka and Schippers JJA and Mokgohloa and Mothle AJJA concurring):

[1] The applicant, Mr Attwell Sibusiso Makhanya was employed by the thirteenth respondent (Mhlatuze Water) as the Chief Executive Officer (CEO). On 7 November 2015 the second to the thirteenth respondents, acting in their official capacities as the Board members of Umhlatuze Water passed a resolution suspending Mr Makhanya from his employment pending a disciplinary hearing. His suspension flowed from findings of alleged impropriety contained in a report compiled by Edward Nathan Sonnenbergs Forensics (ENS Forensics). It is common cause that the report was compiled at the request of the Board who instructed their attorneys, ENS Africa, to facilitate the conduct of the necessary investigations.

[2] Mr Makhanya decided to challenge his suspension and the decision to subject him to a disciplinary hearing and launched an application in the high court, Kwa-Zulu Natal Division, Pietermaritzburg on an urgent basis seeking an order in the following terms:

'1) That pending determination of the relief set out in paragraphs 2 to 6 below, respondents be and are hereby directed to permit applicant to continue performing his functions and responsibility as thirteenth respondent's Chief Executive Officer.

2) That first respondent's [the Minister of Water Affairs and Sanitation] purported extension of second to twelfth respondents' term of office as Board members of Umhlatuze Water (the thirteenth respondent):

2.1 from 28 February 2015 to 30 June 2015; and

2.2 from 30 June 2015 until the appointment of the new Board, are unlawful, invalid and are set aside.

3) That first respondent's purported action to extend second respondent's term of office as Chairperson of Umhlatuze Board beyond 28 February 2015 is unlawful, invalid and is set aside.

4) Declaring that the second to thirteenth respondents' decision contained in their resolution dated 7 November 2015 purporting to suspend applicant as the Chief Executive Officer of the thirteenth respondent is invalid, unlawful and of no force and effect.

5) That second respondent to thirteenth respondents' decision referred to in paragraph 4 above be and is hereby reviewed and set aside.

6) That second respondent's decision of 20 November 2015 purporting to suspend applicant as thirteenth respondent's Chief Executive Officer is declared to be unlawful, invalid and of no force and effect, ***alternatively***, is hereby reviewed and set aside.

7) That second respondent's decision of 20 November 2015 purporting to suspend the applicant as thirteenth respondent's Chief Executive is declared to have lapsed, invalid and in contravention of clause 7.2 of the disciplinary code and procedure for the public service.

8) That the order in paragraph 1 above shall operate as internal [interim] interdict pending the finalization of this application.

9) That any respondent opposing this application be directed to pay the costs of the application, ***mutatis mutandis*** jointly and severally, the one paying the other to be absolved, such costs to be costs occasioned by employment of two counsel.'

[3] The urgent application and the main application were consolidated and heard by Mbatha J who made an order in the following terms:

'1. The decision by the Minister to extend the terms of office of the board is declared invalid and set aside;

2. The decision by the board to pursue disciplinary proceedings against the applicant and suspend him is declared invalid and set aside;

3. The orders in paragraph[s] 1 and 2 above are suspended from the date of the order for a period of 180 days for the Minister to appoint a new board

4. The disciplinary proceedings against the applicant are to be conducted by Edward Nathan Sonnenbergs Africa (ENS) and should be finalised by no later than 31 January 2017. Edward Nathan Sonnenbergs Africa (ENS) will then make its recommendations to the newly appointed board as stated in paragraph 3 above, as soon as it is constituted;

5. The rule nisi in case number 3861/2016P is discharged; and

6. The applicant is awarded costs in respect of both matters (1578/2016P and 3861/2016P) including the costs consequent on the employment of senior and junior counsel where applicable.'

[4] On 8 December 2016, Mbatha J amended paragraph 4 of the order to read:

'The disciplinary proceedings against the applicant are to be conducted by Edward Nathan Sonnenbergs Africa (ENS) and should be finalised by not later than 31 January 2017, where-after its recommendations will be submitted for consideration by the newly appointed board as contemplated in paragraph 3 above, as soon as it is constituted.'

[5] On 12 December 2016, the Chairperson of the Board, Ms Duduzile Myeni, issued Mr Makhanya with a notice of a disciplinary hearing to be held on 18–20 January 2017 and 23–27 January 2017 at 9:00 am. On 19 December 2016, Mr Makhanya's attorneys wrote to the Board and said that in view of the court order the Chairperson of the Board could not participate in the disciplinary hearing. On 21 December 2016 Ms Myeni withdrew the notice, which was subsequently substituted with a new one from ENS Africa dated 21 December 2016 and received by Mr Makhanya on 22 December 2016. On 13 January 2017, Mr Makhanya filed an urgent application for an order interdicting the first to the thirteenth respondents and ENS Africa from proceeding with the disciplinary proceedings, pending an order clarifying and altering paras 4 and 6 of Mbatha J's order. This application was dismissed by the court with costs on the basis that there was no ambiguity in Mbatha J's amended order.

[6] On 18 January 2017, which was the date on which the disciplinary hearing was scheduled to commence, it transpired that ENS Africa had appointed Professor Brenda Grant, an independent person, as a presiding officer at the hearing, ENS Forensics would lead the evidence whilst ENS Africa would conduct the prosecution. Mr Makhanya's counsel applied for a postponement on the basis that he had not been furnished with certain documents, especially the policy documents referred to in the charge-sheet. The application for a postponement was refused but the chairperson allowed the proceedings to stand down for two hours to allow for the perusal of the documents. The disciplinary proceedings could however not proceed because during the adjournment, an application for leave to appeal Mbatha J' order was served on the respondents.

[7] The Minister in turn launched an application to cross-appeal the court's order. The Board launched an application for execution pending the appeal in terms of s 18 of the Superior Courts Act 10 of 2013 and another application for a declaration that Mr Makhanya had perempted the order he sought to appeal. All these applications were heard on 10 April 2017 and judgment was reserved. On 26 April 2017 and before judgment was handed down, the Minister withdrew the cross-appeal and tendered costs. The Minister also dissolved the Board. It seems that the court may not have been aware that the cross-appeal was withdrawn because on 27 June 2017, it granted the Minister leave to cross-appeal. The court also granted an order striking out the application for leave to appeal, declaring that Mr Makhanya had acquiesced in its order against which he sought leave to appeal and also made a costs order against Mr Makhanya.

[8] On 1 August 2017 Mr Makhanya filed a petition to this court in terms of s 16(1)*(a)* of the Superior Court Acts and on 20 September 2017, this court (per Lewis JA and Rogers AJA), referred the application for oral argument in terms of s 17(2)*(d)* of the Superior Courts Act and further ordered the parties to be prepared, if called upon to do so, to address the court on the merits. Subsequent to this order Mr Makhanya filed an application in terms of s 19(b) of the Superior Courts Act for leave to lead further evidence in the hearing of the appeal, which he alleges is material to its outcome, since it sheds light on the developments at Umhlatuze Water after Mbatha J's order. Regarding the appointment of a new Board as envisaged in para 4

of the order, Mr Makhanya stated that the Minister, then Ms Nomvula Mokonyane did not appoint a new Board as contemplated by the court, but that she instead created a new structure referred to as the Amalgamated Provincial Water Board (the Amalgamated Board), and appointed Ms Myeni as the transitional chairperson of the Amalgamated Board. Mr Makhanya has attached a notice dated 10 November 2017, issued by the Minister under Government Gazette number 1247, in terms of which she proposed to disestablish the Mhlatuze Water Board and transfer its staff, assets and liabilities to Umngeni Water and change its name to Kwa-Zulu Natal Water Board.

[9] Regarding his position as the CEO, Mr Makhanya attached documents which showed that the position of CEO at Umngeni Water was advertised and that after he challenged this in a court application, the matter was settled on the basis that he would be appointed as the CEO of Umngeni Water if the disestablishment takes place and the staff of Umhlatuze Water is transferred to Umngeni Water. Mr Makhanya submits that the amalgamation of Umhlatuze Water and Umngeni Water shows that the erstwhile Minister, Ms Nomvula Mokonyane, was working together with Ms Myeni in order to get rid of him so that the latter could remain at the helm of the Board, in order to plunder the public funds of Umhlatuze Water.

[10] The application for leave to adduce further evidence is opposed by the thirteenth respondent, which has filed an affidavit deposed by its acting CEO, Mr Mthokozisi Pius Duze. Mr Duze submits that the evidence which Mr Makhanya seeks to lead is irrelevant to the outcome of the appeal because the erstwhile Minister, against whom the allegations of impropriety are being made, was relieved of her portfolio and replaced by Minister Gugile Nkwinti on 26 February 2018. Mr Duze also alleges that the irregularities that Mr Makhanya is raising were committed during the latter's tenure as an accounting authority and that some of these irregularities form the basis of the charges preferred against Mr Makhanya in the pending disciplinary hearing.

[11] It transpired during the hearing of the appeal that there have been further developments concerning Umhlatuze Water. Counsel for the respondents informed this court from the Bar that the new Minister has decided to revoke the previous

Minister's decision to disestablish Umhlatuze Water and has decided to appoint a new Board. Mr Makhanya's counsel on the other hand, and also from the Bar, said that his instructions were that the new Minister planned to replace Umhlatuze Water or amalgamate it with Rand Water. What is clear from both submissions is that there is still no clarity about the fate of Umhlatuze Water and its Board.

[12] Both counsel were prepared to concede however that the new evidence dealing with the developments within Umhlatuze Water since Mbatha J's order was relevant. Leave to adduce further evidence regarding the developments at Umhlatuze Water is accordingly granted and this evidence will be taken into account in the application for leave to appeal and when considering the merits of the appeal. The rest of the evidence and which suggests that Mr Makhanya's suspension and pending disciplinary proceedings are aimed at victimizing him, is however irrelevant.

The application for leave to appeal

[13] As the Minister withdrew the cross-appeal, there is no appeal against the orders of invalidity. The application concerns their suspension. Mr Makhanya's counsel, Mr Madonsela submitted that there was no need to suspend the orders of invalidity as there was no public interest that would be adversely affected by such declarations. He further contended that the fear of the high court that there would be a disruption of the affairs of the Umhlatuze Water if the orders of invalidity were not suspended was misplaced because Umhlatuze Water could operate seamlessly without a Board, under the leadership of the CEO, until the Minister had appointed a new Board. He further argued that there would be no prejudice suffered by Umhlatuze Water if Mr Makhanya's suspension as CEO was set aside and he was allowed to resume his duties as the CEO. Regarding the seriousness of the allegations against Mr Makhanya, he referred to Mr Makhanya's affidavit where he states that the decision to charge him was actuated by ulterior motives and malice on the part of Ms Myeni because he had refused to engage in irregular and corrupt practices, when requested to do so by the former.

[14] Counsel for the respondent, Ms Annandale, on the other hand contended that the suspension order was a just and equitable relief in the circumstances because it was meant to avoid disruption of the business of Umhlatuze Water, that Mr

Makhanya was facing serious allegations of impropriety contained in a report by an independent entity, and the report itself has not been impugned. Ms Annandale also submitted that in the event the court is inclined to find that the suspension of the invalidity of the orders was not fair and equitable, the court should not lift Mr Makhanya's suspension as he is facing serious allegations – is in a senior position and there are allegations that he tried to influence some of the witnesses and to tamper with the evidence relevant to the charges against him. Ms Annandale contended that a practical solution in view of the uncertainty around the future of Umhlatuze Water and its Board, would be to invoke the provisions of s 73(1)*(f)* of the Water Services Act 108 of 1997, which grants the Minister the general power to perform the functions of a Water Board. A fair order in the circumstances, so the argument went, would be that Mr Makhanya remains on suspension and the Minister be given a period of 30 days within which to consider the report by ENS Forensics, and make a decision whether to proceed with a disciplinary hearing.

[15] In purporting to extend the term of the Board, the Minister was performing an administrative function in terms of s 1 of the Promotion of Administrative Justice Act of 2000 (the PAJA). In terms of s 8 of the PAJA read with s 172(1) of the Constitution, a court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and may make any order that is just and equitable, including an order limiting the retrospective effect of the declaration of invalidity; and an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

[16] In *Steenkamp NO v Provincial Tender Board of the Eastern Cape* [2006] ZACC 16; 2007 (3) SA 121; 2007 (3) BCLR 300 (CC) *(Steenkamp)* paras 28-29 the Constitutional Court said:

'[S]ince the advent of our constitutional dispensation administrative justice has become a constitutional imperative. It is an incident of the separation of powers through which courts review and regulate the exercise of public power. The Bill of Rights achieves this by conferring on "everyone" a right to lawful administrative action that must also be reasonable and procedurally fair. . . .

It goes without saying that every improper performance of an administrative function would implicate the Constitution and entitle the aggrieved party to appropriate relief. In each case the remedy must fit the injury. The remedy must be fair to those affected by it and yet vindicate effectively the right violated. It must be just and equitable in the light of the facts, the implicated constitutional principles, if any, and the controlling law.' (Footnotes omitted.)

[17] In *Bengwenyama Minerals (Pty) Ltd & others v Genorah Resources (Pty) Ltd & others [2010] ZACC 26;* 2011(4) SA 113; 2011 (3) BCLR 229 (CC) (*Bengwenyama*) paras 84-85, the Constitutional Court said;

'It would be conducive to clarity, when making the choice of a just and equitable remedy in terms of PAJA, to emphasise the fundamental constitutional importance of the principle of legality, which requires invalid administrative action to be declared unlawful. This would make it clear that the discretionary choice of a further just and equitable remedy follows upon that fundamental finding. The discretionary choice may not precede the finding of invalidity. The discipline of this approach will enable courts to consider whether relief which does not give full effect to the finding of invalidity, is justified in the particular circumstances of the case before it. Normally this would arise in the context of third parties having altered their position on the basis that the administrative action was valid and would suffer prejudice if the administrative action is set aside, but even then the "desirability of certainty" needs to be justified against the fundamental importance of the principle of legality.

The apparent anomaly that an unlawful act can produce legally effective consequences is not one that admits easy and consistently logical solutions. But then the law often is a pragmatic blend of logic and experience. The apparent rigour of declaring conduct in conflict with the Constitution and PAJA unlawful is ameliorated in both the Constitution and PAJA by providing for a just and equitable remedy in its wake. I do not think that it is wise to attempt to lay down inflexible rules in determining a just and equitable remedy following upon a declaration of unlawful administrative action. The rule of law must never be relinquished, but the circumstances of each case must be examined in order to determine whether factual certainty requires some amelioration of legality and, if so, to what extent. The approach taken will depend on the kind of challenge presented – direct or collateral; the interests involved and the extent or materiality of the breach of the constitutional right to just administrative action in each particular case.' (Footnotes omitted.)

[18] Regarding the nature of the wide discretion a court has in crafting a just and equitable remedy, the Constitutional Court in *Black Sash Trust v Minister of Social Development & others* [2017] ZACC 8; 2017 (5) BCLR 543; 2017 (3) SA 335 (CC) at

para 51 cautioned that the exercise of the court's powers, although wide, are not without limitations. It said:

'It is necessary to be frank about this exercise of our just and equitable remedial power. That power is not limitless and the order we make today pushes at its limits. It is a remedy that must be used with caution and only in exceptional circumstances. But these are exceptional circumstances.'

In *Corruption Watch NPC & others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC & others* [2018] ZACC 23; 2018 (10) BCLR 1179; 2018 (2) SACR 442 (CC) at paras 68-69, the Constitutional Court again emphasised the restrictions and said:

'There is no preordained consequence that must flow from our declarations of constitutional invalidity. In terms of section 172(1)(b) of the Constitution we may make *any* order that is just and equitable. The operative word "any" is as wide as it sounds. Wide though this jurisdiction may be, it is not unbridled. It is bounded by the very two factors stipulated in the section – justice and equity. . . .

What must be paramount in the relief that a court grants is the vindication of the rule of law.' (Footnote omitted.)

[19] One of the factors that the Constitutional Court has taken into account when deciding whether an order of invalidity should be suspended or not is whether the declaration of invalidity is likely to cause a disruption of services to the public or is likely to create a national crisis or public disorder.

[20] In *McBride v Minister of Police* 2016 (2) SACR 585 (CC) *(McBride)* at paras 52 the Constitutional Court said:

'The Minister incorrectly contends that *Kruger* supports the proposition that "an act done pursuant to invalid statutory provisions must nonetheless remain valid in the interests of certainty and to avoid disruption". But the case supports no such general proposition. In *Kruger*, the Court preserved the conduct of the Road Accident Fund that had relied on invalid proclamations. This was to avoid disruption and disorder. There must be an interests of justice consideration that overrides the presumption of objective constitutional invalidity.' (Footnote omitted.)

[21] In *Black Sash*, the Constitutional Court was also concerned that there would be a national crisis if it did not suspend the orders of invalidity. In the matter before us the high court also expressed concern that if it did not suspend the order of invalidity concerning the decision of the Minister to extend the tenure of the Board, Umhlatuze Water would be a 'headless institution' at the time of a water crisis in the country and that this would be against the interests of the public. However it seems that the court's attention was not drawn to the provisions of s 73(1)*(f)* of the Water Services Act and as a result thereof, the option of entrusting the affairs of Umhlatuze Water on the Minister until a properly constituted Board was appointed was not explored. It can thus not be said that its concerns about the possible risks of having an institution without a Board were baseless. Water is indeed a scarce resource all over the world and it is disturbing that even at this stage, there seems to be a lot of uncertainty about what is going on with Umhlatuze Water as an entity.

[22] Regarding the suspension of the order of invalidity of the decision to suspend and initiate disciplinary proceedings against Mr Makhanya, I hold a slightly different view to that of the high court. I accept that Mr Makhanya is facing serious allegations of impropriety varying from failure to disclose certain conflicts of interest in relation to certain employees at Umhlatuze Water, failure to follow procurement processes, and tender irregularities. Mr Makhanya occupies a very senior position as CEO of Umhlatuze Water and exercises a lot of control and influence over its employees. There are allegations that the forensic report was leaked to him before his suspension, that whilst on sick leave he requested certain documentation relevant to the forensic investigation from employees of Umhlatuze Water, and that he requested the erstwhile Supply Chain Manager and Chief Financial Officer to meet him at a local police station. These allegations suggest that Mr Makhanya attempted to interfere with potential witnesses and or temper with evidence relevant to the pending disciplinary proceedings – but they are still simply allegations, as he has not yet been found guilty of any wrongdoing. Whilst I accept that these allegations were a cause of concern and merited that he should be kept away from the workplace until a new Board had been appointed, there was no basis to suspend the declaration of invalidity of the decision to initiate a disciplinary hearing. This is so because such a declaration did not invalidate the report which formed the basis of the allegations against Mr Makhanya.

[23] A properly and legally appointed Board or the Minister, may in terms of s 73(1)*(f)*, still consider the report afresh and make a decision whether to proceed with the disciplinary proceedings or not. The purpose of a public law remedy is to pre-empt or correct or reverse an improper administrative function and to afford the prejudiced party administrative justice. (See *Steenkamp* para 29). The order which had the effect that the disciplinary proceedings against Mr Makhanya should proceed, despite the declaration of invalidity left hollow his victory in setting aside such a decision. One of the factors to be considered on whether the relief is justified in the particular circumstances of a case is whether third parties altered their position on the basis that the administrative action was valid and would suffer prejudice if the administrative action is set aside. (See *Bengwenyama* para 84). As Mr Madonsela, contended, there was no public interest that would be adversely affected by the declarations of invalidity in this matter.

[24] This however does not mean that Mr Makhanya should be allowed to go back to work and resume his duties as the CEO. In *McBride* the Constitutional Court decided to afford the Minister the opportunity, if he so wished, to restart the process of initiating disciplinary proceedings against Mr McBride, but on a proper basis but ordered that he should remain on suspension. Mr McBride had expressed a willingness to participate in his disciplinary process and did not object to an order that he remain on suspension until a proper decision had been taken. In this matter, although there have been several challenges by Mr Makhanya against the decision to charge him, he has in the same breath not said that he is not prepared to attend a properly constituted disciplinary hearing. Instead he claims that the decision to charge him is victimisation arising from his refusal to be involved in corrupt activities at the behest of Ms Myeni. These allegations are not yet tested and he will be free to raise them at a properly constituted disciplinary process or at any other competent forum if and when the time comes. The allegations are however so serious that they cannot be ignored. A fair and equitable remedy in the circumstances is that Mr Makhanya be precluded from resuming his duties as CEO of Umhlatuze Water for a certain period, until the Minister or a properly constituted Board has considered the report, and has made a fresh decision on whether to proceed with a disciplinary hearing against Mr Makhanya. Such an order will ensure that his right to be

presumed innocent is not infringed, that he is afforded administrative justice, and the concern that he may compromise the pending disciplinary process through attempts to interfere with the evidence and potential witnesses is addressed.

Costs

[25] In view of the fact that both parties have attained substantial success in the appeal, an appropriate order is that each party should pay their own costs.

[26] In the premises the following order is made:

1 The application for leave to appeal is granted to the Supreme Court of Appeal.

2 The application for leave to adduce further evidence relevant the developments at Umhlatuze Water after Mbatha J's order, is granted.

3 The appeal is upheld to the extent set out herein below:

3.1 Paragraph 3 of the order of the court a quo insofar as it relates to the applicant's suspension and disciplinary proceedings against him, and paragraph 4 of the order, are set aside and substituted as follows:

'(a) A properly and legally appointed Board of Umhlatuze Water or the Minister of Water and Sanitation, acting in terms of s 73(1)*(f)* of the Water Services Act 108 of 1997 must consider the report compiled by Edward Nathan, Sonnenbergs Forensics and decide whether to suspend and initiate disciplinary proceedings against the applicant, which decision must be taken within 30 calendar days from the date of this order.

(b) Pending the decision referred to in (a) above, the applicant is precluded from reporting at his office in Umhlatuze Water and from performing his duties as the Chief executive Officer of Umhlatuze Water.'

4 Each party to pay its own costs.

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Z L L Tshiqi

Judge of Appeal

APPEARANCES

For the Applicant:	T G Madonsela SC (with N Mfeka and M Mtati)
Instructed by:	Strauss Daly Attorneys, Umhlanga
	Strauss Daly Inc., Bloemfontein
For the Thirteenth Respondents:	A M Annandale SC (with L Naidoo)
Instructed by:	Edward Nathan Sonnenbergs, Umhlanga
	Phatshoane Attorneys, Bloemfontein