

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

NOT REPORTABLE

CASE NO: 21974/2005

DATE: 22/1/2008

In the matter between:

PETRUS JOHANNES RALL

APPLICANT

AND

**THE UNIVERSITY OF SOUTH
AFRICA.**

1st RESPONDENT

**THE PRINCIPAL AND
VICE CHANCELLOR OF THE
UNIVERSITY OF SOUTH AFRICA:
PROF B PITYANA**

2nd RESPONDENT

**THE CHAIRPERSON OF THE BOARD
OF THE SCHOOL OF BUSINESS
LEADERSHIP OF THE UNIVERSITY OF
SOUTH AFRICA AND CHAIRMAN OF THE
SELECTION COMMITTEE FOR THE
APPOINTMENT OF AN EXECUTIVE
DIRECTOR FOR THE POST GRADUATE
SCHOOL OF BUSINESS LEADERSHIP: DR
B KHUMALO**

3rd RESPONDENT

JUDGMENT

MOLOPA, J

The Applicant has launched a Review Application in terms of the Promotion of Administrative Justice Act No.3 of 2000 read with Section 33 of the Constitution Act No. 108 of 1996 for an order set out in his notice of motion, amongst others, that the decision of the Rector and Vice Principal of the University of South Africa, Prof B Pityana and the Chairperson of the Board of the School of Business Leadership and Chairperson of the Selection Committee for the appointment of an Executive Director for the Post Graduate School of business leadership, Dr B Khumalo taken on 08 February 2005 that the Applicant not be appointed in the position of Executive Director of the University of South Africa's school of Business leadership be reviewed and set aside, and that the Respondent be ordered to furnish the Applicant with reasons for the decision referred to above. The Applicant sought further ancillary relief as set out in prayers 3-7 of the Notice of Motion.

The Application is opposed by the Respondents.

The Applicant is employed by the University of South Africa ("UNISA") as Professor at the Post Graduate School of Business Leadership ("SBL"). During the period of 01 August 2004 to 17 April 2005 the Applicant held the position of Acting Executive Director of the SBL after the Executive Director Professor Ferreira resigned on 30 June 2004.

After some deliberations at the SBL Board the post of Executive Director of SBL was advertised in the Sunday Times of 03 October 2004. In the

advertisement for the post aforesaid UNISA reserved the right to make any appointment.

The Applicant, amongst others applied for the post. It is common cause that both the Second and Third Respondents encouraged the Applicant to apply for the post of Executive Director of the SBL aforesaid.

After the closing date of applications for the post, a selection committee chaired by the Third Respondent held several meetings and interviews to select a suitable candidate from 13 candidates who had submitted their applications. The first meeting and interview took place on 06 December 2004, and then followed one on 20 January 2005. Eventually, through the process only three (3) candidates remained on the shortlist i.e. the Applicant, Prof. Pellisier and Prof. Mangaliso.

Prof. Mangaliso subsequently withdrew his application and only the Applicant and Prof. Pellisier remained as contenders for the post of Executive Director of UNISA's SBL. The final interview took place on 28 January 2005.

On 02 February 2005 the selection committee in their final meeting, having interviewed the two remaining candidates, i.e. the Applicant and Professor Pellisier resolved that it could not recommend any of the two candidates for the post. Although both candidates i.e. the Applicant and Prof. Pellisier were found to be appointable apparently the selection committee found that there were unresolved questions about both of them, both were found to have their strength and weaknesses. In so far as the Applicant was concerned he was found not to be convincing as to the manner in which transformation would be effected at the SBL.

As appears from the advertisement, Annexure 'PJR5' to the Founding Affidavit UNISA sought to appoint a high calibre Executive Director to lead the school (SBL). According to the Respondent this entailed the ability of the appointee to transform the SBL and to have qualities of a transformational leader. The Applicant was unfortunately not found to have the qualities that UNISA and the SBL were looking for, hence the decision by the SBL Board not to appoint him.

As already stated above the selection committee apparently had their final meeting on 02 February 2005 (after interviewing both the Applicant and Prof. Pelliesier) and they (the selection committee) resolved that it could not recommend any of the two candidates to the post for the reasons set out above. The Applicant incorrectly states in his papers that he was the only person found to be appointable. It is clear from his papers that he bases most of what he says transpired in the meeting of the Selection Committee on hearsay. From the papers and from the transcript of the meeting filed it appears that both the Applicant and Professor Pellisier were found to be appointable and not only the Applicant as he alleges.

The second Respondent as Principal of UNISA, was eventually informed of the recommendations of the Selection Committee. He apparently then requested the third Respondent, as chairperson of the SBL Board to convene a meeting of the SBL board to sit on the recommendations of the Selection Committee. It is important to state here that the Second Respondent did not himself convene the meeting of the SBL Board aforesaid as alleged by the Applicant.

Apparently immediately on learning of the recommendations of the selection board and prior to the meeting of the SBL board of 08 February 2005 the Second Respondent personally informed the Applicant of the recommendations of the selection committee that he was not appointed to the post. This he apparently did to avoid Applicant hearing this from other sources, as it clearly appears that Applicant had an 'informer' from within the selection committee and/or the SBL Board, hence most of his allegations are hearsay, he does not disclose his source. The second Respondent thus wanted the Applicant to hear this from him personally. In my view he (Second Respondent) accorded the Applicant due respect.

The meeting convened by the Third Respondent took place on 08 February 2005. It clearly appears from the transcript of the meeting, see page 157 of the record, that the meeting was called by the Third Respondent (the Chairperson), and not the Second Respondent. It is clear from the transcript that the **SBL Board** resolved not to appoint the Applicant (it is clearly not the decision of the Second and Third Respondents).

Further, the Applicant alleges that there was no quorum at the meeting. The Applicant himself states in his Affidavit that he is not sure whether there was any quorum or not. From the facts put before court by the Respondents it is clear that there was a quorum. I need not even repeat what is set out by the Respondents in this regard.

The Applicant avers that he was not given for the decision and still insists, as appears from his notice of motion that he be provided with reasons for the decision. Apparently, after the meeting of 08 February 2005 the Applicant was again informed by the Second Respondent

together with the Third Respondent and one Professor Mosoma, who was also part of the SBL board meeting on 08 February 2005 that neither him (Applicant) nor Prof. Pellissier were found to be suitable to fulfil transformational role that UNISA envisaged. The Applicant himself states and confirms in his Affidavit that the Second and Third Respondents together with Professor Mosoma did come to his office and they informed him of the outcome of the meeting as alleged by the Respondents.

The Applicant insisted on written reasons for the decision not to appoint him and these were provided to him in a letter dated 31 March 2005, see p565 of the record. It is not clear what more does the Applicant want since in my view he has been provided with the reasons for his non appointment to the post of Executive Director of the SBL. From the reading of Applicant's papers it is clear that basically he has a gripe/problem with his non-appointment as Executive Director of the SBL.

He specifically states in his Founding Affidavit (paragraph 52, page 43 of the record) that his name and reputation is damaged within the business community because they would think that he did not get the post of Executive Director because of his incompetence. This implies, in my view that the Applicant expected that the First Respondent would advertise the post in the newspaper, obviously interested people would apply, but that the First Respondent and/or the SBL Board would only go through the process as a 'smokescreen' and/or pretend to be following the process knowing that it was a given that the Applicant would eventually be appointed.

He specifically deals with the discussion by the SBL Board relating to how the process of appointing the Executive Director for SBL would be followed from as for as August 2004, see paragraph 16, Founding Affidavit, page 21 of record, The question is why would the SBL Board follow the process set out by the Applicant himself if it is not that they were looking for a person high calibre to lead the SBL and not necessarily that it was a foregone conclusion that the Applicant would 'automatically' be appointed, because this seems to be the attitude of the Applicant from the reading of the papers.

The Applicant also avers/ contends that the minutes of the meeting of 08 February 2005 were not approved. It is clear from the transcript of the meeting aforesaid that both the Applicant and Prof Pellisier were found not to be suitable to be appointed for the post, and that in 'mapping' a way forward it was decided that the selection process be started afresh. On his (Applicant's) own version the Board has already received a subsequent recommendation from the selection committee after a further selection process that another person be appointed. This, in my view, is in line with the decision and recommendations of 08 February 2005 as appear from the transcripts before court. This clearly does not support the Applicant's contention.

It is clear from the above as already stated that the Applicant has a serious problem with his non-appointment to the post aforesaid. He seeks to raise amongst others the issue of legitimate expectation on the basis that he was the only candidate found to be appointable, which is clearly incorrect as already stated above, because Prof Pellisier was also found to be appointable. Further on this issue the Applicant fails dismally to make out a **proper** case on his papers, he does not in any way satisfy/comply with

the requirements as he on his (Applicant's) own terms signed the Second National Response Bulletin of 2002 (the 2002 (4) S.A. 600W) aforesaid. The Second Respondent cannot be blamed for the Applicant's failure in the interview before the Selection Committee. He was not appointed because of his race. This contention/ assertion is so baseless and finds no support whatsoever in his paper clearly from the transcript of the note appearing on February 2005 of finding of the certain decision made that in this Applicant's own words that in the SBL Board and view the Second and Third Respondents of race. It is absurd for one to raise the same point and/or to think that (as Applicant has done) in the herein) Applicant has applied for a post that it is a given that he would be successful in his Notice of Motion. If this was the position as set with his paper UNISA have wasted time in advertising the post in thus inviting the interested parties to apply for review nor for any other prayers sought in his Notice of Motion.

In the result the Application is dismissed with costs. It is worrying that there seems to be trends that people respond to advertisements, apply for jobs and if not successful/appointed in these jobs/posts they take the organisations in question to court mostly on review on one or other superficial ground. As already stated above the Applicant seems to have mistakenly been of a view that it was a foregone

L M MOLOPA (Ms)
 conclusion that he would be appointed as the Executive Director of the SBL and this is based on hearsay information he got from his 'informant' from within the Selection Committee.

The Applicant has in my view established no grounds on his papers for review. He moves from mistaken premises. Even in his Notice of Motion as already stated he seeks to review the decision of the Second and Third Respondents, that is, he holds the Second and Third Respondents responsible for his non-appointment. He even suggests in his Replied Affidavit that the Second and Third Respondents harbour some bias