



## PROGRESS REPORT: DISCIPLINARY HEARING: MS NR NKOSI

	Urgent	×	Confidential		Please reply
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### 1 INTRODUCTION

- 1.1 This is a summary report of the disciplinary hearing of Pan South African Language Board (PANSALB) against Ms NR Nkosi (Chief Executive Officer).

### 2 EVENTS AND HEARING DATES

- 2.1 Ms Nkosi was suspended on 20 February 2009 pending an independent Forensic Investigations on irregularities that were reported to the Board, this decision was taken by the Board in a meeting held on 19-20 February 2009.
- 2.2 Service providers were requested to submit quotations as required by the Treasury Regulations, amongst others Nkonki submitted their quotation and after presentation to the committee they were chosen to conduct the investigation.
- 2.3 Nkonki presented a preliminary report to PanSALB during August 2009 and the final report on 4 September 2009.
- 2.4 The Forensic Report pointed out issues of misconduct ranging from Insubordination and Financial Irregularities.
- 2.5 After the preliminary report in August 2009 Ms Nkosi was charged with misconduct and was summoned to a hearing to be held on 4 September 2009.

LEKGOTLA LA DIPOLELO  
KA MOKA TSA AFRIKA BORWA

Sešhaba se tee  
sa dipolelo tse dintsi

LEKGOTLA LA DIPUO  
TSHOHLE TSA AFRIKA BORWA

Sešhaba se le seng sa  
dipuo tsa ngata

LEKGOTLA LA DIPUO  
TSHOHLE TSA AFRIKA BORWA

Sešhaba so le sengwe  
sa dipuo tse dintsi

LIBHODI LETILWIMI TONKHE  
TASENINGIZIMU AFRIKA

Sive sinye,  
lilwimi linyingali

BODONYANGAREDI YA  
TINDZIMI TA AFRIKA-DZONGA

Lusheko luhini,  
nyambo naha

HUVO YO ANGERHELA YA  
TINDZIMI TA AFRIKA-DZONGA

Ribaka rin'we  
lindzimi linyingali

PAN-SUID-AFRIKANSE TAAL

Eun nsaie, baie tale

PAN SOUTH AFRICAN LANGU  
BOARD

One nation, many language

IBHODI YAMALIMI WONKE  
WESEWULA AFRIKA

Isiljhaba sinye,  
amalimi amanengi

IBHODI YEELWIMI ZONKE  
ZASENINGIZIMU AFRIKA

Isiwe esinye,  
ilwimi eziningi

IBHODI YEZILIMI ZONKE  
ZASENINGIZIMU AFRIKA

Isizwe sinye  
izilimi eziningi

- 2.6 PanSALB appointed Mbada Labour Relations Practitioners to initiate the disciplinary hearing on behalf of the employer.
- 2.7 Mr. Mike Mbada prepared the charge-sheet for Ms Nkosi. On 4 September 2009 the hearing was postponed until 4 and 5 November 2009 to allow parties enough time to prepare and the employer to go through the final report in order to determine whether there was any need to add charges against the employee or not.
- 2.8 On 4 November 2009 Ms Nkosi was not present, she submitted through her lawyer a medical certificate, the hearing was then postponed until 7, 8 and 9 December 2009.
- 2.9 On 7 December 2009 once again Ms Nkosi was not present, her lawyer informed the Chairperson of the hearing that, they as the employee representative had made an application in the Gauteng North High Court wherein the Board, its members and the Honorable Minister of Arts and Culture were cited as respondents.
- 2.10 In her Notice of Motion, Ms Nkosi seek relief from the Court declaring "that the Board was not properly constituted in terms of Sections 57 and 6 of the PanSALB Act, when it took the decision to suspend Ms Nkosi, that the Court to review and set aside the recorded decision of the Board to suspend Ms Nkosi, interdicting the Board from proceeding with the disciplinary action against her and uplifting of her suspension"
- 2.11 Her lawyer then applied for a postponement of the hearing pending the outcome of the High Court case.
- 2.12 As the employer we objected to this postponement as we saw it as a delay tactics by Ms Nkosi and her lawyer.
- 2.13 The Chairperson of the hearing postponed the case ***"well in the light of the court application it would appear that is seeking postponement-is to challenge the constitution of the Board on the issues to suspend and this will affect these proceedings. So in the light of the application made by Mr. Samuels for postponement, I would think that it will be warranted to postpone the matter pending the finalization of the application before court, or pending any other decision that will be taken by the Board in the interim"***

- 2.14 The Board was briefed by the employer representative about the chairperson's decision to postpone the hearing. After an advice from the employer representative the Board through its chairperson decided to place the matter on the role for 22 February 2010.
- 2.15 On 22 February 2010 Ms Nkosi attended the hearing accompanied by a Counsel in the absence of her lawyer.
- 2.16 The Counsel argued that according to her the employer had no right to put the matter on the role because it was postponed pending the finalization of the application before the court.
- 2.17 The employer argued that although there was no reason to postpone the hearing because of the court application, it was clear that the chairperson of the hearing postponed the hearing "**pending the finalization of the application before court, or pending any other decision that will be taken by the Board in the interim**" and that the Board through its chairperson decided to continue with the hearing.
- 2.18 It needs to be mentioned further that after the postponement of the hearing on 7 December 2010 the employer stopped the salary of the employee. She approached the court and the court ordered that she be paid her salary during her suspension.
- 2.19 That matter is attended by the State Attorney who appealed against the court order and the matter came before the court on 1 June 2010.
- 2.20 The Counsel further argued that even if the reasons for the postponement were as we said, the chairperson of the Board could not make that decision on his own and that there should be a Board resolution.
- 2.21 The employer pointed out that in terms of PanSALB Act, the chairperson of the Board was allowed to make decision on behalf of the Board and that such decision will be rectified by the Board, and that in this case the Board mandated the chairperson to make decisions on Ms Nkosi's case and later brief the Board for ratification of his decisions.

- 2.22 The chairperson of the hearing postponed that hearing until 4 March 2010 for both parties to present legal arguments relating to the PanSALB Act.
- 2.23 On 4 March 2010 both the Counsel for Ms Nkosi and her lawyer were present, from the onset Mr. Samuels argued took the hearing back to the decision of the 7<sup>th</sup> December 2009 and refused that the case was postponed for the reasons presented by the employer.
- 2.24 At this point the chairperson demanded the recordings of the hearing to be listened by all parties, it was found that the employer's arguments were accurate.
- 2.25 Mr. Samuels then argued that they requested transcripts of the hearing of 22 February 2010 and those were not given to them, he further argued that the case was not postponed for legal arguments.
- 2.26 The employer objected to the postponement and argued that this was an unnecessary delay of the case. The chairperson postponed the case until 9 April 2010 and ordered the employer to provide the recordings to Mr. Samuels.
- 2.27 The employer representative briefed the Board and advised the Board to follow Schedule 8 of the code of good practice as follows:

Under the circumstances this case will not be finalized. It should be noted that the Employee has been suspended for more than a year with salary. This case is in the public interest because the public monies are been used.

It is my view that the Employee will not co-operate and will do anything to derail these proceedings, under the circumstances I advise the Board to do the following:

*[i] Exercise schedule 8 of the Code of Good Practice, which states that an Employee must be given at least 48 hours to respond to the allegations before a decision is taken.*

What is important is that she must be given an opportunity to respond. It is further important that the reasons for taking this route be clearly stated in the letter accompanied by the allegations.

Due to the amount of the allegations I advise the Board to give her 14 days to respond. That the Board must indicate in the letter that if she failed to respond the Board will make a decision without her response.

The letter must further indicate that the Board shall within 14 days from the last date make a decision, and such will be communicated to her in writing.

When the decision is made the Board must then allow her 5 days to appeal to the board.

- 2.28 I further advised the Board that before such a decision was taken the chairperson of the hearing must also be released from his duties and that he must be informed that the Board decided to take another form of a disciplinary process.
- 2.29 The Board released the chairperson of the hearing. Before the 9 April 2010.
- 2.30 The Board was then advised by the Head of Legal Services to continue with the disciplinary hearing and not to follow schedule 8 as advised by the employer representative.
- 2.31 The Board complied with the advice by the head of legal services. The Board then appointed Adv Ledwaba to proceed with the matter.
- 2.32 On 9 April 2010 the hearing commenced and 10:00, the Employee and his attorney Mr. Samuels were present.
- 2.33 When the hearing commenced Mr. Samuels indicated that he does not recognize the chairperson Advocate Ledwaba because according to him Adv Mphaga was the chairperson.
- 2.34 He further indicated that after he received information from Adv Mphaga that his services were terminated he enquired from the State Attorney as to the reasons.
- 2.35 That Adv Mphaga sent him the letter from the Employer terminating his services.
- 2.36 That he interpreted the letter to be saying that Adv Mphaga was not following the mandate of the Employer as a result he was removed.

- 2.37 He further indicated that they were not going to participate in the hearing because no proper procedures were followed in removing Adv Mphaga, he made it clear to the chairperson that he was not expecting any ruling in this matter.
- 2.38 The employer representative addressed the chairperson in this regard. It was the employer's argument that after the last sitting on the 22 February 2010 he briefed the Board about the progress of the case.
- 2.39 That the Board decided to follow another form of dealing with the CEO's case, as a result the services of Adv Mphaga were not needed.
- 2.40 The Board then decided to end the services of Adv Mphaga because they were not needed for the other processes.
- 2.41 After that the Board was then advised against the intended processes. This then led to the Board appointing another Chairperson. That it should be noted that the Board has a prerogative to appoint a Chairperson.
- 2.42 This meant then therefore this matter starts *de novo*.
- 2.43 Mr. Samuels refused to comment on the arguments by the employer representative indicating that they were leaving.
- 2.44 He further indicated that they were not going to participate in the hearing because no proper procedures were followed in removing Adv Mphaga, he made it clear to the chairperson that he was not expecting any ruling in this matter.
- 2.45 He and Ms Nkosi left the proceedings. The employer representative advised the Board as follows:

Under the circumstances this case will not be finalized. It should be noted that the Employee has been suspended for more than a year with salary. This case is in the public interest because the public monies are been used.

It is my view that the Employee will not co-operate and will do anything to derail these proceedings, under the circumstances I advise the Board to do the following:

*[i] Exercise schedule 8 of the Code of Good Practice, which states that an Employee must be given at least 48 hours to respond to the allegations before a decision is taken.*

What is important is that she must be given an opportunity to respond. It is further important that the reasons for taking this route be clearly stated in the letter accompanied by the allegations.

Due to the amount of the allegations I advise the Board to give her 14 days to respond. That the Board must indicate in the letter that if she failed to respond the Board will make a decision without her response.

The letter must further indicate that the Board shall within 14 days from the last date make a decision, and such will be communicated to her in writing.

When the decision is made the Board must then allow her 5 days to appeal to the board.

- 5.46 The Board accepted the advice from the employer representative.
- 5.47 Adv Ledwaba was then appointed to handle the matter in terms of schedule 8 of the code of good practice. He drafted a programme as attached.
- 5.48 The employer submitted its statement of claim and evidence on 21 May 2010 as directed by adv Ledwaba to both Ms Nkosi's lawyer and to adv Ledwaba. We are now waiting for Ms Nkosi's lawyer to respond to the employer's claim, their response is due on 4 June 2010.
- 5.49 According to the programme by adv Ledwaba this matter must be finalized on 25 June 2010, after which he will submit his findings.