EXHIBIT CC 17.2

SUPPLEMENTARY AFFIDAVIT & ANNEXURES

OF

JONATHAN THEKISO

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

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IN *RE* THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION")

AN INVESTIGATION INTO THE SOUTH AFRICAN BROADCASTING CORPORATION

SUPPLEMENTARY AFFIDAVIT

I, the undersigned

JONATHAN THEKISO

Hereby declare under oath as follows:

1. I am a male adult currently employed at the South African Broadcasting Corporation ("SABC") in the capacity of Group Executive: Human Resources ("GEHR"). I have occupied said position since 21 March 2018.

2. My functions and responsibilities as GEHR include inter alia:

   To provide leadership and strategic direction to the Human Resources Division by aligning and executing the Human Resources Strategy thereby enabling the delivery of the SABC mandate as reflected in the Corporate Plan, as well as supporting the Core business of the SABC to achieve their mandate. To ensure and sustain a working environment that is characterised by a healthy, competent and diverse workforce that is capable of transitioning, sustaining and positioning the SABC as an employer of choice.

3. I was requested by the investigators of the Commission of Inquiry into State Capture ("the Commission") to provide an affidavit outlining information regarding the payment of settlement agreements to employees at the SABC over the past 10 years.

JT TE

4. The contents of this affidavit are true and correct and falls within my own knowledge, unless the contrary clearly appears from the context or is otherwise stated.

BACKGROUND

5. During the period 2009 to 2019 the SABC experienced a number of terminations. Some of these terminations were linked to settlement agreements being reached. The information below regarding the settlements includes all settlements paid to ex-employees and current employees (Including CCMA & Labour Court rulings) from 1 January 2009 to 31 July 2019

6. The table below shows employee personnel numbers, employee names and their positions as at the time they were given settlement agreements, the date the settlement payment was made, the amount paid, and the corresponding Annexure attached hereto which is a copy of the settlement agreement.

7. However, as at the time of finalising this supplementary affidavit, some settlement agreements could not be located. In such instances, I have added a narration "File Pending" under the 'Source Document' column.

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All Settlements for the Period 1 January 2009 to 31 August 2019

Persno	Title	Initials	Surname	Position	Payment Capture Date	Amount	Source Document
00102575	Mr	O	Abrahams	Manager: Systems Integration	30 November 2016	2 030 436,00	S001
00101662	Ms	V	Andrews	Remuneration & Benefits Specialist	27 November 2014	220 267,53	S002
00010507	Miss	R	Bologo	News Editor	30 April 2019	928 088,50	S003
00001902	Mr	KW	Bredenkamp	Engineering Specialist	30 April 2011	322 580,65	S004
00015579	Ms	MC	Campher	Chief Financial Controller	31 October 2016	2 888 238,20	S005
00016035	Miss	KT	Dlamini	Administrator	10 March 2014	343 200,00	File pending
00005508	Miss	V	Duwarkah	Group Executive: Television	30 September 2016	3 059 494,12	S006
00011091	Mr	WD	Feliti	General Manager: Human Resources	22 April 2016	4 697 059,96	S007
00010136	Mr	TP	Hendrikz	Artisan	30 April 2011	307 692,00	File could not be located
00007172	Mr	M	Janse Van Rensburg	General Manager: Strategy, Operations, Research & Development	31 March 2017	2 963 548,96	S008
00102831	Miss	NV	Jokozela	Account Executive	31 October 2014	97 000,00	S009
00017077	Ms	Z	Jones	Sales Director	30 November 2010	1 739 045,27	File pending
00001122	Mr	G	Koumaras	Junior Project Manager	30 April 2011	317 460,00	File pending
00053780	Mr	TB	Leballo	General Manager: Logistical Services	29 February 2012	109 752,30	S010
00103661	Mr	MA	Lebone	Manager: Skills Development Projects & Planning	15 August 2018	177 520,83	File pending
00011187	Mr	LT	Lekgotho	General Manager: Henley TV Facilities	29 May 2016	138 575,00	S011
00017095	Mr	PT	Lesala	Group Executive: Human Capital Services	15 October 2012	2 011 152,96	S012
00011817	Mrs	AT	Litheko	Account Executive	01 March 2012	30 000,00	File pending
00012044	Ms	GN	Luswazi	Administrator	06 November 2015	3 415,00	S013
00102798	Mr	J	Mabaso	Group Executive: Human Resources	30 June 2016	1 309 943,98	S014

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00016969	Mr	GR	Mackenzie	Employee Relations Consultant	14 October 2009	394 799,34	S015
00101111	Ms	LS	Magnus	Reporter	23 March 2016	200 000,00	S016
00103221	Mr	RS	Makalima	Driver	24 December 2018	54 429,60	S017
00010431	Mrs	TCC	Mampane	Group Executive: Office of The GCEO & Regions	31 March 2012	4 344 688,51	S018
00103798	Mr	LR	Marokana	Music Compiler	01 March 2018	98 597,00	File pending
00015896	Ms	GL	Mashigo	Human Resources Manager	03 May 2017	295 782,00	S019
00103215	Mr	CT	Masimula	Driver	24 December 2018	54 429,60	S020
00015382	Mr	SM	Masinga	Group Executive: Technology	21 April 2016	4 539 745,99	S021
00007273	Mr	NP	Masoetsa	National Copy Editor	01 March 2013	- 216 000,00	S022
00016654	Mr	TS	Mathibe	General Manager: Litigation & Legislation Compliance	12 November 2012	1 385 199,00	S023
00103850		FL	Matlala	Group Chief Executive Officer	20 July 2016	5 481 786,20	S024
00016678	Ms	KG	Mbonambi	General Manager: Finance (News)	20 April 2011	623 200,54	File pending
00015257	Ms	MT	Melk	Company Secretary	30 November 2011	2 976 836,70	S025
00102241	Ms	TP	Mfundisi	Programme Manager	19 July 2016	363 039,80	File pending
00015838	Ms	PW	Mkhize	General Manager: Strategy	05 January 2016	768 175,82	S026
00049560	Miss	MZE	Mkize	Provincial General Manager: KZN	01 July 2016	902 382,45	S027
00016706	Mr	SS	Mochichila	Executive Producer	30 April 2019	928 088,50	S028
00006027	Mr	SH	Mohamed	Senior Financial Executive	31 January 2010	53 326,14	File pending
00103212	Mr	SJ	Mokhele	Driver	24 December 2018	54 429,60	S029
00015815	Mrs	PL	Mokhobo	Group Chief Executive Officer	28 February 2014	4 616 831,73	S030
00007113	Mr	QMSM	Mokoetle	Group Chief Executive Officer	18 January 2011	3 206 092,22	S031
00007168	Mr	TP	Molefe	Group Executive: News	31 May 2013	4 998 209,07	S032
00042068	Mr	TE	Molokwane	Group Employee Relations Consultant	31 October 2016	332 394,49	S033
00015292	Mr	RP	Montsho	General Manager: SABC News Resources	14 July 2011	1 221 593,68	S034
00101249	Ms	JM	Motsepe	General Manager: International Programmes	30 November 2012	882 008,10	S035

00104315	Mr	TE	Munyai	Group Employee Relations Consultant	27 May 2019	154 591,35	S036
00100468	Miss	M	Nepfumbada	Head: Legal Services	28 June 2016	3 010 114,52	S037
00015307	Ms	ZZ	Ngcobo	Head of Genre: Drama	31 August 2011	274 149,21	File pending
00102167	Mrs	MP	Nkosi	Group Manager: Labour Relations	30 September 2016	3 025 849,39	S038
00014214	Mr	ZZ	Nomnganga	Project Manager	30 September 2011	42 624,36	File pending
00013118	Mr	BL	Ntloko	Group Executive: Radio	30 September 2016	2 970 443,90	S039
00015822	Mrs	CP	Nzimande	Chief People Officer	20 February 2011	2 578 803,18	File pending
00015795	Mrs	WN	Nzimande	Executive Manager: Office of the GCEO	31 December 2016	899 273,44	S040
00001899	Mr	C	Olivier	General Manager: Finance & Operations	07 November 2016	12 274 921,66	S041
00101594	Mr	EE	Padi	Account Executive	21 May 2015	2 500 000,00	File pending
00016815	Mr	I	Pieterse	Artisan	31 January 2016	152 150,00	S042
00100623	Mr	E	Qwabe	General Manager: Engineering Services	28 February 2017	1 943 895,25	S043
00102812	Mr	TK	Radebe	General Manager: Procurement Operations	30 September 2016	2 520 214,39	S044
00006450	Mrs	N	Ramdhani	Media Analyst	31 August 2009	202 525,63	File pending
00015091	Mrs	AM	Scott	Administrator	01 September 2017	20 000,00	File pending
00014958	Mr	C	Sheik	Station Manager: Radio 2000	01 March 2012	412 301,88	File pending
00102752	Mr	MJ	Shushu	Head of Procurement	30 September 2016	2 641 874,93	S045
00010787	Mrs	SE	Sishuba	Senior Buyer	31 October 2014	221 979,04	S046
00103217	Mr	D	Siyothula	Driver	24 December 2018	54 429,60	S047
00016048	Mr	CA	Smit	Artisan	30 April 2011	312 500,00	File pending
00014507	Mr	M	Soko	General Manager: Public Service Radio	30 November 2012	341 753,81	S048
00050020	Mr	M	Tanda	Executive Producer	01 December 2012	155 934,00	File pending
00014579	Mr	IF	Tseisi	Group Executive: Governance & Risk	30 September 2016	3 221 808,30	S049
00102440	Ms	A	Van Den Heever	Dictaphone Typist/Transcriber	02 February 2019	175 903,06	File pending
00014841	Mr	JR	Van Wyk	Bulletin Editor	01 September 2011	40 753,73	S050
					Grand Total	**102 403 331,97**	

CONCLUSION

8. Based on what is set out above, it can be deduced that the SABC, over the past 10 years, reached a high number of settlements with employees and paid a large amount in settlement agreements.

9. This is all I wish to declare.

I CERTIFY THAT THIS DOCUMEN... OF THE ORIGINAL DOCUMENT WHICH WAS HANDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT, FROM MY OBSERVATIONS, AN AMENDMENT OR CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT.

HANDTEKENING/SIGNATURE

MAGSNOMMER / FORSE NUMBER 7202859-9 RANG / RANK CST

NAAM IN DRUKSKRIF / NAME IN PRINT MATHYE TE

SUID-AFRIKAANSE POLISIEDIENS
SCM HEAD
2019 -08- 29
BRIXTON
SOUTH AFRICAN POLICE SERVICE

DEPONENT

Signed and sworn to before me at BRIXTON Police Station on this the 29th day of AUGUST 2019, the deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath binding on his/her conscience. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS: 7202859-9 CST

FULL NAMES: MATHYE TE

CAPACITY: CST

ADDRESS: C/N HIGH & MERCURY STREET

Annexure 2.

CCMA

Arbitration Award

Case Number: GAJB16789-16
Commissioner: Lungile Matshaka
Date of Award: 1-Nov-2016

In the ARBITRATION between

BEMAWU obo Abrahams, Omar

(Union/Applicant)

and

SABC Ltd

(Respondent)

Union/Employee's representative: H Buisson
Union/Applicant's address: PO Box 203
Wierda Park
0149

Telephone: 080 023-6298,012 661-3915,082 920-8669
Telefax: 086 671-5585
E-mail: headoffice@bemawu.org.za, bemawu@gmail.com

Employer's representative: Tshila Munyai
Respondent's address: Private Bag X1
Auckland Park
2006

Telephone: 011 714-3863,011 714-2708,011 714-9111
Telefax: 011 714-4030,011 714-3001
E-mail: nkoslmp@sabc.co.za, webera@sabc.co.za, potgieterjj@sabc.co.za, xamase@sabc.co.za, knightxe@sabc.co.za

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DETAILS OF HEARING AND REPRESENTATION

1. The matter was set down for arbitration hearing as part-heard on 19 October 2016 in terms of section 186 (2) (a) of the Labour Relations Act (LRA), No. 66 of 1995, as amended, at the Offices of CCMA in Johannesburg. Mr. H du Buisson, union official of BEMAWU (Broadcasting Electronic Media & Allied Workers Union) represented the Applicant, whilst Mr. T Munyai, ER Consultant, represented the Respondent. Ms. M Ashen, HR Manager, was in attendance.

ISSSUE TO BE DECIDED

2. As per the parties Settlement Agreement I am only required to determine the amount of compensation to be awarded to the Applicant.

BACKGROUND TO THE ISSUE

3. The initial hearing that took place on 13 October 2016 had to be adjourned because of the non-availability of the Respondent's witnesses. Fortunately both parties consented and agreed to a short postponement of today's date i.e. 19 October 2016. I must place on record and commend both parties for showing seriousness and willingness to settle the matter right from the very outset.

4. Perhaps for the sake of record and completeness I have to include the terms of the Settlement Agreement which is as follows:

4.1 *"The Applicant will be re-instated to his previous position as Manager: Systems Integration by later than Monday, 24 October 2016.*

4.2 The Applicant will be approached and will enter into discussion with the Respondent with the view to add the responsibilities of the SAG (Strategic Architecture Group) to the responsibilities of the Applicant.
4.3 The parties will argue the amount of compensation to be awarded to the Applicant before the Commissioner who will make a ruling on same."

5. It was on the above basis that the parties argued as below in respect of the compensation to be awarded to the Applicant. Only what is the essence of the submissions respectively will be reflected on.

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SURVEY OF ARGUMENTS

Applicant's Submissions

6. The Applicant argued that he be awarded 12 months' compensation plus punitive costs for being demoted to a lower position in order to send a strong message to the Respondent that it has to follow the law and fair labour practice in such instances.

7. As it has turned out that one Mr. Ralitabo, Group Executive for Media, Technology and Infrastructure, arbitrarily and verbally gave an instruction that the Applicant be demoted to the lower position of Engineering Consultant from a Manager's position. It is the Applicant's averment that the latter should be made personally liable for disregarding the legal processes.

Respondent's Submissions

8. In turn the Respondent argued that in the event of finding that the Applicant should be awarded compensation, Mr. Ralitabo should not be held personally liable as he acted within the scope of his employment, whether he acted on an informed basis or not.

9. Further, in the spirit of legislation the CCMA was not meant to award punitive costs as it is not a judicial body like courts. It only has to ensure fairness as it has limited jurisdictionalpowers. The Respondent may invariably have fallen short in following the processes and on that basis it is asking for leniency.

ANALYSIS OF EVIDENCE AND ARGUMENT

10. As a point of departure, section 186(2) (a) of the Labour Relations Act, No. 66 of 1995, as amended, provides that *'"Unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee.'*

11. Turning to the present case, it is common cause that the Applicant complied with the verbal instruction given by Mr. T Ralitabo through his line manager, Mr. J Hill, Acting General Manager, demoting him from the position of Manager (Mechanical Engineering) to Engineering Consultant effectively from 13 May 2016. It is further common cause that the Applicant as per the Settlement

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Agreement alluded to above and dated 19 October 2016 "*will be re-instated to his previous position by no later than Monday, 24 October 2016.*"

12. I have taken note of the fact that the Applicant, as per the said Settlement Agreement, "*will be approached and will enter into discussion with the Respondent with a view to add responsibilities of SAG (Strategic Architecture Group) to the responsibilities of the Applicant.*"

13. The only issue that needs to be determined is whether or not the Applicant by virtue of his reinstatement, is entitled to compensation or 'back pay'. According to Grogan (Dismissal, 1st Ed 2010) reinstatement is to be interpreted in its ordinary meaning. The learned author goes on to say that if employees are reinstated, they resume employment on the terms and conditions that prevailed at the time of dismissal; the period during which the employee has been out of work as a result of the unfair dismissal is regarded as nothing more than a suspension of the employment contract.

14. Grogan further makes an important point that is relevant in the present case. In his pronouncement he states that reinstatement need not be fully retrospective to the date of dismissal. The extent of retrospectivity is left to the discretion of the court or arbitrator. He further states that although the employer must pay a reinstated employee a sum of money if the reinstatement order is made retrospective, that sum is not compensation as contemplated by subsection (1) (c) of section 193 of the LRA.

15. Grogan is further of the view of that there appears to be no reported judgment dealing with the nature of the monetary component of retrospective reinstatement. While '*back pay*' is obviously a form of compensation for the loss of earnings during the period of employment after the dismissal, it is generally regarded as distinct from compensation. Consistent with this view, the LRA deals with reinstatement and compensation in different sections, and suggests that reinstatement and compensation are alternative remedies. The learned author concludes by further expressing a view that an employee who is awarded full retrospective reinstatement cannot be awarded compensation in addition to back pay. He adds that this would be inconsistent with the use of the disjunctive '*or*' in section 193 (1).

16. The present case in essence deals with an unfair labour practice in terms of section 186 (2) (a) of the LRA relating to demotion and as per Settlement Agreement. I have deemed it appropriate to award five months remuneration for what can be generally regarded as back pay, even though the parties had in their minds compensation. I have noted on record early in the proceedings that the Applicant earned R47 338.46 per month in his position as Manager: Systems Integration.

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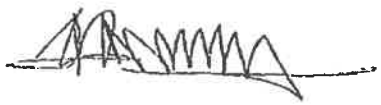
17. I regard this ruling as an exception and mainly giving effect to the Settlement Agreement already in place. I have been encouraged by the willingness of the parties to restore the trust relationship impaired by the action of the Respondent in arbitrarily demoting the Applicant.

AWARD

18. I therefore award the Applicant five (5) months remuneration amounting to R236 692.30 based on his monthly income of R47 338.46.

19. I order the Respondent, SABC Ltd, to pay the Applicant, Omar Abrahams, the said amount of R236 692.30 no later than 11 November 2016.



Signature: _____

Commissioner: *Lungile Matshaka*

Sector: *Communication Sector*

South African Broadcasting Corporation Limited
Group Employee Relations
Human Capital Services
Radio Park Cnr Artillery and Henley Roads Auckland Park
2092. Private Bag X1 Auckland Park 2006 Johannesburg
Gauteng South Africa.
Tel +27 11 714 – 4303/4717 Fax +27 11 714-4030/3001
Cell 082-661-3855; Email: potgietap@sabc.co.za

INTERNAL MEMORANDUM	
Date:	**FRIDAY, 14 OCTOBER 2016**
To:	**MR. Kobus Potgieter** **GENERAL MANAGER- GROUP EMPLOYEE RELATIONS**
Cc:	**MR Tseliso Ralitabo** **GROUP EXECUTIVE: (MTI)** **MR MOHLOLO LEPHAKA** **GROUP EXECUTIVE: HUMAN CAPITAL SERVICES (ACTING)**
Subject:	**Request for Settlement Mandate on SABC v BEMAWU obo Omar Abrahams**

☐	**For Authorization**	✓	**For Your Information**
✓	**For Action**	☐	**Please Revert**
☐	**For Your Comments**	☐	**Returned With Thanks**

Dear Mr Potgieter

PURPOSE

1. The purpose of this memorandum is:-

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South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/30
Non-Executive Directors: Prof M O Maguvhe (Chairperson); Ms L T Khumalo (Deputy Chairperson);
Ms N M Mhlakaza; Dr N A Tshidzumba;
Executive Directors: Mr J R Aguma (Acting Group Chief Executive Officer); Ms B L Tugwana (Acting Chief Operations Officer); Ms A Raphela (Acting Chief Financial Officer); Company Secretary: Ms T V Geldenhuys

1.1 To provide an analysis and opinion on the case, and impact on business owing to failure to comply with section 198A Labour Relations Act 66 of 1995, as amended;
and

1.2 To provide advice on implications owing to failure to comply with Remuneration Directive dated 07 February 2008.

BACKGROUND

1.

Mr Omar Abrahams was employed on the 01 January 2013, in the capacity of Manager Systems Integration at salary scale code 125. Mr Abrahams through his Union (BEMAWU) lodged a dispute at CCMA alleging unfair demotion in terms of section 186 (2) (a).

2.

SUMMARY OF ALLEGATIONS BY Mr Omar Abrahams:-

2.1

In May 2016, James Hill met with Mr Abrahams to discuss work related issues, in this meeting Mr Abrahams asked the correctness about the rumours that he must vacate the position of Manager Systems Integration (salary scale code 125). Mr Hill confirmed the correctness of such rumours and that he must

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occupy the position of Engineering Consultant (salary scale code 130). Mr Abrahams asked Mr Hill as to what are the reasons for this move and Mr Hill response was that; "it's an instruction from Mr Ralitabo".

Subsequent to the meeting above, Mr Abrahams was instructed by the Group Executive: Media Technology Infrastructure Mr Tseliso Ralitabo to vacate his office and position of Manager Systems Integration (salary scale 125) and assume responsibilities of the Engineering Consultant, (salary scale 130) as of the 20 May 2016.

2.2

In January 2013 when he was appointed in the position of Manager Systems Integration, this appointment was at the entry level of the salary scale 125 and kept at the entry level of this scale code to date.

3.

DISCOVERY OF FACTS REGARDING ALLEGATIONS BY Mr Omar Abrahams

3.1

In April 2016, GE: MTI – Mr Ralitabo was tasked to align his division to the Corporate Objectives. There was a meeting called wherein relevant managers

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were informed of contemplated changes in the division. Mr Abrahams was not invited in the abovementioned meeting.

3.2

In May 2016, GE: MTI – Mr Ralitabo called a meeting wherein Mr Omar Abrahams and Ms Ntaoleng Mofokeng (HR Consultant) were in attendance. In this meeting Mr Ralitabo told Mr Abrahams to vacate the office and position of Manager Systems Integration (salary scale 125) and move to the office and position of Mechanical Engineering: Engineering Consultant (salary scale 130). Mr Abrahams was aggrieved in the manner in which the meeting was conducted and approach used by Mr Ralitabo and he viewed this as unfair demotion.

Subsequent to this meeting he became aware that when he was appointed as a Manager Systems Integration in January 2013, his appointment was at entry level of salary scale 125 and he felt aggrieved by this.

3.3

On the 20 May 2016, Mr Omar Abrahams lodged a formal grievance, and raised the following concerns:

1. "Unfairly demoted to scale code 130 as well as change of duties"

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2. "Appointed at entry level of scale code 125 and kept at the entry level of the scale code for approximately 3.5 years without explanation".

Upon realizing that his grievance was not being entertained he resorted to referring a dispute to CCMA pertaining to these issues.

NB: In an attempt to resolve the grievance informally; Ms Ashen (HR Manager) had separate discussions with Mr Ralitabo and Mr Hill seeking to address the proposed solutions by Mr Abrahams' grievance. Mr Ralitabo and Mr Hill agreed to the midpoint adjustment. Then Ms Ashen provided a draft submission for the midpoint adjustment payment and the calculations to this effect were provided by the Remuneration Department. Upon receipt of the draft Mr Hill escalated the matter to Mr Ralitabo and it was subsequently not implemented.

3.4

On the 04 October 2016, there was a meeting attended by myself Tshiila Munyai (Group Employee Relations Consultant), Ms Merlyn Ashen (Human Resources Manager – Media Technology Infrastructure) and Mr Tseliso Ralitabo (Group Executive: Media Technology Infrastructure). In this meeting I was consulting with both Ms Ashen and Mr Ralitabo to establish background and facts leading to the dispute referred to the CCMA by BEMAWU obo Omar Abrahams.

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3.5

Mr Ralitabo stated that there was an instruction from Senior Management Team for him to re-align his department in line with the Corporate Objectives and this instruction had to be implemented within set timelines. Due to set timelines there was limited time available wherein implementation should be carried and there was no room to consult. He confirmed a discussion he had with Mr Omar Abrahams wherein, he advised Mr Abrahams of changes in the Engineering Services Division and that Mr Abrahams was no longer holding a position of Manager Systems Integration; therefore, he will be assuming the position of Engineering Consultant without any change to his remuneration.

4

CASE ANALYSIS

4.1

Alleged Unfair Demotion – section 186 (2) (a) of LRA

It is an established principle envisaged in the section above and it implies that in the event an employee is consulted (in due regard to provisions of section 189 of LRA) regarding the contemplated restructure in this case (re-alignment) and the

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employee in question consent to demotion to avoid retrenchment such demotion would be regarded fair.

However, in the case of Mr Abrahams established facts indicate that there was no consultation as envisaged in the provisions of section 189 of the LRA consequently, there was no consent by Mr Abrahams to be demoted and therefore, such demotion will be viewed procedurally unfair. This would justify a claim of Unfair Labour Practice. The employer failed to remedy this situation subsequent to a grievance lodged by Mr Abrahams on the 20 May 2016 in line with the company's grievance procedure by not addressing the grievance.

4.2

Alleged Unfair Discrimination (Equal Pay for Equal Work)

It is evident that Mr Abrahams upon his appointment in January 2013 as Manager Systems Integration was remunerated at an entry level of salary scale 125 and there was no development plan in place to enable a review in remuneration upon completion of development plan.

However, in line with the remuneration directive of 2008: clauses 2.0; 2.1and 2.2 it was mandatory upon his appointment at entry level of salary scale 125 a development plan should have been in place to ensure that he is elevated to the

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midpoint level of salary scale 125 upon successful completion of development plan.

In the absence of the development plan it implies that the employer failed or omitted to comply with the principles and intentions of the remuneration directive of 2008.

5.

FINANCIAL RISKS TO THE BUSINESS

5.1

The Company prospects of success at Arbitration (scheduled for the **19 October 2016**) with regards to demotion are non-existent based on procedural aspects related to its defence by failing to have consulted with Mr Abrahams. This defect will attract a maximum compensation up to twelve (12) months remuneration.

5.2

The Company prospects of success with regards to failure to remunerate at midpoint of salary scale 125 for the duration from January 2014 to date are non-existent based on failure to comply with remuneration directive.

This implies having to rectify the difference of remuneration between entry level and midpoint level of salary scale 125 for the duration from January 2014 to date.

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6. RECOMMENDATIONS

6.1

Midpoint adjustment of salary backdated to January 2014 (1 year after appointment date).

6.2

Management to engage in a discussion outlining the rational for his deployment to Engineering Consultant position and compensation to the range of 5 months.

TSHIILA MUNYAI

GROUP EMPLOYEE RELATIONS CONSULTANT

JT
TE

Exhibit "J"

Merlyn Ashen

From: Omar Abrahams
Sent: 25 October 2016 01:11 PM
To: Merlyn Ashen
Subject: Re: Mutual Separation
Attachments: Mutual Separation Proposal - Omar Abrahams.pdf

Hello Merlyn.

As discussed yesterday, please find attached my proposal (in PDF format) for the mutual separation between myself and the SABC.

Thanks and Regards.

Omar Abrahams
Manager, Systems Integration
Tel: X4331
Mobile: 0738322555

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Mutual Separation Proposal

Prepared By: Omar Abrahams (SABC Employee)

Designation: Manager Systems Integration

Presented To: The South African Broadcasting Corporation

Date: 25 October 2016

Dear Sir/Madam,

Re: Mutual Separation Proposal

As per the discussion held with SABC HR Technology on the 24th October 2016, I would like to hereby present the following proposal with respect to a Mutual Separation agreement between the South African Broadcasting Corporation (Employer) and Mr Omar Abrahams (Employee). The terms I would like to propose are as follows:

1. The employee to be paid a value equating to 2 years remuneration at the midpoint of the salary scale 125 (TGRP)
2. The employee (Mr Omar Abrahams) will seek no further compensation for the issue raised at the CCMA with case number *GAJB17199-16*. The aforementioned issue will also not be pursued further at the labour court of the Republic of South Africa
3. The employer (South African Broadcasting Corporation) will also be released from implementing the findings and rulings on case number *GAJB16789-16*
4. The employee will continue to aid the Engineering Services Division of the SABC utilising his (the employees) skills in Project Engineering until such time that this agreement has been finalised, implemented and the parties (the employee and employer) have separated.

Please note the above proposal is submitted with the provision that the matter is concluded (i.e. conclusion of all administrative and operational matters as well as final payment made to the employee by the close of business day on the 30th December 2016).

Please accept this proposal in kindness as full and final settlement and with a view to helping the Employer (The South African Broadcasting Corporation) and the employee (Mr Omar Abrahams) move forward amicably and respectfully.

With Thanks and Kind regards,

Omar Abrahams

JT
TE

Annexure 4

Merlyn Ashen

From: Jaco Van Staden
Sent: 31 October 2016 01:10 PM
To: Merlyn Ashen
Cc: Zak Yunus
Subject: RE: OMAR ABRAHAMS DUTIES

Importance: High
Sensitivity: Confidential

Hi there.

It will be R1,015,2018 times 2 which is R2,030,436 for a 24 month period.

Kind Regards,

Jaco.

Jaco Van Staden
Remuneration Information Management Specialist
South African Broadcasting Corporation
Johannesburg
South Africa
Phone : +2711 714 4372
Cell : +2783 453-3038
Fax : +2711 714 5363
E-Mail : vanstadenj@sabc.co.za
Web: http://www.sabc.co.za/

From: Merlyn Ashen
Sent: 31 October 2016 10:58 AM
To: Jaco Van Staden
Cc: Zak Yunus
Subject: FW: OMAR ABRAHAMS DUTIES

Dear Jaco,

Could you please provide a calculation on 24 months remuneration at midpoint of scale 125 as a separation package for Mr Omar Abrahams.

Thank you

Merlyn Ashen
Human Resources Manager | Media Technology Infrastructure
SABC | Auckland Park
Phone: +27 11 714 4815

JT
TE

From: Merlyn Ashen
Sent: 25 October 2016 11:25 AM
To: Tseliso Ralitabo; James Hill
Cc: Ntaoleng Mofokeng
Subject: OMAR ABRAHAMS DUTIES

Good Morning

This serves to confirm that Omar Abrahams has agreed to undertake the role of Engineering Consultant until the matter in relation to his mutual separation proposal has been finalised and on proviso that the matter is concluded by end December 2016. He will provide his proposal in writing today.

The separation proposal being:

- 2 years remuneration at midpoint of scale code 125.
- No further compensation will be sought in relation to the dispute regarding the midpoint adjustment.
- The SABC will be released from implementing the ruling of the CCMA in relation to compensation in the unfair demotion dispute.

I have conveyed to him that his proposal has been positively received and would be taken up with the principals next week upon Mr Ralitabo's return to the office.

Regards

Merlyn Ashen
Human Resources Manager | Media Technology Infrastructure
SABC | Auckland Park
Phone: +27 11 714 4815

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Annexure "5"

Merlyn Ashen

From: Keobokile Mosweu
Sent: 01 November 2016 12:57 PM
To: Merlyn Ashen
Subject: Re: BEMAWU obo Omar Abrahams v SABC Ltd for the 19 October 2016

Hi Merlyn

Noted and supported.

Regards
Keobokile

Sent from my iPad

On 31 Oct 2016, at 16:13, Merlyn Ashen <ashenmd@sabc.co.za> wrote:

> Dear Boss,
>
> The outcome of the CCMA was that Mr Abrahams be reinstated into his position and the commissioner would make a ruling on compensation.
>
> Subsequently, Mr Abrahams has proposed a separation (see attached). The proposal was received positively by Mr Ralitabo.
>
> Regards
> Merlyn

From: Merlyn Ashen
Sent: 18 October 2016 10:34 AM
To: Keobokile Mosweu
Subject: FW: BEMAWU obo Omar Abrahams v SABC Ltd for the 19 October 2016

Dear Boss,

A meeting was convened yesterday with Mr Ralitabo where he gave a mandate of settlement with regards to the Omar Abrahams matter scheduled to continue at CCMA tomorrow.

Please see email below from Tshiila.

Regards

Merlyn Ashen
Human Resources Manager | Media Technology Infrastructure
SABC | Auckland Park
Phone: +27 11 714 4815

JT

From: Tshiila Munyai
Sent: 18 October 2016 10:13 AM
To: Tseliso Ralitabo; Merlyn Ashen
Cc: Kobus Potgieter; Mohlolo Lephaka
Subject: BEMAWU obo Omar Abrahams v SABC Ltd for the 19 October 2016

Good afternoon Sir,

Kindly find this as confirmation of the meeting held on the 17 October 2016 in room 1302

In attendance by the following:-

1. Mr. Tseliso Ralitabo
2. Mr. James Hill
3. Ms. Ntaoleng Mofokeng
4. Ms. Merlyn Ashen
5. Mr. Tshiila Munyai

In this meeting there following was a mandate of settlement offered by Mr. Ralitabo

1. Mutual separation with maximum of 18 months remuneration
    a. As a bargaining tool the above be negotiated between entry level up to midpoint of salary scale code 125

2. Failure to settle on mutual separation as per point 1 above
    a. Remunerate from 01 April 2016 to date at midpoint of salary scale code 125 and Mr. Omar retains the Engineering Consultant

NB: In the event both options fall short of settling the matter:-

1. Mr. Ralitabo will be contacted to address the counter proposal by the employee or failure to reach settlement.
2. It would mean that Arbitration process continues as scheduled and await for the Award by the Commissioner.

Kind regards
Tshiila Munyai
Group Employee Relations Consultant
Tel: 011 714-2311
Mobile: 0710487349
munyaite@sabc.co.za

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<Mutual Separation Proposal - Omar Abrahams.pdf>

Merlyn Ashen

Annexure 1

From:	Tshiila Munyai
Sent:	19 October 2016 03:19 PM
To:	Tseliso Ralitabo
Cc:	Kobus Potgieter; Merlyn Ashen
Subject:	Feedback on the - BEMAWU obo Omar Abrahams v SABC Ltd - 19 October 2016
Attachments:	BEMAWU obo Omar Abrahams v SABC Settlement 19 October 2016.pdf

Good afternoon, colleagues

Kindly find the summation of events in the matter of BEMAWU obo Omar Abrahams v SABC Ltd held on the 19 October 2016

This matter was scheduled for Arbitration as partly-heard on the 13 October 2016 by Commissioner Lungile Matshaka

On the 19 October 2016:-

1. Parties met in the presence of Commissioner:
    a. Representing Employer : Mr. Tshiila Munyai (Group ER Consultant), Ms. Merlyn Ashen (HR Manager: MTI)
    b. Employee Party : Mr. Hannes du Buisson (BEMAWU Official) representing Mr. Omar Abrahams
2. For the employer: Mr. Munyai made an offer of settlement on behalf of the employer – (Mutual Separation – with 12 months compensation without prejudice).
3. For the employee: Mr. du Buisson reject the employer's offer with a counter proposal of R5million being what Mr. Omar Abrahams would accept for mutual separation.
4. Subsequent, to consultation with Mr. Ralitabo, the employer rejected R5million counter proposal and proposed a reinstatement and for the Commissioner to rule on arguments relating to appropriate compensation if deemed necessary.
    a. The reinstatement above was clarified to the Union that there has been changes to the position of Manager Systems Integration which is now known as Manager Systems Integration and Strategic Architecture Group (Mr. Abrahams will then be engaged in discussions regarding the added functions to the role)
    b. Find the settlement agreement attached to this effect.
5. Mr. du Buisson accepted the offer of reinstatement and arguments for compensation by both parties for the Commissioner to make a ruling in this regard.
6. Mr. du Buisson was informed that Mr. Ralitabo will not be available the whole of next week (24-28 October 2016) and therefore, the meeting to discuss the issues relating to paragraph 4 (a) above will be scheduled upon the availability of Mr. Ralitabo. Mr. du Buisson accepted and agreed that a date be scheduled with his office and it would be confirmed upon receipt of the proposed date.

NB: The discussion to be held regarding the current position of Manager Systems Integration &SAG should regarded and approached as a consultation process as envisaged in the settlement agreement.

Kind regards

Tshiila Munyai
Group Employee Relations Consultant
Tel: 011 714-2311
Mobile: 0710487349
mmunyaite@sabc.co.za

JT TE

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

BEMAWU obo VERGAL ANDREWS

(EMPLOYEE)

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD

(EMPLOYER)

SETTLEMENT AGREEMENT

---

1. Whereas, the Employer has initiated disciplinary action against the Employee, Ms Vergal Andrews pertaining to allegations of misconduct;

2. Whereas the Employee / BEMAWU has raised the issue of inconsistent dispensing of discipline by the Employer;

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3. Whereas BEMAWU a recognised trade union by the SABC representing the Employee;

4. The parties hereto have agreed to settle the disciplinary action referred to in paragraph 1 above and the terms and conditions of the settlement agreement are recorded hereunder:

4.1. The Employee agrees that upon signing of this agreement, she will not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee may now have or which may hereafter accrue or otherwise be acquired by the Employee on account of or in any way flowing from the alleged misconduct or any issue resulting from the employment relationship between the parties;

4.2 The Employer agrees that upon signing of this agreement, it will not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employee which the Employer may now have or which may hereafter accrue or otherwise be acquired by Employer, on account of or in any way

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flowing from the alleged misconduct or any issue resulting from the employment relationship between the parties;

4.3 The Employer agrees to issue the Employee, Ms Vergal Andrews with a final written warning valid for eight (8) months which warning the Employee accepts;

5. BEMAWU specifically agrees not to pursue the principle of inconsistent application of disciplinary action applicable to the period prior to signing of this agreement;

6. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Respondent which the Applicants now have, or which may hereafter accrue or otherwise be acquired by Applicants, on account of, or in any way flowing from the alleged unfair dismissal dispute or any issue resulting from the employment relationship between the parties;

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7. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

8. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

9. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

10. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

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11. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

12. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

13. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party;

14. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

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Thus done and signed at Auckland Park on this 30 day of _____ in the presence of the undersigned witnesses.

30/10/2014

JABULANI MABASO
GROUP EXECUTIVE : HUMAN CAPITAL SERVICES

WITNESSESS

1._____

2._____

Thus done and signed at AUCKLAND PARK on this 27 day of OCT 2014 in the presence of the undersigned witnesses.

_____
BEMAWU obo THE EMPLOYEE

WITNESSESS

1._____

2._____

JT
TE

SABC NEWS

SABC NEWS & CURRENT AFFAIRS

17 APRIL 2019

REQUEST FOR APPROVAL TO MAKE COMPENSATION PAYMENT TO EMPLOYEES WITHIN NEWS DIVISION: ARBITRATION LP4757-18

REGISTRATION NUMBER 2003/023915/30

1. **Purpose**

The purpose of this submission is to obtain authority to pay compensation to the following employees as per **CCMA Arbitration Award LP4757-18** of 21 March 2019 issued by Mr Piet Shai:

a. Mr Sam Mochichila [16706], Executive Producer, Polokwane

b. Ms Rudzani Bologo [10507, News Editor, Polokwane

2. **Background**

The Commissioner was to determine whether the SABC committed an unfair labour practice by not appointing the 1st and the 2nd applicants as mentioned in para 1, which appointment was given to Mr Jubie Matlou the current Provincial News Editor: Limpopo.

Attached herewith as Annexure A is the Arbitration Award Rendered setting out that the SABC would need to pay compensation to the applicants a sum equivalent to Mr Jubie Matlou's ten (10) months wages calculated at the latter's rate at the time of appointment. The amount shall be paid on the **30 April 2019**.

Attached as Annex B is the Remuneration Package of Mr Jubie Matlou as at date of appointment.

3. **Financial implications/Compensation to be Paid**

The SABC is required to pay compensation to the employees mentioned in para 1, a sum equivalent to Mr Jubie Matlou's ten (10) months wages calculated at the latter's rate at the time of appointment. The monthly remuneration of Mr Matlou as the time of appointment is confirmed as **R92 208, 85 per month**.

A total of **R928 088, 50** (Taxable) would be required to be paid each of the employees by 30 April 2019.

4. **Conclusion/Recommendation**

It is recommended that SABC make the compensation payment to the employees mentioned in para 1 by **30 April 2019**, in order that SABC in not taken on by being in contempt of the judgement as per the Award iro Arbitration Case matter LP4757-18. This compensation payment is considered a final settlement on the matter to the two concerned employees.

Mannie Alho [244]
HUMAN RESOURCES MANAGER: NEWS

JT
TE

Arbitration Award Rendered

Case Number: LP4757-18
Commissioner: Piet Shai
Date of Award: 21-Mar-2019

In the **ARBITRATION** between

BEMAWU obo Bologo, Rudzani and 1 other
(Union/Applicant)

and

SABC SOC Limited and Jubie Matlou
(Respondent)

Union/Employee's representative:
Union/Applicant's address: PO Box 203
Wierda Park
0149

Telephone: 0800236298,0126613915
Telefax: 0866715585
E-mail: headoffice@bemawu.org.za, bemawu@gmail.com, legal@bemawu.org.za, ramarumoma@sabc.co.za, mochichilass@sabc.co.za, bologor@sabc.co.za

Employer's representative:
Respondent's address: Private Bag X1
Auckland Park
2006

Telephone: 0117142708,0117142311,0117143819,0117142721,0117144303,0152900179
Telefax: 011 714-403-0300,0117143001
E-mail: grouper@sabc.co.za, xamase@sabc.co.za, munyaite@sabc.co.za, motshekgamj@sabc.co.za, McinekaL@sabc.co.za, muofher@sabc.co.za,

Only signed awards that contain the CCMA approved watermark are authorised.

jubie@sabc.co.za, mphephurn@sabc.co.za, bulanngap@sabc.co.za

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration took place on the 8th November 2018, the 24th January 2019 and the 4th March 2019, at the CCMA office, No 104 Hans Van Rensburg Street, Polokwane.
2. Both parties were present. The applicants were represented by Mr H du Buisson, an official of BEMAWU. The 1st respondent was represented by Mr Sello Xama, whereas, the second respondent represented himself and conducted his own case.
3. Parties requested extension for written submissions of Closing Arguments by given date on 11 March 2019.
4. Both parties submitted written closing arguments and same were taken into account herein.

ISSUE TO BE DECIDED

5. To determine whether the 1st respondent committed unfair labour practice by not appointing the 1st and the 2nd applicants, which appointment was given to the 2nd respondent. If I find that the 1st respondent committed unfair Labour practice, I will determine an appropriate remedy for the applicants.

BACKGROUND ON THE ISSUE

6. The two (2) applicants were employed by the 1st respondent for a number of years. The position of provincial editor of news was advertised. The policy of the 1st respondent is that such a post must be advertised internally and only when a suitable candidate is not found, the respondent can advertise externally.
7. Both applicants acted in the above position on several occasions. Further that the policy of the 1st respondent provides that only qualified employees can be appointed to act in the position. The applicants applied for the position, were selected for interview and duly interviewed. Since then nothing was heard about the outcome. The applicants lodged a grievance

but the matter was not resolved. In the meantime, the position was filled. Only after the filling of the position, the 2nd respondent sort to resolve the grievance.

8. The applicants contended that the appointed incumbent, 2nd respondent Mr Jubie Matlou is unqualified for the position on the basis that they believe they scored higher than him and secondly he had a civil judgment against him, thus not followed procedure when appointing him.
9. The applicants prayed for an order that the process be started all over again, alternatively either of the applicants be appointed in the position or be compensated.

The applicants submitted that the conduct of the 1st respondent therefore amounts to failure to promote since the position is a higher position.

The respondent confirmed that the applicants acted in the position previously and therefore qualified, that they were duly interviewed and ranked. The 1st respondent further confirmed the delay in finalizing the process of appointment of the incumbent as it decided to advertise externally.

The panel decided to compare the internal and external candidates and decided to go externally. There was nothing that prevented the 1st respondent to appoint Mr Matlou. Thus Matlou was offered the position. The 1st respondent is of the view that it followed its own policy and procedure.

SURVEY OF EVIDENCE FOR THE APPLICANTS

MR SAMUEL SELLO MOCHICHILA TESTIFIED UNDER OATH AS FOLLOWS:

He is the executive producer of Lehlokwana La Tsela since 2010, having assumed the same responsibility in 2008 in the Sport Division in Johannesburg. He has fourteen (14) years' experience as a producer and presenters are reporting to him.

He has acted several times as a Provisional Editor. According to the 1st respondent's policy, one can only act in the position if he/she is qualified for the position. He holds a BA degree, majoring in Psychology and

Only signed awards that contain the CCMA approved watermark are authorised.

Education. He has been in marketing, communication and producing. He started as an administration officer at the Human Science Research Council and also worked at Government Communications department. He joined the SABC in 1994.

Pages 1-3 of Bundle B contain an advertised post of Provincial News Editor (Polokwane) Limpopo. He applied for the position as it appears at page 1-3 of bundle A.

Page 3 of bundle B contains the requirements of the position, namely:

- Degree or post graduate qualification, preferably in journalism.
- 8 years' experience in the field of journalism and news gathering.
- 5 years of which must be managerial.
- Ability to manage own and teams time effectively.
- Ability to work to deadlines, under pressure, and when required, irregular hours.
- Ability to analyse and solve problems.
- Ability to be proactive and use own initiative.
- Excellent interpersonal and communication skills (written and verbal)
- Passionate about the pursuit of excellence within the SABC.
- Adaptability.
- Ability to work well under pressure and meet deadlines.
- Ability to work under pressure, long irregular hours and complete tasks in time.
- Computer skills (Ms word, Ms outlook, Ms Excel, The Internet, Dalet/Audacity and EMPS etc)
- Social media skills.
- Possess both a valid driver's license and passport.

There was a delay in the appointment and he enquired with one Mannie after which he lodged a grievance. His grievance was that the process should have been completed within 6 weeks. The grievance was intended to remedy what he regarded as irregularity. At page 98 of bundle A is a policy statement on efficiency, which provided that the above process shall be concluded within a time period of approximately six (6) weeks.

BEMAWU wrote a letter to the 1st respondent complaining about the lack of progress with regard to outcome and also an attempted to stop external

advertisement. This was followed by the 1st respondent sending a report detailing the the reasons for the delay and going external.

When he requested for the record of individuals scores, the 1st respondent indicated that they were destroyed. According to policy, the record of the interview proceedings for shortlisted candidates should be kept for a minimum of sixty (60) months following the selection process.

Further that, the policy of the 1st respondent provides that the position will be advertised eternally after the internal process has been exhausted and no internal candidate has been found suitable. There was no communication which said that he was not suitable. This is confirmed by the fact that he was told that he would still be considered in the next interview, thus following external advertisement.

According to the 1st respondent's policy as contained at page 82 of bundle A paragraph 7.1, the recipients of a grievance form have to call a meeting within three (3) working days, and make sure that all the parties concerned are present. This procedure was not followed with regard to his grievance.

The response from Mr Mannie contained at page 10 of bundle A told him that the policies are not followed due to political interference.

Page 11 of Bundle A contains the second and external advertisement. There is difference with regard to the requirements. The first one required a degree or post graduate qualifications, preferably in Journalism whereas, the second one required a degree in Journalism.

Page 12 of bundle A shows a letter from him complaining about the long time it took to resolve his grievance.

Page 100 of bundle A paragraph 7.2.4 provides that during interviews internal job applicants will be given preference for selection and appointment.

His other complaint was that vetting was requested from his fellow applicant but not from him. He regarded this as inconsistency.

Page 25 bundle A contains an outcome report of the interview that he was not successful. At page 26 of the same bundle, the appointment of Mr Jubie Matlou to the post was announced.

At this stage his grievance was not yet resolved.

JT
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At page 85 of bundle A is Mr Matlou's CV and shows that he does not have a journalism degree. Further that he does not have BA (Honours) Broadcasting and film studies. His CV shows Honour's in communications studies.

In terms of the second advertisement, he would not have qualified, as he did not have a journalism degree.

With regard to individual scores contained at page 29 of bundle B, he would not trust them as the source documents were destroyed.

The incumbent, second respondent , was appointed subject to positive verification assessment as it appears at page 30 of bundle B, however, page 33 of the same bundle shows that he was appointed despite a negative assessment as he had a negative credit record. At paragraph 6.1 of page 34, the report continues to say " it should be noted that the inability of a person to manage his/her finances could pose a security risk"

The effect of changing criteria in the second advertisement could have excluded people who would have wanted to apply. The first one was more open.

The witness was not cross examined.

MS RUDZANI BOLOGO testified under oath and confirmed Mr Mochichila's evidence. She was cross-examined.

SURVEY OF EVIDENCE FOR THE EMPLOYER

The 1st respondent elected not to lead evidence.

SURVEY OF EVIDENCE FOR THE 2ND RESPONDENT

MR JUBIE MATLOU TESTIFIED UNDER OATH AS FOLLOWS:

a. He saw the advertisement (2nd one) and followed it with an application. He was called for an interview. Following the interview his qualifications were verified. Thereafter, he received an offer and

accepted it. He started his work life as an intern, worked as a radio current affairs producer, producer for TV, SABC and Channel Africa, and later Good Morning SA, associate editor of Mail and Guardian - political reporting and editing the monitor of development section, Editor of biannual supplement on telecommunications. He also has experience in production and policy. Further that he was part of the Technical team that drafted the current legislation that governs media. He also lectured in television at UJ.

b. The second advertisement required someone with a journalism degree.

c. When it was put to him that he does not have journalism degree he said his degree was in communication but included journalism. His other qualifications are in communication but they include journalism.

d. With regard to verification he admitted that he has an adverse verification.

ANALYSIS OF EVIDENCE AND ARGUMENTS

e. The applicants complained that the 1st respondent in appointing the 2nd respondent, it committed unfair labour practice in that in doing so it breached its policy in the following respects:

- The 1st respondent failed to finalize the interview process within six (6) weeks provided in the policy.
- By not finalizing the grievance in relation to not finalizing the above process within the required period as provided in the policy.
- By breaching its policy of preference for internal candidates before going externally as provided for in the policy.
- By not finalizing the interview process before going external as per policy.
- By appointing the 2nd respondent even though he did not qualify in respect of qualifications and vetting process.

Failure to finalize the interview process within the required period of six (6) weeks.

JT TE

10. In terms of the policy of the 1st respondent, the process of interview should be finalized within six (6) weeks. It is common cause that in this case the process was finalized way above the period of six (6) weeks. It actually took months. The 1st respondent proferred no explanation by way of evidence, except by way of response letter to the enquiry by the applicants. This situation resulted with applicants having to file a grievance which will be discussed more fully below.

3.1." **Failure to finalise a grievance procedure within the required period.**

The policy of the 1st respondent provides that the recipient of a grievance form must ensure that he/she convenes a meeting of relevant parties within three (3) days of the receipt of such grievance. In this case it is common cause that grievance lodged by the applicants was attended to after several months, in fact after the appointment of the 2nd respondent, a fact that rendered such a meeting irrelevant.

3.2." **Failure to give internal preference to internal candidates despite that the 1st respondent regarded them as suitable by including them in the 2nd (external) advertisement.**

The policy of the 1st respondent provides that in the interviews, the internal candidate shall be given preference and only when there are no suitable candidates' external candidates may be considered. It is clear in this case that the 1st respondent regarded the two (2) candidates to be suitable by including in the second interview for external candidates. This is a clear violation of 1st respondent's policy and amount to unfair labour practice.

3.3. "Appointment of the second respondent even though he did not qualify.

It is clear that the second respondent does not have a journalism qualification and had a negative assessment. The vetting process reported that he has adverse assessment which could post a security risk. It is my view that he should not have been appointed for above reason. The way the

1st respondent dealt with his appointment gives impression that the position was reserved for him regardless.

3.4. In the process I find that the 1st respondent committed an unfair labour practice by failing to appoint one of the two (2) applicants and by appointing the 2nd respondent although he did not qualify.

The applicants prayed for the setting aside of the appointment and for the process to start all over again. Alternatively prayed for the appointment of either of them in the position or compensation.

3.5. I conclude that compensation is the appropriate remedy in the circumstances.

AWARD

3.6. I find that the 1st respondent has committed unfair labour practice .

3.7. I order the 1st respondent to pay compensation to the applicants a sum equivalent to the 2nd respondent's ten (10) months wages calculated at the latter's rate at the time of his appointment.

The above amount shall be paid on the 30th April 2019.

If the parties do not agree as to the amount above, either of them may approach the CCMA to determine same.

Signature: _____

Commissioner: ***Piet Shai***

Sector: ***Media (parastatal)***

JT
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JT
TE

Mannie Alho

From: Jaco Van Staden
Sent: Friday, 05 April 2019 8:47 AM
To: Mannie Alho
Subject: Matlou

Importance: High
Sensitivity: Confidential

Personnel Number	00104545
Title	Mr
Initials	H
Surname	Matlou
Scale	125
Position ID	60002358
Position	Provincial News Editor
ID Number	6504205272086
Division & Unit	News - Radio News
Province	Limpopo
SABC Provincial Office	Polokwane
Company	SABC Ltd
Cluster/Division	Operations
Division/Unit	News
Unit/Section	Radio News
Section/Sub-Section	Limpopo Regional Editor
Org ID	50000574
Organisational Unit	Limpopo Regional Editor
Cost Center	1452
Real Start Date	2017-11-01
Cost Center Name	NP NsBu Polek RegEd
Basic Salary (IT008)	59,935.76
Fraction	1
Basic Salary	719,229.12
Housing Allowance	23,640.00
Car Allowance	60,996.00
Entertainment Allowance	780
Other Allowances	121,780.80
13th Cheque	0
Pension Fund (Employer)	100,692.12
Medical Aid (Employer)	72,172.80
Group Life (Employer)	7,215.36
TGRP	1,106,506.20

Jaco van Staden
Remuneration & Information Management Specialist (HR)
South African Broadcasting Corporation

JT
TE

Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/



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JF
TE

Mannie Alho

From: Sello Xama
Sent: Friday, 05 April 2019 8:35 AM
To: Mannie Alho
Cc: Phathiswa Magopeni; Linda Mcineka
Subject: RE: AWARD LP4757-18

Sensitivity: Confidential

Dear Mannie

The above matter and the email below refer.

You are welcome to approach the legal department/advisor but you will still need to provide the ground/s for a judicial review of the award and the reasons thereof and address the issue of security that must put up by the SABC.

Please note that wages refers to monthly remuneration earned by the Applicants.

Regards

Sello Xama

Group Employee Relations Consultant

SABC SOC Limited.
SABC Radio Park Building, Office 1925, 19th Floor,
Corner Henley and Artillery Roads, Auckland Park, Johannesburg
Private Bag X1, Auckland Park, 2006,
Gauteng, Republic of South Africa,
Tel: +27 (11) 714 2708 | Fax: +27 (11) 714 4030 / 3001
E-mail: xamase@sabc.co.za

From: Mannie Alho
Sent: Friday, April 5, 2019 8:23 AM
To: Sello Xama
Cc: Phathiswa Magopeni
Subject: RE: AWARD LP4757-18
Sensitivity: Confidential

Dear Sello,

Can we not approach the SABC Legal Adviser for his guidance on the matter before we proceed with the payment to the applicants?

What is defined a wages in the award? Is this the basic pay or TCTC?

FI
TE

MANNIE ALHO
Human Resources Manager
Tel: +27 11 714 3770 | Cell: +27 82 774 4026 | Email: alhom@sabc.co.za
sabcnews.com | @sabcnewsonline | #sabcnews
SABC NEWS
Independent. Impartial.

From: Sello Xama
Sent: Thursday, 04 April 2019 3:21 PM
To: Mannie Alho
Cc: Phathiswa Magopeni; Linda Mcineka
Subject: RE: AWARD LP4757-18
Sensitivity: Confidential

Dear Mannie

The above matter and the email below refer.

In the absence of you and Mr Ronald Mphephu advancing ground/s for a judicial review of the award and the reasons thereof and taking account the provisions of s 145 (7) and (8) the LRA which states that:

> (7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).
> (8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must—
> *(a)* in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or
> *(b)* in the case of an order of compensation, be equivalent to the amount of compensation awarded.

(My emphasis),
please note that the SABC will have to comply with the order articulated in the award.

Please advise.

Regards

Sello Xama

Group Employee Relations Consultant

SABC SOC Limited.
SABC Radio Park Building, Office 1925, 19th Floor,
Corner Henley and Artillery Roads, Auckland Park, Johannesburg
Private Bag X1, Auckland Park, 2006,
Gauteng, Republic of South Africa,
Tel: +27 (11) 714 2708 | Fax: +27 (11) 714 4030 / 3001
E-mail: xamase@sabc.co.za

From: Mannie Alho
Sent: Thursday, April 4, 2019 10:48 AM
To: Sello Xama
Cc: Phathiswa Magopeni
Subject: FW: AWARD LP4757-18
Sensitivity: Confidential

Dear Sello,

Do I need to arrange the execution of the payment to the two applicants as per the award issued?

JT TE

Look forward to hear from you

MANNIE ALHO
Human Resources Manager
Tel: +27 11 714 3770 | Cell: +27 82 774 4026 | Email: alhom@sabc.co.za
sabcnews.com | @sabcnewsonline | #sabcnews
SABC NEWS
Independent. Impartial.

From: Mannie Alho
Sent: Wednesday, 27 March 2019 2:00 PM
To: Sello Xama
Cc: Ronald Mphephu; Phathiswa Magopeni; Linda Mcineka
Subject: RE: AWARD LP4757-18
Sensitivity: Confidential

Dear Sello,

I am shocked at reading this award. It appears to be very severe penalty for the SABC. Can the SABC not apply for the award to be reviewed?

Mr Jubie Matlou' s basic salary when appointed was **R62,932.55**. (Not TCTC) Am I correct to say that this will cost the SABC an amount of R629 325,50 to each of the two applicants?

Look forward to hear from you.

MANNIE ALHO
Human Resources Manager
Tel: +27 11 714 3770 | Cell: +27 82 774 4026 | Email: alhom@sabc.co.za
sabcnews.com | @sabcnewsonline | #sabcnews
SABC NEWS
Independent. Impartial.

From: Sello Xama
Sent: Monday, 25 March 2019 5:55 PM
To: Mannie Alho; Ronald Mphephu
Cc: Linda Mcineka
Subject: FW: AWARD LP4757-18

Dear Sirs

The above matter and the attached documents refer.

FYA.

We await your advise and instructions.

Regards

Sello Xama

Group Employee Relations Consultant

SABC SOC Limited.
SABC Radio Park Building, Office 1925, 19th Floor,
Corner Henley and Artillery Roads, Auckland Park, Johannesburg

JT
TE

Private Bag X1, Auckland Park, 2006,
Gauteng, Republic of South Africa,
Tel: +27 (11) 714 2708 | Fax: +27 (11) 714 4030 / 3001
E-mail: xamase@sabc.co.za

From: Thendo Thinavhuyo Sithole [mailto:ThendoS@CCMA.org.za]
Sent: Monday, March 25, 2019 4:06 PM
To: Group - ER
Cc: Sello Xama; Tshiila Munyai
Subject: FW: AWARD LP4757-18

From: ThendoS@CCMA.org.za [mailto:ThendoS@CCMA.org.za]
Sent: 25 March 2019 04:14 PM
To: Thendo Thinavhuyo Sithole <ThendoS@CCMA.org.za>
Subject: Message from KM_C658



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TE

Mannie Alho

From: Linda Mcineka
Sent: Tuesday, 16 April 2019 2:21 PM
To: Mannie Alho
Subject: Request for Approval to Pay Compensation

Dear Mannie

I received a submission that seeks to obtain an approval for the payment of compensation as ordered in the arbitration award issued in respect of case LP4757-18.

I am not too sure why this needs to be signed by me as we do not normally sign any such documents that seeks to give effect to the awards issued by the CCMA.

Please advise.

Regards,

Linda



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MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

MR. K. BREDENKAMP
Personal Number: 1902
(THE EMPLOYEE)

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION LIMITED
(THE EMPLOYER)

1. Whereas the parties have agreed by mutual consent to settle the dispute on the basis that a once of cash offer will be made to the **EMPLOYEE.**

1.1 The **EMPLOYEE** has agreed to accept the settlement offer made by the **EMPLOYER** and it is specifically recorded that this offer was made and accepted by the parties without any party being put under duress, instruction or force to do so;

1.2 Neither party shall have any claim against the other as a result of the mutual settlement.

1.3 The **EMPLOYER** will:

1.3.1 Pay a once off cash amount to the **EMPLOYEE** in the amount of **TWO HUNDERD THOUSAND RAND (R200, 000-00).** Such amount payable to the **EMPLOYEE** is the **NET** amount after all tax deductions.

1.3.2 **Be liable for all legal costs.**

1.3.3 Pay the **EMPLOYEE's** once off cash amount to the **EMPLOYEE** within **ten (10) working days** after the signing of the settlement agreement.

1.4 The **EMPLOYEE** will:

1.4.1 Sign the settlement agreement as a full and final settlement.

1.4.2 The **EMPLOYEE** specifically records, acknowledges and agrees that the nature of the **EMPLOYEE's** work is confidential and agrees to honour the confidentiality for the remainder of his employment and any time thereafter.

2. This agreement will be private and confidential between the parties, and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto by law;

3. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

4. This agreement constitutes the only and entire agreement between the parties and will be the full and final settlement between the parties and neither party may institute further and/or alternative claims in respect of the said settlement between the parties. However, notwithstanding the contents of this clause; should the **EMPLOYER** become aware of any conduct by the **EMPLOYEE** which would entitle the **EMPLOYER** to claim damages and/or compensation from the **EMPLOYEE,** it shall not be precluded from doing so unless such information was available or made known to the **EMPLOYER** by the time this agreement was concluded;

5. No variation, modification or waiver of this agreement shall be applicable unless same is reduced to in writing and signed by the parties;

6. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever;

7. If any provision of this agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the parties shall

endeavour in good faith to agree on an alternative provision to the void, illegal or unenforceable provision;

8. The parties further undertake to take all reasonably steps within it's power, which are necessary or desirable to give effect to the spirit and intent of this agreement.

9. The parties choose for the purposes of this agreement the following **domicilium citandi et executanti**:

EMPLOYER

PRIVATE BAG X1, AUCKLAND PARK, 2006

SABC
CRNS OF HENLEY AND ARTILLERY STREETS
AUCKLANDPARK
JOHANNESBURG

THUS AGREED TO AND SIGNED AT AUCKLAND PARK

ON THIS 14 **DAY OF** April **2011**

EMPLOYEE **WITNESS**

For and on behalf of the
EMPLOYER **WITNESS**

Duly authorised thereto

JT
TE

South African Broadcasting Corporation Limited

MOHLOLO LEPHAKA
GROUP EXECUTIVE: HUMAN RESOURCES (ACTING)
Radio Park , Cnr Artillery and Henley Roads , Auckland Park, 2092. Private Bag X1 , Auckland Park 2006 , Johannesburg, Gauteng, South Africa.
Tel +27 11 714 3331 www.sabc.co.za
Email: lephakam@sabc.co.za

25 OCTOBER 2016

mc Q.

MS ~~CM~~ CAMPHER
CHIEF FINANCIAL CONTROLLER
SABC
JOHANNESBURG

Dear Ms Campher

mcQ

RE : SABC // MS ~~CM~~ CAMPHER – SEPARATION

The above matter and the meetings held on **24** & **25 October 2016**, have reference.

Please be notified that the SABC has resolved to part ways with you and to sever the employment relationship.

It was further resolved to pay out your fixed term contract you have entered into with the SABC for the remainder of the contract period being eighteen (18) months.

Attached is the following document:

1. **Breakdown of the pay-out / separation amount.**

JT
TE

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/30
Non-Executive Directors: Prof M O Maguvhe (Chairperson); Ms L T Khumalo (Deputy Chairperson); Ms N M Mhlakaza; Dr N A Tshidzumba;
Executive Directors: Mr J R Aguma (Acting Group Chief Executive Officer); Ms B L Tugwana (Acting Chief Operations Officer); Ms A Raphela (Acting Chief Financial Officer); **Company Secretary:** Ms T V Geldenhuys

Please be informed that your last working day in service of the SABC will be **31 October 2016**. You will also not be required to render any further services with immediate effect. It would be appreciated if you could hand in all SABC equipment currently in your possession to the **Human Resources Manager : Group Services, Mr Mzu Ndlovu** before leaving the premises of the SABC.

Furthermore, it should be noted that the SABC will effect payment of the said separation amount into your banking account within seven (7) days from having received the relevant tax directive.

It is, herewith, categorically recorded that you refused signing the separation agreement handed to you.

The SABC herewith wants to thank you for your contributions made during your tenure with the SABC and we wish you everything of the best for the future.

Yours faithfully

MOHLOLO LEPHAKA
GROUP EXECUTIVE : HUMAN RESOURCES (ACTING)

I, ~~CM~~ MC CAMPHER, hereby acknowledge receipt of the letter and have noted the contents thereof.

SIGNATURE Do not agree with total value.

25/10/2016
DATE

JT
TE

SABC

Ms MC Campher
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	Nov 2016 - Apr 2018 (18 Months) (Cash Value of Remainder of Contract)
Basic Salary	1 245 340.44	103 778.37	1 868 010.66
Housing Allowance	23 640.00	1 970.00	35 460.00
Car Allowance	120 000.00	10 000.00	180 000.00
Other Cash	219 516.48	18 293.04	329 274.72
Entertainment Allowance	1 680.00	140.00	2 520.00
Group Life	11 895.48	991.29	17 843.22
Medical Aid	25 293.60	2 107.80	37 940.40
RPM 13th Cheque Allowance	103 778.37	8 648.20	155 667.56
Pension Fund	174 347.76	14 528.98	261 521.64
Grand Total	**1 925 492.13**	**160 457.68**	**2 888 238.20**

Plus Current Leave Balance (31 Oct 2016)	**40.50**
Cash Value of Current Leave	**154 122.18**
Grand Total (TCTC Plus Leave)	**3 042 360.38**

Calculation excludes Oct 2016 Salary which will be paid through Payroll

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

VERONA DUWARKAH

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

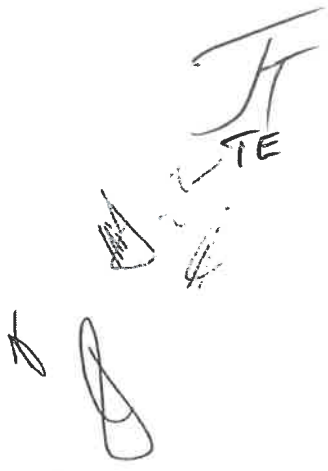
---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 2 963 742-44 (Two Million Nine Hundred and Sixty Three Thousand Seven Hundred and Forty Two Rand and Forty Four Cents).** This amount reflects a TGRP payment of THIRTEEN (13) months. The cash value of accrued leave will be paid to the Employee separately.



1.4 The amount referred to in paragraph 1.3 above shall be subject to all statutory deductions;

1.5 The amount referred to in paragraph 1.3 shall be paid into the Employee's bank account by way of electronic funds transfer within seven (7) days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive; and

1.6 The last day of employment of the Employee will be **Friday 23 September 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.



7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at Highlands North on this 26th day of September 2016. in the presence of the undersigned witnesses.

VERONA DUWARKAH

WITNESSESS

1. _____

2. _____

Thus done and signed at Johannesburg on this 21th day of September 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1.

2.

TE

Office of the Group Chief Executive Officer
28th Floor, Radio Park, Henley Road
Auckland Park, 2094
Private Bag X1, Auckland Park, 2006
Johannesburg, Gauteng, South Africa
Tel +27 11 714-3820, Fax +27 11 714-4889
www.sabc.co.za

19 April 2016

Mr Dingaan Feliti
C/O SABC- Group GM: HR
Auckland Park

Strictly Private & Confidential

Dear Mr Feliti

RE : CONTRACT OF EMPLOYMENT – SABC / DINGAAN FELITI

1. The above matter has reference.

2. As you are aware, you are employed by the SABC on a fixed-term contract basis and your fixed term contract of employment with the SABC will expire by effluxion of time on **31 August 2018**

3. You are hereby advised that the SABC will not be renewing or extending your fixed term contract of employment upon termination thereof on **31 August 2018 (Expiry Date).**

4. Please note that the SABC has, in terms of its own prerogative, decided to waive its right to the provision of services and/or rendition of work by you for the remainder of your contract period. Accordingly, with effect from Friday **22 April 2016**, you are not required to report for duty and/or provide services to the SABC and the SABC will be under no obligation to and will therefore not provide or assign any work or services to you.

5. The SABC will, in relation to the remainder of your contract period, pay you the remuneration as provided for in your fixed term contract of employment,

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/30
Non-Executive Directors: Prof M O Mequvhe (Chairperson); Ms L T Khumalo (Deputy Chairperson);
Mr V G M Mavuso; Ms N M Mhlakaza; Mr K Naidoo; Dr N A Tshidzumba;
Executive Directors: Mr F L Matlala (Group Chief Executive Officer); Mr G H Motsoenang (Chief Operations Officer); Mr J R Aguma (Chief Financial Officer); Company Secretary: Ms T V Geldenhuys

payable as a once-off lump-sum. This includes payment in *lieu* of accrued annual leave, if any. All payments will be subject to the tax laws of the Republic of South Africa.

6. The SABC will deduct and/or set off from the amount due to you, the value of any outstanding loans and/or debts that are repayable and/or due to the SABC.

7. You will be required to hand over all SABC property and assets back to the SABC on or before **22 April 2016** at **15:00,** to the **Human Resources Manager : Group Services.** This includes your access card, laptop computer and 3G card, as well as your forwarding address and medical aid card/s.

8. Due to the SABC having opted to discharge its full payment obligations to you upfront, you will, with effect from **1 May 2016** , be responsible for your own pension fund and medical aid arrangements.

9. Please note that the provisions relating to confidentiality in terms of your fixed term contract of employment are and remain applicable. We request that you comply therewith, which includes keeping this letter and the terms contained herein confidential.

10. We would like to take this opportunity to wish you everything of the best in your future endeavours.

Please do not hesitate to contact us if you have any queries in this regard.

Yours faithfully

JIMI MATTHEWS
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

CC : Jabulani Mabaso: Group Executive Human Resources

JT
TE

Printed in accordance with SARS recommended format

INCOME TAX IRP3e

Employees' tax deduction directive

Enquiries should be addressed to:
Receiver of Revenue ROODEPOORT
-

Tel: (011) 271 9000 **Fax:**(011) 760 3095

Always quote this reference number in correspondence with this office or during interviews

Reference number :1185124847
Date :2016/05/25
Tax Year :2017
Directive Number :20097678
Application number :000000022898239

A: Particulars of Employee / Member of Fund

Surname : FELITI
Initials : WD
First names : Witness Dingaan
Address : 47 BERNARD STREET
BERGBRON

Date of Birth : 1967/12/16
Identity number / Other : 6712165823083
Office where registered for Income Tax : ROODEPOORT
Employee, Policy, Pension or Provident fund number : Employee Number - 11091

B: Directive Information

Employees' Tax reference number (PAYE) : 7720722265
Name of fund/employer : SABC LTD
Reason for directive : SETLEMENT AGREEMENT
Source Code : 3907 Date of accrual : 2016/04/22 Year of assessment : 2017

Under the provisions of paragraphs 2 and 11 of the Fourth Schedule to the Income Tax act, you are required to comply with the directive as set out below, regarding the remuneration paid to the above-named employee or member of fund.

Tax amounting to R 1925794.19 to be deducted from the gratuity / lump sum payment of R 4697059.96.

Exemption and Deductions allowed in terms of the 2nd Schedule to the Act:

Vested right pre-1 March 1998 : R 0.00
Amount transferred : R 0.00
Own contribution to a provident fund : R 0.00
Excess retirement fund contribution : R 0.00
Transferred divorce benefit previously taxed : R 0.00
Amount exempt based on services outside the Republic : R 0.00
AIPF member transfer contribution : R 0.00

This directive is valid for the period 2016/03/01 - 2017/02/28

Please note:
1. This directive is invalid if any alterations have been made thereto.
2. Please file this on the employee's file in your office.
3. This form must be retained for inspection purposes.

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Item	March 2016	April 2016 (7% plus 13th Cheque)	April Short Payment	May 2016 - March 2017	April 2017 - Mar 2018	April 2018 - August 2018	Grand Total
Basic Salary	1 198 260.12	1 282 138.33	28 491.96	1 175 293.47	1 282 138.33	534 224.30	3 020 148.06
Housing Allowance	23 640.00	23 640.00	525.33	21 670.00	23 640.00	9 850.00	55 685.33
Car Allowance	120 000.00	120 000.00	2 666.67	110 000.00	120 000.00	50 000.00	282 666.67
Entertain. Allowance	1 680.00	1 680.00	37.33	1 540.00	1 680.00	700.00	3 957.33
13th Cheque Allowance	-	106 844.86	2 374.33	97 941.12	106 844.86	44 518.69	251 679.01
Other Cash	120 000.00	142 734.94	3 171.89	130 840.36	142 734.94	59 472.89	336 220.07
PF ER Contribution	167 756.40	179 499.35	3 988.87	164 541.07	179 499.35	74 791.40	422 820.69
MA ER Contribution	59 464.80	59 464.80	1 321.44	54 509.40	59 464.80	24 777.00	140 072.64
Group Life EE	11 445.84	12 247.05	272.16	11 226.46	12 247.05	5 102.94	28 848.60
	1 702 247.16	1 928 249.32	42 849.98	1 767 561.88	1 928 249.32	803 437.22	4 542 098.40

Leave Balance	39.67
Leave Cash Value	154 961.56
Total Settlement	4 697 059.96

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

MARIUS JANSE VAN RENSBURG

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 2 963 548-96 (Two Million Nine Hundred and Sixty Three Thousand Five Hundred and Forty Eight Rand and Ninety Six Cents).** This amount reflects a **TGRP** payment of **Eighteen (18)** months. Any accrued leave for the period between **1 December 2016** until **31 March 2017**, will be paid to the Employee separately.

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1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions; and

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive after **31 March 2017**. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive;

1.6 The last day of employment of the Employee will be **Friday 31 March 2017**. Until then the Employee will take leave from **1 December 2016** until **31 March 2017** using his leave credits and will also contribute towards the Employee portion of the **Pension Fund** as well as the **Medical Aid Scheme** from his monthly TGRP for this period. However, the Employee will not be required to render any services as from **1 December 2016** until **31 March 2017** and shall return all equipment, access card and the like to the SABC on **30 November 2016**;

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1.7 The Employee will qualify for **Post Retirement Medical Aid** should he retire within the Fund as per the applicable rates for pensioners at any specific time.

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or

partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to

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jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at AUCKLAND PARK on this 6 day of DECEMBER in the presence of the undersigned witnesses.

MARIUS JANSE VAN RENSBURG

WITNESSESS

1. Blemmer

2.

Thus done and signed at JOHANNESBURG on this 05 day of DECEMBER in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD
(MR T RALITABO – GE : MTI)

WITNESSESS

1. Blemmer

2.

JT TE

Thus done and signed at Johannesburg on this 15th day of December 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD
(MR M LEPHAKA – GE : HR)

WITNESSESS

1. _____

2. _____

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SABC

Mr M Janse van Rensburg (7172)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	6 Months	12 Months	18 Months	Remainder of Contract from 1 April 2017 (18 Months)
Basic Salary	1,481,773.92	123,481.16	740,886.96	1,481,773.92	2,222,660.88	2,222,660.88
Housing Allowance	-	-	-	-	-	-
Car Allowance	90,000.00	7,500.00	45,000.00	90,000.00	135,000.00	135,000.00
Other Cash	14,562.00	1,213.50	7,281.00	14,562.00	21,843.00	21,843.00
Entertainment Allowance	-	-	-	-	-	-
Group Life	14,153.88	1,179.49	7,076.94	14,153.88	21,230.82	21,230.82
Medical Aid	44,280.00	3,690.00	22,140.00	44,280.00	66,420.00	66,420.00
RPM 13th Cheque Allowance	123,481.16	10,290.10	61,740.58	123,481.16	185,221.74	185,221.74
Pension Fund	207,448.35	17,287.36	103,724.17	207,448.35	311,172.52	311,172.52
Grand Total	**1,975,699.31**	**164,641.61**	**987,849.65**	**1,975,699.31**	**2,963,548.96**	**2,963,548.96**

Number of Leave Days	-
Cash Value of Leave	-
Total Amount	**2,963,548.96**

Calculation excludes March 2017 Salary which will be paid through Payroll
***** Any Leave Days will also be paid through Payroll***

SABC

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

NOSIPHO VANESSA JOKOZELA [102831]
(THE EMPLOYEE)

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED
(THE EMPLOYER)

1. Whereas the Employee and the Employer ("the parties") are desirous of mutually severing the subsisting employment relationship;

2. The parties have therefore agreed to terminate the employment relationship referred to in paragraph 1 above on the terms and conditions set out hereunder:-

   2.1 The Employee agrees that her last day of work shall be **31 October 2014**, after which day the Employee shall cease to be in the employ of the Employer;

2.2 The Employer undertakes to furnish the Employee with a certificate of service;

2.3 The Employer agrees to pay the Employee's salary for the month of **October 2014** on or before **29 October 2014**. The aforementioned payment includes all the monies the Employee is entitled to in law or would be entitled to up until the date of termination of the employment relationship;

2.4 The Employer further agrees to pay the Employee an amount of **R97 000.00 (Ninety Seven Thousand Rand)** as a final settlement package;

2.5 The amount referred to in paragraph 2.4 above shall be subject to all statutory deductions;

2.6 The amount referred to in paragraph 2.4 shall be paid into the Employee's bank account by way of electronic funds transfer within seven (7) days from having obtained the relevant SARS tax directive. The Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive;

2.7 The Employee's bank details are:

Bank	:	**ABSA**
Bank Branch	:	**632005**
Account Holder's name is	:	**Nosipho Vanessa Jokozela Account**
Number	:	**9273851625**
Account Type	:	**Savings Account**

2.8 The Employee agrees that upon the signing of this agreement she shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by Employee, on account of, or in any way flowing from the mutual termination of the

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employment relationship or any issue resulting from the employment relationship between the parties;

2.9 The Employee agrees that, by reason of her association with and service to the Employer, she had acquired and gained knowledge and information pertaining to the Employer's trade secrets, marketing strategies, customer base, pricing, trade connections, development of programmes, compositions, ideas, improvements or inventions, that are the property of the Employer. The Employee acknowledges that such knowledge and information could be advantageous to outsiders and/or competitors of the Employer. The Employee, therefore, undertakes not to directly or indirectly disclose to any third party or use for her own benefit after termination of the employment relationship with the Employer such information that is hereby regarded by the Employee as confidential, without first having obtained written consent from the Group Chief Executive Officer of the Employee;

2.10 Employee agrees that she shall return all property of the Employer in her possession or under her control on the effective date of termination of the employment relationship;

2.11 On termination of the Employee's employment relationship, the Employee agrees that she shall return to the Employee all the documents, catalogues, memoranda, notes, minutes of meetings and any other such material (including any copies) that the Employee may have in her possession or used whilst being in the Employer's employ. The provisions of this paragraph shall apply irrespective of who was the author of such documents and material;

2.12 The Employee hereby assigns all intellectual property created by the Employee in the scope of her employment to the Employer and the Employer accepts such assignment of rights;

2.13 The Employee hereby waives all moral rights the Employee may have in any intellectual property created by the Employee in the scope of her employment;

2.14 The Employee hereby warrants that intellectual property created, is original and not an infringement of any third party rights;

2.15 The Employee shall not, directly or indirectly and notwithstanding the termination of employment relationship with the Employer, use, allow others to use or in any other manner benefit from the Employer's intellectual property; and

2.16 The Employee shall not, copy, distribute, reverse-engineer, modify or adapt or in any other manner deal with the Employer's intellectual property without the Employer's prior written consent. For the avoidance of doubt, intellectual property shall include, but not be limited to, copyright assets, trademarks, trade name(s), domain names, patents, trade secrets, software, source code, know-how, business knowledge, client details or parts thereof.

2.17 The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by Employee, on account of, or in any way flowing from the termination of employment relationship or any issue resulting from the employment relationship between the parties.

2.18 No variation, modification or waiver of any of the provisions of this agreement or consent to any departure therefrom shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific

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instance and for the specific purpose and to the extent for which it was made or given.

2.19 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

2.20 This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

2.21 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

2.22 The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

2.23 This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto in law.

2.24 Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at **JOHANNESBURG** on this **22nd day of OCTOBER 2014** in the presence of the undersigned witnesses.

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FOR THE EMPLOYEE

WITNESSESS

1. (13941)

2. (1362)

Thus done and signed at **JOHANNEBSURG** on this 22nd day of **OCTOBER 2014** in the presence of the undersigned witnesses.

22/10/14

Nomsa Philiso [7852]
GROUP EXECUTIVE: COMMERCIAL ENTERPRISES (Acting)

FOR AND ON BEHALF OF THE EMPLOYER

WITNESSESS

MANNIE ALHO (244)
HUMAN RESOURCE MANAGER 22/10/14

1.

2. (11267)

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JT-420

SABC

TERMINATION OF EMPLOYMENT CHECKLIST:-

DETAILS OF THE EMPLOYEE –3G CARD RETURN

Full Names: Nosipho Jokozela

Personnel No.:102831

Job Title: Account Executive

Department: Sport Sales

Province: Gauteng

Termination Date: 22 October 2014

Date: 23 October 2014

Dear Penge Kindly be advised that **Ms Nosipho Jokozela, Account Executive[102831]** has resigned from the SABC with last working day being **22 October 2014.** **Please cancel the subscription with immediate effect.** Herewith returned is the following; • Vodacom 3G Card (SN – 320133252074) 8930000000002812558 Kind regards Portia Ndlovu Commercial Enterprises	Full Names: PENGE VIETMAN Job Title: ACTING SUP. CORP. CELL Pers No: 4369 Signature: [signature] Date: 23/10/14 Remarks:

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Edelweiss Fouche

From:	Penge Liefman
Sent:	23 October 2014 10:44 AM
To:	'PublicSector@vodacom.co.za'
Cc:	Rebecca Tsime; Mannie Alho
Subject:	Suspension of 3G Sim Card

Good day,

Kindly suspend the below 3G sim card with immediate effect.

3G sim card number
89300000000002812558

Kind regards,

Pengé Liefman
Supervisor: Corporate Cell Phone Office(Acting)
Logistical Services
SABC LTD
Tel: +27 11 714-3601
Fax: +27 11 714-4000
Cell: +27 83 383 1473
e-mail: liefmanmp@sabc.co.za



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MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

BROADCAST ELECTRONIC MEDIA AND ALLIED WORKERS UNION (BEMAWU)

OBO

TSELISO LEBALLO

(APPLICANT)

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION LIMITED

(RESPONDENT)

CASE NUMBER : GAJB 2736-10

SETTLEMENT AGREEMENT

1. The **Broadcast Electronic Media and Allied Workers Union** on behalf of **Tseliso Leballo,** referred a dispute to the CCMA claiming an unfair suspension under CCMA Case Number **GAJB 2736-10** and the Respondent referred the dispute on review to the Labour Court.

2. The parties hereto engaged in consultation and agreed to settle the above dispute referred to in 1 above and the terms and conditions of the settlement agreement are recorded hereunder:

   2.1. The Respondent agrees that upon signing of this agreement not to proceed with whatsoever action and / or claims against the Applicant flowing from this dispute or any issue resulting from the employment relationships between the parties;

   2.2 By entering into this agreement, the Respondent does not admit or acknowledge that the Applicant was unfairly suspended nor does the Applicant claim that he was unfairly suspended;

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2.3 The Respondent agrees to:

2.3.1 Pay an amount of **R 90 000-00 (ninety thousand rand)** plus interest of **R 19 752-30 (nineteen thousand seven hundred and fifty two rand and thirty cents)** to the Applicant as per the directive of the CCMA and reflected in the attached **CCMA Award** dated **28 July 2010**;

(This amount will be paid into the Applicant's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant tax directive. The Applicant's bank details are:

Bank	:	**Standard Bank**
Branch	:	**Alberton (012342)**
Account Holder's name is	:	**TB Leballo**
Account Number	:	**220637229**
Account :	:	**Cheque**

2.4 Once signature has been effected by both parties hereto as well as attested by witnesses, the Respondent agrees to withdraw the dispute referred to in 1 above at the Johannesburg Commission for Conciliation Mediation and Arbitration and the Labour Court and to serve such Notice of Withdrawal on the Commission for Conciliation Mediation and Arbitration, the Labour Court and the Applicant respectively;

2.5 Pay BEMAWU's legal cost incurred within 30 (thirty) days from receipt of an invoice reflecting the legal cost BEMAWU has to settle with its legal representative;

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2.6 That the terms of this agreement shall be in full and final settlement of any or all claims and/or disputes of any nature whatsoever either party has or may have against each other arising from the relationship between the parties, which include but not limited to the matter pertaining to the Applicant's referral under case number GAJB 2736-10 in the Commission for Conciliation Mediation and Arbitration and in the Labour Court, held at Johannesburg;

2.7 No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

2.8 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

2.9 This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

2.10 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

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3. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

4. The Applicant confirms that Mr. H du Buisson from the Broadcast Electronic Media and Allied Workers Union duly represents the Applicant in this matter and on behalf the union, and that they were fully informed of the contents of this agreement and fully agree thereto.

5. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

6. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto in law;

7. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at CENTURION **on this** 7 **day of** FEB 2018 **in the presence of the undersigned witnesses.**

FOR THE APPLICANT
H DU BUISSON (BEMAWU)

WITNESSESS

1._____

2._____

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FOR AND ON BEHALF OF THE
RESPONDENT

WITNESSESS

1.

2.

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ANNEXURE "A"
No. 1065 P. 1/7

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CCMA

ARBITRATION AWARD

Case Number: GAJB2736-10
Commissioner: K Kleinot
Date of Award: 28th July 2010

In the **ARBITRATION** between

BEMAWU obo Mr Tsellso Leballo
(Union/Applicant)

And

SABC Ltd
(Respondent)

Union/Applicant's representative: Mr du Buisson
Union/Applicant's address: PO Box 203
Wierda Park
Centurion

Telephone: 011 8037973/2204/012653
Telefax: 011 7268618/0866715585
E-mail: headoffice@bemawu.org.za

Respondent's representative: Mr Weber obo SABC
Respondent's address: Private Bag X1
Auckland Park
2006

Telephone: 011714 3863/9111
011714 4030/3001/5363/6951
E-mail:

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1 DETAILS OF HEARING AND REPRESENTATION

1.1. The matter was heard on the 8th of July 2010. Mr Du Buisson appeared for the applicant. Mr Webber represented the respondent. Parties agreed that the issues were crisp and elected to submit argument on the matter. The parties agreed to submit these arguments on the 19th of July 2010, which they did.

2 ISSUE TO BE DECIDED

2.1 Whether the suspension is unfair?

3 SURVEY OF THE ARGUMENT

Respondent's Argument

3.1 It was argued that the alleged unfair suspension as claimed by the applicant does not fall within the ambit of S186 (2) (b) of the Labour Relations Act *"The unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee"*. Having regard to the wording of the section, the legislature intended that the words unfair suspension which follow the wording ".other disciplinary" action. It was argued that the unfair suspension must be a suspension as a result of disciplinary action (*Koka v Director General North West (LC) 1997 7 BLLR (LC)*)

3.2 Therefore as no disciplinary action has been taken against the employee and the suspension is not discipline in nature, the dispute should be dismissed on this basis alone.

3.3 The Respondent has a suspension policy, which is part of the Applicant's contract of employment. It is submitted that the Applicant has committed a serious misconduct, which after an investigation led to charges involving contravention of SABC rules and the PFMA. The Respondent contends that the applicant who is in a senior manager, contravened the common law obligation to maintain bona fides at all times. Although the suspension policy does state a person will be suspended for serious misconduct such as fraud, theft, these are examples. The list is not exhaustive.

3.4 The Applicant was suspended pending an investigation and or holding of a hearing. Correspondence was sent to the Applicant indicating such. The letter reflected the respondent's intention to suspend as well as the alleged misconduct pertaining to certain projects. It also set out that disciplinary action may follow. At this stage the investigation had not been completed. It was unnecessary to supply a comprehensive charge sheet as the investigation had not been finalised. The Respondent submitted that the information disclosed to the Applicant was sufficient to respond as to why he should not be suspended. In terms of an email on the 20th of January the applicant indicated that as he had already been suspended there was no reason to motivate why he should not be suspended, further the allegations were vague. No further particulars were requested to submit any representations as to why he should not be suspended. The Respondent argued that it was prudent to suspend the Applicant in order to ensure that the investigation was not interfered with.

3.5 It was argued that when the Applicant received the letter to suspend the line manager informed him that as the allegations were serious, he should rather stay at home and not have any work related issues influencing him when considering the representations as to why he should not be suspended. The Respondent agrees that his laptop and access card were handed in. Upon receipt of the email of the 20th of January where it was alleged that the suspension had already occurred the Respondent realised its error and handed the laptop and access card back to the applicant on the 21st of January 2010. The respondent pointed out that Mr Korkie was to act in the applicant's position whilst the applicant was considering the representations. The respondent explained that no formal Delegation of Authority document was drafted and Mr Korkie was not instructed to act officially.

3.6 A letter dated that 29th of January 2010 was sent to the Applicant indicating that he was placed on suspension on full remuneration and with immediate effect. This is in compliance of the SABC rules and regulations.

3.7 An extract from the auditor general's report is quoted, the Respondent argued that the report states that the suspension of employees was not investigated in detail and therefore no conclusion can be made. Consequently it was argued that this extract should not be considered as there are no facts pertaining to the circumstances of each case

3.8 It was argued that where an investigation is complete the suspension does not come into contention any longer as the disciplinary process is then determined by the chairperson of the panel.

3.9 The Applicant argued that the respondent is being inconsistent in the application of its suspension as Ms Samuels was not suspended for serious misconduct. The Respondent conceded that Ms Samuels was not suspended but argues that the circumstances of her suspension are unknown. It was argued that the charges in this case related to breach of the SABC rules and regulations and not to dishonesty. The Respondent argued that no adverse inference should be drawn in the absence of any evidence.

3.10 The Applicant requested the respondent to uplift the suspension during the world cup so that he could render services on Lesedi FM as a commentator. This request was declined as the applicant was on suspension and the Respondent did not want to create a precedent. The Respondent argued that as the Head of Procurement due to operational requirements it was uncertain as to whether he would have been permitted time off.

3.11 When the Applicant commenced his services he was made aware of the suspension policy as well as personnel regulations and rules.

3.12 A notice to attend a hearing was sent to the Applicant in April 2010 for a hearing scheduled on the 14th and 15th of April 2010. After receiving the charge sheet, the applicant approached the respondent and requested that the matter be heard in terms of S 188A. The matter was then set down on the 19th of May 210. The parties addressed the points in limine and had to submit heads of argument on certain legal issues. The arbitrator was only available on the 10th-12th August 2010. It was argued that these dates were not effected by payment. The delay in the finalisation of the arbitration is not due to the respondent as the process is controlled by the CCMA.

3.13 Consequently it was argued that there was no unfair suspension and that the dispute should be dismissed.

Applicant's Argument

3.14 Mr Leballo is a senior employee, General Manager, Logistical Services. He commenced employment on the 6th of June 1986 and has 24 years' service.

3.15 It is common cause that the Applicant was received a letter notifying the applicant of the Respondent's intention to suspend. The letter stated that the Applicant was involved in certain irregularities pertaining to certain projects. The letter also urges the Applicant to tender reason why the precautionary suspension should not be effected. However the same day the Applicant was instructed to hand over his lap top and access card. The Applicant was suspended and told not to come to work.

3.16 A letter was written pointing this out. The respondent confirmed that the applicant was requested to take a few days off and that Mr Korkie was requested to oversee the managerial functions of the applicant.

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Furthermore the respondent was not opposed to returning the access card. The applicant contends that at the time of the suspension the respondent called a meeting and informed staff that Mr Korkie will be acting in the post of the applicant for the duration of his suspension. Another letter was written by the union indicating that the company was merely paying lip service to the policy. The respondent did not respond but the suspension was not uplifted and the Applicant was refused access to his workplace.

3.17 On the 27th of January 2010 the applicant wrote an email to the respondent indicating that as he had been suspended there was no purpose in supplying the respondent with reasons why he should not be suspended. He also contended that the allegations were vague. Despite this the respondent did not furnish further particulars. The Respondent merely confirmed that he had been suspended.

3.18 A letter was sent to the respondent on the 20th of April 2010 which indicated that the suspension should be uplifted, the Respondent did not respond.

3.19 The Applicant requested a S188A pre-dismissal arbitration as he feared he would not get a fair hearing within the SABC.

3.20 The Applicant requested that he be allowed to commentate on Lesedi FM.
3.21 It was argued that S186 (2) (b)"The unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee" was clear and unambiguous. It was argued that the word "other" refers to other than dismissal and not to suspension as part of disciplinary action. Any suspension that is part of disciplinary action must be agreed to otherwise it will simply be an unfair suspension. It was argued that many disputes were referred in terms of this section disputing a precautionary suspension. It was argued that it could not have been the intention of the legislature to give the employer carte blanche to suspend indiscriminately.

3.22 Various case law was cited to support the argument that common law contract of employment should be developed in light of the Constitution which contains the right to fair labour practices *Old Mutual Assurance Co SA v Gumbi [2007] 8 BLLR 699 SCA*. It was argued that all employers have a duty to act fairly when dealing with their employees *Murray v Minister of Defence [2008] 6 BLLR 513 (SCA)*.The Applicant argued that the CCMA was bound to follow the high court to ensure proper jurisprudence. In an article by Halton Cheadle it was noted that suspension is the employment equivalent of arrest, with the consequence that an employee suffers palpable prejudice to reputation, advancement and fulfilment. The author further suggests that suspension should be reserved pending a hearing and only where there is a reasonable apprehension that the employee will interfere with any investigation that has been initiated or repeat the misconduct in question.

3.23 In terms of *Koka v Director General: Provincial Administration North West Government (1997) 18 ILJ 1018 (LC)* the court found that the definition of unfair labour practice was sufficiently broad enough to encompass the two forms of suspension, namely to impose discipline and secondly where it is for purposes of good administration. It was argued that where an employee was suspended the employer should offer an employee the opportunity to be heard before suspending (*SAPO Ltd v Jansen van Vuuren NO and others [2008] 8bllr 798 (LC).)*

3.24 It was argued that the applicant has a right to be heard before he is suspended as stipulated in the Personnel Regulations.

3.25 From the sequence of events it was argued that at the time he received the letter of intention to suspend. He was not given time to respond as the respondent instructed him to hand over his access card, office keys, laptop and 3G card. Seconds later he was marched out of the building. It was argued that this demonstrates that the Respondent had already suspended him regardless of any reasons that he would offer.

JT TE

JT-432

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3.26 When confronted with this irregularity the respondent offered to hand back the Applicant's access card and laptop but refused to allow him back at work. It was pointed out that the Applicant had a right to be heard before he is suspended. As he was not allowed to be at work he could not respond properly to the vague allegations as he did not have access to the information. It is disputed that there was a prima facie case against the Applicant. The charges against the Applicant are subject to a point in limine that the charges have not been brought within time and are no more than a witch hunt.

3.27 The Applicant is a well known and famous soccer commentator. He was approached by Lesedi FM to commentate on the Soccer World Cup and agreed to do so pro bono. The respondent merely stated that it did not want to create a precedent and that but for the suspension it would be a given that he would be allowed to commentate. This it was argued demonstrated the respondent's malice.

3.28 The period of suspension is six months an unreasonably long period. It is unlikely that the pre dismissal arbitration will be complete in two weeks time. It was argued that it was unlikely that the matter would be finalised this year and to keep the applicant on suspension for a further six months was unreasonable. As a result of being on suspension he is prejudiced as he cannot apply for positions or promotions. The Applicant is not at work and is unable to earn his incentive bonus.

3.29 As long as the applicant is on suspension he will be viewed with suspicion by his peers and colleagues.

3.30 It was argued that there was no valid reason for the suspension. The pre-trial minute has been agreed. The second letter of suspension does not indicate when the suspension will end. The Applicant was not charged with serious misconduct such as fraud or theft. Neither has it been raised that the Applicant will repeat the alleged misconduct.

3.31 The respondent has not acted consistently in that some employees have not been suspended and no disciplinary action has been taken against them, Mr Ntenteni. Further in Ms Samuels case it is clear that there was no suspension following accusations of serious misconduct.

3.32 The Applicant requested that the suspension be uplifted and that 12 months compensation be awarded.

4 ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 The issue before me is whether an unfair labour practice occurred in terms of the Labour Relations Act as amended. Section 186 (2) states the following" Unfair labour practice means any unfair act or omission that arises between an employer and an employee involving ***(.b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee"***

4.2 The respondent argued that this section meant that suspension was part of disciplinary action short of dismissal. In *Koka v Director General : Provincial Administration , North West Government (1997) 18 ILJ 108 (LC)*, the court held that depending on the facts of the case a suspension imposed primarily as a holding operation or as an interim measure could be tantamount to suspension for disciplinary reasons. The suspension of an employee pending a disciplinary enquiry is not meant to be punitive as no misconduct has been established. It is usually imposed to ensure that the investigation is not interrupted and that it is completed timeously It is with this in mind that S 186 (2) (b) is broad enough to encompass both types of suspension. This is supported by the various SCA cases quoted above which indicate that the common law right to fairness in terms of the employment relationship is enshrined in our constitution *Old Mutual Assurance Co SA v Gumbi [2007] 8 BLLR 699 (SCA); Murray v Minister of Defence [2008] 6 BLLR 513 (SCA)*. It does not fall within the realm of fairness to exclude a suspension which is frequently used by employers pending an investigation or a hearing or both, to do so would exclude a whole range of employees and this could not have been the intention of the legislature. Consequently the CCMA has jurisdiction to adjudicate this matter.

JT TE

4.3 The Respondent has its own rules and regulations in relation to suspension. It is common cause that the Applicant was aware of such. The Regulations specify as follows: that prima facie the employee has committed a serious offence such as fraud assault or theft, suspending pending an investigation and or the holding of a disciplinary hearing; employee to be advised that the Corporation considers suspending him or her pending an investigation or the holding of a hearing, employee to be given an opportunity to respond to the proposed suspension before a decision is made to suspend, employee to be advised in writing of the suspension and suspension to be on full pay.

4.4 The case before me reflects that a letter was sent to the employee notifying him of the Respondent's intention to suspend. This is dated the 19th of January 2010. The Applicant is requested to supply reasons by the 21st of January 2010. However it appears to be common cause that the Respondent's line manager then confiscated the Applicant's lap top, office keys, access card and suggested that he take leave to consider his response. This was also coupled with the fact that Mr. Korkie was then placed in the Applicant's position. Whilst I accept that there is a dispute about this particular fact, this is a neutral factor in that the Respondent is entitled to make operational decisions in terms of management and considering the Applicant's senior position this is reasonable. The Applicant was not given an opportunity at that stage of supplying reasons as to why he should not be suspended. Correspondence dated the 20th of January 2010 was sent to the Respondent indicating that their member had been suspended. The Respondent sent correspondence to the trade union indicating that it would return the access card and lap top. Our courts have taken the approach that an employer is entitled to redress its procedural irregularities in disciplinary hearings. This can also be applied in this instance. Here the Respondent attempted to redress the suspension. However it did not invite the Applicant to return to work or to address reasons as to why the suspension should not proceed. The fact that the Applicant was instructed to hand in his access card, lap-top and office keys coupled with the fact that he was told to take leave and not to return despite the correspondence on the 20th of January 2010, reveals that a suspension took place.

4.5 The Respondent contends that it waited in vain for reasons and finally notified the Applicant that he was suspended on the 29th of January 2010. Although I find that there was a suspension there was nothing stopping the Applicant from providing reasons. This would not have prejudiced him. It is this sort of tit- for- tat behaviour that escalates conflict. The Applicant must take some responsibility for such specifically where the Respondent reiterated that there was no suspension.

4.6 From the facts before me it appears that the applicant was notified that he was suspended pending the institution of a disciplinary hearing and further investigation. The court in *Mogothle v Premier of the North West Province & Another [2009]4 BLLR 331 (LC)* held that suspension is equivalent to arrest and should only be used where there is a reasonable apprehension that the employee will interfere with investigations or pose some other threat. The court went further and indicated in paragraphs 31-39 *"that an employee should not be suspended unless there are prima facie grounds for believing that the employee has committed serious misconduct and there is some objectively justifiable reason for excluding the employee from the workplace, and unless the employee has been given an opportunity to make representations, albeit not of the kind required by the criminal justice model of workplace disciplinary action"*

4.7 It was argued that the allegations supplied to the Applicant are vague. The Respondent did not respond or supply further particulars. Clearly the test is whether there is a prima facie case and given that the investigation may not be complete at that time details, are to some extent limited. The allegations appear to be vague but at no stage does the Applicant request further details in order to make submissions to the Respondent.

4.8 The Applicant was suspended pending the institution of a hearing and further investigation. This is in line with the Respondent's Regulations.

JT TE

4.9 The only part of the policy that the Respondent failed to comply with is that the Applicant was not afforded the opportunity of making submissions as to why he should not be suspended.

4.10 The Applicant was suspended in January 2010 and the next sitting of his case is in Aug 2010. He has been suspended for 6 months, this is a lengthy suspension. However it appears that the delays were caused by a request for a S188A process, the availability of the Commissioner and the various points in law that parties raised at the pre-dismissal arbitration. This delay cannot be laid at the feet of either party.

4.11 The applicant has not suffered financial prejudice as he has been paid for this period.

4.12 It appears that the Applicant has suffered prejudice in that due to the length of the suspension his career and prospects for promotion as well as the accumulation of an incentive bonus are affected by the fact that he is not working.

4.13 It is submitted that the applicant suffered prejudice in that he was not allowed to provide commentary for the Soccer World Cup. There is insufficient evidence before me that this would have been allowed as a matter of course and as such I cannot rule on this factor.

4.14 Although the applicant alleged that the Respondent has not acted consistently in the application of suspensions. There is insufficient evidence surrounding Ms Samuels suspension and case and as such no ruling can be made in this regard.

4.15 The Applicant has requested as relief that the suspension be uplifted as a hearing is pending. It was argued that a suspension could not be indefinite. It is unfair to suspend the Applicant when he has not been able to make representations. Considering that a disciplinary hearing is pending in the form of a S188A the suspension is uplifted. Given that the unfairness centres around being unable to make representations and the Applicant's reluctance to engage with the Respondent on this two month's remuneration is awarded. The Applicant earned R45000x 2= R90000,00

5 AWARD

5.1 The suspension is uplifted. Mr Leballo is to return to work within 7 days of receipt of this award. The Respondent , SABC Ltd, is to pay Mr Leballo the sum of R90000,00 within 21 days of receipt of this award.

APPROVED

Signature:

Commissioner: *K Kleinot*

Sector: *Media*

JT TE

Soil JT-435

SETTLEMENT AGREEMENT

IN THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

Case Number: GAJB817739-16

In the dispute between:

Lesetja Letsoatho (Applicant)

and

SABC Ltd (Respondent)

The undersigned parties record the settlement of their dispute in the following terms. By signing this agreement, the parties acknowledge that the agreement was read to them and interpreted (where necessary) and that they understand the content hereof. This agreement is in full and final settlement of the dispute referred to the CCMA as well as in full settlement of all statutory payments due to the applicant unless specifically excluded in paragraph 4 of this agreement.

1. ☐ **REINSTATEMENT**

1.1 The respondent agrees to reinstate the applicant on the same terms and conditions of employment which governed the employment relationship prior to the dismissal dated .....(date)

1.2 The said reinstatement is to operate retrospectively with effect from .....(date)

1.3 As a result of the retrospective effect of the reinstatement, the respondent agrees to pay remuneration due to the applicant in the amount of R ..... by no later than .....(date)

1.4 The applicant must report for duty on .....(date) at.....(time) at .....(place)

2. ☐ **RE-EMPLOYMENT**

2.1 The respondent agrees to re-employ the applicant with effect from .....(date)

2.2 The applicant must report for duty on .....(date) at.....(time) at.....(place)

2.3 The re-employment will be on the same terms and conditions of employment which governed the employment relationship prior to the dismissal unless specifically set out hereunder.....

.....

3. ☑ **MONETARY SETTLEMENT**

3.1 The respondent agrees to pay the applicant the amount of R 138575-00 by no later than 31 October 2016 .....(date)

3.2 The amount in paragraph 3.1 is inclusive of statutory payments due to the applicant unless specifically excluded in terms of paragraph 4 below.

3.3 In the event that the parties agree to settle the amount in instalments, the following plan is agreed with the specific understanding that the entire amount will become due and payable to the applicant on the first payment date if the respondent fails to meet its obligations to pay the applicant the specified amount on any date set out hereunder:

R	on	R	on
R	on	R	on

JTTE

Case Number: GAJB 17739-16

3.4 **Method of payment**

☐ Cash / cheque(s) will be collected by the applicant at the respondent's premises.

☑ Payment(s) will be deposited by the respondent into the applicant's bank account:

Branch code: 168405 Bank: Nedbank

Account number: 1684040825

4. ☐ **EXCLUSION OF STATUTORY PAYMENTS**

The parties have failed to reach agreement in respect of the following statutory payments and the applicant may pursue his / her claim in this regard with the Department of labour.

☐ Wages ☐ Notice Pay ☐ Leave Pay ☐ Severance Pay

☐ All statutory payments ☐ Other (specify): .....

5. ☐ **WITHDRAWAL OF DISPUTE**

The applicant voluntarily withdraws the referral and abandons the dispute against the respondent in settlement of his / her case at the CCMA with the full knowledge that he / she will not be able to proceed with this dispute at a later stage.

6. ☐ **OTHER**

.....

.....

.....

.....

.....

.....

.....

.....

7. No variation of this agreement shall be legally binding unless reduced to writing and signed by the parties.

8. The parties consent to this agreement being made an arbitration award in terms of s142A(1) of the Labour Relations Act.

9. The parties agree that in the event of non-compliance of this agreement, the party defaulting will pay the full costs incurred by the other party in enforcing this agreement.

Done and signed at Johannesburg **on this** 21st **day of** October 2016

.....
Applicant

.....
Respondent

.....
Witness

.....
Witness

This agreement was interpreted by: ..... Signature .....

This agreement was conciliated by: T. I. Boyce Signature .....

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

THABISO PHILLIP LESALA

("APPLICANT")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("RESPONDENT")

SETTLEMENT AGREEMENT

GE: Legal Services (Acting)
MBULU NEPFUMBADA

JT TE

1. The Applicant has referred an alleged unfair dismissal dispute to the Johannesburg Commission for Conciliation Mediation and Arbitration ("CCMA") under case number **GAJB 28698-12**.

2. The parties hereto have agreed to settle the dispute referred to in paragraph 1 above and the terms and conditions of the settlement agreement are recorded hereunder:

2.1 The Applicant agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Respondent which the Applicant now has, or which may hereafter accrue or otherwise be acquired by Applicant, on account of, or in any way flowing from the alleged unfair dismissal dispute or any issue resulting from the employment relationship between the parties;

2.2 By entering into this agreement, the Respondent does not admit or acknowledge that the Applicant was unfairly dismissed;

2.3 The Respondent hereby agrees to pay the Applicant an amount of R 1 800 000, 00 (one million eight hundred thousand rand);

2.4 The Respondent hereby agrees to contribute to the Applicant's legal costs in the amount of R 211 152, 96 (two hundred and eleven thousand one hundred and fifty two rand and ninety six cents).

2.5 The amount referred to in paragraph 2.3 above shall be subject to all statutory deductions;

GE: Legal Services (Acting)
MBULU NEPFUMBADA

TE

2.6 The amount referred to in paragraph 2.3 shall be paid into the Applicant's bank account by way of electronic funds transfer within seven (7) days from having obtained the relevant SARS tax directive. In this regard the Respondent shall apply to the SARS for such a tax directive. The Applicant undertakes to do all that may be necessary to enable the Respondent to obtain such a tax directive;

2.7 The amount referred to in paragraph 2.4 shall be paid into the Applicant's attorneys trust bank account by way of electronic funds transfer within thirty (30) days of receipt of the invoice from the Applicant's attorneys; and

2.8 Once signatures have been appended by both parties hereto as well as attested by witnesses, the Applicant agrees to unconditionally withdraw the dispute referred to in 1 above at the CCMA and to provide the Respondent with a copy of such withdrawal within two (2) days of the filing of the withdrawal notice with the CCMA.

3. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Respondent which the Applicant now has, or which may hereafter accrue or otherwise be acquired by Applicant, on account of, or in any way flowing from the alleged unfair dismissal dispute or any issue resulting from the employment relationship between the parties;

GE: Legal Services (Acting)
MBULU NEPFUMBADA

TE

4. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

5. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

6. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

7. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

8. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party;

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

GE: Legal Services (Acting)
MBULU NEPFUMBADA

Thus done and signed at _____ on this ____ day of _____ in the presence of the undersigned witnesses.

_____

FOR THE APPLICANT

WITNESSESS

1._____

2._____

Thus done and signed at JOHANNESBUR on this 30 day of JANUARY in the presence of the undersigned witnesses.

_____

FOR AND ON BEHALF OF THE RESPONDENT

WITNESSESS

1._____

2._____

JT TE

Sello Xama

From: Amy Lodge
Sent: Wednesday, January 30, 2013 12:49 PM
To: Keobokile Mosweu
Subject: FW: SABC / T. LESALA
Attachments: 20130130082603076.pdf

Importance: High

Please note below

-----Original Message-----
From: Mandiwe Nkosi
Sent: 30 January 2013 10:33 AM
To: Lulama Mokhobo
Cc: Amy Lodge
Subject: SABC / T. LESALA
Importance: High

Dear Mam,

I hope that this finds you well. Kindly find attached hereto a copy of the duly signed settlement agreement for your attention and records.

Regards

Mandi Nkosi
GM: Employee Relations
Tel 011 714 3972
Fax 011 714 4030
P/Bag X1, Auckland Park, 2006, Gauteng, South Africa

JT TE

SABC NEWS

Human Resources | SABC News & Current Affairs
Entrance 13,Cnr Artillery & Canary Roads
Auckland Park, 2094
PO Box 91102, Auckland Park, 2006
Johannesburg, Gauteng, South Africa
Tel +27 11 714-3770, Fax +27 11 714-6012
www.sabc.co.za

Memorandum

Sensitivity:	**CONFIDENTIAL**
Priority:	**HIGH**
Attention:	**PAYROLL MANAGER** MR ELIJAH MOKOKA (14TH FLOOR RADIO PARK)
Re:Subject	**CCMA ARBITRATION AWARD** **MS NOMHLE LUSWAZI [12044]**
Date:	**02 NOVEMBER 2015**
From:	**HUMAN RESOURCES MANAGER: SABC NEWS & CURRENT AFFIARS** MANNIE ALHO

☒ For Authorisation	☐ For Your Information
☐ For Action	☐ Please Revert
☐ For Your Comments	☐ Returned With Thanks

Dear Elijah,

1. Attached herewith is a copy of the **CCMA Arbitration Award** dated 28 October 2015 – GAJB6641-15 in which the Commissioner orders the SABC to pay **Ms Nomhle Luswazi [12044],** an employee at News Cameras an amount of **R3 415, 00** as an award settlement.

2. Kindly ensure that the amount of **R3 415, 00** is electronically transferred into the employee's banking account before 11 November 2015 as ordered by the CCMA.

Mannie Alho [244]
HUMAN RESOURCES MANAGER – SABC NEWS & CURRENT AFFAIRS

Privacy and Confidentiality Notice
The information contained in this facsimile is intended for the named recipient/s only. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this facsimile in error, please notify us immediately by calling the above telephone number.

CCMA

Arbitration Award

Case Number: GAJB6841-15
Commissioner: Motlatsi Phala
Date of Award: 28-Oct-2015

In the ARBITRATION between

Nomhle Luswazi
(Union/Applicant)

and

SABC Ltd
(Respondent)

Union/Employee's representative: I.M. Shongwe
Union/Applicant's address: c/o Shongwe Attorneys
Suite 1204
Management House
38 Melle Street
Telephone: 011 447-6987,011 443-4378,011 714-6454
Telefax: 011 604-0649,086 664-2068
E-mail: info@shongweattorneys.co.za,
shongweattorneys.st.law@gmail.com

Employer's representative: Kobus Potgieter
Respondent's address: Private Bag X1
Auckland Park
2006

Telephone: 011 714-3863,011 714-3770
Telefax: 011 714-4030,011 714-2635,011 714-3001
E-mail:

JT TE

1 DETAILS OF HEARING AND REPRESENTATION

1.1 The arbitration was heard on a number of days and was finalized on the 19 October 2015. Mr. I M Shongwe an attorney represented the applicant and Mr. Kobus Potgieter the Employee Relations Consultant appeared for the Respondent.

2 ISSUE TO BE DECIDED

2.1 Whether the Respondent committed an Unfair Labour Practice relating to benefits.

3 BACKGROUND TO THE ISSUE

3.1 The Applicant is currently employed by the Respondent in the position of Administrator; News Camera Department. James Mosaka is currently the Head of the Department

3.2 According to the Applicant the dispute was about the failure of the Respondent to pay her acting allowance because she acted in the position of coordinator, whose incumbent was Makgobatlou.

3.3 In terms of the Acting policy in particular paragraph 3.3 the appointment must be in writing for a specific period, be approved by a higher authority in line with the delegation of authority.

3.4 The Applicant confirmed that at the beginning of her acting stint her appointment was in writing. It was for a period of a month from 01 to 31 July 2012 and Molete signed the document of behalf of Mosaka (p20 of the bundle)

3.5 Acting in a higher grade is done on a month to month basis. An interrupted period should not exceed three months unless there are special circumstances it must be motivated and be recorded in the system.

3.4 The second period was from 01 September until further notice (p21 of the bundle of documents)

3.5 The final document indicates that the acting period was from January 2013 to June 2013.

3.6 The Applicant stated that she was acting in the position of supervisor and coordinator and still in the same Department. The Applicant was paid only until January 2013.

3.7 The Applicant approached the Chief Operations Officer about non payment between the January and June 2013. The COO gave specific instructions that the Applicant should be paid for that period.

3.8 She was given a printout from the salaries department which showed all the payments that went through. The first two entries denote that there was a payment in March but the Applicant only received such payment in July 2013 (p45 of the bundle)

3.9 The Respondent paid R4 488 which is R2 244 multiplied by 2 months (p83 of the bundle)

3.10 The Applicant stated that she did not sign the delegation of authority forms from February-June 2013 because it was pointless as she was not paid for the months of December and January 2012.

3.11 She then inquired from her supervisor about non-payment but the latter said the HR department did not give any explanation.

3.12 After numerous attempts to resolve the matter the Applicant eventually referred a dispute to the CCMA. At the conciliation hearing the representative for the Respondent stated that the position that the Applicant acted in was delimited, meaning that it did not exist anymore. She was further handed a letter dated the 22 April 2015 confirming what the representative disclosed (p76 of the bundle)

3.9 The Applicant was not aware of the above development and at the time she sought the intervention of the COO in March no one told her that the position did not exist.

3.10 Before referring the matter to the CCMA the Applicant was called into the office of the HR on 12 December 2014 and handed a letter which recorded the following

RE: ONCE OFF PAYMENT FOR ADDITIONAL WORK UNDERTAKEN

"Kindly be advised that management has taken a decision to make a payment R10 000 (before tax) to you as a final settlement pertaining to your concerns/dispute raised for not being rewarded for undertaking additional work. This amount will be paid to you together with your salary in December 2014."

3.11 Below the signature of the of the Human Resources Manager there was a declaration which required the signature of the Applicant

*"I acknowledge receipt of this letter and **accept the payment** as referred above as final settlement pertaining to the additional work undertaken"* (p34 of the bundle)

3.12 According to the Applicant she refused to sign the letter but continued to perform the duties of a coordinator.

3.13 However she received the payment referred to in the letter but did not leave it there.

3.14 On 19 January 2015 the Applicant addressed email to Nothando Maseko and copied the HR Manager Mannie Alho and the subject; **was seeking clarity of R10 000 deposited on my salary (sic)**

"End of December the SABC deposited R10 000 in my salary, I don't know what is it for, however Mr. Mannie Alho, Manager HR, News wrote me a letter on the 12 December 2015 (sic) offering me R10 000 "for additional work" I did with the SABC and requesting me to sign acceptance.

I have not signed that letter; I don't know what he was referring to! What I know is that I have not been paid for my acting allowance, for acting on the position of Coordinator from July 2012 till today (sic)

The total amount SABC owes me is excluding accrual since it increased annually.

I am trying to exhaust all internal processes as this is Unfair Labour Practice" (p35 of the bundle)

3.15 Maseko responded and stated *"I need time to investigate this matter further. I promise to get back to you as soon as possible"* (p37 of the bundle)

3.16 The Applicant approached the office of the COO in October 2013 about the matter. The COO referred the matter to Jimi Mathews the Head of News to deal with the matter. The latter passed on the matter to James Mosaka the Applicant's supervisor to a give background to the issue and explain what steps were taken to address the matter.

3.17 As a result of the exchanges James Mosaka, Mannie Alho and Jimi Mathews agreed that a proposal should be made to offer the Applicant a lump sum payment for additional work. As a result the letter referred to in paragraph 3.11 was prepared and handed to the Applicant for her signature.

3.18 The Applicant intimated that she wanted to be paid for acting from February 2013 to date because she continues to perform the duties of a coordinator which entails ensuring that the camera men doing news and current affairs have all the equipment they need. She has to be at work as early as 4: am and the office is always flooded with people who want a camera. She is normally in the office from 7: am to 7: pm.

3.19 The Applicant averred that the SABC owes her R84 814 and the formula used is in p84 of the bundle.

3.20 James Mosaka a witness for the Applicant testified that he was a Manager in the Camera Department and the Applicant reported to him. He chose the Applicant to act in the position of coordinator and supervisor because one employee resigned and the other was boarded because of ill-health. He was unable to find anyone because he could not take a camera man to perform the duties as the department was short staffed.

3.21 Mosaka prepared the necessary delegation of authority documents and confirmed the following dates; the 01 July-31 July 2012, 01 September until further notice, 01 January until June 2013.

3.22 He became aware at some point that the Applicant submitted documents for payment but they were processed and she was not paid. She escalated the matter to Mosaka who approached HR but he could not get any answers.

3.23 Mosaka wrote to Jimi Mathews and as a result a meeting was held with the HR Manager Mannie Alho and Mosaka was then instructed to write letter titled Re: Once off Payment-Ms G N Luswazi in which he recorded

"Since the departure of the Supervisor and the Coordinator in the department who were on scale 300 & 130 respectively, the department has been operating without two strategic positions and Ms Luswazi was asked to act in that position. She was paid a total acting allowance at R12 537 over the period of 17 July 2012 to 2 March 2013. She continued assisting in the role and was rewarded accordingly and feels disgruntled for the additional work undertaken"

She has escalated this issue to the COO who after perusing her plight gave an instruction to look into this matter

I would therefore recommend an once off payment (sic) of R10 000 (before tax) as an acknowledgement and settlement on her current dispute in not being rewarding (sic) for taking on the additional responsibilities

Thanking you wholly for your understanding In anticipation"

3.29 Mosaka stated that the letter above was edited because the initial paragraph stated that he was acting on the advice of the HR Manager but that part was excised.

3.30 According to Mosaka he made a proposal that the two positions coordinator and supervisor should be fused but that was not accepted.

JT TE

3.31 He was also not aware that the position of coordinator was scrapped at some point, not even HR brought this to his attention. The only information at his disposal was that HR was working on the issue of the acting allowance.

3.32 The Applicant is at the beck and call of the SABC in order to ensure that news is covered. She continues to execute the functions of supervisor and coordinator.

3.33 There was no motivation as to how the R10 000 was paid, it was an arbitrary figure proposed by the HR manager Mannie Alho.

3.34 Mannie Alho the HR manager testified that he had been with the SABC for 34 years. Although he was not in the news department at the time the dispute arose he got to know by perusing the documents that the Applicant started acting in July 2012 and stopped in March 2013.

3.35 The acting was in terms of the SABC policy which states that "*acting in a higher grade is done on a month to month basis". An interrupted period should not exceed three months unless there are special circumstances it must be motivated and be recorded in the system*"

3.36 According to Alho he was not aware that the Applicant was still acting in the position of coordinator because the position did not exist anymore. He addressed a letter to the applicant explaining that the position confirming the situation.

3.37 He confirmed that he indeed had a meeting with the manager of the Applicant Mosaka and Jimi Mathews. The purpose was to try and resolve the complaint that the Applicant lodged with the office of the COO. Mosaka was requested to write a proposal on how to break the impasse.

3.38 It was correct that Mosaka submitted the initial draft and Alho introduced certain changes which were agreed to by all concerned (p47 of the bundle)

3.39 He was not aware of any complaints when Mosaka submitted the letter which he signed and was approved by Alho (p63 of the bundle)

3.40 As a result of the letter in p63 Alho addressed another letter to the Applicant offering her the R10 000 that was discussed and agreed to by the manager as well. The manager was also copied on the correspondence.

3.41 There was no feed-back from the manager but Alho was informed that the Applicant refused to sign the letter. In January 2015 he also received email from the Applicant raising concerns about the payment but she did not return the money given to the Respondent.

4 ANALYSIS OF EVIDENCE AND ARGUMENT

4.1 In terms of section 186(2)(a) of the LRA an; "Unfair Labour Practice means any unfair act or omission that arises between an employer and employee involving

(a) *unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissal for a reason relating to probation) or training of an employee relating to* ***the provision of benefits to an employee;***

4.2 The Applicant referred a dispute relating to non-payment of acting allowance which was a benefit to which she was entitled.

4.3 The Labour Appeal Court dealt with the issue relating to the definition of benefits, In Appollo Tyres South Africa (Pty) Ltd v CCMA and others DA1/11 [2013] ZALAC it was held that a "benefit" for the purposes of section 186(2)(a) is not limited to an entitlement which arises ex contractu or ex lege. Musi AJA held

"In my view, the better approach would be to interpret the term "benefit" to include a right or entitlement to which the employee is entitled (ex contractu or ex lege including her right judicially created) as well as an advantage or privilege which has been offered or granted to an employee in terms of a policy or practice subject to the employer's discretion. In my judgement 'benefit' in

section 186(2)(a) of the Act means existing advantages or privileges to which an employee is entitled has a right or granted in terms of a policy or practice subject to the employer's dicretion. In so far as Hospersa , G4S C Scheepers postulates a different approach how they are with respect, wrong".

4.3 In Protekon v CCMA and others [2005] ZALC 75 (17 May 2005) the Labour Court dealt with the issue and adopted the approach that it will serve no purpose for claims in terms of section 186(2) (a) to be restricted to those arising ex contractu or ex lege.

4.4 It is common cause that the appointment of the Applicant to act in a higher grade has to be in writing. Furthermore payment was dependent upon payroll confirming that a letter of an acting appointment was issued.

4.5 Section A of the "Acting Allowance in Higher Grade Payment Request" provides for the following process;

Verification *"It is hereby confirmed that a letter of acting appointment was issued to above employee which clearly stated the duration of the acting capacity and the level of remuneration"* (if applicable the relevant level of SABC delegation of authority) the relevant DOA is herewith attached as supporting documents)

4.6 The Applicant's approach was two-fold, that her acting was authorized in writing from July 2012 to June 2013; however she was only paid until January 2013. Secondly she continued acting as a coordinator beyond June 2013 and as a result the Respondent was obliged to pay her from that period to date.

4.7 Starting with the second part of the applicant's approach, the Applicant conceded that acting should be in writing in terms of the policy of the Respondent. It follows therefore that the absence of authorization in writing is a violation of the policy of the Respondent.

4.8 The argument that the Applicant was entitled to be paid for a period that was not authorized, and that the obligation arose from the assertion that she was performing the same duties could not be sustained. Even if one were to accept

JT TE

the argument, payment is conditional upon the letter of appointment being produced in terms of the verification process.

4.9 During cross-examination the Applicant stated that she stopped submitting request for payment because she was not paid for the months of November and December 2012, and one can safely conclude that the same goes for all the other months she claimed she was acting but was not paid.

4.10 With regard to the first approach there is a dispute of fact about the duration of the acting period. According to the Applicant she was appointed in writing from July 2012 to June 2013, but the Respondent averred that in fact it was until March 2013. The only documents submitted showed that the appointment was as stated by the Applicant.

4.11 The Respondent also argued that some of the appointments were done in violation of the policy because the DOA merely identified the 1st day and made the period elastic by stating "until further notice" or for a period exceeding three months, e.g. January to June 2013 The policy was clear that acting is on a month to month basis and should not go beyond uninterrupted period of three months. Special circumstances should exist for the period to exceed three months and there should be a motivation as well.

4.12 The Respondent appears to have condoned the non-compliance with the policy taking into account the manner in which some of the DOAs were completed. The irregularities notwithstanding, the Applicant was paid for some of the period. The only period in contention is February to June 2013 a period of five months.

4.13 Having set a precedent, the Respondent was obliged to pay the Applicant for the five months referred to above.

4.14 The Applicant quantified the amount outstanding and argued that taking into account appreciation over a period of time she was entitled to R2683 per month between February and June 2013, the total amount being R13 415 (2863 x 5=R13 415)

4.15 It should also be noted that the Respondent did not dispute the figures above. Furthermore the Respondent gave an undertaking that payment for two months that is, February and March would be verified and communicated to the Applicant. At the time I wrote the award there was no feed-back from either of the parties.

4.16 But this did not dispose of the matter. It emerged during arbitration that the Applicant was paid R10 000 in December 2014 and has retained the money to date although she did not sign the letter offering the payment. There were a number of factual disputes with regard to the circumstances under which the offer was made and the primary reason for making such an offer.

4.17 Mosaka a witness and manager for the Applicant claimed that he was instructed to prepare a proposal for the amount to be made. On the other hand Alho the HR manager intimated that the proposal was agreed to at a meeting. It did not assist Mosaka to try and disown the proposal because he signed the proposal as a Manager and also described the payment as "additional work"

4.18 The dispute that the Managers sought to resolve arose out of supposed non-payment of acting allowance, whether the Applicant's case was on firm legal ground or not. I have already made a finding that the Applicant was not entitled to any payment which was not authorized in writing. However she was indeed entitled to the amount referred to in paragraph 4.14. That amount must be offset against the R10 000 that the Applicant has already received.

4.19 It is therefore my finding that the Respondent committed Unfair Labour Practice relating to non-payment of benefits (acting allowance)

I therefore make the following award

(a) The Respondent SABC LTD is ordered to pay the Applicant Nomhle Luswazi R3415 calculated in the following manner R13 415-R10 000=R3 415 which is just and equitable.

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(b) The amount is to be paid within 14 days after receipt of the award.

(c) There is no order as to costs.



Motlatsi Phala
Senior Comissioner

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

JABULANI MABASO

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

   1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims,

JT TE

demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the from the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R1 309 943.98 (One Million Three Hundred and Nine Rand Nine Hundred and Forty Three Rand and Ninety Eight Cents);**

1.4 The amount referred to in paragraph 1.3 above shall be subject to all statutory deductions; and

1.5 The amount referred to in paragraph 1.3 shall be paid into the Employee's bank account by way of electronic funds transfer within seven (7) days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for

such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive.

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further

JT TE

exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to

JT TE

jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at Rivonia **on this** 21 **day of** June 2016 **in the presence of the undersigned witnesses.**

JABULANI MABASO

WITNESSESS

1._____

2._____

Thus done and signed at Auckland Park **on this** 21 **day of** June 2016 **in the presence of the undersigned witnesses.**

FOR AND ON BEHALF OF THE SABC SOC LTD

WITNESSESS

1._____

2._____

JT TE

MEMORANDUM OF SETTLEMENT AGREEMENT

ENTERED INTO BETWEEN

GARY ROBERT MACKENZIE
(THE APPLICANT)

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION LIMITED
(THE RESPONDENT)

1. Whereas the parties have agreed by mutual consent to settle the dispute referred to the CCMA by the **APPLICANT** under case number **GAJB 38832-09**, the parties herewith further agree to do so on the following basis, terms and conditions:

1.1 The **APPLICANT** has agreed to accept the settlement offer made by the **RESPONDENT** and it is specifically recorded that this offer was made and accepted by the parties without any party being put under duress, instruction or force to do so;

1.2 The **RESPONDENT** will:

1.2.1 Pay a settlement package to the **APPLICANT** in the amount of **R 196 787-70 (one hundred and ninety six thousand seven hundred and eighty seven rand and seventy cents)** after tax had been deducted **(Please refer to the calculation made in this regard as reflected in Annexures A & B)**;

1.2.2 Furnish the **APPLICANT** with a certificate of service to reflect that the services were terminated by mutual consent;

1.3 This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto in law;

1.4 Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

1.5 This agreement constitutes the only and entire agreement between the parties and will be the full and final settlement between the parties of the dispute referred to above and neither party may institute further and/or alternative claims in respect of the settlement of this dispute;

2 It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever;

3. The **RESPONDENT** will effect payment of the amount referred to in 1 2.1 above to the **APPLICANT**, within seven (7) working days from the date of signature of this agreement.

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THUS AGREED TO AND SIGNED ON THIS THE 7th DAY OF APRIL 2010 AT JOHANNESBURG

APPLICANT

WITNESS

For and on behalf of the
RESPONDENT

Duly authorised thereto

WITNESS

JT TE

"A"

MONTHLY REMUNERATION INFORMATION
GR MACKENZIE

BASIC SALARY	38,155.46
CAR ALLOWANCE	5,083.00
ENTERTAINMENT ALLOWANCE	65.00
HOUSING ALLOWANCE	1,300.00
13TH CHEQUE RPM ALLOWANCE	3,179.62
Employer Group Life	434.06
Employer Medical Aid (Member + Spouse + 2 children)	2,841.00
Employer Pension Fund (14%)	5,341.76
MONTHLY GROSS TOTAL	**56,399.91**
DEBT OWED TO SABC	**40,091.91**

GR Mackenzie

7 MONTHS REMUNERATION

BASIC SALARY	267,088.22
CAR ALLOWANCE	35,581.00
ENTERTAINMENT ALLOWANCE	455.00
HOUSING ALLOWANCE	9,100.00
13TH CHEQUE RPM ALLOWANCE	22,257.35
Employer Group Life	3,038.42
Employer Medical Aid (Member + Spouse + 2 children)	19,887.00
Employer Pension Fund	37,392.35
GROSS TOTAL	**394,799.34**
LESS PAYE	157,919.74
LESS SABC DEBT	40,091.91
NET VALUE	**196,787.70**

S016 JT-466

IC 1111

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

CASE NO:JS506/14

In the matter between:

LS MAGNUS Applicant

and

THE SOUTH AFICAN BROADCASTING CORPORATION SOC LIMITED Respondent

---

SETTLEMENT AGREEMENT

WHEREAS the Applicant has instituted a claim in the Labour Court against the Respondent seeking relief as set out in her Statement of Claim; and

WHEREAS the parties have reached an agreement to settle the dispute between them;;

NOW THEREFORE, without admission of liability on either party, the parties wish to record the terms of the agreement as follows:-

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1. The Respondent will pay the Applicant an amount of R200 000-00(Two Hundred Thousand Rand) in full and final settlement of all claims by the applicants brought against the Respondent under case number JS506/14. Any dispute or claim that the Applicant has against the Respondent arising from the Respondent's decision to adjust the salary of the Applicant in December 2012, its subsequent decision to reverse such adjustment which was communicated to the Applicant on 23 February 2013, and its further decision to deduct from the Applicant's remuneration additional payments made to the Applicant shall not be pursued and are all considered settled.

2. The Respondent shall continue to pay the Applicant the remuneration that she is currently earning, subject to Applicant's right to receive increases to her remuneration as determined by the Respondent in the normal course of business from time to time.

3. The Applicant shall serve and file a Notice of Withdraw of her claim within 3 working days after signature of this settlement agreement by the party signing last.

4. Payment of the amount stated in paragraph 1 above shall be made subject to the deduction of such amounts as may be directed in terms of an appropriate tax directive issued by the South African Revenue Service. The Respondent will pay this amount to the Applicant within 14 (FOURTEEN) calendar days after receipt of the original tax directive from the South African Receiver of Revenue.

5. Both parties shall not to disclose the contents of this agreement to third parties without first obtaining the written consent from the other. It is recorded that this term is material to the settlement agreement and its

JT TE

breach will lead to the termination thereof and the right by the innocent party to claim damages from the other, and in the case of the employer, to claim from the employee the amount paid to her in terms of cause 1 hereof.

6. No variation, amendment or waiver of the rights or obligations in terms of this agreement, whether express or implied, shall be binding unless contained in this agreement and signed by both parties.

7. No indulgence of extension given by either party shall be considered to be a waiver or innovation of such party's rights.

Signed at PRETORIA **on this** 25 **day of** JANUARY **2016.**

Applicant

Signed at Johannesburg **on this** 28th **day of** January **2016.**

Respondent

JT TE

JT-469

TRANSMISSION VERIFICATION REPORT

TIME : 08/02/2016 10:36
NAME : HURTER SPIES
FAX : 0126441597
TEL : 0126640708
SER.# : A3JP042002862

DATE,TIME	08/02 10:35
FAX NO./NAME	0114039327
DURATION	00:00:54
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

Hurter Spies inc

prokureurs • attorneys

Hurter Spies Incorporated
Reg. no. 2008/009751/21
Attorneys/Notaries/Conveyancers

First Floor
AfriForum Building
C/o Of Meian and Union Avenue
Kloofsig
Centurion

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0140 Lyttelton
Tel: 012 941 9239
012 664 0708
Fax: 012 644 1597
e-mail: admin@hurterspies.co.za
Internet: www.hurterspies.co.za

Our ref. Tertius Kruger/W1255 **Your ref: The Registrar**

08 February 2016

The Registrar Labour Court
86 Juta Street
Braamfontein

Fax: (011) 403 9327

Dear Sir/Madam,

RE: L.S. MAGNUS / SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LIMITED
CASE NUMBER: JS506/14
ENROLLED FOR HEARING: 11 FEBRUARY 2016.

JT TE

1 We refer to the abovementioned matter and confirm that we act for and on behalf of the Applicant ("our client") who instructed us to address this correspondence to you.

2 We attach hereto a Notice of Withdrawal under the abovementioned case number, the matter having been settled.

JT-470

Hurter Spies inc

prokureurs • attorneys

Hurter Spies Incorporated
Reg. no. 2008/009761/21
Attorneys/Notaries/Conveyancers

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e-mail: admin@hurterspies.co.za
Internet: www.hurterspies.co.za

Our ref. Tertius Kruger/W1255 **Your ref: The Registrar**

08 February 2016

The Registrar Labour Court
86 Juta Street
Braamfontein

Fax: (011) 403 9327

Dear Sir/Madam,

RE: **L.S. MAGNUS / SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LIMITED**
CASE NUMBER: JS506/14
ENROLLED FOR HEARING: 11 FEBRUARY 2016.

1. We refer to the abovementioned matter and confirm that we act for and on behalf of the Applicant ("our client") who instructed us to address this correspondence to you.

2. We attach hereto a Notice of Withdrawal under the abovementioned case number, the matter having been settled.

3. Kindly remove the matter from the roll for **11 February 2016.**

4. We thank you for your assistance herein.

Yours faithfully

HURTER SPIES INC
Per: T P Kruger

HURTER SPIES INC

JT TE

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

CASE NO.: JS506/14

In the matter between:

LS MAGNUS Applicant

and

SABC Respondent

NOTICE OF WITHDRAWAL

BE PLEASED TO TAKE NOTICE that the Applicant hereby withdraws its action against the Respondent under the abovementioned case number, the matter having been settled.

SIGNED at CENTURION on this the 8TH day of FEBRUARY 2016.

HURTER SPIES INC
APPLICANT'S ATTORNEYS
First Floor, Afriforum Building
Cnr Union & DF Malan Drive
Kloofsig, Centurion
Tel: (012) 664 0708
Fax: (012) 644 1997
Ref: T KRUGER/W1255

JT TE

TO: THE REGISTRAR OF THE LABOUR COURT
Johannesburg

AND TO: MASERUMELE INC. ATTORNEYS
ATTORNEYS FOR THE RESPONDENT
43 Oxford Road
Forest Town
Johannesburg
Tel: (011) 486 3081
Fax :(011) 486 4013 / 3697
Ref: MR P MASERUMULE/pl/S1265

Received a copy hereof on this .....
day of February 2016

.....

JT TE

Arbitration Award

Case Number: *GAJB13971-17*
Commissioner: *Larry Shear*
Date of Award: *20-Jul-2018*

In the **ARBITRATION** between

BEMAWU obo Makalima, Ricky and 3 Others
(Union/Applicant)

and

SABC SOC Limited
(Respondent)

Union/Employee's representative:
Union/Applicant's address: *PO Box 203*
Wierda Park
0149

Telephone: *0800236298,0126613915,0829208669,0848728001,0820864630 ,0797011556,0789482232*
Telefax: *0866715585*
E-mail: *headoffice@bemawu.org.za, bemawu@gmail.com*

Employer's representative:
Respondent's address: *Private Bag X1*
Auckland Park
2006

Telephone: *0117143972,0117144717,0117144303,0117142708,0117142311 ,0117143819,0117144309,0841443109*
Telefax: *011 714-403-0300,0117143001,0117148040,0117146906*
E-mail: *potgieterjj@sabc.co.za, moufher@sabc.co.za, xamase@sabc.co.za, munyaite@sabc.co.za, motshekgamj@sabc.co.za, nkosipm@sabc.co.za, BareE@sabc.co.za, luthif@sabc.co.za*

DETAILS OF HEARING AND REPRESENTATION

The matter was heard at CCMA House, Fox Street, Johannesburg on 9 July 2018.

ISSUE TO BE DECIDED

Whether the Applicants' dismissal was fair, at the conclusion of their Fixed Term Contract on 31 May 2017; in terms of the provisions of s198B of the Labour Relations Act.

SURVEY OF EVIDENCE

1. **Mr F Luthi**, the transport manager, testified.

2. Mr Luthi is responsible for the management of staff and vehicles and the maintenance of budgets within the Transport Department.

3. In terms of its operations, the respondent is responsible to provide transport to staff members who work unusually late hours. These would be the hours between 18:00 and 06:00.

4. The applicants in the current matter, were employed on Fixed Terms Contract basis to perform functions in respect of a "pilot project" established for this purpose.

5. In 2007, the respondent appointed a consultant to consider the costs and viability of employing its own drivers for this purpose, or whether to use the services of an external consultant. The consultant tabled a recommendation, and the respondents' management accepted a recommendation to commence with a "pilot project" in respect of providing after hours transport services.

6. The respondent set about purchasing vehicles, which took longer than anticipated. The plan was resuscitated during 2013 when the vehicles were actually purchased.

7. The respondent commenced the process of recruiting drivers for the after-hours transport project.

8. The positions were advertised in March 2014. Those applicants who were short-listed attended interviews. During their interviews, each applicant was informed that the respondent was running an "after-hours driving project" and that any contracts would be on a fixed term basis. They were also informed that the project was a "pilot project" and that there was no expectation of permanent employment. Candidates who were employed, were advised not to terminate their employment relationships, given the fixed term nature of any possible employment.

9. Mr Luthi testified that all the candidates understood this explanation and did not raise any objections.

10. The current applicants were employed in terms of a limited duration contract of employment which specified the period of their employment as running from 4 June 2014 until it would automatically terminate on 31 May 2017.

11. It was specifically stipulated in the contract that once the period specified above had expired, there would be no expectation of renewal or continuation thereof.

12. Mr Luthi explained that there had been some "issues" relating to the tender in respect of the vehicles, and prior to and even during the employment of the applicants' employment, an external service provider

JT TE

had had and continued to provide afterhours transport services.

13. In fact, Mr Luthi said even during the duration of the pilot project, the applicants did not fulfil the requirements of the limited duration contract and the position stipulated therein. They were in fact idle.

14 In 2017, a decision was taken to terminate the pilot project and not to continue therewith. The services of the external service provider were used for this purpose.

15. **Mr S Mokhele**, one of the applicant's testified.

16. He said that he perused and responded to the advert for afterhour's drivers in March 2014. He referred to the advert (page 72 of the bundle) and said that no mention was made of a limited duration contract in the advertisement.

17. Mr Mokhele attended an interview and he said, likewise, no mention was made of the limited duration nature of the employment offered. The interview only dealt with issues such as driving qualifications and knowledge of Johannesburg roads.

18. He said he could not recall any mention of a limited duration contract, as had been testified by Mr Luthi.

19. After his interview, he received a call a few weeks later, and was requested to attend a driving test. Thereafter, he was required to attend a medical examination and thereafter, received a call from Mr Luthi, who offered his congratulations for his successful employment with the respondent.

20. On 4 June 2014 Mr Mokhele signed his contract of employment. Although he did concede that the contract did stipulate that it was valid for a limited duration, the contract did not make any reference to a pilot project or to any other project, at all.

21. Mr Mokhele denied that he and the other applicants merely "sat doing nothing" during the duration of their employment, and he testified that he and the other applicants were requested to perform airport shuttles and various administrative functions on behalf of the respondent.

22. It was put to Mr Mokhele that the contract was very clear and that it only applied for a limited duration i.e. between 4 June 2014 and 31 May 2017. He said that he was so excited to be offered the position, but he did not take note of this fact, and only became aware of the limited duration after commencing his employment.

ANALYSIS OF EVIDENCE AND ARGUMENT

1. The respondent submitted that in terms of s198B, a Fixed Term Contract is one which terminates upon -

   - The occurrence of a specified event;
   - The completion of a specified task or project; or
   - A fixed date, subject to sub-section 3 thereof.

2. Section 198B(3) states that an employer may employ an employee on a Fixed Term Contract, for longer than 3 months only if –

   - The nature of the work is of a limited duration; or

- The employer can demonstrate any other justifiable reason for the fixed term nature of the contract.

3. S198B(6) states that an offer to employ an employee on a Fixed Term Contract **must** –

   - Be in writing, and

   - State the reasons contemplated in sub-section 3.

4 It is common cause that the applicants did sign a Contract of Employment which is defined as a "Limited Duration Contract of Employment", with the respondent, which was valid from 4 June 2014 until 31 May 2017.

5. The applicants were employed in the capacity of afterhour's drivers.

6. It is also common cause that the advertisement which gave rise to their employment, did not stipulate the limited duration nature of their employment, nor did it stipulate any reference to a particular project.

7. It is further common cause that although the contract of employment did stipulate the limited duration period, it did not mention and nor did it refer to a specific project. The contract of employment did not stipulate the reasons for the limited duration period as is required in terms of s198B above.

8. S198B (6) is clear. An offer to employ on a Fixed Term Contract must be in writing, and, state the reasons contemplated in sub-section 3(a).

9. As already indicated, the contract did not stipulate the reasons for the Fixed Term Contract and nor did it make any reference to a project.

10. It is instructive to note that the respondent did not provide any written proof of the pilot project, in the form of recommendations made by the consultant, nor any reference to any acceptance thereof by the respondent's Board. The only reference to this project is that made by Mr Luthi in his evidence.

11. I am not making any negative inferences regarding Mr Lathi's credibility, but the simple fact is that the respondent has not complied with the provisions of s198B and, more particularly, s198B(6) which requires that the limited duration contract must be in writing and must state the reasons which require a limited duration contract. The contract signed by the applicants are silent on this aspect, and therefore, I must conclude that the exceptions contained in s198B do not apply in the present instance.

12. I therefore conclude that the applicants' fixed terms contracts were not valid, in terms of the provisions of s198B and that therefore the termination of their employment in June 20017 was unfair

13. The applicants are entitled to be reinstated into their positions as after-hours drivers with the respondent.

14. However, the applicants must, to a certain extent, accept responsibility for the fact that they signed a contract which stipulated their period of employment as being from 4 June 2014 until 31 May 2017. They did not query this. For that reason that it would be fair or equitable to award compensation for the full period that the applicants had been unemployed, and it is my intention to award compensation to each applicant, which is equivalent to five month's salary, i.e. R10 885.92 x 5 = R54 429.60.

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AWARD

1. For all the reasons set out above, I find that the Applicants dismissals were unfair.

2. The Respondent, The SABC is ordered to pay each Applicant, i.e. Mr Ricky Makaila, Mr Albania Siyothila, Mr Sechaba Mokhele and Mr Caiphus Masimula the sum of R54 429.60, each.

3. Payment is to be made by no later than 1 August 2018.

Signature: _____

Commissioner: L SHEAR

Sector: _____

Cecilia van Zyl

From: BEMAWU HEADOFFICE <headoffice@bemawu.org.za>
Sent: 13 December 2018 07:30
To: Sello Xama
Cc: Jonathan Thekiso
Subject: Arbitration Award | Makalima & others

Dear Sirs,

The arbitration award declaring the dismissals of Messieurs RICKY MAKALIMA, DIBANISA SIYOTHULA SECHABA MOKHELE and CAIPHUS MASIMOLA both substantively and procedurally unfair has reference.

The four BEMAWU members were employed on Fixed Terms Contracts as drivers at the SABC, earning below the threshold as published from time to time in the Government Gazette.

Despite being warned not to terminate the contracts of our members at the expiry of their contracts, the SABC proceeded with the termination of same.

The CCMA has found these dismissals to be unfair, and reinstated the four BEMAWU members.

Our members will report for duty on Monday, 17 December 2018.

Kindly ensure their smooth reintroduction to the workplace.

Sincerely,

Hannes du Buisson
BEMAWU

JT TE

Group Executive Human Capital Services
Radio Park, Henley Road
Auckland Park, 2094
Private Bag X1, Auckland Park, 2006
Johannesburg, Gauteng, South Africa
Tel +27 11 714-4711, Fax +27 11 714-4820
www.sabc.co.za

SABC
Vuka Sizwe!

20 MARCH 2012

Mrs. CHARLOTTE MAMPANE

Group Executive

SABC

JOHANNESBURG

Dear Mrs. Mampane

RE : SABC / MAMPANE

1. The above matter has reference.

2. As you are aware, you are employed by the SABC on a fixed term basis and your fixed term contract of employment with the SABC will expire by effluxion of time on 31 October 2013.

3. The SABC will not be renewing or extending your fixed term contract of employment.

4. Please note that the SABC has, in terms of its prerogative, resolved to waive its right to the provision of services and/or rendition of work by you to it for the remaining term of your fixed term contract of employment. Accordingly, with effect from 20 March 2012, you shall not be required to enter the premises of the SABC and/or attend work and/or provide services to the SABC and the SABC will be under no obligation to and it will therefore not, provide or assign any work or services to you.

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/06
Non-Executive Directors: Dr Ben Ngubane (Chairperson);Mr Thami ka Plaatjie (Deputy-Chairperson)
Mr Sembie Danana; Mr Cedric Gina; Mr Desmond Golding; Prof Philippa Green; Advocate Cawe Mahlati; Dr Patricia Makhesha; Mr Clifford Motsepe; Mr Lumko Mtimde; Ms Clare O'Neil; Ms Suzanne Vos
Executive Directors: Ms Lulama Mokhobo (Group Chief Executive Officer) Ms Gugu Pride Duda (Chief Financial Officer)
Mr Hlaudi Motsoeneng (Acting Chief Operations Officer)
Acting Company Secretary: Ms Jane Mbatia

5. Subject to paragraph 6 & 7 below, the SABC will, in relation to the Remaining Contract Period, pay you the following:

- Remuneration as provided for in your fixed term contract of employment, payable as a once off lump-sum; and
- Payment in lieu of accrued annual leave, if any.

6. The SABC will, within the next 5 (five) business days following the date of this letter, apply for a tax directive from the South African Revenue Services ("SARS") for the amount of tax to be deducted from the abovementioned payments. Kindly, when requested to do so by the SABC, furnish such information as the SABC may require for purposes of applying for the abovementioned tax directive.

7. The SABC will deduct and/or set-off from the amounts due to you, the value of any outstanding loans and/or debts that are repayable and/or due to the SABC.

8. The SABC will make payment of the aforementioned amounts (less the tax as per stipulation in terms of the abovementioned tax directive and loans/debts) within 10 (ten) business days of receipt of the tax directive from SARS into your banking account as per the SABC's records.

9. Because the SABC is discharging its full payment obligations to you upfront, you will, from 23 March 2012, be responsible for your own pension fund and medical aid arrangements. The SABC will inform the administrators of the pension fund and medical aid scheme in which you and the SABC participate of the relevant terms of this letter for the necessary adjustments to be made. Kindly cooperate with any requests that you may receive from the SABC and/or the administrations of the pension fund and/or medical aid scheme in this regard.

10. In light of paragraph 4 above, you will no longer require use of or access to the SABC's property, premises and assets. Please handover all SABC property and assets back to the SABC on 22 March 2012 prior to departing the SABC premises. This includes your access card, medical aid card, laptop computer and 3 G card, etc.

11. Please note that the provisions relating to confidentiality in your fixed term contract of employment are and remain applicable. We request that you comply therewith, which includes keeping this letter and the terms contained herein confidential.

12. We would like to take this opportunity to wish you everything of the best in your future endeavors.

Please do not hesitate to contact us if you have any queries in this regard.

Yours faithfully

THABISO LESALA

17095

GROUP EXECUTIVE: HUMAN CAPITAL SERVICE

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SABC

Total Cost to Company Information

Name	Ms TCC Mampane
Position	GE : Office Of The GGCE & Regions
Scale	115
Start Date	01-Oct-96
Date of Birth	12-Oct-58
Contract Period	01 November 2008 - 31 October 2013
Months Remaining	20 Months

Item	Annual Amount	Monthly Amount
Basic Salary	1 694 256.00	141 188.00
Car Allowance	168 000.00	14 000.00
Housing Allowance	20 400.00	1 700.00
Other Allowances	168 676.56	14 056.38
Pension Fund	237 196.08	19 766.34
Medical Aid	37 389.60	3 115.80
Group Life	17 403.48	1 450.29
Total Cost to Company	**2 343 321.72**	**195 276.81**

Potential Settlement

1 Month Total Cost to Company	195 276.81
1 Year Total Cost to Company	2 343 321.72
Remainder of Contract	3 905 536.20

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20 March 2012, Confidential

FAX

Date :04/25/17

Total number of pages :13

To :0866715585

Company :

Department :

Fax number :0866715585

From :NerriaM@CCMA.org.za

Subject:Fax1493117750363LiveGAU - For attention BEMAWU obo Mashigo, Diketso (case GAJB19069-16)

---------- Fax----------
To: BEMAWU obo Mashigo, Diketso
Fax: 086 671-5585
From: CCMA - Nerria Mphaki (011) 220-5000 NerriaM@CCMA.org.za
Sent: Tue 25-Apr-2017 12:55:50.363
Reference: Fax1493117750363LiveGAU
Attachments:
[1] Award

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CCMA

ARBITRATION AWARD

Case Number: *GAJB 19069-16*
Commissioner: *HASIENA HASSEN*
Date of Award: *25TH APRIL 2017*

In the **ARBITRATION** between

BEMAWU obo LIKETSO MASHIGO
(Union/Applicant)

And

SABC LTD.
(Respondent)

APPROVED

Union/Applicant's representative: *MR. HANNES DU BUISSON (BEMAWU)*
Union/Applicant's address: *P O BOX 203*
WIERDA PARK
0149

Telephone: *080 023 6298; 012 661 3915*
Telefax: *086 671 5585; 011 714 3398*
E-mail: headoffice@bemawu.org.za; *bemawu@gmail.com*

Respondent's representative: *MR. SELLO XAMA*
Respondent's address: *PRIVATE BAG X1*
AUCKLAND PARK
2006

Telephone: *011 714 3972/2232*
Telefax: *011 714 4030; 011 714 3001*
E-mail: grouper@sabc.co.za; nkosimp@sabc.co.za; *muofher@sabc.co.za*

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DETAILS OF HEARING AND REPRESENTATION:

1. The applicant, Liketso Mashigo, was represented at the arbitration by Mr. Hannes du Buisson and the respondent was represented by its Group ER Consultant, Mr. Sello E. Xama.
2. The dispute that arose was referred for conciliation/arbitration to the CCMA on 29th September 2016. The dispute could not be settled at conciliation and arbitration followed thereafter. Proceedings were manually and electronically recorded.

ISSUE TO BE DECIDED:

3. The sole issue to be determined is whether the suspension of the applicant by the respondent, from 7th December 2015 to date constitutes an unfair labour practice as contemplated by Section 186 (2) (b) of the Labour Relations Act 66 of 1995, as amended (LRA).

BACKGROUND TO THE MATTER

4. The following background to the dispute consists of facts which were common cause, undisputed or Indisputable:

5. The applicant was appointed as an HR Consultant on 5th December 2005. At this time, the applicant was not involved with the training of broadcast engineers.
6. The applicant was promoted to Human Resources Manager in 2007. She is employed by the respondent as an HR Manager, Business Partner, Technology from March 2012 and earns a gross monthly salary of R98 594.00.
7. The applicant reported to the Group Executive, Technology, Sipho Masinga.
8. In September 2012, Marlene Snyman, Human Capital Services Consultant addressed a request to outsource P1 and P2 training (Broadcast Engineers) to the applicant. This request was supported by the applicant, Neil Shaw (General Manager, Finance and Technology and Sipho Masinga, Acting Chief Technology Officer and line manager of the applicant).
9. At the end of September 2012, a Request for Quotation (RFQ) was sent to all relevant providers to pitch for the requested training. It was done by Nompilo Dlamini, the Acting Supply Chain Manager.
10. In terms of this RFQ, the successful bidder will be awarded a 3-year contract.
11. On 27th November 2012, Maddy Cloete of Procurement also sent out an RFQ for the same training.
12. During 2013, the process of contracting with Nkoka Training cc (Nkoka) to do broadcast engineer training was restarted.
13. An email from Camning Spani, Education, Training and Development practitioner at the respondent, dated 2nd September 2012 and addressed to Cosmas Tshabalala, Acting General Manager, Television, Nick Bonthuys, Shimane Matjeka, who was acting in the applicant's position and the applicant, contained the approved business plan and RFQ forms for P1 and P2 training (broadcast engineer).
14. On 18th October 2013, a technology divisional meeting was held at the respondent and attended by inter alia: Mr. Masinga (GE Technology and Infrastructure), Mr.Neil Shaw (GM Technology and Finance), Mr. Theigasen Govender (GM Learning & Development) and the applicant. It was noted at this meeting that the consolidation of the training budget failed to influence specific technology training initiatives required against skills division. Furthermore, a R2 million budget was available for Nkoka, but the business plan from technology was still outstanding. It was resolved that the business plan for Nkoka be presented at the Technology divisional meeting before submission to

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the Group HCS. It was further noted that the meeting had been scheduled by the applicant with Group Learning and Development (L & D) to discuss several issues, including P1 and P2 intake.

15. On 22nd October 2013, Mr. Theigasen Govender, (Govender) (GM L&D) forwarded an email with the P1 and P2 business case and RFQ to the applicant. On 1st November 2013, the applicant forwarded this to Masinga and asked him to 'check it'.
16. On or about 13th December 2013, the applicant went on leave.
17. Shimane Matjeka (Matjeka) acted in the applicant's position and he took the matter further, corresponding with Masinga. On 18th December 2013, whilst the applicant was on leave, Masinga forwarded the version of the same document to Matjeka and informed him that he has updated the document and a signed copy could be found on his secretary's desk. (This document originally came from Matjeka on 2nd September 2013 and was edited and changed by Masinga on 18th December 2013). This email was also sent to Irene Marutla of Procurement.
18. During 2014, the applicant's reporting line changed. She now reported to Mr. Keobokile Mosweu (Mosweu).
19. The applicant returned from leave on about 21st January 2014.
20. On 7th April 2014, the applicant attended a meeting with Govender, Mosweu, Ms. Le Grange (of L &D) and Mr. Tati of Nkoka. The minutes were compiled by Le Grange and mailed to all attendees on 9th April 2014.
21. On 10th November 2015, the applicant filed a grievance against her line manager, Mosweu.
22. On 4th December 2015, the applicant was served with a Letter of Intention to Suspend.
23. On 7th December 2015 and at 12h08, the applicant responded to the Letter of Intention to Suspend and forwarded reasons why she should not be suspended. In her response, the applicant mentioned that the letter of intention to suspend coincided with her grievance against Mosweu.
24. On 7th December 2015, the applicant received a telephone call from Mr. Mzu Ndloviu, the HR Manager, who informed the applicant that Mosweu is looking for her. The applicant was outside the respondent's building, at Campus Square Shopping Mall. When the applicant arrived at the respondent at 13h45, Mosweu had left the respondent's building. On her arrival, the applicant was served with a Letter of Suspension.
25. The applicant was suspended pending a full investigation into her alleged involvement in the awarding of a contract to Nkoka.
26. On 24th August 2016, the applicant was charged with her alleged involvement in the awarding of a contract to Nkoka.
27. Her disciplinary enquiry commenced on 26th September 2016 and the initiator concluded his case on behalf of the respondent on 27th October 2016. After the applicant testified and before her cross-examination, the initiator applied to re-open his case and recall his witnesses.
28. On 22nd February 2017, the disciplinary enquiry was postponed sine die. (It was previously postponed as follows:
    a. On 12th September 2016;
    b. On 26th September 2016;
    c. On 13th October 2016;
    d. On 9th and 10th November 2016 and
    e. On 22nd February 2017 – sine die.
29. The collective agreement between BEMAWU and the respondent stipulates that both parties agree to abide by the disciplinary procedure and code of conduct.
30. The Personnel Regulations of the respondent stipulates that an employee may be suspended when, prima facie, an employee has committed an act of serious misconduct, such as assault, theft or fraud. Assault, theft and fraud are criminal offences.
31. The Personnel Regulations do not stipulate a period of suspension.
32. During 2012, the respondent entered discussions to amend the Disciplinary Procedure and Code of Conduct. At a subsequent meeting, a draft Disciplinary Code and Procedure policy

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(HCS/008/2012), drafted by the respondent's management, was handed to BEMAWU to consider as the new proposed Disciplinary Code, replacing the current Code and Procedure.

33. Paragraph 8.2.7 of the abovementioned policy stipulates that:
'A suspension may not exceed a period of 3 months unless there are exceptional and/or justifiable reasons'.

34. The applicant has been on suspension for 1 year 2 months and 2 days on 9th February 2017.

35. On 4th November 2016, BEMAWU addressed a letter to the respondent enquiring if Mr. Quinton Lenyai (Lenyai) (a manager of the respondent in Mpumalanga), who has been accused of appointing Nozihle Cleaning Services, a company his wife worked for as a general manager since 2013, has been suspended. Mr. Kaizer Kganyago confirmed that the matter was under investigation. Mr. Lenyai has not been suspended. BEMAWU has not received a response to its letter.

36. During or about December 2016, the GE Human Resources, Ernst Lephaka, (Lephaka) called Parliament a 'kangaroo court'. Lephaka has since apologized. Lephaka was never suspended and disciplinary action was taken against him for this.

37. On 15th January 2017, the Sunday Times Newspaper reported the following:
'Court papers revealed that Motsoeneng and Mbalula, as trustees of the Imbuma Trust and MM Development Trust received millions of rands between 2010 and 2011 to build 350 low cost houses in Viginia, Free State and 100 in Bloemfontein. An internal progress report showed not a single house was built. The value of that contract is estimated to a total of more than R38 million. Motsoeneng and Mbalula were trustees of both trusts and both were cited as Respondents. Other MM Development trustees were Morne Ernst and Mmahlajwane Maria Chaka, who are also cited in papers. Imbuma trustees include Ernst and Mohlolo Lephaka'.
Lephaka was never suspended.

38. The applicant seeks to have her suspension to be immediately uplifted.

39. The applicant seeks compensation equal to the period of her suspension, alternatively from 28th August 2016.

40. The onus of proof and duty to begin lies with the applicant, who intends to lead her evidence. The respondent intends to lead one witness, Mr. Mosweu.

41. The applicant and respondent have exchanged bundles of documents, both having admitted to the contents thereof.

42. I advised the parties that I intended to use both the adversarial and inquisitorial systems herein.

APPROVED

SUBMISSION OF EVIDENCE:

APPLICANT'S CASE:

Summary of the relevant aspects of the applicant's case:

43. Liketso Mashigo testified under oath that the respondent used Denel Kentron (Denel) for training its broadcast engineers in 2002. Denel advised that its training unit would be impacted by its downsizing. The respondent and Denel agreed that Denel would create a company and offer training to broadcast engineering students (students) on a 3 – 5 year contract. This company was called 'Nkoka Training cc' (Nkoka). During this time, Paul Tati, the respondent's GM of Human Resources left the respondent and was replaced by Ms. Motsieng-Diwati, who continued the relationship with Nkoka. Students continued training at Nkoka until 2008/9, when the respondent announced 'austerity measures'. Motsieng-Diwati was replaced by Julia Mpafudi who in 2010/2011, whilst still working with Nkoka, changed the training structures so that students would be trained by Nkoka at the respondent's premises and not at Nkoka's premises. This was not feasible as line managers had to conduct certain training whilst still bearing their own responsibilities. The quality of the training became questionable

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and was not working out. It is for this reason that Nkoka had to resume training at its premises. The applicant joined HR Technology at this point in March 2012.

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44. The applicant engaged the General Manager of Learning and Development, Theigasen Govender (Govender), to discuss the issue for assistance with regards to the students.
45. A Technology divisional meeting was held on 18th October 2013, chaired by Masinga (the applicant's line manager at that stage) to discuss operations at the respondent with all general and senior managers. J. Aguma (Acting COO of the respondent), Govender, J. Mabaso (GE of Human Resources), Irene Marutla (GM of Strategic Sourcing: Procurement) and the applicant were, inter alia, present. In this meeting, the training budget was discussed. Govender noted that R200 million was available for training by Nkoka but that the business plan from Technology was still outstanding. Govender appointed the applicant to present the business plan for Nkoka at the Technology Divisional meeting before submission to Group HCS (the office of the applicant). A proper procurement process was followed, as RFQ's were sent out by the Procurement department. After the meeting, Govender sent the applicant an attachment from Camning Spani (Spani), the Education, Training Development Practitioner from L&D, who reports to Govender, of an approved business plan for the P1 and P2 broadcasting students as well as RFQ forms.
46. The applicant did not change the business plan (apart from some grammatical changes) and forwarded it to her line manager, Masinga, on 1st November 2013.
47. This process was placed on hold soon thereafter, with budget restraints cited as the reason.
48. A few weeks later, the applicant received the instruction that everything that is related to Learning and Development needs to be centralized into the L&D portfolio of Govender. In other words, the applicant could not act without Govender's approval.
49. On 13th December 2013, the applicant went on leave and Shimane Matjeka (Matjeka) acted in the applicant's position. He took the position further, corresponding with Masinga. Masinga finalized the document when the applicant was on leave. Matjeka (who had to sign the document in his capacity as the Acting Manager and not on behalf of the applicant) signed the Request to Outsource the P1 and P2 Training. The document was co-signed by Masinga and M. Shushu (Shushu) (Head of Procurement). The document included a deviation request to deviate from normal tender processes to appoint Nkoka to handle the recruitment and training of broadcast engineers for a period of 3 years. The deviation was signed off and Nkoka was appointed after being approved by the Bid Adjudication Committee (BAC). The applicant returned from leave on 21st January 2014.
50. On 7th April 2014, Govender, Mosweu, the applicant, Paul Tati (co-owner of Nkoka) and Lorna le Grange (le Grange) (the Learning and Development Manager) attended a meeting with Nkoka. Le Grange forwarded a summary of the meeting to all the attendees and she requested them to advise her if she had omitted anything. None of the parties replied to this email. The minutes reflect that L&D was part and parcel of the process. Everyone was aware of the Nkoka contract. Le Grange continued to engage the applicant to agree on dates when students would come to the respondent, how to schedule them and other logistical arrangements. L&D was always involved and represented by le Grange and Govender.
51. The first batch of students were trained in 2014 and graduated. The second batch of students trained in 2015. Two days before their graduation, the applicant received a letter of Intention to Suspend.
52. The applicant filed a grievance against Mosweu on 10th November 2015. Her allegations against Mosweu were serious and included bullying, victimization, abuse of power etc. Mosweu was not suspended and the grievance has not been heard to date.
53. The applicant, shortly thereafter, received a letter of Intention to Suspend on 4th December 2015.
54. This letter coincided with the decision of Paul Tati to testify against Hlaudi Motsoeneng (Motsoeneng), the former COO of the respondent. Motsoeneng allegedly lied to Tati (who was the HR Manager in Bloemfontein) about his matric qualification.

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55. According to a news report on 10th December 2015, as soon as Tati agreed to testify against Motsoeneng, 'his training contract with the SABC was queried and the person who signed the contract was suspended due to alleged irregularities'. This was 3 days after the applicant was suspended.

56. The applicant tried to engage Mosweu about the allegations against her in a telephonic discussion between them on 4th December 2015. Mosweu refused to divulge what the

allegations were, except that they were 'serious allegations'. The applicant could not understand this as the Nkoka contract was approved by the BAC.

57. The applicant filed a response to Mosweu as to why she should not be suspended at 12h08 on 7th December 2015. At 13h30, Mzu Ndlovu telephoned the applicant to collect her suspension letter from him and he handed same to her when she arrived at the respondent. The letter of suspension stated that 'the applicant is suspended pending a full investigation into her alleged involvement in the awarding of a training contract to a service provided known as Nkoka Training cc'. This was a Precautionary suspension. The letter of suspension stated that the investigation will be finalized within a reasonable time period. The letter of suspension gave the applicant an impression that once the investigation is completed, the suspension will be lifted. During cross-examination, the applicant stated that there was nothing in the Notice of Intention to suspend that prohibited the applicant from communicating with Tati or anyone else at the respondent. The applicant testified that she spoke to Tati and le Grange then to determine what the allegations against her actually were.

58. The applicant was served with a charge sheet on 24th August 2016.

59. The charges against the applicant were as follows:

a. 'Gross Negligence: It is alleged that on or about December 2013 you failed and/or neglected to ensure that the procurement of the Nkoka Training Services was in accordance with the Supply Chain Management and the Preferential Procurement policy;

b. Gross Dishonesty: It is alleged that on or about December 2013 you provided the Bid Adjudication Committee with incorrect information in that -

1. Nkoka Training Services is the only 'known' tertiary institution that could provide quality training at the SABC;
2. SABC was party to the establishment of Nkoka Training Services;
3. The training was tailor made to the SABC specification; and
4. SABC had a partnership with Nkoka Training cc.

c. Breach of Code of Conduct: It is alleged that on or about December 2015 you shared the SABC's information with the 'third party' or service provider without obtaining the relevant authorization.

60. During cross examination, the applicant denied that there were 4 other service providers in the market, other than Nkoka. She stated that this was mentioned only at her disciplinary enquiry. The applicant did not remember any other specific service providers from rural developments before December 2015. She was aware that Mosweu wanted to promote 'up and coming' service providers, but she had already conceived of this idea 'way before her suspension'. She canvassed this with Govender who complained about her idea. This led to her aborting this idea and she accordingly stopped Mosweu from pursuing it as well. Mosweu never raised a query regarding this thereafter. The charge sheet relates to a document that was changed and sent to the BAC whilst the applicant was on leave. The applicant denied that she was grossly negligent and/or dishonest as per her charge sheet.

61. The applicant also denied the charge under point '59. c' above. This was introduced in her disciplinary enquiry only. The applicant stated that after Nkoka was awarded the contract, she responded to Tati's query about the type of broadcast engineers the respondent was seeking. (5 females, 1 to be disabled). The applicant denied that she was frustrated with the legal department who delayed in finalizing the contract with Nkoka. She stated that the decision to go with Nkoka was made in October 2013. The BAC approved the deviation process in February 2013. The plan was to start training in January or February 2014 and the legal department was given 8-12 days to finalise the

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contract. On the 12th day the applicant was advised that the legal department did not 'get anything'. This led to her frustration because of the urgency of the training. Furthermore, the applicant emphasized that nothing in her Letter of Suspension prohibited her from speaking to Tati or anyone else. The suspension letter referred to 'allegations' only and the applicant needed to determine what those allegations were.

62. The applicant referred to the respondent's Personnel Regulations which 'constitute terms and conditions of employment'. It provides that: "Where, prima facie, an employee has inter alia committed an act of serious misconduct such as assault or theft or fraud, the employee may be suspended pending an investigation and or the holding of a disciplinary hearing." The applicant denied committing an act of serious misconduct. Matjeka, Masinga and Madoda Shushu(Head of Procurement) were not suspended for this matter. The applicant testified that another employee, Ernst Lephaka (the GE of Human Resources) was not suspended despite his comments of Parliament being a 'Kangaroo Court'. This was further entrenched despite there being serious allegations against him about fraud in the Free State Housing issue.
63. The applicant stated that, like Motsoeneng,(vide A26) her suspension is having negative effects on her dignity borne out by the treatment she receives from her co-employees and her fellow churchgoers. She feels traumatized and left out of workplace developments. Furthermore, her prospective employer would want to know about her suspension to her prejudice.
64. The applicant denied that it was necessary to suspend her without having given her a chance to properly respond to specific allegations.

RESPONDENT'S CASE:

Summary of the relevant aspects of the respondent's case:

65. **Keibokile Mosweu** (Mosweu) testified under oath that he joined the respondent as a General Manager: Employee Relations on 15th July 2009. He is currently the General Manager HR Business Partner and acts as Group Executive Corporate Affairs as well. He is also an accredited commissioner of the CCMA and holds an Honours degree in Communication. The applicant reports to him.
66. He issued a Notice of Intention to Suspend to the applicant on 4th December 2015 as a matter of process upon receiving allegations of her involvement in the awarding of a training contract to Nkoka as the procedure for appointing Nkoka as a training provider was flawed in the following manner:
    a. She knew that the training was centralized at Corporate HR, yet she knowingly facilitated training to be approved outside Corporate HR;
    b. She said Nkoka was the sole training provided, when it was not;
    c. She communicated directly with Nkoka before the service contract was awarded and created an impression that she was closely linked to Nkoka.
67. The Letter of Suspension was a 'general letter' to allow the applicant to freely state her involvement in the tender. Mosweu would then decide if the applicant's involvement was questionable or not.
68. Mosweu testified that he received feedback from the applicant within the timeline of 16 hours. He admitted points 1 and 2 of the applicant's response (vide A87). Regarding point 3 (vide A87) of the applicant's response that "In 2012/13 the Management of Technology elected to continue with the partnership which required deviation from the Procurement process", Mosweu stated that he issued a directive that all training matters must be dealt with through the L&D department within the Group HR. The applicant did not comply with this directive.
69. The applicant, in her response, stated that "my office facilitated the request for deviation in writing and consultation with all relevant stakeholders including the GM: L&D". Mosweu testified that he enquired from Govender (who attended the meeting wherein this was discussed) about his approval

herein and Govender stated that he objected to this approach. The applicant had to refer the matter to him as it was L&D's responsibility of sourcing a service provider.

70. Mosweu stated that the deviation submission should have occurred at the Central level after 2012. Mosweu further stated that the approvals of the deviation were done based on a wrong process. Mosweu admitted that the respondent is satisfied with the quality of students trained by Nkoka.

71. Mosweu confirmed that there was a tender for the training of broadcast engineers but that an investigation revealed shocking issues. The applicant generated the submission of a deviation to the

BAC, which was signed by Masinga and Shushu. Masinga and Shushu were members of the BAC and approved their own recommendation which they made with the support of the applicant. J. Mabaso (GE HR, Mosweu's line manager) was present and ought to have guided the process. At no stage did the applicant approach Mosweu about this matter.

72. Mosweu denied that the 'intention to suspend is coincidentally preceded by a grievance' the applicant recently lodged against him and stated that he is still waiting for the grievance to be heard.

73. Mosweu thinks that the allegations against the applicant are serious and relates to questionable transactions within a 'responsible organization' and yet the applicant was alleged to be in contact with Nkoka. He needed to investigate and therefore felt it necessary that the applicant stay at home 'for a while' and not interfere in the investigation.

74. Mosweu stated that he decided on his own to suspend the applicant based on the reasons outlined in the Notice of Suspension (vide A84)

a. 'The seriousness of the allegations;
b. The need for an objective investigation;
c. The nature of your job and responsibilities, which could hamper the investigation, and possibly harm the SABC.

75. Mosweu maintained that he did consider the applicant's response despite reading it, consulting with Govender and typing the Letter of Suspension in less than 90 minutes as he is very 'fast'.

76. Mosweu stated that his informer advised him that the applicant and Tati are 'somehow related'.

77. He maintains that the process of suspension is fair as the applicant cannot occupy a position where she could collude with the service provider.

78. Mosweu maintained that the Notice of Suspension (vide A84) and the Notice of Intention to Suspend (vide A89) must be 'conjoined' insofar as it relates to the issue of the cessation of suspension upon the completion of investigation. In the Notice of Intention to Suspend, it is stated that he would investigate and if necessary, discipline. In the Notice of Suspension, it is stated that: 'I have, after careful consideration decided to suspend you from the workplace, with full pay, as a precautionary measure pending a full investigation into your alleged involvement in the awarding of a training contract to a service provider known as Nkoka Training cc'. The investigation was concluded and confirmed that serious misconduct was committed. The disciplinary enquiry followed immediately and this should determine if the applicant should be 'unsuspended' or not. The suspension will only be lifted if the applicant should be found not guilty. The respondent has closed its case in the disciplinary enquiry.

79. The applicant is suspended with full emoluments and is not prejudiced.

80. During cross examination, Mosweu refused to comment on the negative effects of a suspension, more particularly, with Motsoeneng's opinion of suspension as he felt that he was not familiar with the merits of Motsoeneng's matter. He stated that if the applicant felt so traumatized 'she should make an appearance at the disciplinary enquiry and finish her case'. He stated that he did not know that the initiator reopened the case for the respondent. He accepted that there are social and personal implications to a suspension but that this cannot 'unsuspend' the applicant. The applicant is not suffering prejudice as she still has access to the respondent's building to look for information in respect of the disciplinary enquiry and is on full pay.

81. Mosweu admitted that the Notice of Intention to Suspend (vide A89), which he typed himself, does not expand on the serious 'allegations' except to refer to "your involvement as HRBP Manager

JT TE

for Technology in the awarding of a training contract to a service provider known as Nkoka Training cc." He responded to the applicant's representations as to why she should not be suspended with a Notice to Suspend despite considering her representations.

82. He denied that the Notice to Suspend coincided with the institution of a grievance by the applicant and explained that the applicant is an HR Manager and knows how to handle this situation.

83. Mosweu stated that he did consider the applicant's representations before suspending her. He was made aware that the applicant called Nkoka between the 4th and 7th December 2015. He also discussed this matter briefly with Govender (his office neighbor) about point 4 of the applicant's representations (vide 87), when Govender expressed that he raised an objection to the applicant's

approach in the meeting on 7th April 2014. Mosweu also attended that meeting but heard about Govender's objection only when he asked him about it before drafting the Letter of Suspension. He confirmed that Govender stated that a R2 million budget was available for Nkoka but that business plans from Technology was still outstanding and that the applicant was tasked to action that it be submitted. He further admitted that he could not object to Nkoka thereafter as everyone agreed to it at the meeting. Mosweu accepted that the minutes of that meeting was circulated on 9th April 2014 and was not rectified by him or Govender. He testified that he stated in the meeting that he was 'uncomfortable' but that this was not minuted. He did not deem it necessary to rectify the minutes as he did not think that it would become 'an issue'. His discomfort was because he was called into a meeting after the contract was signed, that he was not part of the deviation process and furthermore, that the applicant did not inform him of the deviation process.

84. He stated that he did not raise his discomfort in the meeting as there was 'no issue of wrongfulness of the award at that meeting' despite being at the meeting and ratifying the minutes thereof. He did, however, ask the applicant on numerous occasions if Nkoka was the best service provider and she agreed. This was contradicted by the 'whistle-blower's' version that the applicant was involved. He was advised that the applicant was 'irregularly' involved in Tati's business.

85. Mosweu admitted that Govender emailed the business plan to the applicant on 22nd October 2013, that Masinga approved it after receiving it from the applicant, who had by then gone on leave. Mosweu however, maintained that the applicant did not follow his ruling that all training should be centralized, that she spoke to Nkoka before the contract was awarded, that she denied that she generated the deviation process despite it being on her computer and that she alleged that Nkoka was the only service provider. Her conduct needed to be tested as the training should have gone on a public tender process, despite an RFQ having gone out in this case.

86. Mosweu admitted that the members of the BAC are obliged to be familiar with and adhere to all relevant policies, guides and laws regarding tenders and supply chains. He further admitted that the BAC approved of the deviation but that they were 'misled' by the applicant.

87. Mosweu stated that the respondent's policy to suspend for serious cases of misconduct refers to criminal cases but is not limited thereto. He stated that the applicant's alleged misconduct falls within the 'serious cases of misconduct' referred to in the policy. He did not know if Lephaka's calling Parliament a "kangaroo court" is a serious offence as envisaged by the respondent's policy. Lephaka however, apologized and withdrew his comment. Mosweu agreed that Lephaka was not suspended for this as well as his alleged involvement in the Free State housing scandal. Mosweu is aware of the allegations against Lenyai as he is his line manager but does not see any reason to suspend him as he is being disciplined. (supra 35).

88. Mosweu suspended the applicant because she spoke to Tati after receiving the Notice of Intention to Suspend as it did not prohibit her from speaking to anyone. Mosweu considered it a matter of ethics that the Notice of Intention to Suspend 'intended' that the applicant not speak to anyone. He stated that there were other issues that led to the applicant's suspension but he 'could not put everything into a letter'.

ANALYSIS OF EVIDENCE AND ARGUMENT:

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89. Section 23(1) of the Constitution of the Republic of South Africa, Act 108 of 1996, entrenches the right to fair labour practices. The applicant, in casu, who bears the onus of proof, contended that the respondent committed an unfair labour practice by suspending her on 7th December 2015 (vide Section 186 (2) (b) of the LRA). The respondent denied that an unfair labour practice was committed by it.

90. The LRA provides that a suspension may constitute an unfair labour practice if it is unfair. Suspension may be of two types. It could be imposed either as a precautionary measure pending disciplinary action or as a form of disciplinary penalty. In casu, it was the respondent's allegation that the suspension was precautionary. The wording in Section 186 (2) (b) of the LRA and the use of the word 'other' makes it abundantly clear that an 'unfair suspension' is only one type of 'unfair disciplinary

action short of dismissal'. This means that the employee, to prove that an unfair labour practice has been committed, is obliged to prove that her suspension constituted 'unfair disciplinary action short of dismissal' or that the suspension was disciplinary in nature. Disciplinary action short of dismissal will obviously include punitive action taken against an employee by an employer, such as a written warning, demotion etc. An employee will succeed in proving that her suspension amounted to 'disciplinary action short of dismissal' when she can show that the suspension was disciplinary in nature. When an employee is suspended for an inordinate period, or when the employer, following the suspension of an employee, decides not to hold a disciplinary hearing, this will constitute 'disciplinary action short of dismissal' since it is plainly disciplinary in nature (vide Sajid v Mohamed NO and Others (2000) 21 ILJ 1204 (LC).

91. The applicant has been suspended for 1 year, 4 months and 18 days on 24th April 2017. The applicant was charged on 24th August 2016. It took the respondent 8 months and 17 days from the letter of suspension to serving the charge sheet on the applicant. It is common cause that the disciplinary enquiry commenced on 26th September 2016 and has been postponed several times to 22nd February 2017, when it was postponed sine die. On this date, the initiator applied to reopen his case and recall his witnesses. No further date has been set down by the respondent. I believe the applicant's suspension has been for an inordinate period and that the respondent is unreasonably dragging out the disciplinary enquiry. This leaves me with no doubt that the applicant's suspension is no longer a precautionary suspension, but disciplinary in nature. The applicant's evidence is that the suspension has damaged her integrity and precluded her from participating in workplace benefits as described by Motsoeneng. Although an employee's suspension may sometimes be justified, it is trite law that suspensions 'have a detrimental impact on the affected employee and may prejudice his or her reputation, advancement, job security and fulfillment' (vide SA Post Office Ltd. V Jansen van Vuuren NO and Others [2008] 8 BLLR 798 (LC)). In Mogothle v Premier of Northwest Province & another (2009) 30 ILJ 605 (LC), Judge van Niekerk said: '[there is a] trend apparent in this court in which employers tend to regard suspension as a legitimate measure of first resort to the most groundless suspicion of misconduct, or worse still, to view the suspension as a convenient mechanism to marginalize an employee who has fallen from favour'. It is unchallenged evidence that the applicant was suspended soon after she laid a grievance against Mosweu. This grievance has not been dealt with to date. In explanation, Mosweu claims that the applicant is an HR manager and knows what to do despite him being the GM HR Business Partner and clearly able to action the applicant's grievance. This leaves me to question his motives in suspending the applicant. The applicant further stated that her suspension came soon after Tati agreed to testify against Motsoeneng and this led to her suspension as well. This appears to be the 'convenient mechanism to marginalize an employee who has fallen from favour' as stated in Mogothle's case above.

92. In Lebu v Maquassi Hills Local Municipality (2) (2012) 33 ILJ 642; [2012] 4 BLLR 411 (LC), Judge van Niekerk summarized the procedural steps to ensure a fair suspension:

a. The employer must have prima facie evidence of serious misconduct.

b. The employer must reasonably believe that the continued presence of the employee would jeopardize an investigation, or that the employee might commit further acts of misconduct, or may interfere with potential witnesses;

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c. The employer must inform the employee of the above suspicions in sufficient detail to enable the employee to respond;
d. The employee must be permitted time to prepare a response to the suspicions.
e. The employee should be given an opportunity to make representations to the employer and
f. The employer must seriously consider the representations and make a decision on whether or not to suspend.

At all material times the allegation against the applicant was that she did not involve L&D in sourcing the services of Nkoka. Mosweu, despite being in the meeting with inter alia Govender and the applicant on 7th April 2014, did not confirm with Govender then, about whether L&D was involved in the Nkoka contract despite allegedly stating that he was 'uncomfortable', nor did he contest the minutes thereof. He only addressed this issue again when he briefly consulted Govender before typing out the

applicant's Letter of Suspension. No evidence was presented that the procurement policy excluded the applicant from preparing a deviation request, and same was done by L&D, forwarded to Masinga by Govender and then to the applicant and thereafter signed by Matjeka when the applicant was on leave. I am satisfied that Mosweu did not have prima facie evidence of serious misconduct as envisaged in the respondent's Personnel Regulations and in Lebu's case (supra).

93. Mosweu admitted that the applicant had time to talk to people at the workplace from 4th December 2015, the date she received the Notice of Intention to Suspend to the 7th December 2015, the date of the Notice of Suspension. She could have discussed any issues with anyone as there were no prohibitions in the Notice of Intention to Suspend. This put paid to the respondent's reasonable belief that the applicant would jeopardize its investigations or commit further acts of misconduct or interfere with witnesses.

94. Mosweu admitted that he did not 'expand' on the allegations against the applicant in the Notice of Intention to Suspend and thereby did not provide sufficient detail to allow the applicant to respond. The applicant stated that she asked Tati and le Grange about the allegations, to no avail.

95. The applicant was not given sufficient opportunity to make proper representations due to the lack of detail of the allegation/s.

96. Mosweu admitted that he considered the applicant's representations in approximately 90 minutes which included reading her representations, consulting with Govender and typing a response as he is 'fast'. Mosweu's conduct does not lend itself to someone who sincerely and objectively considered the applicant's response.

97. I am not convinced that the suspension policy of the respondent is applied consistently. Mosweu could not explain why Lephaka and Lenyai were not suspended despite committing apparent acts of serious misconduct. Motjeka, who acted on behalf of the applicant in signing the business plan and deviation process was not suspended nor disciplined. Neither was Masinga or Shushu, for the same allegation. Employees working for the same company cannot be treated differently in particular when workplace discipline and rules are applied.

98. I am further not convinced that the respondent can 'conjoin' the Notice of Intention to Suspend and the Notice to Suspend in so far as it relates to the cessation of the suspension upon the completion of the investigation. The Notice of Suspension clearly provides for suspension pending full investigation and once that process is over, the applicant's suspension, in terms of the language used by Mosweu, should be lifted. The investigation was over when the applicant was served with a charge sheet. In POPCRU obo Sephanda & another v Provincial Commissioner, SA Police Service, Gauteng Province & another, Judge Le Grange reviewed and set aside the suspension of two policemen suspected of bribery and defeating the ends of justice because he found that the suspensions were instituted after the investigation into the alleged misconduct had been competed, and during the disciplinary enquiry – there was no precautionary purpose to the suspensions. This is similar to the applicant's case.

CCMA APPROVED

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99. Having regard to the evidence before me, both viva voce and documentary, it is patently clear that the employee's suspension on 7th December 2015 was, and still is, an 'unfair act' by the employer as envisaged by Section 186 (2) (b) of the LRA.

100. Section 193(4) of the LRA states that "An arbitrator appointed in terms of this Act may determine any unfair labour practice dispute referred to the arbitrator, on terms that the arbitrator deems reasonable, which may include ordering reinstatement, re-employment or compensation". In the present matter, I believe an appropriate remedy for the employer's 'unfair act' (being the suspension of the employee on 7th December 2015) is an order that the suspension is immediately uplifted and that an amount of compensation is paid to the employee. In determining an appropriate amount of compensation, I have had regard to the circumstances of the employee's suspension and the fact that her suspension has been on full pay. In the circumstances, I am of the view that compensation equal to 3 months of the applicant's salary constitutes 'just and equitable' compensation.

AWARD:

101. I, therefore, resolve the dispute by finding that the suspension of the applicant by the respondent on 7th December 2015 constituted an unfair labour practice as contemplated by Section 186(2)(b) of the LRA.

102. The respondent, SABC Ltd., is consequently, ordered to:

- Immediately uplift the suspension of the applicant, Liketso Mashigo, and allow her to return to work by no later than 8th May 2017;
- Pay the applicant, Liketso Mashigo,on or before 8th May 2017, compensation in the sum of R295 782.00, calculated as follows:
  R98 594.00 x 3 = R295 782.00.

103. I make no order as to costs.

APPROVED

Signature: _____

Commissioner: ***HASIENA HASSEN (MRS.)***

Sector: ***JOHANNESBURG***

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S020

Arbitration Award

CCMA
COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION

Case Number: *GAJB13971-17*
Commissioner: *Larry Shear*
Date of Award: *20-Jul-2018*

In the **ARBITRATION** between

BEMAWU obo Makalima, Ricky and 3 Others
(Union/Applicant)

and

SABC SOC Limited
(Respondent)

Union/Employee's representative:
Union/Applicant's address: *PO Box 203*
Wierda Park
0149

Telephone: *0800236298,0126613915,0829208669,0848728001,0820864630 ,0797011556,0789482232*
Telefax: *0866715585*
E-mail: *headoffice@bemawu.org.za, bemawu@gmail.com*

Employer's representative:
Respondent's address: *Private Bag X1*
Auckland Park
2006

Telephone: *0117143972,0117144717,0117144303,0117142708,0117142311 ,0117143819,0117144309,0841443109*
Telefax: *011 714-403-0300,0117143001,0117148040,0117146906*
E-mail: *potgieterjj@sabc.co.za, moufher@sabc.co.za, xamase@sabc.co.za, munyaite@sabc.co.za, motshekgamj@sabc.co.za, nkosipm@sabc.co.za, BareE@sabc.co.za, luthif@sabc.co.za*

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DETAILS OF HEARING AND REPRESENTATION

The matter was heard at CCMA House, Fox Street, Johannesburg on 9 July 2018.

ISSUE TO BE DECIDED

Whether the Applicants' dismissal was fair, at the conclusion of their Fixed Term Contract on 31 May 2017; in terms of the provisions of s198B of the Labour Relations Act.

SURVEY OF EVIDENCE

1. **Mr F Luthi**, the transport manager, testified.

2. Mr Luthi is responsible for the management of staff and vehicles and the maintenance of budgets within the Transport Department.

3. In terms of its operations, the respondent is responsible to provide transport to staff members who work unusually late hours. These would be the hours between 18:00 and 06:00.

4. The applicants in the current matter, were employed on Fixed Terms Contract basis to perform functions in respect of a "pilot project" established for this purpose.

5. In 2007, the respondent appointed a consultant to consider the costs and viability of employing its own drivers for this purpose, or whether to use the services of an external consultant. The consultant tabled a recommendation, and the respondents' management accepted a recommendation to commence with a "pilot project" in respect of providing after hours transport services.

6. The respondent set about purchasing vehicles, which took longer than anticipated. The plan was resuscitated during 2013 when the vehicles were actually purchased.

7. The respondent commenced the process of recruiting drivers for the after-hours transport project.

8. The positions were advertised in March 2014. Those applicants who were short-listed attended interviews. During their interviews, each applicant was informed that the respondent was running an "after-hours driving project" and that any contracts would be on a fixed term basis. They were also informed that the project was a "pilot project" and that there was no expectation of permanent employment. Candidates who were employed, were advised not to terminate their employment relationships, given the fixed term nature of any possible employment.

9. Mr Luthi testified that all the candidates understood this explanation and did not raise any objections.

10. The current applicants were employed in terms of a limited duration contract of employment which specified the period of their employment as running from 4 June 2014 until it would automatically terminate on 31 May 2017.

11. It was specifically stipulated in the contract that once the period specified above had expired, there would be no expectation of renewal or continuation thereof.

12. Mr Luthi explained that there had been some "issues" relating to the tender in respect of the vehicles, and prior to and even during the employment of the applicants' employment, an external service provider

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had had and continued to provide afterhours transport services.

13. In fact, Mr Luthi said even during the duration of the pilot project, the applicants did not fulfil the requirements of the limited duration contract and the position stipulated therein. They were in fact idle.

14 In 2017, a decision was taken to terminate the pilot project and not to continue therewith. The services of the external service provider were used for this purpose.

15. **Mr S Mokhele**, one of the applicant's testified.

16. He said that he perused and responded to the advert for afterhour's drivers in March 2014. He referred to the advert (page 72 of the bundle) and said that no mention was made of a limited duration contract in the advertisement.

17. Mr Mokhele attended an interview and he said, likewise, no mention was made of the limited duration nature of the employment offered. The interview only dealt with issues such as driving qualifications and knowledge of Johannesburg roads.

18. He said he could not recall any mention of a limited duration contract, as had been testified by Mr Luthi.

19. After his interview, he received a call a few weeks later, and was requested to attend a driving test. Thereafter, he was required to attend a medical examination and thereafter, received a call from Mr Luthi, who offered his congratulations for his successful employment with the respondent.

20. On 4 June 2014 Mr Mokhele signed his contract of employment. Although he did concede that the contract did stipulate that it was valid for a limited duration, the contract did not make any reference to a pilot project or to any other project, at all.

21. Mr Mokhele denied that he and the other applicants merely "sat doing nothing" during the duration of their employment, and he testified that he and the other applicants were requested to perform airport shuttles and various administrative functions on behalf of the respondent.

22. It was put to Mr Mokhele that the contract was very clear and that it only applied for a limited duration i.e. between 4 June 2014 and 31 May 2017. He said that he was so excited to be offered the position, but he did not take note of this fact, and only became aware of the limited duration after commencing his employment.

ANALYSIS OF EVIDENCE AND ARGUMENT

1. The respondent submitted that in terms of s198B, a Fixed Term Contract is one which terminates upon -

   - The occurrence of a specified event;
   - The completion of a specified task or project; or
   - A fixed date, subject to sub-section 3 thereof.

2. Section 198B(3) states that an employer may employ an employee on a Fixed Term Contract, for longer than 3 months only if –

   - The nature of the work is of a limited duration; or

- The employer can demonstrate any other justifiable reason for the fixed term nature of the contract.

3. S198B(6) states that an offer to employ an employee on a Fixed Term Contract **must** –

   - Be in writing, and
   - State the reasons contemplated in sub-section 3.

4 It is common cause that the applicants did sign a Contract of Employment which is defined as a "Limited Duration Contract of Employment", with the respondent, which was valid from 4 June 2014 until 31 May 2017.

5. The applicants were employed in the capacity of afterhour's drivers.

6. It is also common cause that the advertisement which gave rise to their employment, did not stipulate the limited duration nature of their employment, nor did it stipulate any reference to a particular project.

7. It is further common cause that although the contract of employment did stipulate the limited duration period, it did not mention and nor did it refer to a specific project. The contract of employment did not stipulate the reasons for the limited duration period as is required in terms of s198B above.

8. S198B (6) is clear. An offer to employ on a Fixed Term Contract must be in writing, and, state the reasons contemplated in sub-section 3(a).

9. As already indicated, the contract did not stipulate the reasons for the Fixed Term Contract and nor did it make any reference to a project.

10. It is instructive to note that the respondent did not provide any written proof of the pilot project, in the form of recommendations made by the consultant, nor any reference to any acceptance thereof by the respondent's Board. The only reference to this project is that made by Mr Luthi in his evidence.

11. I am not making any negative inferences regarding Mr Lathi's credibility, but the simple fact is that the respondent has not complied with the provisions of s198B and, more particularly, s198B(6) which requires that the limited duration contract must be in writing and must state the reasons which require a limited duration contract. The contract signed by the applicants are silent on this aspect, and therefore, I must conclude that the exceptions contained in s198B do not apply in the present instance.

12. I therefore conclude that the applicants' fixed terms contracts were not valid, in terms of the provisions of s198B and that therefore the termination of their employment in June 20017 was unfair

13. The applicants are entitled to be reinstated into their positions as after-hours drivers with the respondent.

14. However, the applicants must, to a certain extent, accept responsibility for the fact that they signed a contract which stipulated their period of employment as being from 4 June 2014 until 31 May 2017. They did not query this. For that reason that it would be fair or equitable to award compensation for the full period that the applicants had been unemployed, and it is my intention to award compensation to each applicant, which is equivalent to five month's salary, i.e. R10 885.92 x 5 = R54 429.60.

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AWARD

1. For all the reasons set out above, I find that the Applicants dismissals were unfair.

2. The Respondent, The SABC is ordered to pay each Applicant, i.e. Mr Ricky Makaila, Mr Albania Siyothila, Mr Sechaba Mokhele and Mr Caiphus Masimula the sum of R54 429.60, each.

3. Payment is to be made by no later than 1 August 2018.

Signature: _____

Commissioner: **L SHEAR**

Sector: _____

Cecilia van Zyl

From: BEMAWU HEADOFFICE <headoffice@bemawu.org.za>
Sent: 13 December 2018 07:30
To: Sello Xama
Cc: Jonathan Thekiso
Subject: Arbitration Award | Makalima & others

Dear Sirs,

The arbitration award declaring the dismissals of Messieurs RICKY MAKALIMA, DIBANISA SIYOTHULA SECHABA MOKHELE and CAIPHUS MASIMOLA both substantively and procedurally unfair has reference.

The four BEMAWU members were employed on Fixed Terms Contracts as drivers at the SABC, earning below the threshold as published from time to time in the Government Gazette.

Despite being warned not to terminate the contracts of our members at the expiry of their contracts, the SABC proceeded with the termination of same.

The CCMA has found these dismissals to be unfair, and reinstated the four BEMAWU members.

Our members will report for duty on Monday, 17 December 2018.

Kindly ensure their smooth reintroduction to the workplace.

Sincerely,

Hannes du Buisson
BEMAWU

JT TE

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 10721/15

In the matter between

SIPHOKUHLE MDUMISE MASINGA	Applicant
And	
THE MINISTER OF COMMUNICATIONS	First Respondent
THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED	Second Respondent
THE CHAIRPERSON: PROFESSOR MBULAHENI OBERT MAGUVHE N.O (representing the BOARD OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED)	Third Respondent
HLAUDI GEORGE MOTSOENENG THE CHIEF OPERATIONS OFFICER OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED	Fourth Respondent

SETTLEMENT AGREEMENT

MBULU NEFFUMBADA
HEAD: LEGAL SERVICES

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1. Introduction

1.1 During June 2015, Siphokuhle Mdumise Masinga (**"Masinga"**), instituted various legal proceedings in the Western Cape High Court against the South African Broadcasting Corporation SOC Limited ("SABC"), the Chairperson: Professor Mbulaheni Obert Maguvhe (representing the Board of the SABC) and Hlaudi George Motsoeneng, the Chief Operations Officer of the SABC (hereinafter collectively referred to as "**the Respondents**").

1.2 The precursor to the above legal proceedings were others instituted in the Labour Court.

1.3 The legal proceedings above were in relation to and/or for an order, *inter alia*, in the following terms:-

1.3.1 That the SABC's Memorandum of Incorporation was invalidly amended by the Minister of Communications on 26 September 2014 and is in conflict with the provisions of the Broadcasting Act No. 4 of 1999 and unlawful;

1.3.2 alternatively that clause 13.4.5.3 of the Memorandum of Incorporation is illegal and of no legal force and effect; and

1.3.3 The Fourth Respondent, Mr Hlaudi Motsoeneng, the SABC's Chief Operations Officer, has no authority to discipline Masinga.

1.4 After negotiations between Masinga and the SABC, however, the Parties have now reached agreement that it would be in their best interests to settle all their disputes (**"Disputes"**) amicably. The Settlement is in relation to all Court Applications currently pending before the Western Cape High Court, Labour Court and the Labour Appeal Court of the Republic of South Africa.

1.5 Therefore, the Parties hereby record the terms of their settlement agreement herein.

MBULO NEPFUMBADA

SM

2. **Interpretation and Definitions**

In this Agreement:-

2.1. Clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, an expression which denotes:-

2.1.1. any gender shall include the other gender;

2.1.2. a natural person shall include an artificial or juristic person and vice versa; and

2.1.3. the singular shall include the plural and vice versa;

2.2. The following words and expressions shall bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings:–

2.2.1. **"the/this Agreement"** means the terms and conditions of this settlement agreement;

2.2.2. **"Dispute/s"** means issues of disagreement between the Parties in relation to matters referred to in clause 1.3 above;

2.2.3. **"Effective Date"** means the date on which this Agreement shall be signed by the last Party signing;

2.2.4. **"Legal Proceedings"** means all the applications collectively instituted by Masinga against the Respondents in the High Court of South Africa, Western Cape Division under case number 10721/15 and the Labour Court under case numbers 1061/15 and 1311/15 and the word Application shall have a corresponding meaning in respect of each of the cases individually or a combination of any of them as the context may require;

2.2.5. **"Parties"** means collectively the SABC and the other Respondents on the one hand, and Masinga on the other, and **"Party"** means any of them as the context may indicate or require;

MBULU NEPFUMBADA
HEAD: LEGAL SERVICES

SM

2.2.6. **"SABC"** means the South African Broadcasting Corporation SOC Ltd situate at Corner Henley and Artillery Roads, Auckland Park;

2.2.7. **"Settlement Amount"** means the net total sum of R2, 678,419.80 (two million six hundred and seventy eight thousand four hundred and nineteen rand and eighty cents) free of any deductions statutory or otherwise payable by the SABC to Masinga in full and final settlement of all the Legal Proceedings and attendant Disputes.

2.3. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

2.4. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail; and

2.5. The expiration or termination of this Agreement shall not affect those of its provisions, which provide that they will operate after any such expiration or termination or which, as a matter of necessity, shall continue to operate.

3. **Settlement of Disputes**

3.1. The Parties hereby agree to settle all Disputes between them amicably, without each admitting liability to the other and in accordance with the terms set out below.

3.2. The SABC shall pay Masinga the Settlement Amount in full and final settlement of all the Disputes between them.

3.3. The SABC will make payment of the Settlement Amount in one lump sum, within seven (7) days of the Effective Date.

3.4. It is hereby recorded that the settlement amount excludes Masinga's retirement benefits which he is entitled to claim separately. The SABC undertakes to do, comply or act as may be necessary to assist Masinga in lodging a claim for his retirement benefits should it become necessary to render such assistance.

MBULU NEPFUMBADZI
HEAD: LEGAL SERVICES

SM

3.5. The SABC will, through its attorneys of record, supply Masinga, through his attorneys of record, with a copy of the deposit slip or proof of payment after payment has been made.

3.6. Masinga's fixed term contract with the SABC, which became effective from 15 May 2015 and was to continue until 31 May 2018, is hereby terminated with effect from the Effective Date of this Agreement.

3.7. Masinga will, within five (5) days of receipt of the Settlement Amount, return to the SABC all of the SABC's items including office or other keys, access cards, laptop (if applicable) and any other items which may still be in his possession.

3.8. Masinga shall cause his attorneys of record to withdraw any and all Legal Proceedings and any other matter which may still be pending before any of the relevant Courts relating to the Disputes in respect of which he is *dominus litis* by serving the relevant withdrawal notices on the Respondents' Attorneys of record and filing such notices in the relevant Courts at his own cost. The Respondents shall at their own cost and where or if applicable, also file the requisite notices of withdrawal. Each of the withdrawal notices contemplated herein shall specifically state that there shall be no order as to costs.

3.9. This Agreement is in full and final settlement of all Disputes and claims of any nature whatsoever that any of the Parties may have against the other or others arising from the Disputes and Legal Proceedings.

3.10. The Parties shall, at their own instance, be entitled, to the extent necessary, to make this Agreement an order of court.

4. **Domicilium Citandi Et Executandi**

The Parties choose as their *domicilia citandi et executandi* ("domicilia") for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:-

JT TE

MBULU NEPFUMBADA
HEAD: LEGAL SERVICES

SM

4.1. **Masinga**

C/o Thabiso Maseko Attorneys
2nd Floor West Tower
Nelson Mandela Square
Maude Street
SANDTON

4.2. **The SABC**

C/o Mchunu Attorneys
160 Jan Smuts Avenue
3rd Floor, North Tower
Rosebank, 2196
Johannesburg

5. **General Provisions**

5.1. This Agreement save for what is expressly agreed to herein settles all disputes, releases each Party from further contractual obligations and/or claims between the Parties should there be any existing now or in future arising out of the employment relationship between the Parties and in relation to the Legal Proceedings.

5.2. This Agreement constitutes the sole record of the agreement between the Parties relating to the subject matter hereof and supersedes any other agreement, whether written or oral which may have been entered into between the Parties.

5.3. This Agreement is governed by and shall be construed in accordance with the law of the Republic of South Africa.

5.4. No addition to, variation or agreed cancellation of this Agreement shall be of any force and effect unless in writing and signed by the Parties or their duly authorized representatives.

5.5. The Parties hereby warrant and represent that they are duly authorised and empowered to negotiate, conclude and implement the terms and conditions of this Agreement.

MBULU NEPFUMBADA
HEAD: LEGAL SERVICES

JT TE

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SM

5.6. Each Party shall bear its own costs of and incidental to the negotiation, drafting and execution of this Agreement.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 31 DAY OF APRIL 2016.

AS WITNESSES: **FOR: SOUTH AFRICAN BROADCASTING SOC LIMITED**

1. _____

_____
who warrants that he is duly authorized hereto.

2. _____

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 20th DAY OF APRIL 2016.

AS WITNESSES:

1. _____

_____
SIPHOKUHLE MDUMISE MASINGA
(ID NO: 810824 5479 087)

2. _____

JT TE

SM



SYMINGTON & DE KOK
ATTORNEYS • PROKUREURS • BABUELEDI
Solutions that fit • Oplossings wat pas • Ditharabolo tse di Isegang

HUMAN RESOURCE MANAGER
SABC
BLOEMFONTEIN
9301

DATE/DATUM
2013-02-27

ATTENTION: SIPHO MASEKO

VAT/BTW REG NO. 4620106841

YOUR REF/U VERW

OUR REF/ONS VERW
KK MOHALEROE/MEN7707

BY FAX: 051 503 3239

Sir

LABOUR LAW REVIEW: NP MASOETSA / SABC
CASE NUMBER: JR1676/2010
JUDGMENT DATE: 26 FEBRUARY 2013

We refer to the abovementioned matter and confirm that we act on behalf of Mr Masoetsa.

Kindly find attached a copy of the judgment that was delivered in this case. Your will note that the judge ordered that our client be re-instated.

Consequently, we address this letter to you in order to:

1. Confirm the date on which our client must report for duty
2. Ascertain whether there is any documentation which he is required to furnish you before commencing with his employment
3. Confirm the manner of payment and the date when our client should expect receipt of his back pay.

We trust you find the above in order and request your swift response hereto.

Yours truly,

SYMINGTON & DE KOK
PER: KK MOHALEROE

Email: kmohaleroe@symok.co.za

www.symok.co.za

BLOEMFONTEIN
169B NELSON MANDELA DRIVE/RYLAAN , WESTDENE, BLOEMFONTEIN, SOUTH AFRICA/ SUID AFRIKA
PO BOX/POSBUS 12012, BRANDHOF, 9324 / DOCEX 18 BLOEMFONTEIN / TEL. (051) 505 6600 / FAX/FAKS (051) 430 4806

BELLVILLE * TEL: (021) 913 3137

PARTNERS/VENNOTE: PHILIP JACOBS, LEON STRATING, GERHARD VAN GRAAN, DE BUYS HUMAN, HEIN GARSHAGEN,THEUNS WOLMARANS, ETIENNE VAN ZYL, CHRISTIE BEUKES, GILES REHBOCK, PIERRE JOUBERT, JANINE FOUCHÉ *, ELNA POHL, TONIE O'REILLY, MC JACOBS *, KUTLWANO MOHALEROE
ASSOCIATES/ASSOSIATE: PIET SWANEPOEL, GWEN JOHNSTONE, DIEPERINK MÖLLER
ASSISTED BY/BYGESTAAN DEUR: STEFANI SLABBERT, SONETTE OOSTHUIZEN, LIEZE-MARI BRINK, NATALIE WOLMARANS, ELZAAN DU PREEZ, CARLA ODENDAAL, LELANI VAN BLERK, RUWAYNE SMITH
FIN. MANAGER/BESTUURDER RIANA NEL IT MANAGER/BESTUURDER FRANCOIS HORN HR MANAGER/MH BESTUURDER RITA-LIZE COETSEE OFFICE MANAGER/KANTOOR BESTUURDER DAWIE NIEMANN

Certified as a level FOUR contributor to B-BBEE and a Value Adding Supplier

JT TE

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.

06-02-2013 DATE SIGNATURE

REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

LABOUR COURT

Not Reportable

Case no: JR 1676/2010

In the matter between:

N P MASOETSA **APPLICANT**

and

SOUTH AFRICAN BROADCASTING CORPORATION LIMITED **FIRST RESPONDENT**

COMMISION FOR CONCILIATION, MEDIATION AND ARBITRATION **SECOND RESPONDENT**

P M VENTER NO **THIRD RESPONDENT**

Heard: 21 December 2012

Delivered: 26 February 2013

Summary: Review Failing to deal with material placed before the Arbitrator is a reviewable irregularity, Exercise of discretion in terms of section 193 (2) without taking the totality of the circumstances into account when awarding compensation instead of the primary remedy of reinstatement in a substantively unfair dismissal

JT TE

JUDGMENT

WALELE Z, AJ

Introduction

[1] This matter concerns an application in terms of section 145 of the LRA by the Applicant to review and set aside an arbitration award of the Third respondent in its entirety as a Commissioner of the CCMA (the second respondent). The application is opposed.

[2] The Applicant was dismissed for misconduct and the third respondent found that the Applicant's dismissal was procedurally fair; but substantively unfair. The Third Respondent ordered as relief for the substantively unfair dismissal that the First Third Respondent pay 6 months' compensation to the Applicant amounting to R 216 000, 00.

[3] The Applicant sought condonation for the late delivery of the Rule 7 (A) Notice and the supplementary affidavit. The transcript of the record was received on 21 October 2010 and the Rule 7 (A) (8) Notice was only filed and served on 3 December 2010. The reasons proffered by the Applicant is that the attorney on record was not involved in the arbitration and were obliged to first study the record of the proceedings before the papers could be supplemented. There were logistical difficulties in obtaining the record from the Registrar.

[4] The delay was not excessive bearing in mind that new attorneys came on board and the Applicant has shown good cause for the delay. The First Respondent did not object to the late delivery of the notice and the Applicant claimed that the Respondents suffered no prejudice due to the late delivery of the Notice.

[5] Having had regard to the degree of the delay; and being satisfied by the explanation for the late filing, and the prospects of success, I condoned the late filing of the Rule 7 (A) notice and the late filing of the supplementary affidavit.

Background Facts:

UNREVISED

[6] The Applicant was employed as an Executive Producer: Current Affairs. The Regional Editor at the time was replaced with Mr Motsoeneng on 6 August 2009 and since this appointment the Applicant and the Acting Regional Editor were at loggerheads regarding the running of the news programmes.

[7] The Applicant was charged with dereliction of duties, poor supervision and refusal or failure to carry out a reasonable and lawful instruction given by a superior. These charges emanated from circumstances that prevailed on 20 August 2009. The disciplinary hearing was held on 8 October 2009 during which the Applicant's request to postpone the hearing due to the absence of his union representative alternatively to obtain alternative representation was refused. The Applicant excused himself from the hearing as a result of this refusal and the hearing continued in his absence. The Applicant was found guilty of all the charges and consequently dismissed.

Grounds of review

[8] The Applicant claimed that the award stands to be reviewed and varied as the Third Respondent committed gross irregularity in the arbitration proceedings and exceeded his powers as a Commissioner when he awarded compensation and by doing so failed to sufficiently appreciate the circumstances surrounding whether the dismissal is such that the continued employment relationship will be intolerable and consequently is the award of compensation not justified.

The decision not to order reinstatement is a decision which a reasonable decision maker could not have reached. The Third Respondent failed to justify the findings and ignored all the circumstances surrounding the dismissal in totality and placed more weight on the inter-personal relationship between the Applicant and Motsoeneng as the justification for the award of reinstatement;

[9] In his supplementary affidavit the Applicant claims that the Third Respondent committed a gross irregularity and misconduct when he found that the dismissal was procedurally fair in that he failed to properly apply his mind when he came to the conclusion that the disciplinary hearing held in his absence on 8 October 2009 was fair and hence the finding is not justified.

JT TE

(i) Failed to accede to his request to have the hearing postponed to later that same day in order to obtain the assistance of a co- employee to represent him. This was an alternative request.

(ii) The aforesaid caused that the Applicant was forced not to be present and not in the state of mind to conduct his own defence.

[10] Further, that the Third Respondent committed a gross irregularity and misconduct when he found the Applicant was guilty of misconduct as articulated in the charges and failed to consider the evidence that :

(i) The Applicant satisfied himself on 20 August 2009 that the contents of the program that was to be broadcasted later without a Senior Producer was in order and properly compiled;

(ii) The non - availability of a Senior Producer was addressed by the appointment of Ms Monyaki as the Acting Senior Producer;

(iii) The Third Respondent disregarded the evidence of the Applicant and Sello Thulo that he dealt with the issue of a staff shortage no differently as he had done in the past.

The review standard

[11] The applicable test in reviews following *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[1] is that of reasonableness, which must be determined objectively with due regard to all the evidence before the Commissioner. In order to succeed in a review the Applicant must therefore establish that the award was one that would not have been made by a reasonable decision maker based on the evidence presented.[2]

[12] In *Commercial Workers Union of SA v Tao Ying Metal Industries and Others*[3] the Constitutional Court confirmed that a Commissioner is required to properly apply his mind to the issues and that failure to do so will result in an arbitration award being set aside.

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[1] (2007) 28 ILJ 2405 (CC).
[2] *Sidumo supra* at 110.
[3] (2008) 29 ILJ 2461 (CC) at 2485-2486

SUPREME COURT

[13] The Applicant must therefore show that the outcome falls outside the parameters of what is reasonable. *See Edcon Ltd v Pillemer NO and Others*[4]

[14] In *Herholdt v Nedbank Ltd*[5] the LAC set the test for interference in a latent irregularity as follows:

> 'There is no requirement that the Commissioner must have deprived the aggrieved party of a fair trial by misconceiving the whole nature of the enquiry. The threshold for interference is lower than that; it being sufficient that the Commissioner has failed to applied his mind to certain of the material facts or issues before him, with such having potential for prejudice and the possibility that the result may have been different.'

Evaluation

Procedural fairness

[15] The Commissioner concluded that the hearing was procedurally fair as the Applicant had two prior postponements and had sufficient time to get his preparations in order. He did not request a postponement in advance in relation to the unavailability of his co employee and chose to wait until the morning of the hearing to advise the Respondent of the aforesaid. The Applicant also could not explain why he did not ask any other employee to assist him and should be borne in mind that the Respondent incurred costs as their representative travelled from Johannesburg. The Applicant left at his own peril and he had every opportunity to be present and participate in the hearing.

[16] The Applicant's representative during the process of narrowing the issues clarifies that the procedural fairness that the Commissioner was required to consider was the denial of the Applicant's request for an adjournment of two minutes to afford the Applicant an opportunity to secure an alternative representative.

[17] This after the request for a further postponement was not granted and the union official was asked to leave the proceedings. The Third Respondent was required

[4] (2008) 29 ILJ 614 (LAC) at 21.
[5] *(2012) 33 ILJ 1789 (LAC) at para. 39.*

SOURCE COURT

to consider whether the chairperson's decision to continue with the hearing in absentia instead was procedurally fair.

[18] The First Respondent did not call the chairperson to testify on the circumstances surrounding his decision to continue in the absence of the Applicant.

[19] The Applicant testified to the above circumstances but the Third Respondent does not deal with this aspect at all in his award. Instead, he alludes to all the other occasions that the Applicant was granted a postponement and fails to decide on an issue that the Applicant's representative makes specific reference to during the process of narrowing of the issues to be determined. Essentially, the Third Respondent failed to determine the issue in relation to the material before him. The award stands to be reviewed on this ground. The Third Respondent's conclusion is not rationally connected to his reasons taking into account the material before him. He failed to carry out his mandate.

Substantive unfairness

[20] The Commissioner found that there was no Senior Producer initially present during the program and that the Applicant had a discretion to appoint another person as Senior Producer or not. The evidence of the Respondent's witnesses whom he found reliable all testified that it was compulsory that a Senior Producer had to be present during the program; that the instruction was given to the Applicant; documents to support the aforesaid were shown;

[21] The Commissioner concluded that the Applicant was obliged to either appoint another Senior Producer or to step in as Senior Producer on 20 August 2009. The Commissioner did not find his explanation as plausible and found the Applicant as evasive. He was aware of the rule and failed to start the program without a Senior Producer. The Commissioner having found that there was a splitting of charges found the Applicant guilty of dereliction of duties when he failed to ensure that the program started with a Senior Producer.

[22] The Applicant submits that the Commissioner committed a reviewable irregularity when he concluded that the Applicant was guilty of dereliction of duty when there was no senior producer present on the day in question.

JT TE

[23] In arriving at this decision the Commissioner took into account the following evidence: (i) Thobile's evidence that in the instance when a senior producer is absent that Executive Producer must make arrangements for another Senior Producer to stand in or in the alternative he must take over the duties as a Senior Producer; (ii) Alfred Moloi's evidence was that on the day in question he was called to assist as a Senior Producer for the programme and that the programme started at 17 H00 without a senior producer; (iii) Motsoeneng testified that it is the duty of the Executive Producer (the Applicant) to ensure that a Senior Producer is present at all times and that he should actively take charge of the programme.

[24] The Applicant's evidence reflects that he did not bring in a Senior Producer as he exercised his discretion that the programme could be aired without one and that the appointment of Monyaki would serve the purpose of having a Senior Producer present.

[25] The Commissioner concludes that it was compulsory that a Senior Producer had to be present during a program. The latter was made clear in the form of an instruction to the Applicant by Motsoeneng. He further concludes that the Applicant was obliged to either appoint another Senior Producer or to "step in" as a senior producer on the day in question. The First Respondent did not dispute that there was a staff shortage.

[26] The Commissioner's findings were in accord with the material placed before him. I cannot say that the Commissioner committed a gross irregularity or misconduct in relation to the evidence before him in finding the Applicant guilty of dereliction of duty.

Sanction and relief

[27] In so far, as the sanction is concerned the Commissioner took into account that the program was broadcast without any problems; and that "things went smoothly; the Respondent was not prejudiced and that there were staff shortages at the time.

[28] The Commissioner could not understand why the sanction of dismissal was handed down as the Applicant had 15 years of service and a clean record. [29] The Applicant claimed that the award stands to be reviewed and varied as

REVIEWED

the Third Respondent committed gross irregularity in the arbitration proceedings and exceeded his powers as a Commissioner when he awarded compensation and by so doing failed to sufficiently appreciate the circumstances surrounding whether the dismissal is such that the continued employment relationship will be intolerable and consequently is the award of compensation not justified.

[30] The Applicant Commissioner found the sanction of dismissal inappropriate; shocking and unfair and said that there were alternative sanctions to impose. In other words that the offence is not serious enough to breakdown the relationship and that instead of dismissing the Applicant that the Third Respondent could have imposed another sanction.

[31] It is trite that in terms of section 193 (2) of the LRA the primary remedy when the dismissal is found to be substantively unfair is reinstatement unless: (a) the employee does not wish to be reinstated or re-employed;(b) the circumstances surrounding the dismissal is such that a continued employment relationship would be intolerable;(c) it is not reasonably practicable for the employer to reinstate or re-employ the employee or; (d) the dismissal is unfair only because the employer did not follow a fair procedure.

[32] The Commissioner considered reinstatement to be inappropriate and based this on his view that there as animosity between Motsoeneng and the Applicant and that it was not possible for them to work together. In support for the aforesaid, the Commissioner claimed that he had to stand down the proceedings as the Applicant and Motsoeneng were at loggerheads.

[33] I perused the entire record to confirm that if indeed this was the case and nowhere does the record reflect the conclusion and basis upon which the Commissioner made this contention. In fact the record reflects where the representatives deliberated on the ruling of the Commissioner that Motsoneng should remain in the proceeding.

[34] The Applicant's Counsel correctly pointed out that it was not the Applicant and Motsoeneng but rather the parties' representatives who were at loggerheads and it appears as a result of Motsoeneng's sitting in at the proceedings as an

JT TE

observer and seemingly passing notes to the Respondent's representative.. (See page 308 & 310 of the record)

[35] It is clear that the Commissioner erred in placing emphasis on the aforesaid in reaching the conclusion that there was animosity between the parties and that they could not work together.

[36] The Commissioner further placed too much emphasis on Motsoeneng's evidence that it is not possible or him to work with the Applicant when the relationship between Motsoeneng and the Applicant was only 14 days old without taking account the surrounding circumstances in the commission of the offence. [37]

The Commissioner failed to take into account that Motsoeneng says he has nothing personal against the Applicant which accords with the Applicant's evidence that he was at loggerheads with work related issues such as how the section worked after Thobile was suspended and when Motsoeneng was at the helm of the unit.

[38] I agree with the Applicant's Counsel that the Applicant cannot be deprived of the primary remedy simply because they do not see eye to eye on certain issues.

[39] I am satisfied that in denying the Applicant the primary remedy of reinstatement for the substantively unfair dismissal, that the Third Respondent reached the conclusion that could not have reasonably been reached by him.

Conclusion

[40] In the light of the above discussion I am of the view that the Applicant has made out a case for the review of the arbitration award of the arbitrator in so far as the relief of compensation instead of reinstatement and the finding that the dismissal was procedurally fair.

[41] On the basis of the material placed before this Court, I do not deem it necessary to remit the matter back to the First Respondent for a determination afresh.

Costs

[42] As far as costs are concerned, I see no reason why costs should not follow the cause. The First Respondent is to pay the costs of the application.

JT TE

In the circumstances I make the following order:

42.1 The Arbitration award of the First Respondent made under case number FS 6509-09 dated 30 April 2010 is reviewed and set aside.

42.2 The finding of 6 months compensation is set aside and the arbitration award is substituted with the following order:

The Applicant is to receive a written warning for dereliction of duty

The Third Respondent is ordered to reinstate the Applicant retrospectively into the position that he occupied prior to his dismissal without any loss of benefits.

42.3 In calculating the back pay, the Third Respondent is entitled to take into account the 6 months compensation that the Applicant has already received.

LABOUR COURT

Walele, AJ

Acting Judge of the Labour Court

JT TE

APPEARANCES

For the Applicant: Advocate P R Cronje

For the First Respondent: Advocate M van As SC

LABOUR COURT

JT TE

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

THABANG SYLVESTER MATHIBE

(ID NUMBER: 6607185621089)

("APPLICANT")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("RESPONDENT")

SETTLEMENT AGREEMENT

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CM M.R

1. The Applicant has referred an alleged unfair dismissal dispute to the Johannesburg Commission for Conciliation Mediation and Arbitration ("CCMA") under case number **GAJB 33136-12**.

2. The parties hereto have agreed to settle the dispute referred to in paragraph 1 above and the terms and conditions of the settlement agreement are recorded hereunder:

2.1. The Applicant agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Respondent which the Applicant now has, or which may hereafter accrue or otherwise be acquired by Applicant, on account of, or in any way flowing from the alleged unfair dismissal dispute or any issue resulting from the employment relationship between the parties;

2.2 By entering into this agreement, the Respondent does not admit or acknowledge that the Applicant was unfairly dismissed;

2.3 The Respondent hereby agrees to pay the Applicant an amount of **R 1 385 199, 24 (one million three hundred and eighty five thousand one hundred and ninety nine rand and twenty four cents)** which amount is equivalent to the Applicant's 12 months' gross salary (Total Cost to Company).

2.4 The amount referred to in paragraph 2.3 above shall be subject to all statutory deductions;

2.5 The amount referred to in paragraph 2.3 shall be paid into the Applicant's bank account by way of electronic funds transfer within **seven (7)** days from having

JT TE

M.R CM

obtained the relevant SARS tax directive. The Respondent shall apply to the SARS for such a tax directive. The Applicant undertakes to do all that may be necessary to enable the Respondent to obtain such a tax directive.

2.6 The Applicant's bank details are:

Bank	:	**Standard Bank**
Branch	:	**013 042**
Account Holder's name is	:	**Thabang Sylvester Mathibe**
Account Number	:	**420 191 437**
Account	:	**Current account**

2.7 Once signatures have been appended by both parties hereto as well as attested by witnesses, the Applicant agrees to unconditionally withdraw the dispute referred to in 1 above at the CCMA and to provide the Respondent with a copy of such withdrawal within two (2) days of the filing of the withdrawal notice with the CCMA;

2.8 The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Respondent which the Applicant now has, or which may hereafter accrue or otherwise be acquired by Applicant, on account of, or in any way flowing from the alleged unfair dismissal dispute or any issue resulting from the employment relationship between the parties;

2.9 The Applicant undertakes to, and agrees that this agreement is subject to the condition of the Applicant at the time of signature of this agreement, disclosing the identity of the person/s who gave him the original and/or a copy of a document dated 10 September 2012 which was addressed to Mr Thabiso Lesala and singed by Mrs Lulama Mokhobo.

2.10 No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

2.11 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

2.12 This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

2.13 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

3. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

JTE

M.R CM

4. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

5. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto in law;

6. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at SAB **on this** 10th **day of** January 2012 **in the presence of the undersigned witnesses.**

FOR THE APPLICANT

WITNESSESS

1.

2.

Thus done and signed at SABC **on this** 10th **day of** January **in the** 2013 **presence of the undersigned witnesses.**

FOR AND ON BEHALF OF THE RESPONDENT

WITNESSESS

1.

2.

JT TE

MEMORANDUM OF AGREEMENT
ENTERED INTO BETWEEN

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED
("the employer")

and

MBULAYENI MAGHUVE
("the chairman")

and

FRANS LEKOPA MATLALA
("the employee")

(Collectively referred to herein as the parties)

SEPARATION AGREEMENT

WHEREAS the employee is employed by the employer as the group chief executive officer in terms of a fixed-term employment contract (the contract of employment);

AND WHEREAS the employee was suspended with full pay pending the finalisation of an investigation into certain allegations of misconduct against him and any disciplinary proceedings the employer elects to bring against him arising therefrom;

AND WHEREAS the employee has brought an application against the employer and the chairman before the Gauteng Division of the High Court, Pretoria under case

Prof. M.O. Maguvhe

number 94721/15, challenging, among other things, the lawfulness of his suspension and any acts taken by the employer pursuant thereto, which is set down for argument on 13 and 14 September 2016;

AND WHEREAS the employer has commenced disciplinary proceedings against the employee which are due to proceed on Tuesday, 12 July 2016;

AND WHEREAS the employer and the employee are desirous to bring an end to the employment relationship between them, to curtail the disciplinary proceedings commenced by the employer against the employee, and to settle the dispute underlying the application brought by the employee against the employer and the chairman in the Gauteng Division of the High Court, Pretoria;

NOW THEREFORE the parties have decided to conclude this separation agreement and agree as follows:

1 The employer and the employee agree to the termination of the contract of employment on the basis of the terms set out in this agreement. The contract of employment will terminate upon signature of this agreement by the parties.

2 The employer shall pay to the employee the amount of R5, 481,786.20 (Five Million Four Hundred and Eighty One Thousand Seven Hundred and Eighty Six Rand and Twenty Cents Only) (calculated as set out in the document attached to this separation agreement, as **"A"**, and subject to the terms as set out in it), within five (5) days of signature of this agreement.

JT TE

Prof. M.O. Maguvhe

FCM SB

3 Payment of the aforesaid amount shall be into the bank account of the employee into which the employer customarily makes payment of the employee's salary.

4 This agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses or compensation that the parties may have against each other, or which may hereafter accrue or otherwise be acquired by any of them, on account of or in any way arising from the termination of the employment relationship or from any issue arising from the employment relationship between the employer and the employee;

5 In particular, the monetary amount referred to in paragraph 2 above shall be in full and final settlement of all and any claims that the parties may have against one another ;

6 The employee shall forthwith withdraw the application brought by him before the Gauteng Division of the High Court in Pretoria under case number 94721/15 and each party to that application shall bear their own costs, including those of the urgent proceedings of December 2015;

7 The employer and the chairman shall forthwith abandon in full the cost order granted in their favour against the employee in the urgent proceedings of December 2015 under the above case number;

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8 The employer hereby abandons the disciplinary proceedings commenced against the employee;

9 The employer hereby abandons the restraint of trade against the employee contained in the employee's contract of employment;

10 All the other applicable terms governing the post-employment relationship between the employer and the employee contained in the employee's employment contract shall continue to be of full force and effect;

11 The employer shall issue the employee with a certificate of service in accordance with the Basic Conditions of Employment Act, 1997;

12 The contents of this separation agreement shall remain confidential between the parties and may not be disclosed by any of them for any reason whatsoever unless such party is required in law to make such disclosure, or unless the prior written consent of the other parties is obtained;

13 Nothing contained in this separation agreement shall be construed as an admission and/or acknowledgement by the employer or the chairperson that the employee was suspended, or that disciplinary proceedings against the employee were initiated, or that the employee's services were terminated, unfairly and/or unlawfully. Similarly, nothing in this agreement shall be

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deemed to constitute an admission or acknowledgement by the employee of any wrongdoing whatsoever during his employment with the employer. The parties record that they have entered into the agreement purely for the sake of avoiding the costs, time and inconvenience of continued litigation between them including those occasioned by the disciplinary proceedings brought against the employee.

14 Each of the parties choose as their *domicilium citandi et executandi* the respective addresses set out below for purposes of giving of any notice, serving of any process and for any other purpose arising out of or in connection with this separation agreement. Each of the parties shall be entitled from time to time to vary their *domicilia citandi et executandi* to any other address within the Republic of South Africa which is not a post office box or *poste restante*.

15 For purposes of this agreement, the parties' respective addresses shall be:

The employer:	Ncube Incorporated Attorneys 23-25 Sturdee Avenue Rosebank Terrace North Rosebank
Telephone:	011 880 4204
Fax:	011 880 4183
Email:	bafana@ncubeinc.co.za
The chairman:	Ncube Incorporated Attorneys 23-25 Sturdee Avenue Rosebank Terrace North Rosebank
Telephone:	011 880 4204

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SP

Fax:	011 880 4183
Email:	bafana@ncubeinc.co.za

The employee:	Norton Rose Fulbright South Africa Incorporated Alice Lane Sandton
Telephone:	011 685 8643
Fax:	011 301 3311
Email:	joe.mothibi@nortonrosefulbright.com

16 If any party/parties ("the defaulting party/parties") commits a breach of any of the material provisions of this agreement and fails to remedy such breach within fourteen (14) days of receipt of a written notice from one or both of the other parties ("the innocent party/parties") calling upon him to do so, then the innocent party/parties shall be entitled, without prejudice to any other rights which it/they may have in terms of this agreement and/or at law to:

16.1 cancel this agreement forthwith, with or without claiming damages, if the breach is material in nature;

16.2 obtain an order against the defaulting party/parties for specific performance, with or without claiming damages, and with or without making this separation agreement an order of court; or

16.3 Claim such damages as it/they may have suffered *in lieu of* specific performance together with all amounts owing under or in terms of this agreement.

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17 This separation agreement constitutes the whole agreement between the parties as to the subject-matter of it and no agreements, representations or warranties between the parties regarding the subject-matter of this separation agreement other than those set out in this separation agreement are binding on the parties.

18 No addition to or variation, consensual cancellation or novation of this separation agreement and no waiver of any rights arising from this separation agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

19 No latitude, extension of time or other indulgences which may be given or allowed by any party to another party in respect of the performance of any obligation under this separation agreement and no delay or forbearance in the enforcement of any right of any party arising from this separation agreement and no single or partial exercise of any right by any party under this separation agreement shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this separation agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or terms of this agreement.

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20 If any of the provisions of this separation agreement are unenforceable, then such unenforceable provisions will be deemed to be severed from this separation agreement and the remaining provisions of this separation agreement will continue of full force and effect, as between the parties.

21 The parties declare that this separation agreement was prepared in English at the request of all the parties and that at the time of its signing; they are fully versed in the language and the meaning of this separation agreement.

22 The parties sign this separation agreement on the dates and at the places indicated above their respective names.

23 This separation agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

24 The parties have either read or have had read to them the contents of this agreement and understand the contents. Each party confirms that this agreement is signed by them freely and voluntarily.

25 It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

THUS DONE SIGNED AT JOHANNESBURG ON THIS THE 11th DAY OF JULY 2016

JT TE

Prof. M.O. Maguvhe

PDM SB

FOR THE EMPLOYER
NAME: PROF M O MAGUVHE
DESIGNATION: CHAIRPERSON OF THE BOARD

AS WITNESS:

Signature: D. Gumbi'

Name: DOROTHY GUMBI'

Prof. M.O. Maguvhe

THE CHAIRMAN
MBULAYENI MAGHUVE

AS WITNESS:

Signature:

Name: LISA PHILLIPS

THE EMPLOYEE
FRANS LEKOPA MATLALA

JT TE

SB

AS WITNESS:

Signature: _____

Name: SAFIYYAH BUCKAS

JT TE

Prof. M.O. Maguvhe

FRM

Annexure "A"

1. The amount of R5,481,786.20 as set out in paragraph 2 of the Memorandum of Agreement to which this annexure is attached is equivalent to twelve (12) months' remuneration, excludes the employee's remuneration for the month of July 2016 which the employee shall receive in the normal course, and includes all other contractual and statutory monies due to the employee, and is made up as follows:

Item	Annual TGRP
Basic Salary	3,199,300.08
Car Allowance Advised	216,000.00
Entertain. Allowance	2,500.00
Special Allowance	947,456.64
13th Cheque Allowance (pro rata)	266,608.34
Group Life EE	30,559.80
Housing Allowance	23,640.00
PF ER Contribution	447,902.04
TGRP	**5,133,966.90**

Leave Balance	**36.92**

12 Months TGRP	5,133,966.90
Cash Value of Leave	347,819.30
Grand Total	**5,481,786.20**

*** As per Board Approval**

Prof. M.O. Maguvhe

SB

2. The amounts as set out above shall be subject to all statutory deductions.

3. It shall be the duty of the employee to apply to the South African Revenue Service for any required tax directives.

TE

Prof. M.O. Maguvhe

SB

In the matter between:

THE SOUTH AFICAN BROADCASTING CORPORATION SOC LIMITED Employer

and

THELMA MELK Employee

SEPARATION AGREEMENT

WHEREAS the Employee is employed by the Employer as a Company Secretary in terms of a fixed term contract which is valid for the period 11 August 2011 until 31 August 2013;

WHEREAS both parties wish to amicably terminate the employment relationship before the expiry date of the contract;

NOW THEREFORE, without admission of liability on either party, the parties wish to record the terms of the agreement as follows:-

1. Notwithstanding the provisions of clause 2.1 of the employment contract, the employment contract and employment relationship between the parties will terminate with effect from 30 November 2011;

2. The Employer shall pay the Employee a gross amount of **R2 976 836.70,** before the deduction of tax, representing amounts due and payable to the Employee for the period 01 December 2011 to 31 August 2013. The breakdown of this mount is as follows:

2.1 Basic Salary	R2 025288.90
2.2 Housing Allowance	R35 700.00
2.3 Travel Allowance;	R350 000.07
2.4 Benefit Replacement Allowance	R220 500.00
2.5 Entertainment Allowance	R4 374.93
2.6 Group Life Employer;	R20 803.86
2.7 Medical Aid(Employer)	R36 628.20
2.8 Pension (Employer)	R283 540.74

3. In addition to the above, the Employee shall be paid the value of her accrued leave until 30 November 2011, subject to the deduction of applicable taxes.

4. The above amounts exclude the value of the Employee's retirement fund, which must will be dealt with in terms of the applicable rules of the retirement fund, should the employee be a members thereof.

5. Payment of the amount stated above shall be made subject to the statutory deductions in terms of an tax directive issued by the South African Revenue Service. The Respondent will pay the nett amount to the Applicant within 7 (seven) calendar days after receipt of the original tax directive from the South African Revenue Service.

6. The Employee shall return any item or property belonging to the Employer by not later than 30 November 2011.

JT TE

2

7. Both parties shall not disclose the contents of this agreement to third parties without first obtaining the written consent from the other. It is recorded that this term is material to the separation agreement and its breach will lead to the termination thereof and the right by the innocent party to claim damages from the other, and in the case of the Employer, to claim from the Employee the amount paid to her in terms of cause 3 hereof.

8. The parties agree that any public statement relating to the consensual termination of the Employee's employment agreement will be limited to what is contained in Annexure "A" hereto.

9. This agreement constitutes the entire agreement between the parties and any representation, terms, condition or warranty not contained in this agreement shall not be binding upon the parties. No agreement varying, adding to, deleting from or cancelling this agreement shall be effective unless reduced to writing and signed for on behalf of both parties. No relaxation by a party of any such party's rights in terms of this agreement shall prejudice it or be a waiver of its rights unless it is a written waiver, and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.

10. The settlement agreement is signed out of the parties' own free will and on a voluntary basis.

11. The parties have discussed the terms and conditions of this agreement and acknowledge and accept the legal implications thereof.

12. No indulgence of extension given by either party shall be considered to be a waiver or innovation of such party's rights.

JT TE

Signed at Auckland Park on this 09 day of December 2011.

Employer(duly authorised)

Witness

Signed at Johannesburg on this 28 day of November 2011.

Thelma Melk

Witness

JT TE

ANNEXURE A

TO WHOM IT MAY CONCERN

The SABC had previously resolved to initiate disciplinary proceedings against its company secretary, Ms Thelma Melk. The SABC and Ms Melk have since held discussions which have resulted in an agreement that the disciplinary proceedings against Ms Melk's be discontinued and her fixed term employment contract be terminated by consent.

DR BEN NGUBANE

CHAIRPERSON OF THE BOARD

JT TE

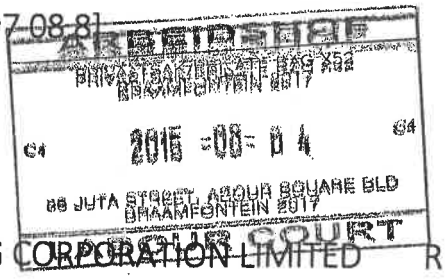
IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)

Case No. JS 565 / 2015

In the matter between:-

WANDA PHUMELELE MKHIZE [IDENTITY NUMBER: 770804 0297 08 8] APPLICANT

And



SOUTH AFRICAN BROADCASTING CORPORATION LIMITED RESPONDENT
(REGISTRATION NO.: 2003/02391/06) (SABC SOC LTD)

LIST OF DOCUMENTS

1.	*ANNEXURE "WPM1"*	-	FIXED SERVICE AGREEMENT
2.	*ANNEXURE "WPM2"*	-	HUMAN CAPITAL SERVICE REPORT (FEB 2013)
3.	*ANNEXURE "WPM3"*	-	SUB-DELEGATION OF AUTHORITY
4.	*ANNEXURE "WPM4"*	-	DELEGATION OF AUTHORITY FRAMEWORK
5.	*ANNEXURE "WPM5"*	-	ACTING IN HIGHER GRADE POLICY
6.	*ANNEXURE "WPM6"*	-	EMAIL DATED 3rd OCTOBER 2014
7.	*ANNEXURE "WPM7"*	-	EMAIL DATED 20th NOVEMBER 2014
8.	*ANNEXURE "WPM8"*	-	EMAIL DATED 4th DECEMBER 2014
9.	*ANNEXURE "WPM9"*	-	GRIEVANCE PROCEDURE POLICY
10.	*ANNEXURE "WPM10"*	-	GRIEVANCE FORM (20 JAN 2015)

11. *ANNEXURE "WPM11"* - PROCEEDINGS TRANSCRIPT (24 MAR 2015)

12. *ANNEXURE "WPM12"* - LETTER DATED 5th MAY 2015

13. *ANNEXURE "WPM13"* - HR LETTER DATED 6th MAY 2015

14. *ANNEXURE "WPM14"* - HUMAN CAPITAL SERVICE REPORT (JAN 2015)

DATED at PRETORIA on this the 29th day of JULY 2015

ATTORNEYS FOR APPLICANT
FLOYD MAKHANYA INCORPORATED
379 Queen's Crescent
Block 7, First Floor
Sunwood Office Park
LYNNWOOD
Tel: (012) 348 4701
Fax: (012) 348 3445
Cell: 0822133807
Email: legal@floydmakhanyainc.co.za
Ref: Makhanya/mkhi 103/CSM 023

TO: THE REGISTRAR OF THE LABOUR COURT
BRAAMFONTEIN
TEL: 011 359 5700
FAX: 011 403 9327

AND TO:

SOUTH AFRICAN BROADCASTING CORPORATION LIMITED
CORNER HENLEY & ARTILLERY ROADS
AUCKLAND PARK
GAUTENG PROVINCE
FAX: 011 714 3130 / 2647

Recieved by Xavier Knight of Employee Relations on 04-08-2015.

JT TE

JS 565/15

THE LABOUR COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)

APPLICATION FOR A CASE NUMBER

1. Particulars of the party instituting proceedings

1.1 Applicant



Name: Wanda Phumelele Mkhize

Address: 1 Monte Cello, Simon Teller Road, Northriding

Telephone number: (011) 714 7428

Fax number: (012) 714 7483

Representative

Name: Floyd Makhanya Incorporated

Physical address: Sunwood Office Park
Block 7, First Floor
379 Queen's Crescent
Lynnwood
Pretoria

Postal address: P O Box 35071, Menlo Park, 0102

Telephone: (012) 348 4701

Fax number: (012) 348 3445

FT TE

Email: legal@floydmakhanyainc.co.za

Your reference number: Makhanya/mkhi 103/CSM022

2. Nature of application: Unfair Labour Practice

Section of the Labour Relations Act 66 of 1995 (as amended) in terms of which the proceedings are instituted:

Section 185(2)(b) read in conjunction with Section 77(3) of BCEA

3. Particulars of the Respondents (if any)

3.1 Respondent

Name: South African Broadcasting Corporation Limited

SABC

Physical address: Corner Henley & Artillery Roads
Auckland Park
Johannesburg

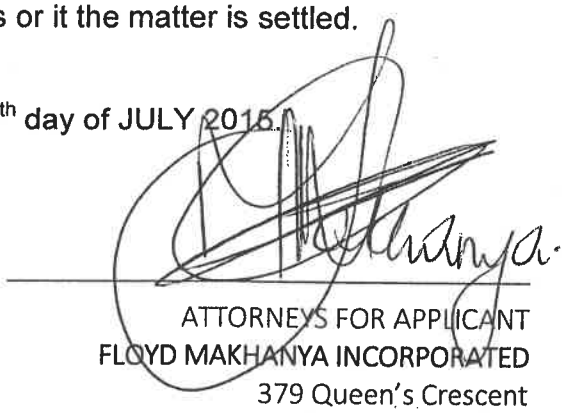
Telephone number: (011) 714 7000

Fax number: (011) 714 3130 / 2647

JT TE

I certify that no previous application for a case for the same parties in the same dispute has been made. I undertake to advise the Registrar in writing if proceedings are not initiated within 30 days or it the matter is settled.

Signed and dated at PRETORIA on this 29th day of JULY 2015.



ATTORNEYS FOR APPLICANT
FLOYD MAKHANYA INCORPORATED
379 Queen's Crescent
Block 7, First Floor
Sunwood Office Park
LYNNWOOD
Tel: (012) 348 4701
Fax: (012) 348 3445
Cell: 0822133807
Email: legal@floydmakhanyainc.co.za
Ref: Makhanya/mkhi 103/CSM 022

TO: THE REGISTRAR OF THE LABOUR COURT
86 JUTA STREET
ARBOUR SQUARE
BRAAMFONTEIN

FAX: (011) 403-9327

COPY
COPY

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

Case No.: JS 565 / 2015

In the matter between:-

WANDA PHUMELELE MKHIZE
[IDENTITY NUMBER: 770804 0297 08 8] APPLICANT

ARBEIDSHOF
PRIVAATSAK/PRIVATE BAG X52
BRAAMFONTEIN 2017
C4
2015 -08- 04
C4
86 JUTA STREET, ABOUR SQUARE BLD
BRAAMFONTEIN 2017
LABOUR COURT

And

SOUTH AFRICAN BROADCASTING CORPORATION LIMITED
(REGISTRATION NO.: 2003/02391/06) (SABC SOC LTD) RESPONDENT

APPLICANT'S STATEMENT OF CLAIM

---

1. The Applicant will accept all notices, communication and documentation herein at the address of her attorneys of record, Floyd Makhanya Incorporated below mentioned.

2. If the Respondent intends to oppose this matter it should deliver its opposing papers within ten (10) days of the statement of claim in terms of Rule 6(3) of the Labour Court Rules, failing which the matter may be heard in the Respondent's absence and an order for costs may be made against the Respondent.

3. <u>The Parties:</u>

3.1 The Applicant is Wanda Phumelele Mkhize, an adult female General Manager: Strategy and Business Development, SABC Television currently residing at 1 Monte Cello, Simon Teller Road, Northriding, Gauteng Province.

JT TE

3.2 The Respondent is the South African Broadcasting Corporation Limited; a state owned company duly incorporated registered and incorporated in terms of the laws of the Republic of South Africa with a principal business address at Corner Henley & Artillery Roads, Auckland Park, Gauteng Province, hereinafter referred to as the "SABC".

4. Nature of the Claim:

This is an unfair labour practice claim in terms of section 185(2)(a) of the Labour Relations Act 66 of 1995 (as amended) read in conjunction with section 77(3) of the Basic Conditions of Employment Act 75 of 1997 (as amended) .

5. Material Facts:

5.1 On or about 1st July 2011 and at Johannesburg the Applicant and Respondent concluded a fixed term general manager service agreement which is in subsistence until 30th June 2016.

5.2 The Fixed Service Agreement is specifically with regard to the General Manager: Strategy and attached hereto as annexure **"WPM 1"**.

5.3 However, in February 2013 the Applicant was formally requested by the Respondent to act as or otherwise step into a position as Acting General Manager for Business Development which position was vacant and further alternatively the Respondent's structure was yet to be finalized regarding same.

5.4 The written Human Capital Services Report, Television Division for the month of February 2013 annexed hereto as annexure **"WPM 2"**thus shows the Applicant was at the time at least been in the acting post for a week.

5.5 Thence the Applicant was wearing two hats, one as General Manager: Strategy as per fixed service agreement and the other as General Manager: Business Development as per Sub-Delegation of Authority which emanates from the Delegation of Authority Framework. These source documents are respectively attached herewith as **"WPM 3 & WPM 4"**.

5.6 Nonetheless, the Respondent approved a policy in a board meeting held on 30th April 2014 to be made effective from 1st May 2015 in terms hereof, *inter alia,* the following:

JT TE

5.6.1 *Where an employee is requested to act in a similar graded/equivalent position, whilst still fulfilling his current job, then payment of an acting allowance will be granted in line with that salary scale code.*

5.6.2 The said policy is annexed herewith as **"WPM 5"**.

5.7 Although, on or about 3rd October 2014, the Applicant became aware such policy exists, she therefore requested back-payments of R11 071 for each of the six (6) months since the new policy came into place being mindful the Applicant continuously acted in as General Manager for Business Development for twenty (20) prior to that. Her claim for six months was for sum of R66 426.00.

5.8 An email dated 3rd October 2014 addressed to Human Resources Manager Miss Merlyn Ashen underlining this request is attached herein as annexure **"WPM 6"**.

5.9 However on or about 20th November 2014 the Applicant sought intervention from her superior Miss Verona Duwarkah in an email dated 20th November 2014 which was replied hereto on 4th December 2014. Both emails are annexed herein as **"WPM 7 & WPM 8"** respectively.

5.9.1 Furthermore, this was in compliance with the Respondent's policy number: HR054/02 Disciplinary, Code of Conduct & Grievance Procedure which has been in place from August 2002 which is annexed herewith as **"WPM 9"**;

5.9.2 On or about 20th January 2015 the Applicant dispatched a grievance form attached herein as **"WPM 10"**. The said grievance form underscores *ex facie* (a) the Respondent's unfair labour practice to pay the acting allowance in terms of its policy, and (b) the Respondent's embargo on the Applicant's employment contract.

5.9.3 Furthermore, Miss Verona Duwarkah was on record with the Applicant that the General Manager: Strategy and Business Development have been amalgamated signifying that the Respondent's structure had been finalized and paragraph 5.3 (above) has been confirmed. It was expedient that the parties herein to negotiate a new employment contract as the fixed service agreement had been rendered *pro non scripto.*

5.9.4 A grievance hearing was heard on 24thMarch 2015, the transcript of the proceedings is attached herewith as **"WPM 11"**.

JT TE

5.9.5 On or about 5th May 2015 the Applicant re-hearing of the grievance hearing where she opined the same was substantively and/ or procedurally unfair. The request directed to General Manager: HR Business Partner Keobokile Mosweu is annexed herein as **"WPM 12"**.

5.9.6 The reposit letter from human resource dated 6th May 2015 stated the matter has been exhausted. The said letter is attached herewith as **"WPM 13"**.

5.9.7 Lastly, over a long protracted period, from February 2013 to January 2015 the Human Resources projected the Applicant as Acting General Manager: Business Development. The Human Capital Services Monthly Report: January 2015 is annexed herewith as **"WPM 14"**.

6. Statement of Legal Issue(s)

6.1 The withholding of the employment benefit or alternatively the denial or refusal of acting allowance amounts to unfair labour practice;

6.2 The withholding of an updated service agreement in line with the Applicant's new job role or alternatively the denial or refusal of an amended service agreement amounts to unfair labour practice and unilateral change of the fixed term service agreement.

7. Relief Sought:

In the circumstances the Applicant requests the Labour Court to make an order in the following terms:

7.1 Declaring the non-payment of the benefit otherwise the acting allowance was both procedural and substantively unfair and amounted to unfair labour practice on the part of the Respondent;

7.2 Directing the Respondent to furnish an employment contract that is reflective of the current status quo or representative of the merged General Manager Strategy and General Manager Business Development position(s).

7.3 Directing the Respondent to pay the Applicant just and equitable acting allowance from 1st May 2014 to the date hereof;

7.4 Cost of this application on attorney and client scale;

JT TE

7.5 Further and / alternative relief.

8. Schedule of Documents and Relevant Documentation:
Schedule of documents that are material and relevant to the Applicant's claim are attached hereto:

8.1	*ANNEXURE "WPM1"*	-	FIXED SERVICE AGREEMENT
8.2	*ANNEXURE "WPM2"*	-	HUMAN CAPITAL SERVICE REPORT (FEB 2013)
8.3	*ANNEXURE "WPM3"*	-	SUB-DELEGATION OF AUTHORITY
8.4	*ANNEXURE "WPM4"*	-	DELEGATION OF AUTHORITY FRAMEWORK
8.5	*ANNEXURE "WPM5"*	-	ACTING IN HIGHER GRADE POLICY
8.6	*ANNEXURE "WPM6"*	-	EMAIL DATED 3rd OCTOBER 2014
8.7	*ANNEXURE "WPM7"*	-	EMAIL DATED 20th NOVEMBER 2014
8.8	*ANNEXURE "WPM8"*	-	EMAIL DATED 4th DECEMBER 2014
8.9	*ANNEXURE "WPM9"*	-	GRIEVANCE PROCEDURE POLICY
8.10	*ANNEXURE "WPM10"*	-	GRIEVANCE FORM (20 JAN 2015)
8.11	*ANNEXURE "WPM11"*	-	PROCEEDINGS TRANSCRIPT (24 MAR 2015)
8.12	*ANNEXURE "WPM12"*	-	LETTER DATED 5th MAY 2015
8.13	*ANNEXURE "WPM13"*	-	HR LETTER DATED 6th MAY 2015
8.14	ANNEXURE "WPM14"	-	HUMAN CAPITAL SERVICE REPORT (JAN 2015)

TAKE NOTICE FURTHER that the Applicant has appointed FLOYD MAKHANYA INCORPORATED at the address set forth below at which it will accept notice and service of all the process in these proceedings.

TAKE NOTICE FURTHERMORE that if you intend opposing this urgent application you are required:

a) To notify the Applicant's attorneys in writing on or before Friday 14th August 2015;
b) To file your opposing paper(s), if any on or before Friday 14th August 2015;
c) To appoint in such notification an address referred in rule 6(5)(d) at which you will accept notice and service of all documentation in these proceedings;
d) In terms of Rule 4 (as amended) service can be received on the email provided at legal@floydmakhanyainc.co.za and we also deem it necessary that you provide the Applicant's attorneys with a forwarding email address expediently.

KINDLY PLEASE ENROLL THIS APPLICATION ACCORDINGLY

JT TE

DATED at PRETORIA on this the 29th day of JULY 2015.

ATTORNEYS FOR APPLICANT
FLOYD MAKHANYA INCORPORATED
379 Queen's Crescent
Block 7, First Floor
Sunwood Office Park
LYNNWOOD
Tel: (012) 348 4701
Fax: (012) 348 3445
Cell: 0822133807
Email: legal@floydmakhanyainc.co.za
Ref: Makhanya/mkhi 103/CSM 022

TO: THE REGISTRAR OF THE LABOUR COURT
86 JUTA STREET
ARBOUR SQUARE
BRAAMFONTEIN
TEL: 011 359 5700
FAX: 011 403 9327

AND TO:

SOUTH AFRICAN BROADCASTING CORPORATION LIMITED
CORNER HENLEY & ARTILLERY ROADS
AUCKLAND PARK
GAUTENG PROVINCE
FAX: 011 714 3130 / 2647

JT TE

Kobus Potgieter

From: Puke Maserumule [puke@maserumule.co.za]
Sent: Friday, June 17, 2016 12:45 PM
To: Kobus Potgieter
Subject: WANDA MKHIZE/SABC

Dear Kobus,

We confirm that The Labour Court today upheld the jurisdictional point in respect of the unfair labour practice claim for an acting allowance as well as the exception in respect of the claim for a new contract. Mkhize has been given leave to amend her claim in respect of the new contract. In our view, the claim has no merit and will eventually be dismissed, if it is indeed filed. Mkhize has been ordered to pay the costs on a party and party scale. We will instruct a cost consultant to prepare the bill and get it taxed.

We thank you for your valued instructions.
Regar5ds,
Puke.

Puke Maserumule
BA LLB (UCT) P G Dip in Labour Law (NU)

Physical Address: Ground Floor, College House, 26 Peter Place, Lyme Park, Bryanston
Postal Address: Suite 34, Private Bag X36, Bryanston, 2021

Cell: 083 610 0116 Tel: 011 300 2820 Fax: 086 295 5787 Email: puke@maserumule.co.za

www.maserumule.co.za

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ATTORNEYS

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Maserumule
ATTORNEYS

Puke Maserumule Attorneys Inc, Registration No 2015/395427/21
Tel: 011 300 2820 Fax: 086 295 5787 www.maserumule.co.za
Email: reception@maserumule.co.za

GAUTENG: Ground Floor, College House,
26 Peter Place, Lyme Park, Bryanston
Postal Address:
Suite 34, Private Bag X36 Bryanston, 2021

Also at Cape Town

Our Ref : Mr. P Maserumule/sz/S1301
selina@maserumule.co.za

Your Ref : Mr. K Potgieter

Date : 2 June 2016

SABC SOC LTD
Private Bag X1
Auckland Park
Email Address: portgieterj@sabc.co.za **"BY EMAIL"**

Dear Sir

RE: WANDA PHUMELELE MKHIZE // SABC

1. The above matter bears reference.
2. We advise that the matter is set down for hearing on **17 June 2016,** for arguments on the *point in limine* we raised.
3. We hereby enclose herein the notice of set own for your kind attention.
4. We hope you find all in order.

MASEREMULE ATTORNEYS
PER: MS S. ZAMBANA

JT TE

JT-557

NB: (POINT IN LIMINE)

NOTICE OF SET DOWN

To: MASELUMULE ATTORNEYS Date: 24-05-16.
Fax: 086 699 2231. Case no: JS 1565/15.
Ref: Mr. Maselumule/sg/SA301

And to: FLOYD MAKHANJA INC.
Fax: 012-348 3445
Ref: Makhanja/Mkhi 103/CSM022.

Dear Sirs

In the matter between:-

SABC LIMITED. Applicant

And

WANDA NTUMELELE MKHIZE. Respondent

1. Please take notice that the above matter has been set down for hearing on the Interlocutory roll in the Labour Court at the 6th floor, Arbour Square Building, at corner of Juta & Melle Streets, Braamfontein, on the 17TH day of JUNE. 2016 at 10:00.

JT TE

Your attention is drawn to the following

2. Withdrawal and postponements: (Rule 13)

2.1 A party who has initiated proceedings and wants to withdraw the matter must deliver a notice of withdrawal as soon as possible.

2.2 If the parties reach a settlement, the party who initiated the proceedings must notify the Registrar of the settlement as soon as possible.

2.3 If the parties agree to postpone the hearing, the party who initiated the proceedings must notify the Registrar as soon as possible.

3 Pagination of documents:

3.1 The applicant or his/her/its representative must prepare a bundle of relevant documents which is securely bound and paginated.

3.2 An index of the paginated bundle must be prepared

3.3 A separate bundle of irrelevant documents, such as copies must be securely bound.

3.4 The bundle must be prepared not less than 10(ten) days before the hearing date.

Yours faithfully

REGISTRAR

JT TE

Office of the Chief Operations Officer
Room 2746, Radio Park Building
Auckland Park
Johannesburg, 2006, Gauteng, South Africa.
Tel +27 11 714-2331 Fax +27 11 714-4159
www.sabc.co.za

AP SHANGASE & ASSOCIATES

6TH Floor Anton Lembede Street
Durban
4001

"WITHOUT PREJUDICE"

Your Ref: P. Shangase/ L2806/hn

Dear Sirs

Re: MS ZAMAMBO MKHIZE/ SABC CCMA CASE NO: KNDB 2977/16

Your Letter dated 13 June 2016 refers.

Ad Paragraph 1:

The SABC has considered the contents of the paragraph and denies the contents thereof. The SABC has never had any intention of renewing your clients fixed term contract of employment and the assertion that a legitimate expectation was created is not only unfounded but it is both baseless and unsupported in law. Even if the SABC had intended to renew your clients fixed term contract of employment, which was never the case, the SABC would not have extended the said fixed term contract to a period beyond your clients retirement age which would have meant that your clients fixed term contract would have been extended for a period not exceeding 20 (twenty months).

Ad Paragraph 2:

The contents of this paragraph as mentioned in Ad Paragraph 1 Supra are baseless and therefore denied by the SABC.

In light of the above, the SABC would like to advise that your client's contract of employment terminated by affluxion of time and therefore terminated lawfully especially because your client was engaged 3 (three) months prior to the termination of the contract and made aware that the SABC did not harbour any intentions of renewing the fixed term contract of employment.

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/30
Non-Executive Directors: Prof M O Maguvhe (Chairperson); Ms L T Khumalo (Deputy Chairperson); Mr V G M Mavuso; Ms N M Mhlekaza; Mr K Naidoo, Dr N A Tshidzumba;
Executive Directors: Mr F L Matlala (Group Chief Executive Officer); Mr G H Motsoeneng (Chief Operations Officer); Mr J R Aguma (Chief Financial Officer); **Company Secretary:** Ms T V Geldenhuys

In an attempt to have the matter resolved *inter parties* as a sign of respect and appreciation of the services that your client offered to the SABC for the duration of her service, the SABC would like to make the following **without prejudice** offer in **full and final settlement** of your claim:

1) The SABC is making an offer of a new contract of employment for a period of **18 (eighteen) months** commencing on the 1st of May 2016 and Terminating on the 17th of January 2018 (on the date that your client is eligible for retirement)
2) The new contract will be on the same salary scale code and same benefits as her previous contract.
3) The SABC will endeavour to place your client in a position it deems suitable and appropriate for her experience and expertise.

We trust that you will find the above in order.

Yours Faithfully

Mr Hlaudi Motsoeneng
Chief Operations Officer ("COO")
SABC SOC LIMITED

JT TE

A.P.SHANGASE & ASSOCIATES

ATTORNEYS / ABAMELI

Suite 601 6th Floor, Mercury House
320 Anton Lembede Street
Durban 4001

P.O. Box 3733
Durban 4000

Telephone : 031 – 307 7200/6/7
Facsimile : 031 – 307 7211
Cellphone : 083 779 1143
Email : nosihle@apshangase.co.za

Our Ref: PS/L2806/nn Your Ref: Date: 27 June 2016

SABC

Office of the Chief Operations Officer

Room 2746, Radio Park Building

Auckland Park

Johannesburg

2006

Dear Mr Hlaudi Motsoeneng

RE: MS ZAMAMBO MKHIZE//SABC.

CASE NO: KNDB 2977/16.

We refer to your letter dated 21 June 2016.

Our client accepts your settlement proposal as contained in your letter under reply.

Kindly advise as to where and when our client should report for duty.

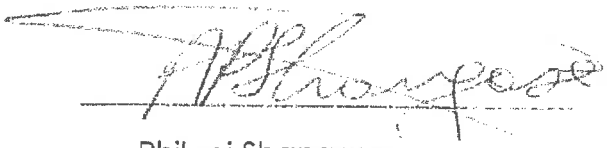
Our client has instructed us that the issue regarding her property transfer costs remain unresolved but she will deal with it upon her reinstatement with your Human Resources.

Managing Partner: *Appolonaris Philani Shangase B Proc. (Natal)*
Associates:
Simangele Cele LL.B (Natal)
Professional Assistant: *Nombuso Mzimela; LLB (North West)*
Cathryn Dorasamy:LLB(UKZN)

JT TE

We would like to thank you for your ability to settle our client's matter at such a short space of time.

Yours faithfully



Philani Shangase

AP SHANGASE & ASSOCIATES

FT TE

Anna Jacobs

From: Jaco Van Staden
Sent: Thursday, July 07, 2016 11:39 AM
To: Anna Jacobs
Subject: FW: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Attachments: Untitled (16).pdf; L2806 LETTER 27 June 2016.docx; SABC / Z MKIZE

Importance: High
Sensitivity: Confidential

From: Jaco Van Staden
Sent: 07 July 2016 10:29 AM
To: Elijah Mokoka
Cc: Petra Campher
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Importance: High
Sensitivity: Confidential

Hi there.

The agreement (Attached letters) indicate that she will be re-employed (paid) for the period 1 May 2016 – 17 January 2018. Due to the fact that she was on Pension Fund during May and June the SABC did the employment contract from 1 July 2016. In my opinion it is better that way and that the remainder (May – June 2016) is paid by once-off as requested by the Acting GE: HR in the attached email to you.

There is therefore no settlement agreement but an offer letter by the COO and an acceptance letter by Zamambo's legal team (attached)

Regards,

Jaco.

Jaco van Staden
Remuneration Information Management Specialist
South African Broadcasting Corporation
Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/

From: Elijah Mokoka
Sent: 07 July 2016 10:11 AM
To: Jaco Van Staden
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Sensitivity: Confidential

JT TE

Hi Jaco

Settlement agreement?, I see Petra also asked for it in the email below.

Regards
E

From: Jaco Van Staden
Sent: 07 July 2016 09:54 AM
To: Elijah Mokoka
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Sensitivity: Confidential

Hi there.

Please pay as per your calc's. The variable portion should therefore be correctly included.

Regards.

Jaco.

Jaco van Staden
Remuneration Information Management Specialist
South African Broadcasting Corporation
Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/

From: Elijah Mokoka
Sent: 07 July 2016 09:51 AM
To: Jaco Van Staden
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Sensitivity: Confidential

Hi Jaco

See attached as per my calculations

Regards
E

From: Jaco Van Staden
Sent: 05 July 2016 02:51 PM
To: Petra Campher
Cc: Elijah Mokoka
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Importance: High
Sensitivity: Confidential

Hi.

JTTE

The person is re-employed from 1 July 2016. The period of May – June must be based on the Annual TGRP in the contract.

Regards.

Jaco.

Jaco van Staden
Remuneration Information Management Specialist
South African Broadcasting Corporation
Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web : http://www.sabc.co.za/

From: Petra Campher
Sent: 05 July 2016 12:36 PM
To: Jaco Van Staden
Cc: Elijah Mokoka; Zak Yunus
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Sensitivity: Confidential

Hi Jaco,

I do not see the settlement agreement attached, do you have a copy all attached here is the contract.

Regards,
Petra

From: Jaco Van Staden
Sent: Tuesday, July 5, 2016 12:21 PM
To: Petra Campher
Cc: Elijah Mokoka; Zak Yunus
Subject: FW: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Importance: High
Sensitivity: Confidential

Dear Petra.

As discussed the Mr Mohlolo Lephaka will forward the settlement agreement for May and June 2016 TGRP to Elijah. As per the attached contract the amount for two months TGRP will be R327,062.14. It would be highly appreciated if the payment could be done by Friday.

She has already been re-instated on SAP w.e.f. from 1 July 2016.

Regards,

Jaco.

JT TE

Jaco van Staden
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South African Broadcasting Corporation
Johannesburg
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Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/

From: Jaco Van Staden
Sent: 04 July 2016 12:57 PM
To: Anna Jacobs
Cc: Zak Yunus; Agnes Mashao; Elijah Mokoka; Petra Campher
Subject: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Importance: High
Sensitivity: Confidential

Dear Anna.

As discussed, attached please find employment contract for Zamambo Mkhize. She should be appointed on the same personnel number but will re-join SABC Pension Fund as a new member (with new Pension Number) wef 1 July 2016. Please liaise with Wayne Smith on details thereof.

Please note that the Acting GE: HR on Friday enquired when we can pay her outstanding amounts. I have not seen any settlement agreement yet unless it has been provided to Elijah.

Regards,

Jaco.

Jaco van Staden
Remuneration Information Management Specialist
South African Broadcasting Corporation
Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/

From: vanstadenjf@sabc.co.za [mailto:vanstadenjf@sabc.co.za]
Sent: 04 July 2016 11:30 AM
To: Jaco Van Staden
Subject: Scan-to-Me from 155.234.216.5 2016-07-04 112822



JT
TF

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JT TE

JT-568

...ana Kirsten

...m:	Elijah Mokoka
...nt:	07 July 2016 09:56 AM
...o:	Raygaana Kirsten
Subject:	FW: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Attachments:	49560.xlsx
Sensitivity:	Confidential

From: Jaco Van Staden
Sent: 07 July 2016 09:54 AM
To: Elijah Mokoka
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Sensitivity: Confidential

Hi there.

Please pay as per your calc's. The variable portion should therefore be correctly included.

Regards,

Jaco.

No, we do not pay variable pension in cash, it is not part of total cost to company.
7/7/2016.

Jaco van Staden
Remuneration Information Management Specialist
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Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/

From: Elijah Mokoka
Sent: 07 July 2016 09:51 AM
To: Jaco Van Staden
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)
Sensitivity: Confidential

Hi Jaco

See attached as per my calculations

Regards
E

From: Jaco Van Staden
Sent: 05 July 2016 02:51 PM
To: Petra Campher
Cc: Elijah Mokoka
Subject: RE: Urgent & Confidentail - Zamambo Mkhize Contract (1 July 2016)

JT TE

PN49560

TGRP

	16-May	16-Jun	Total
Basic Salary	104,380.20	104,380.20	208,760.40
Car Allowance Advised	12,419.80	12,419.80	24,839.60
Entertain. Allowance	140.00	140.00	280.00
Housing Allowance	1,970.00	1,970.00	3,940.00
Other Cash	17,807.78	17,807.78	35,615.56
RPM	8,698.35	8,698.35	17,396.70
Pension Fund	14,613.23	14,613.23	29,226.46
GRP Life	997.04	997.04	1,994.08
	161,026.40	**161,026.40**	**322,052.80**

SABC NEWS

SABC NEWS & CURRENT AFFAIRS

17 APRIL 2019

REQUEST FOR APPROVAL TO MAKE COMPENSATION PAYMENT TO EMPLOYEES WITHIN NEWS DIVISION: ARBITRATION LP4757-18

REGISTRATION NUMBER 2003/023915/30

1. **Purpose**

The purpose of this submission is to obtain authority to pay compensation to the following employees as per **CCMA Arbitration Award LP4757-18** of 21 March 2019 issued by Mr Piet Shai:

a. Mr Sam Mochichila [16706], Executive Producer, Polokwane

b. Ms Rudzani Bologo [10507, News Editor, Polokwane

2. **Background**

The Commissioner was to determine whether the SABC committed an unfair labour practice by not appointing the 1st and the 2nd applicants as mentioned in para 1, which appointment was given to Mr Jubie Matlou the current Provincial News Editor: Limpopo.

Attached herewith as Annexure A is the Arbitration Award Rendered setting out that the SABC would need to pay compensation to the applicants a sum equivalent to Mr Jubie Matlou's ten (10) months wages calculated at the latter's rate at the time of appointment. The amount shall be paid on the **30 April 2019**.

Attached as Annex B is the Remuneration Package of Mr Jubie Matlou as at date of appointment.

3. **Financial implications/Compensation to be Paid**

The SABC is required to pay compensation to the employees mentioned in para 1, a sum equivalent to Mr Jubie Matlou's ten (10) months wages calculated at the latter's rate at the time of appointment. The monthly remuneration of Mr Matlou as the time of appointment is confirmed as **R92 208, 85 per month**.

A total of **R928 088, 50** (Taxable) would be required to be paid each of the employees by 30 April 2019.

4. **Conclusion/Recommendation**

It is recommended that SABC make the compensation payment to the employees mentioned in para 1 by **30 April 2019**, in order that SABC in not taken on by being in contempt of the judgement as per the Award iro Arbitration Case matter LP4757-18. This compensation payment is considered a final settlement on the matter to the two concerned employees.

Mannie Alho [244]
HUMAN RESOURCES MANAGER: NEWS

Arbitration Award Rendered

Case Number: LP4757-18
Commissioner: Piet Shai
Date of Award: 21-Mar-2019

In the **ARBITRATION** between

BEMAWU obo Bologo, Rudzani and 1 other
(Union/Applicant)

and

SABC SOC Limited and Jubie Matlou
(Respondent)

Union/Employee's representative:
Union/Applicant's address: PO Box 203
Wierda Park
0149

Telephone: 0800236298,0126613915
Telefax: 0866715585
E-mail: headoffice@bemawu.org.za, bemawu@gmail.com, legal@bemawu.org.za, ramarumoma@sabc.co.za, mochichilass@sabc.co.za, bologor@sabc.co.za

Employer's representative:
Respondent's address: Private Bag X1
Auckland Park
2006

Telephone: 0117142708,0117142311,0117143819,0117142721,0117144303,0152900179
Telefax: 011 714-403-0300,0117143001
E-mail: grouper@sabc.co.za, xamase@sabc.co.za, munyaite@sabc.co.za, motshekgaml@sabc.co.za, McinekaL@sabc.co.za, muofher@sabc.co.za,

Only signed awards that contain the CCMA approved watermark are authorised.

jubie@sabc.co.za, mphephurn@sabc.co.za, bulanngap@sabc.co.za

DETAILS OF HEARING AND REPRESENTATION

1. The arbitration took place on the 8th November 2018, the 24th January 2019 and the 4th March 2019, at the CCMA office, No 104 Hans Van Rensburg Street, Polokwane.
2. Both parties were present. The applicants were represented by Mr H du Buisson, an official of BEMAWU. The 1st respondent was represented by Mr Sello Xama, whereas, the second respondent represented himself and conducted his own case.
3. Parties requested extension for written submissions of Closing Arguments by given date on 11 March 2019.
4. Both parties submitted written closing arguments and same were taken into account herein.

ISSUE TO BE DECIDED

5. To determine whether the 1st respondent committed unfair labour practice by not appointing the 1st and the 2nd applicants, which appointment was given to the 2nd respondent. If I find that the 1st respondent committed unfair Labour practice, I will determine an appropriate remedy for the applicants.

BACKGROUND ON THE ISSUE

6. The two (2) applicants were employed by the 1st respondent for a number of years. The position of provincial editor of news was advertised. The policy of the 1st respondent is that such a post must be advertised internally and only when a suitable candidate is not found, the respondent can advertise externally.
7. Both applicants acted in the above position on several occasions. Further that the policy of the 1st respondent provides that only qualified employees can be appointed to act in the position. The applicants applied for the position, were selected for interview and duly interviewed. Since then nothing was heard about the outcome. The applicants lodged a grievance

but the matter was not resolved. In the meantime, the position was filled. Only after the filling of the position, the 2nd respondent sort to resolve the grievance.

8. The applicants contended that the appointed incumbent, 2nd respondent Mr Jubie Matlou is unqualified for the position on the basis that they believe they scored higher than him and secondly he had a civil judgment against him, thus not followed procedure when appointing him.
9. The applicants prayed for an order that the process be started all over again, alternatively either of the applicants be appointed in the position or be compensated.

The applicants submitted that the conduct of the 1st respondent therefore amounts to failure to promote since the position is a higher position.

The respondent confirmed that the applicants acted in the position previously and therefore qualified, that they were duly interviewed and ranked. The 1st respondent further confirmed the delay in finalizing the process of appointment of the incumbent as it decided to advertise externally.

The panel decided to compare the internal and external candidates and decided to go externally. There was nothing that prevented the 1st respondent to appoint Mr Matlou. Thus Matlou was offered the position. The 1st respondent is of the view that it followed its own policy and procedure.

SURVEY OF EVIDENCE FOR THE APPLICANTS

MR SAMUEL SELLO MOCHICHILA TESTIFIED UNDER OATH AS FOLLOWS:

He is the executive producer of Lehlokwana La Tsela since 2010, having assumed the same responsibility in 2008 in the Sport Division in Johannesburg. He has fourteen (14) years' experience as a producer and presenters are reporting to him.

He has acted several times as a Provisional Editor. According to the 1st respondent's policy, one can only act in the position if he/she is qualified for the position. He holds a BA degree, majoring in Psychology and

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Education. He has been in marketing, communication and producing. He started as an administration officer at the Human Science Research Council and also worked at Government Communications department. He joined the SABC in 1994.

Pages 1-3 of Bundle B contain an advertised post of Provincial News Editor (Polokwane) Limpopo. He applied for the position as it appears at page 1-3 of bundle A.

Page 3 of bundle B contains the requirements of the position, namely:

- Degree or post graduate qualification, preferably in journalism.
- 8 years' experience in the field of journalism and news gathering.
- 5 years of which must be managerial.
- Ability to manage own and teams time effectively.
- Ability to work to deadlines, under pressure, and when required, irregular hours.
- Ability to analyse and solve problems.
- Ability to be proactive and use own initiative.
- Excellent interpersonal and communication skills (written and verbal)
- Passionate about the pursuit of excellence within the SABC.
- Adaptability.
- Ability to work well under pressure and meet deadlines.
- Ability to work under pressure, long irregular hours and complete tasks in time.
- Computer skills (Ms word, Ms outlook, Ms Excel, The Internet, Dalet/Audacity and EMPS etc)
- Social media skills.
- Possess both a valid driver's license and passport.

There was a delay in the appointment and he enquired with one Mannie after which he lodged a grievance. His grievance was that the process should have been completed within 6 weeks. The grievance was intended to remedy what he regarded as irregularity. At page 98 of bundle A is a policy statement on efficiency, which provided that the above process shall be concluded within a time period of approximately six (6) weeks.

BEMAWU wrote a letter to the 1st respondent complaining about the lack of progress with regard to outcome and also an attempted to stop external

advertisement. This was followed by the 1st respondent sending a report detailing the the reasons for the delay and going external.

When he requested for the record of individuals scores, the 1st respondent indicated that they were destroyed. According to policy, the record of the interview proceedings for shortlisted candidates should be kept for a minimum of sixty (60) months following the selection process.

Further that, the policy of the 1st respondent provides that the position will be advertised eternally after the internal process has been exhausted and no internal candidate has been found suitable. There was no communication which said that he was not suitable. This is confirmed by the fact that he was told that he would still be considered in the next interview, thus following external advertisement.

According to the 1st respondent's policy as contained at page 82 of bundle A paragraph 7.1, the recipients of a grievance form have to call a meeting within three (3) working days, and make sure that all the parties concerned are present. This procedure was not followed with regard to his grievance.

The response from Mr Mannie contained at page 10 of bundle A told him that the policies are not followed due to political interference.

Page 11 of Bundle A contains the second and external advertisement. There is difference with regard to the requirements. The first one required a degree or post graduate qualifications, preferably in Journalism whereas, the second one required a degree in Journalism.

Page 12 of bundle A shows a letter from him complaining about the long time it took to resolve his grievance.

Page 100 of bundle A paragraph 7.2.4 provides that during interviews internal job applicants will be given preference for selection and appointment.

His other complaint was that vetting was requested from his fellow applicant but not from him. He regarded this as inconsistency.

Page 25 bundle A contains an outcome report of the interview that he was not successful. At page 26 of the same bundle, the appointment of Mr Jubie Matlou to the post was announced.

At this stage his grievance was not yet resolved.

At page 85 of bundle A is Mr Matlou's CV and shows that he does not have a journalism degree. Further that he does not have BA (Honours) Broadcasting and film studies. His CV shows Honour's in communications studies.

In terms of the second advertisement, he would not have qualified, as he did not have a journalism degree.

With regard to individual scores contained at page 29 of bundle B, he would not trust them as the source documents were destroyed.

The incumbent, second respondent , was appointed subject to positive verification assessment as it appears at page 30 of bundle B, however, page 33 of the same bundle shows that he was appointed despite a negative assessment as he had a negative credit record. At paragraph 6.1 of page 34, the report continues to say " it should be noted that the inability of a person to manage his/her finances could pose a security risk"

The effect of changing criteria in the second advertisement could have excluded people who would have wanted to apply. The first one was more open.

The witness was not cross examined.

MS RUDZANI BOLOGO testified under oath and confirmed Mr Mochichila's evidence. She was cross-examined.

SURVEY OF EVIDENCE FOR THE EMPLOYER

The 1st respondent elected not to lead evidence.

SURVEY OF EVIDENCE FOR THE 2ND RESPONDENT

MR JUBIE MATLOU TESTIFIED UNDER OATH AS FOLLOWS:

a. He saw the advertisement (2nd one) and followed it with an application. He was called for an interview. Following the interview his qualifications were verified. Thereafter, he received an offer and

accepted it. He started his work life as an intern, worked as a radio current affairs producer, producer for TV, SABC and Channel Africa, and later Good Morning SA, associate editor of Mail and Guardian - political reporting and editing the monitor of development section, Editor of biannual supplement on telecommunications. He also has experience in production and policy. Further that he was part of the Technical team that drafted the current legislation that governs media. He also lectured in television at UJ.

b. The second advertisement required someone with a journalism degree.

c. When it was put to him that he does not have journalism degree he said his degree was in communication but included journalism. His other qualifications are in communication but they include journalism.

d. With regard to verification he admitted that he has an adverse verification.

ANALYSIS OF EVIDENCE AND ARGUMENTS

e. The applicants complained that the 1st respondent in appointing the 2nd respondent, it committed unfair labour practice in that in doing so it breached its policy in the following respects:

- The 1st respondent failed to finalize the interview process within six (6) weeks provided in the policy.
- By not finalizing the grievance in relation to not finalizing the above process within the required period as provided in the policy.
- By breaching its policy of preference for internal candidates before going externally as provided for in the policy.
- By not finalizing the interview process before going external as per policy.
- By appointing the 2nd respondent even though he did not qualify in respect of qualifications and vetting process.

Failure to finalize the interview process within the required period of six (6) weeks.

Only signed awards that contain the CCMA approved watermark are authorised.

10. In terms of the policy of the 1st respondent, the process of interview should be finalized within six (6) weeks. It is common cause that in this case the process was finalized way above the period of six (6) weeks. It actually took months. The 1st respondent proferred no explanation by way of evidence, except by way of response letter to the enquiry by the applicants. This situation resulted with applicants having to file a grievance which will be discussed more fully below.

3.1." **Failure to finalise a grievance procedure within the required period.**

The policy of the 1st respondent provides that the recipient of a grievance form must ensure that he/she convenes a meeting of relevant parties within three (3) days of the receipt of such grievance. In this case it is common cause that grievance lodged by the applicants was attended to after several months, in fact after the appointment of the 2nd respondent, a fact that rendered such a meeting irrelevant.

3.2." **Failure to give internal preference to internal candidates despite that the 1st respondent regarded them as suitable by including them in the 2nd (external) advertisement.**

The policy of the 1st respondent provides that in the interviews, the internal candidate shall be given preference and only when there are no suitable candidates' external candidates may be considered. It is clear in this case that the 1st respondent regarded the two (2) candidates to be suitable by including in the second interview for external candidates. This is a clear violation of 1st respondent's policy and amount to unfair labour practice.

3.3. "Appointment of the second respondent even though he did not qualify.

It is clear that the second respondent does not have a journalism qualification and had a negative assessment. The vetting process reported that he has adverse assessment which could post a security risk. It is my view that he should not have been appointed for above reason. The way the

1st respondent dealt with his appointment gives impression that the position was reserved for him regardless.

3.4. In the process I find that the 1st respondent committed an unfair labour practice by failing to appoint one of the two (2) applicants and by appointing the 2nd respondent although he did not qualify.

The applicants prayed for the setting aside of the appointment and for the process to start all over again. Alternatively prayed for the appointment of either of them in the position or compensation.

3.5. I conclude that compensation is the appropriate remedy in the circumstances.

AWARD

3.6. I find that the 1st respondent has committed unfair labour practice .

3.7. I order the 1st respondent to pay compensation to the applicants a sum equivalent to the 2nd respondent's ten (10) months wages calculated at the latter's rate at the time of his appointment.

The above amount shall be paid on the 30th April 2019.

If the parties do not agree as to the amount above, either of them may approach the CCMA to determine same.

Signature: _____

Commissioner: ***Piet Shai***

Sector: ***Media (parastatal)***

JT TE

Mannie Alho

From: Jaco Van Staden
Sent: Friday, 05 April 2019 8:47 AM
To: Mannie Alho
Subject: Matlou

Importance: High
Sensitivity: Confidential

Personnel Number	00104545
Title	Mr
Initials	H
Surname	Matlou
Scale	125
Position ID	60002358
Position	Provincial News Editor
ID Number	6504205272086
Division & Unit	News - Radio News
Province	Limpopo
SABC Provincial Office	Polokwane
Company	SABC Ltd
Cluster/Division	Operations
Division/Unit	News
Unit/Section	Radio News
Section/Sub-Section	Limpopo Regional Editor
Org ID	50000574
Organisational Unit	Limpopo Regional Editor
Cost Center	1452
Real Start Date	2017-11-01
Cost Center Name	NP NsBu Polek RegEd
Basic Salary (IT008)	59,935.76
Fraction	1
Basic Salary	719,229.12
Housing Allowance	23,640.00
Car Allowance	60,996.00
Entertainment Allowance	780
Other Allowances	121,780.80
13th Cheque	0
Pension Fund (Employer)	100,692.12
Medical Aid (Employer)	72,172.80
Group Life (Employer)	7,215.36
TGRP	1,106,506.20

Jaco van Staden
Remuneration & Information Management Specialist (HR)
South African Broadcasting Corporation

JT TE

Johannesburg
South Africa
Phone : +2711 714-4372
Cell : +2783 453-3038
Fax : +2711 714-5363
E-Mail : vanstadenjf@sabc.co.za
Web: http://www.sabc.co.za/



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JT TE

Arbitration Award

Case Number: *GAJB13971-17*
Commissioner: *Larry Shear*
Date of Award: *20-Jul-2018*

In the **ARBITRATION** between

BEMAWU obo Makalima, Ricky and 3 Others
(Union/Applicant)

and

SABC SOC Limited
(Respondent)

Union/Employee's representative:
Union/Applicant's address: *PO Box 203*
Wierda Park
0149

Telephone: *0800236298,0126613915,0829208669,0848728001,0820864630 ,0797011556,0789482232*
Telefax: *0866715585*
E-mail: *headoffice@bemawu.org.za, bemawu@gmail.com*

Employer's representative:
Respondent's address: *Private Bag X1*
Auckland Park
2006

Telephone: *0117143972,0117144717,0117144303,0117142708,0117142311 ,0117143819,0117144309,0841443109*
Telefax: *011 714-403-0300,0117143001,0117148040,0117146906*
E-mail: *potgieterjj@sabc.co.za, moufher@sabc.co.za, xamase@sabc.co.za, munyaite@sabc.co.za, motshekgamj@sabc.co.za, nkosipm@sabc.co.za, BareE@sabc.co.za, luthif@sabc.co.za*

JT TE

DETAILS OF HEARING AND REPRESENTATION

The matter was heard at CCMA House, Fox Street, Johannesburg on 9 July 2018.

ISSUE TO BE DECIDED

Whether the Applicants' dismissal was fair, at the conclusion of their Fixed Term Contract on 31 May 2017; in terms of the provisions of s198B of the Labour Relations Act.

SURVEY OF EVIDENCE

1. **Mr F Luthi**, the transport manager, testified.

2. Mr Luthi is responsible for the management of staff and vehicles and the maintenance of budgets within the Transport Department.

3. In terms of its operations, the respondent is responsible to provide transport to staff members who work unusually late hours. These would be the hours between 18:00 and 06:00.

4. The applicants in the current matter, were employed on Fixed Terms Contract basis to perform functions in respect of a "pilot project" established for this purpose.

5. In 2007, the respondent appointed a consultant to consider the costs and viability of employing its own drivers for this purpose, or whether to use the services of an external consultant. The consultant tabled a recommendation, and the respondents' management accepted a recommendation to commence with a "pilot project" in respect of providing after hours transport services.

6. The respondent set about purchasing vehicles, which took longer than anticipated. The plan was resuscitated during 2013 when the vehicles were actually purchased.

7. The respondent commenced the process of recruiting drivers for the after-hours transport project.

8. The positions were advertised in March 2014. Those applicants who were short-listed attended interviews. During their interviews, each applicant was informed that the respondent was running an "after-hours driving project" and that any contracts would be on a fixed term basis. They were also informed that the project was a "pilot project" and that there was no expectation of permanent employment. Candidates who were employed, were advised not to terminate their employment relationships, given the fixed term nature of any possible employment.

9. Mr Luthi testified that all the candidates understood this explanation and did not raise any objections.

10. The current applicants were employed in terms of a limited duration contract of employment which specified the period of their employment as running from 4 June 2014 until it would automatically terminate on 31 May 2017.

11. It was specifically stipulated in the contract that once the period specified above had expired, there would be no expectation of renewal or continuation thereof.

12. Mr Luthi explained that there had been some "issues" relating to the tender in respect of the vehicles, and prior to and even during the employment of the applicants' employment, an external service provider

had had and continued to provide afterhours transport services.

13. In fact, Mr Luthi said even during the duration of the pilot project, the applicants did not fulfil the requirements of the limited duration contract and the position stipulated therein. They were in fact idle.

14 In 2017, a decision was taken to terminate the pilot project and not to continue therewith. The services of the external service provider were used for this purpose.

15. **Mr S Mokhele**, one of the applicant's testified.

16. He said that he perused and responded to the advert for afterhour's drivers in March 2014. He referred to the advert (page 72 of the bundle) and said that no mention was made of a limited duration contract in the advertisement.

17. Mr Mokhele attended an interview and he said, likewise, no mention was made of the limited duration nature of the employment offered. The interview only dealt with issues such as driving qualifications and knowledge of Johannesburg roads.

18. He said he could not recall any mention of a limited duration contract, as had been testified by Mr Luthi.

19. After his interview, he received a call a few weeks later, and was requested to attend a driving test. Thereafter, he was required to attend a medical examination and thereafter, received a call from Mr Luthi, who offered his congratulations for his successful employment with the respondent.

20. On 4 June 2014 Mr Mokhele signed his contract of employment. Although he did concede that the contract did stipulate that it was valid for a limited duration, the contract did not make any reference to a pilot project or to any other project, at all.

21. Mr Mokhele denied that he and the other applicants merely "sat doing nothing" during the duration of their employment, and he testified that he and the other applicants were requested to perform airport shuttles and various administrative functions on behalf of the respondent.

22. It was put to Mr Mokhele that the contract was very clear and that it only applied for a limited duration i.e. between 4 June 2014 and 31 May 2017. He said that he was so excited to be offered the position, but he did not take note of this fact, and only became aware of the limited duration after commencing his employment.

ANALYSIS OF EVIDENCE AND ARGUMENT

1. The respondent submitted that in terms of s198B, a Fixed Term Contract is one which terminates upon -

   - The occurrence of a specified event;
   - The completion of a specified task or project; or
   - A fixed date, subject to sub-section 3 thereof.

2. Section 198B(3) states that an employer may employ an employee on a Fixed Term Contract, for longer than 3 months only if –

   - The nature of the work is of a limited duration; or

- The employer can demonstrate any other justifiable reason for the fixed term nature of the contract.

3. S198B(6) states that an offer to employ an employee on a Fixed Term Contract **must** –

   - Be in writing, and
   - State the reasons contemplated in sub-section 3.

4 It is common cause that the applicants did sign a Contract of Employment which is defined as a "Limited Duration Contract of Employment", with the respondent, which was valid from 4 June 2014 until 31 May 2017.

5. The applicants were employed in the capacity of afterhour's drivers.

6. It is also common cause that the advertisement which gave rise to their employment, did not stipulate the limited duration nature of their employment, nor did it stipulate any reference to a particular project.

7. It is further common cause that although the contract of employment did stipulate the limited duration period, it did not mention and nor did it refer to a specific project. The contract of employment did not stipulate the reasons for the limited duration period as is required in terms of s198B above.

8. S198B (6) is clear. An offer to employ on a Fixed Term Contract must be in writing, and, state the reasons contemplated in sub-section 3(a).

9. As already indicated, the contract did not stipulate the reasons for the Fixed Term Contract and nor did it make any reference to a project.

10. It is instructive to note that the respondent did not provide any written proof of the pilot project, in the form of recommendations made by the consultant, nor any reference to any acceptance thereof by the respondent's Board. The only reference to this project is that made by Mr Luthi in his evidence.

11. I am not making any negative inferences regarding Mr Lathi's credibility, but the simple fact is that the respondent has not complied with the provisions of s198B and, more particularly, s198B(6) which requires that the limited duration contract must be in writing and must state the reasons which require a limited duration contract. The contract signed by the applicants are silent on this aspect, and therefore, I must conclude that the exceptions contained in s198B do not apply in the present instance.

12. I therefore conclude that the applicants' fixed terms contracts were not valid, in terms of the provisions of s198B and that therefore the termination of their employment in June 20017 was unfair

13. The applicants are entitled to be reinstated into their positions as after-hours drivers with the respondent.

14. However, the applicants must, to a certain extent, accept responsibility for the fact that they signed a contract which stipulated their period of employment as being from 4 June 2014 until 31 May 2017. They did not query this. For that reason that it would be fair or equitable to award compensation for the full period that the applicants had been unemployed, and it is my intention to award compensation to each applicant, which is equivalent to five month's salary, i.e. R10 885.92 x 5 = R54 429.60.

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AWARD

1. For all the reasons set out above, I find that the Applicants dismissals were unfair.

2. The Respondent, The SABC is ordered to pay each Applicant, i.e. Mr Ricky Makaila, Mr Albania Siyothila, Mr Sechaba Mokhele and Mr Caiphus Masimula the sum of R54 429.60, each.

3. Payment is to be made by no later than 1 August 2018.

L Shear

Signature: _____

Commissioner: L SHEAR

Sector: _____

JT TE

Cecilia van Zyl

From: BEMAWU HEADOFFICE <headoffice@bemawu.org.za>
Sent: 13 December 2018 07:30
To: Sello Xama
Cc: Jonathan Thekiso
Subject: Arbitration Award | Makalima & others

Dear Sirs,

The arbitration award declaring the dismissals of Messieurs RICKY MAKALIMA, DIBANISA SIYOTHULA SECHABA MOKHELE and CAIPHUS MASIMOLA both substantively and procedurally unfair has reference.

The four BEMAWU members were employed on Fixed Terms Contracts as drivers at the SABC, earning below the threshold as published from time to time in the Government Gazette.

Despite being warned not to terminate the contracts of our members at the expiry of their contracts, the SABC proceeded with the termination of same.

The CCMA has found these dismissals to be unfair, and reinstated the four BEMAWU members.

Our members will report for duty on Monday, 17 December 2018.

Kindly ensure their smooth reintroduction to the workplace.

Sincerely,

Hannes du Buisson
BEMAWU

JT TE

SEPERATION AGREEMENT

entered into between

SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD

("the employer")

and

LULAMA MOKHOBO

("the employee")

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3. **TERMS OF THE SEPARATION AGREEMENT**

3.1. The fixed term employment contract and the employment relationship between the employer and the employee will terminate on 28 February 2014.

3.2. The employer will pay the employee the following amounts on termination:

3.2.1. R 4,221,179.22 (Four million two hundred and twenty one thousand one hundred and seventy nine rands and twenty two cents) which is equivalent to 12 months' of the employee's gross cost to company at her current total cost remuneration level of R4,221,179.22 (Four million two hundred and twenty one thousand one hundred and seventy nine rands and twenty two cents) per annum;

3.2.2. R1, 400,736.96 (One million four hundred thousand seven hundred and thirty six rands and ninety six cents), in respect of the restraint of trade payment provided for in clause 18.8.1 of the employment contract and **Annexure A** of the employment contract, which is the equivalent of the employee's six months basic salary; and

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3.2.3. Accrued annual leave as at 28 February 2014 in the amount of R395,652.51 (Three hundred and ninety five thousand six hundred and fifty two rands and fifty one cents).

3.3. The employee accepts the payments and benefits contained herein without any admission by either of the parties that they breached the terms of the employment contract prior to its consensual termination.

3.4. The above payments are in full and final settlement of all and any claims that the employee may have had against the employer arising out of her employment contract and the termination thereof. This amount is inclusive of all other benefits to which she may have been entitled to and all other claims that he may have.

3.5. Payment to the employee of her retirement fund benefits will be calculated in accordance with the rules of that Fund. The employer will liaise directly with the retirement fund in respect of the payment of her benefits. The value of the retirement fund is not included in the settlement amount referred to in clause 3. 4 above.

3.6. The employee will apply for and obtain a tax directive from the South African Revenue Services (SARS) and the employer will pay

the employee the settlement amount, net of tax within 14 days after the tax directive has been issued.

3.7. The employee will apply for and obtain a separate tax directive from the South African Revenue Services (SARS) in respect of the restraint of trade and the employer will pay the employee an amount net of tax.

3.8. The employer will pay the employee the net amount in respect of the restraint of trade payment within 30 days after the expiry of the six months' restraint period calculated from 1 March 2014, provided that the employee would have complied in full with the terms of the restraint of trade agreement. In the event of a dispute over whether or not the employee has complied with the restraint of trade agreement in full, such dispute shall be referred to expedited private arbitration under the auspices of AFSA, which shall appoint a suitably qualified arbitrator to arbitrate the dispute. The employer and employee shall share the cost of the arbitration fees charged by AFSA in equal shares.

3.9. The employee acknowledges that she remains bound by the provisions of the confidentiality clause of her employment contract(clause 16 thereof) and is obliged to respect the confidentiality of company information which she has acquired as a

JT TE

result of her employment and undertakes to continue to keep such information confidential and not to disclose it to third parties without the company's written consent.

3.10. Both parties agree and undertake not to make negative or derogatory comments about or concerning the other, and in the case of the company, including its shareholders, directors and employees, in any manner whatsoever. The parties acknowledge that this is a material term of the agreement and any breach thereof will entitle the other party to terminate the agreement and take such legal steps as it may be entitled to, including but not limited to recover whatever may have been paid hereunder.

3.11. The parties agree to keep the terms of this separation agreement confidential and not to disclose them to third parties, save in so far as they are legally obliged to do so by law.

3.12. This agreement shall be in full and final settlement of any claims that may exist between the parties hereto, arising out of or as a consequence of the termination of the employee's employment contract. The employee agrees not to institute any claim in any tribunal or court to challenge the termination of her employment contract.

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3.13. This agreement shall constitute the entire Agreement between the parties and no representations, terms, conditions or warranties not contained in this Agreement shall be binding upon the parties.

3.14. No agreement adding to, deleting from or cancelling this Agreement shall be effective unless reduced to writing and signed by or on behalf of both the parties.

3.15. No relaxation by a party of any such party's rights in terms of this Agreement shall prejudice such rights or be considered a waiver of her or its rights (unless it is reduced to writing) and each party shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.

3.16. No party may cede any of its rights or delegate or assign any of its obligations in terms of this Agreement without the prior written consent of the other party.

3.17. The parties agree that any costs incurred by either of them as a result of a breach by the other party of the terms of this agreement may be recovered from the party in breach in full, on the attorney and client scale unless a court orders otherwise, which costs shall

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include collection charges, tracing agents fees and storage charges.

Thus signed at Boksburg **this the** 23rd **day** January **2014.**

_____ **(the employee)**

_____ **(by and on behalf of the employer)**

_____ **(witness)**

_____ **(witness)**

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AGREEMENT OF SETTLEMENT

MADE AND ENTERED INTO BETWEEN

THE SOUTH AFRICAN BROADCASTING CORPORATION LTD

(Hereinafter referred to as "the Employer")

And

QABANG MICHAEL SOLLY MOKOETLE

(Hereinafter referred to as "the Employee")

WHEREAS the Employer has employed the Employee in the position of Group Chief Executive Officer from 1 January 2010 until 31 December 2014.

AND WHEREAS the parties have agreed to terminate the employment relationship between them by mutual consent in terms of this Agreement of Settlement.

NOW THEREFORE the parties agree as follows:

1. the Employer hereby withdraws all disciplinary charges against the Employee;

SPM C.S. I D JT TE

2. the Employee hereby resigns as Group CEO of the Employer with effect as from 19 January 2011 and the Employee shall be paid his normal monthly salary for the month of January 2011;

3. the Employer will pay the Employee, on an *ex gratia* basis, an amount equal to 1 (one) years salary within 30 (thirty) days from date of signature hereof after the Employee has obtained a tax directive from the South African Revenue Services indicating the nett amount payable to him;

4. the Employer will pay to the Employee an amount equals to the value of any accrued annual leave due to him as at 19 January 2011;

5. the Employer will provide to the Employee a certificate of service as well as a duly signed UIF form;

6. the parties will issue a joint statement to the Media to the effect that the parties have settled all disputes between them and that the employee has resigned and will now pursue his career elsewhere and that the parties wish one another well for the future. Neither

SDM C.S. 1.0 JTE

party shall thereafter grant interviews to the Media or otherwise make comments concerning this matter;

7. this settlement agreement is in full and final settlement of all and any claims of whatsoever nature and howsoever arising relating to the employment relationship, the consensual termination thereof and all other dispute(s) between the parties;

8. this agreement constitutes the full and final terms of agreement between the parties and no other agreement or undertaking will be of any force or effect, save in so far as it is recorded herein;

9. the parties have agreed to keep the terms of the Settlement Agreement confidential and will not disclose them to third parties otherwise than as agreed to in this agreement.

DATED AT JOHANNESBURG on this 19 day of JANUARY 2011

AS WITNESS:

1. _____

2. _____

_____

FOR: THE EMPLOYER

NAME: Cedric Gina

Duly Authorised Representative of SABC Board.

5

L.D

JT TE

DATED AT JOHANNESBURG on this 19th day of JANUARY 2011

AS WITNESS:

1. _____

2. _____

_____

THE EMPLOYEE

Q.M.S. MOKOETLE

JT TE

SABC

Group Human Capital Services
26th Floor, Radio Park, Henley Road
Auckland Park, 2094
Private Bag X1, Auckland Park, 2006
Johannesburg, Gauteng, South Africa
Tel +27 11 714-4711, Fax +27 11 714-5363
Email: mosweuke@sabc.co.za

Memorandum

Sensitivity:	**Confidential**
Priority:	**High**
Attention:	**Group Chief Executive Officer**
Re:	**SABC// Phil Molefe**
Date:	**23 May 2013**
From:	**Keobokile Mosweu**

☒ **For Authorisation**	☐ **For Your Information**
☐ **For Action**	☐ **Please Revert**
☐ **For Your Comments**	☐ **Returned With Thanks**

1. INTRODUCTION AND PURPOSE

The matter between SABC and Phil Molefe was presented to the Board at its Special Meeting of 29 April 2013.

The Board resolved that the SABC settle with Mr Molefe in respect of the remainder of his employment contract, less legal costs that the SABC incurred on the matter as per the cost order awarded in favour of SABC by the South Gauteng High Court on 19 December 2012.

This document seeks to acquire approval on the principles that will be applied for the payment to Mr. Molefe.

2. PAYMENT

2.1 Costs that would be needed to be paid to Molefe as per the Board resolution are as per below:

- The payout equates to R4, 550,028.87 plus leave pay of R448, 180.20; which equates in total to R4, 998,209.07
- This amount must be subjected to tax first, unless there is a directive by SARS to treat it otherwise.
- The amount after tax will still be further reduced with the estimated Legal costs (R600,000) until the true legal costs are calculated by the courts and submitted to

South African Broadcasting Corporation SOC Limited: Registration Number: 2003/023915/06
Non-Executive Directors: Ms Ellen Tshabalala (Chairperson); Ms Noluthando Gosa (Deputy Chairperson)
Dr Iraj Abedian; Mr Ronny Lubisi; Mr Vusumuzi Mavuso
Executive Directors: Ms Lulama Mokhobo (Group Chief Executive Officer); Ms Gugu Pride Duda (Chief Financial Officer)
Mr Hlaudi Motsoeneng (Acting Chief Operations Officer) Company Secretary: Ms Theresa Geldenhuys

SABC. This amount will be retained by SABC as per the Court order for legal fees to be recovered (this is an estimate since the actuals are not available at present). Once the actuals are submitted to SABC, the difference will be calculated and if there is any balance owing to Mr Molefe, it will be paid.

2.2 The total costs are from 1 June 2013 until contract expiry date of 1 June 2015.

2.3 The leave days accumulated are upto May 2013 and payout is capped at 90 days as per policy.

3. FULL AND FINAL SETTLEMENT

- It is the understanding as per the Board resolution that the payout to settle the matter is the value up to the contract expiry date.
- Employee Relations will prepare the necessary documents and arrange for it be delivered to Mr Molefe, via our attorneys, who will liaise with Mr Molefe's attorneys.

4. GENERAL

- Once these principles are signed off, Employee Relations must instruct payroll on the exact date for the payment to be made to Mr Molefe, after our attorneys have submitted a letter to this effect to Mr Molefe's attorneys.

Regards,

KEOBOKILE MOSWEU
GROUP EXECUTIVE: HCS (ACTING)

LULAMA MOKHOBO
GROUP CHIEF EXECUTIVE OFFICER

Total Cost to Company Information

Name	Mr TP Molefe
Position	Group Executive: News
Scale	115
Start Date	01-Mar-94
Date of Birth	13-Jul-58
Contract Period	1 June 2010 - 1 June 2015
Months Remaining	24 Months

Item	Annual Amount	Monthly Amount
Basic Salary	1 629 219.96	135 768.33
Car Allowance	168 000.00	14 000.00
Housing Allowance	20 400.00	1 700.00
Other Allowances	168 676.56	14 056.38
Pension Fund	228 090.79	19 007.57
Group Life	15 562.32	1 296.86
Medical Aid	45 064.80	3 755.40
Total Cost to Company	**2 275 014.43**	**189 584.54**

Potential Settlement	
Remainder of Contract (24 Months)*	4 550 028.87

May 2013 salary will be paid to Mr. Molefe as normal
**** Calculation based from June 2013 until contract expires***

Leave	Days	Value
Total Leave Balance	199.74	994 661.26
Max SABC Pay out as per policy	90	448 180.20

Retaining Legal costs as per Court Order	600 000.00

Summary of Total payable	
Remainder of Contract	4 550 028.87
Leave days payout	448 180.20
Less Legal Costs (note: Legal costs are estimates by attorneys)	600 000.00

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16 May 2013 **Confidential**

South African Broadcasting Corporation Limited

MOHLOLO LEPHAKA
GROUP EXECUTIVE: HUMAN RESOURCES (ACTING)
Radio Park , Cnr Artillery and Henley Roads , Auckland Park, 2092. Private Bag X1 , Auckland Park 2006 , Johannesburg, Gauteng, South Africa.
Tel +27 11 714 3331 www.sabc.co.za
Email: lephakam@sabc.co.za

19 OCTOBER 2016

MR TE MOLOKWANE
GROUP EMPLOYEE RELATIONS CONSULTANT
EMPLOYEE RELATIONS
SABC
JOHANNESBURG

Dear Mr Molokwane

RE : SABC // TE MOLOKWANE – INTENTION TO SUSPEND / EARLY RETIREMENT

The above issue has reference.

Pursuant to the SABC's notification of an intention to suspend you, you requested the SABC to consider granting you permission to leave on early retirement.

In light of the above, management has resolved the following:

1. To grant you permission to go on early retirement with your last day in service being **31 October 2016**;
2. To make good the employer's and employee's pension fund contributions until **31 January 2017**; and

JT TE

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/30
Non-Executive Directors: Prof M O Maguvhe (Chairperson); Ms L T Khumalo (Deputy Chairperson); Ms N M Mhlakaza; Dr N A Tshidzumba;
Executive Directors: Mr J R Aguma (Acting Group Chief Executive Officer); Ms B L Tugwana (Acting Chief Operations Officer); Ms A Raphela (Acting Chief Financial Officer); **Company Secretary:** Ms T V Geldenhuys

3. You will be granted the benefit of the forty (40) years long service awards.

Please note that acceptance of the above has to be confirmed by no later than **12:00** on **Thursday 20 October 2016**, failing which your representations as to why you should not be suspended , should reach the office of writer hereof by no later than **12:00** on **Friday 21 October 2016**.

I trust you will find the above in order.

Yours faithfully

MOHLOLO LEPHAKA
GROUP EXECUTIVE : HUMAN RESOURCES (ACTING)

I, EDDIE MOLOKWANE, hereby acknowledge receipt of the letter and have noted the contents thereof.

SIGNATURE

19. 10. 2016
DATE

I accept.

19. 10. 16

JT TE

SABC

Mr TE Molokwane (42068)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	2 Months	3 Months	4 Months	6 Months	Remainder of Contract (8 Months)
Basic Salary	1 027 056.96	85 588.08	171 176.16	256 764.24	342 352.32	513 528.48	684 704.64
Housing Allowance	23 640.00	1 970.00	3 940.00	5 910.00	7 880.00	11 820.00	15 760.00
Car Allowance	60 996.00	5 083.00	10 166.00	15 249.00	20 332.00	30 498.00	40 664.00
Other Cash	9 078.72	756.56	1 513.12	2 269.68	3 026.24	4 539.36	6 052.48
Entertainment Allowance	780.00	65.00	130.00	195.00	260.00	390.00	520.00
Group Life	9 810.48	817.54	1 635.08	2 452.62	3 270.16	4 905.24	6 540.32
Medical Aid	44 280.00	3 690.00	7 380.00	11 070.00	14 760.00	22 140.00	29 520.00
RPM 13th Cheque Allowance	85 588.08	7 132.34	14 264.68	21 397.02	28 529.36	42 794.04	57 058.72
Pension Fund	143 787.97	11 982.33	23 964.66	35 946.99	47 929.32	71 893.99	95 858.65
Grand Total	**1 405 018.21**	**117 084.85**	**234 169.70**	**351 254.55**	**468 339.40**	**702 509.11**	**936 678.81** A

Item	Current Annual TGRP	Current Monthly TGRP	2 Months	3 Months	4 Months	6 Months	Remainder of Contract (8 Months)
Employee Pension Contribution	61 623.42	5 135.28	10 270.57	15 405.85	20 541.14	30 811.71	41 082.28
SABC Pension Contribution (16.5%)	169 464.40	14 122.03	28 244.07	42 366.10	56 488.13	84 732.20	112 976.27
Total Pension Fund Contribution	**231 087.82**	**19 257.32**	**38 514.64**	**57 771.95**	**77 029.27**	**115 543.91**	**154 058.54**

Number of Leave Days	**33.25954**
Cash Value of Leave	**101 299.72** B
Total Amount (A + B)	**1 037 978.53**

Cash Value of Gold Coin	**30 034.63**
Cash Amount	**22 033.90**
Total Value of LSA (Before Tax)	**52 068.53**

Calculation excludes Oct 2016 Salary which will be paid through Payroll

B = Inclusive of 5 Days Head Official Leave

jvs/19 October 2016

SABC
Vuka Sizwe!

GENERAL MANAGER: GROUP EMPLOYEE RELATIONS
Radio Park
Henley Road
Broadcasting Centre
Johannesburg 2092
Private Bag X1
Auckland Park 2006
Tel: 011 714-3972
Fax: 011 714-4030
Internet: http://www.sabc.co.za

INTERNAL MEMORANDUM	
Date:	TUESDAY, 12 JULY 2011
To:	MR. JUSTICE NDABA (ACTING GE:HCS)
Cc:	
Subject:	SABC/ R. MONTSHO

✓	For Authorization	☐	For Your Information
✓	For Action	☐	Please Revert
☐	For Your Comments	☐	Returned With Thanks

Dear Mr. Ndaba

PURPOSE

The purpose of this memorandum is to source approval and authorization from the Acting GE: HCS to settle this matter on the basis that Mr. Rapitse Montsho ("Montsho") be paid the remaining balance of his contract of employment.

BACKGROUND

During the course of July 2009 Mr. Montsho was suspended as a result of allegations of serious misconduct. Subsequent to his aforesaid suspension Mr. Montsho was taken through a process of disciplinary hearing which was presided over by an external chairperson. Several charges of serious misconduct were leveled against Mr. Montsho. The SABC and Mr. Montsho

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/06
Non-Executive Directors: Dr Ben Ngubane (Chairperson); Mr Sembie Danana; Mr Cedric Gina; Mr Desmond Golding; Dr Philippa Green; Mr Peter Harris; Advocate Cawe Mahlati; Dr Patricia Makhesha; Mr Clifford Motsepe; Mr Lumko Mtimde; Ms Clare O'Neil; Ms Suzanne Vos
Executive Director: Mr Phil Molefe (Act Group Chief Executive Officer)
Company Secretary: Ms Thelma Melk

were legally represented in the disciplinary hearing. The disciplinary hearing was finalized on 08 April 2011 and the chairperson's disciplinary hearing ruling was received on 23 June 2011. The ruling of the disciplinary hearing acquitted Mr. Montsho on all the charges that were leveled against him. The disciplinary hearing chairperson uplifted Mr. Montsho's suspension and directed him to report for duty on 27 June 2011. The disciplinary hearing chairperson further ordered the SABC to facilitate a process of the viewing of the tapes to allow Mr. Montsho to remove his personal tapes.

Subsequent to the receipt of the aforesaid chairperson's disciplinary hearing ruling, the SABC wrote and dispatched a letter to Mr. Montsho placing him on special leave whilst the SABC management was considering its options regarding the ruling. An offer of 12 (twelve) months mutual separation settlement was then made to Mr. Montsho. Mr. Montsho made a counter offer which was subject to the following conditions:

1. That the SABC should provide him with written proof that the SABC Board knew and was aware of the offer of 12 (twelve) months mutual separation;
2. That he be paid the entire balance of his contract of employment;
3. That the SABC pays his alleged un-quantified legal costs;
4. That the SABC compensate him for his alleged defamation;
5. That the SABC compensate him for his alleged loss of copyright usage;
6. That the SABC compensate him for his alleged malicious criminal prosecution;
7. That the SABC should honour his alleged contract that should have been entered with him for the production of the Mandela documentary;
8. That Mr. Phil Molefe should unconditionally resign from the SABC with immediate effect; and
9. That the SABC should issue a media statement that Mr. Phil Molefe lied to the SABC Board to take disciplinary action against him and that Mr. Molefe deliberately gave false evidence against him during his disciplinary hearing.

On 01 July 2011 the SABC complied with the order of the disciplinary hearing ruling by holding a verification of exercise to allow Mr. Montsho remove his personal tapes. Mr. Montsho is still on special leave.

JT TE

RECOMMENDATIONS

Based on the evidence that was presented at the disciplinary hearing by various witnesses who are in the employ of the SABC and the consultations with GE: News and Current Affairs, Mr. Phil Molefe it is clear that the relationship between Mr. Montsho and the SABC has irretrievably broken down to such an extent that it cannot be resuscitated. Furthermore the SABC is not in a position to comply with the conditions that have been set by Mr. Montsho in his counter offer.

It is hereby recommended that Mr. Montsho be paid the remaining balance of his contract of employment which is 15 (fifteen) months. The total cost of the separation would be approximately R 1 219 370.00 (one million two hundred and nineteen thousand three hundred and seventy rands only). This includes total cost to company and the remaining leave days.

Regards

THABISO LESALA
ACTING GM: GROUP EMPLOYEE RELATIONS AND
GM: LEARNING AND DEVELOPMENT

APPROVED / NOT APPROVED

19/8/14

JUSTICE NDABA
HEAD OF STRATEGY AND ACTING GE: HUMAN CAPITAL SERVICES

Approved / ~~Not Approved~~

PHIL MOLEFE
ACTING GROUP CHIEF EXECUTIVE OFFICER

JT TE

South African Broadcasting Corporation Limited

Office of the Group Executive | Television
Television Centre Cnr Artillery and Henley Roads
Auckland Park 2006. Private bag X41 Auckland Park
2092 Gauteng South Africa.
Tel +27 11 714-6129 www.sabc.co.za

Memorandum

Sensitivity:	CONFIDENTIAL
Priority:	HIGH
Attention:	CHIEF OPERATING OFFICER – MR HLAUDI MOTSOENENG (Acting)
	Cc: GROUP EXECUTIVE – MR KEOBOKILE MOSWEU (Acting)
Re:	SETTLEMENT AGREEMENT : JACQUELINE MOTSEPE
Date:	27 NOVEMBER 2012
From:	GROUP EXECUTIVE : TELEVISION – VERONA DUWARKAH

☐ For Authorisation	☐ For Your Information
☐ For Action	☐ Please Revert
☐ For Your Comments	☐ Returned With Thanks

Dear Mr Motsoeneng,

Discussions have taken place between myself and Jacqueline Motsepe relating to the desire to terminate the employment relationship on the terms and conditions as set out in the Agreement of Settlement.

The SABC will pay Ms Motsepe the amount of ten months remuneration as a lump sum (once-off) payment.

Regards

Verona Duwarkah
GROUP EXECUTIVE : TELEVISION

JT TE

Privacy and Confidentiality Notice
The information contained in this facsimile is intended for the named recipient/s only. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this facsimile in error, please notify us immediately by calling the above telephone number.

AGREEMENT OF SETTLEMENT

entered between

Ms Jacqueline Moepeng Motsepe
("Motsepe")

and

SABC LIMITED
("SABC")

("the parties")

1. **INTRODUCTION**

It is recorded that:

1.1 Discussions have taken place between the parties relating to the desire to terminate the employment relationship between them on an amicable basis.

1.2 Pursuant to these discussions, the parties have concluded a settlement agreement relating to the early termination of the contract (that should have come to an end on 30 September 2013), and wish to record the terms and conditions thereof below.

2. **PAYMENT**

2.1 The SABC will pay Ms Motsepe the amount of 10 (ten) months' remuneration (for December 2012 – September 2013), calculated on a total cost to company basis in an amount of **R 882 008.10** The SABC will also pay Ms Motsepe the cash value of her leave accrued up to 30 November 2012.

2.2 The total gross amount paid to Ms Motsepe will be subject to taxation.

2.3 Ms Motsepe agrees to apply within 5 (five) days from date of signature hereof for a tax directive from South African Revenue Services ("SARS") in respect of the settlement payable to her in terms of clause 2.1 of this agreement.

2.4 Within a period of 5 (five) working days from date of obtaining of such directive, the SABC will make payment to Ms Motsepe in accordance with that tax directive.

2.5 The payment of above mentioned amount within the stipulated period, will be subject to Ms Motsepe doing a successful handover of all projects/tasks/duties she is currently performing, to the Group Executive: Television, before leaving the service of the SABC.

3. CONFIDENTIALITY

3.1 The parties undertake to keep secret and confidential the terms of this settlement agreement. Ms Motsepe agrees not to divulge the details of this settlement reached between the parties other than to her independent legal or financial advisors.

3.2 Ms Motsepe also agrees to keep confidential any information of a confidential nature to which Ms Motsepe was privy during the course of her employment relationship with the SABC, in accordance with her obligations under her contract of employment with the SABC.

3.3 The parties record that any such breach of the above confidentiality provisions will be considered a material breach of this agreement.

4. FULL AND FINAL SETTLEMENT

This agreement has been entered into in full and final settlement of any and all claims of whatsoever nature which Ms Motsepe has had or may have against the SABC arising from the termination of her employment with the SABC. The effective date of termination of service is 30 November 2012.

5. GENERAL

It is recorded that the settlement has been entered into without any admission of liability by any party hereto, and in order simply to settle the matter. No party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the parties or their representatives.

No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

THUS DONE and SIGNED at _____ on this the _____ day of November 2012, in the presence of the undersigned witnesses:

AS WITNESSES :

1. _____

2. _____

_____

JM Motsepe

THUS DONE and SIGNED at _____ on this the _____ day of November 2012 in the presence of the undersigned witnesses:

AS WITNESSES :

1. _____

2. _____

_____

For and on behalf of **the SABC**, he/she being duly authorized hereto

L.S

Annexure A

SABC

Total Cost to Company Information

Name	Ms JM Motsepe
Position	General Manager: International Content
Scale	120
Contract Period	1 October 2008 - 30 September 2015
Months Remaining	10 months

Item	Annual Amount	Monthly Amount
Basic Salary	676 372.68	56 364.39
Car Allowance	120 000.00	10 000.00
Housing Allowance	16 200.00	1 350.00
Other Allowances	121 680.00	10 140.00
Pension Fund	94 692.24	7 891.02
Group Life	6 460.80	538.40
Medical Aid	23 004.00	1 917.00
Total Cost to Company	**1 058 409.72**	**88 200.81**

Settlement	
Remainder of Contract (10 Months)	882 008.10

JT TE

Arbitration Award Rendered

Case Number: *HO5140-18*
Commissioner: *Cameron Morajane*
Date of Award: *25-May-2019*

In the **ARBITRATION** between

Tshilla Elijah Munyai
(Employee)

and

SABC SOC Limited
(Employer)

Employee's representative: *No Legal or Union official*
Union/Applicant's address: *49 Griffendale*
Paul Colin Avenue
Edleen
Kempton Park
Telephone: *0658628166,0710487349*
Telefax: *0117143001*
E-mail: *zeamun@gmail.com*

Employer's representative: *Allen Visser*
Respondent's address: *Private Bag X1*
Auckland Park
2006

Telephone: *0117142703,0117144304*
Telefax: *011 714-403-0300,0117143001*
E-mail: *xamase@sabc.co.za, McinekaL@sabc.co.za, visseral@sabc.co.za*

Particulars of proceedings and representation

1. The matter was heard at the Head office of the CCMA, on the 25th March 2019, 26th March 2019, 8th April 2019, 15th April 2019, 16th April 2019 and 30th April of 2019. The final sitting of the case was on the 15th of May 2019. The parties presented mitigation for the employee and aggravation for the employer, after I, as commissioner, made a finding against the employee that he actually committed the acts misconducts as alleged. The matter was mechanically recorded.

2. It is also important to note that in this award and also during the proceeding, I only referred to parties as an employee and employer respectively; not applicant and respondent or accused employee. This accords with the approach preferred by judges of the Labour Court which is simple drafting involving less usage of legal language, brevity and clarity.

3. The employee requested for legal representation. The attorney who was supposed to appear on behalf of the employee was not present at the time of commencement of proceedings. The employee was left to his own devices. In the interest of fairness, I caused that he be called to attend and present to me as to why he should be allowed to appear and represent the employee. I had to stand the matter down for a few hours to enable the attorney to come and present. It is painful to state that the legal representative was not properly prepared and did not discharge the burden in terms of rule 25 of the CCMA Rules of demonstrating that the employee must be represented by a legal practitioner. I therefore did not grant legal representation. The details of the deliberations are contained in the record of the proceedings. Given the experience and skill of the employee, I am satisfied that the employee was not prejudiced by my ruling. Most importantly, the employer was also not legally represented, so the balance of convenience is achieved.

The issue to be decided

4. At the commencement of the arbitration process I was expected to make a finding as to whether the employee is responsible or has committed the alleged acts of misconduct. This finding has already been made in my written ruling dated the 10th of May 2019. This latter ruling is incorporated into this award as if specifically traversed. It is part and parcel of this award. What is outstanding is for me to determine is whether, based on the mitigation as submitted by the employee and the aggravation as presented by the employer, that the employee should be sanctioned with a dismissal or other corrective action short of dismissal. This decision I will make purely on evidence presented to me. There are no legal questions raised and therefore I will not venture into complex legal questions and case law.

JT TE

5. The allegations of misconduct against the Employee are contained in the ruling mentioned above. Given my ruling, they are no longer allegations but acts of misconduct.

The background to the dispute

6. This is a section 188A inquiry by the `Arbitrator. The matter was properly referred by the employer and the employee consented to the process. I have presented to the parties, as guided by case law, that I will refrain from using the criminal law language in this arbitration as this is a dispute emanating from the workplace. As such, there will be no reference to accused employee, charges, and finding of guilty. We have agreed with parties to refer to the so-called charges as alleged violation or alleged acts of misconduct. This approach is guided by the main case of Avril Elizabeth Home for the Mentally Handicapped v CCMA & others (2006) 27 ILJ 1644 (LC); [2006] 9 BLLR 833 (LC).

Narrowing of the Issues:

7. The parties did narrow issues which will be dealt with in the alleged acts of misconduct. One significant outcome is that alleged misconduct 3 was deleted from the list of allegations.

Summary of evidence and argument

Employer's case

8. The employer only led one witness for all 9 allegations against the employee, save the one allegation that was withdrawn. The name of the only witness for the employer is Sello Xama.

Witness: Sello Xama (salient evidence)

9. Mr. Xama testified that he occupies the position of Group employee relations consultant at the SABC. At the time of these allegation he was Acting as General Manager Group employee relations. He was acting from the 22nd July 2017 until 31 January 2019. The employee therefore reported to him. Under cross examination, it was put to him as to why he only acted in in August instead of April; he replied by saying that he noticed a pattern of misconducts by the employee and its cumulative effect, that is when he decided to take action. There was no issue of prejudice that was raised.

In terms of allegation ALLEGED MISCONDUCT/VIOLATION 1: GROSS INSUBORDINATION, ALTERNATIVELY INSUBORDINATION

JT TE

10. It was common cause that the employee was given an instruction by Mr. Xama as alleged. In terms of the pre-arb minutes this issue was not in dispute. He testified that the instruction was never executed by the employee. He confirmed that he gave the instruction to the employee and that it was never executed by the employee as alleged. He further testified that the employer was prejudiced because he, as the General Manager was unable to brief the Group Executive about the pending case where the Group Executive was joined in a case. It was further put to him that there is no prejudice suffered because the meeting which the employee failed to provide a write- up about did not materialize. Mr. Xama further testified that the fact that the meeting did not happen did not change the fact that the instruction was not carried out by the employee.

In terms allegation 2 GROSS INSUBORDINATION, ALTERNATIVELY INSUBORDINATION

11. M Xama testified that the employee did not act in terms of the instruction as expected. Given his experience and the level of involvement in the past, the employee could not just have forwarded the letter of demand to the legal department. There is nothing wrong in getting the legal department involved and other departments. Given the sensitivity and urgency of the matter especially the nature of the issues, the employee should have done more than just forwarding the letter with a brief comment. In his view the employee failed to act in terms of this instruction. It was put to him that the instruction did not say what needed to be done. He responded by saying that the employee received a full briefing about what needed to be done.

In terms of allegation 4, GROSS INSUBORDINATION, ALTERNATIVELY INSUBORDINATION

12. Mr. Xama testified that it was his duty to anticipate questions that the board will ask during its meetings. He will then ensure that the team prepares submissions incorporating such anticipated questions. In preparing for it, he must ensure that they are addressed in all matters going to the board meeting. When he received submissions from the employee, he made a number of changes to the submissions because they did not reflect the anticipated issues as he presented. He expected that these changes he effected will be incorporated by the employee. The employee did not fully incorporate the changes he made. All material changes were omitted without Mr. Xama being engaged. He sees this as insubordination. It was put to Mr. Xama that the meeting did not happen and as a result, no prejudice was suffered by the SABC; and he replied that there was in his view an instruction to incorporate all submitted changes. After all he as the GM must make the final call on what goes into the submissions. This was not done. He did not see the final documents submitted until after it was submitted.

JT TE

In terms of allegation 5, GROSS DISHONESTY, alternatively DISHONESTY

13. The employee was requested in an email by Mr. Xama to give instructions to the attorneys on the matter mentioned below. The employee replied by saying he did not have an idea about the case spoken of. He further testified that the employee was fully aware of the case in question (SABC v Mashile and SABC v Magolego). To state that he has no idea of these cases is spoken is dishonest. Even after the employee was provided with a full report and dates of his involvement in these cases, he still did not act. In his view this was gross dishonesty. It was put to him under cross examination that the employee did not remember the cases he must give instructions about; he replied to that by providing details of the cases to the employee. Despite such assistance, the employee did not act still. Where the employee asked for assistance from Mr. Xama in the email but the employee still did not act or react. This failure by the employee suggested that the employee was being dishonest.

In terms of allegation 6, ABSCONDMENT, Alternatively, ABSENCE WITHOUT PERMISSION

14. The employee went on leave without obtaining approval. The employee did not engage Mr. Xama about leave. The employee did not even enter his leave on the SAP system. The employee did not even apply for this leave. He only found out from other colleagues about the employee being on leave. Based on this the employee is absent from work without approved leave.

In terms of allegation 7 FRUITLESS AND WASTEFUL EXPENDITURE,

15. Mr. Xama testified that the issue in this allegation is a failure by the employee to ask for costs when he agreed to a postponement in the case of SABC v Daniel Mongale. The employee knows that when postponing a matter at the instance of the other party, the employee must ask for costs. This the employee failed to do. The SABC has an established practice that when a matter is being postponed at the instance of the other party, you ask for costs. It was put to Mr. Xama that the employee has a discretion whether to ask for costs or not; he replied by saying that given the financial position of SABC and the employee being a seasoned practitioner and also the standing practice to ask for costs, the employee did not have a discretion. He had to ask the other party to tender costs.

In terms allegation 8, GROSS DERELICTION OF DUTY, alternatively, GROSS NEGLIGENCE.

JT TE

16. The employee was involved in the arrangements of the logistics since he is the main person responsible for the case. The appointed facilitator of the case in question was Mr. Paradza. The employee was expected to provide all logistics or at least ensure that they are provided. He was also expected to ensure that he had all the necessary documents. Mr. Paradza complained that he does not have all documents and that his travel arrangements were not done properly. Mr. Paradza elevated his frustration to Mr. Xama. Mr. Xama provided Mr. Paradza with the contact details of the employee. This, in his view indicated that the employee did not deal or at least ensured that they are okay. There is no rule or policy that the employee must arrange the travel. He is however responsible to ensure that the arrangement is done and that all documents are provided. This he did not do properly.

In terms of allegation 9, ABSENCE WITHOUT PERMISSION

17. the employee was absent from work on the 31st August without permission. The employee did not even inform Mr. Xama about his absence or apply accordingly. Employer closed his case.

EMPLOYEES'S CASE

18. The employee testified in his own defense. He was then the only witness.

Witness: Tshiila Munyai (employee)

19. The employee holds a position of Group employee relation consultant. He has been employed for two years and two months. He originally reported to Linda Mcineka.

20. In terms of allegation 1, ALLEGED MISCONDUCT/VIOLATION 1: GROSS INSUBORDINATION. ALTERNATIVELY INSUBORDINATION

21. The Employee conceded that he got written instruction from Mr. Xama. He understands it is an instruction. He also conceded in the pre-arbitration that he did not execute the instruction. He was instructed to provide a write up. The write up was not submitted by the employee as instructed by Mr. Xama. He submitted that the allegation is not serious because the meeting did not take place. He further testified that he did provide the relevant ruling which was self-explanatory. The failure by him to provide the write-up had no effect. The

employee, during his closing argument, conceded that he did not follow the instruction. He argued against the gravity because the intended meeting for which he failed to provide the write up did not happen.

In terms of allegation 2, GROSS INSUBORDINATION, ALTERNATIVELY INSUBORDINATION

22. The employee was sent an email containing a letter of demand that the employee was supposed to attend to it. The employee testified that to him, the instruction to "attend" meant exactly what he did. He did as he understood it. By forwarding the letter it means he has attended to the letter of demand as instructed. The employee conceded that he did not do the necessary follow up to finalize the response to the letter of demand.

In terms of violation 4, GROSS INSUBORDINATION, ALTERNATIVELY INSUBORDINATION

23. The employee testified that he did incorporate the changes to the draft as submitted by Mr. Xama. The employee did not consult Mr. Xama on his submissions to draft documents. He felt that he had a discretion on what to include and what not to include.

In terms of allegation 5, GROSS DISHONESTY, alternatively DISHONESTY

24. The employee conceded that he should have consulted Mr. Xama as to the cases that he denied knowing. When he was provided with information by Mr. Xama, he failed to respond or consult him. He conceded to the material omissions.

In terms of allegation 6, ABSCONDMENT, Alternatively, ABSENCE WITHOUT PERMISSION

25. The employee conceded that he was absent without permission. He testified that he was too busy. He did not have the time to get permission

26. In terms of violation 7, FRUITLESS AND WASTEFUL EXPENDITURE

27. The employee contested the duty to ask for costs. It was not until in the closing argument, that the employee conceded that he knows he should have asked for costs. He stated that he has no argument against that. He further submitted that he is prepared to reimburse the losses. He further testified that it was his error.

JT TE

In terms of violation 8, GROSS DERELICTION OF DUTY. alternatively, GROSS NEGLIGENCE.

28. He submitted that; In hindsight he should have followed up. He conceded that he was negligent, to a certain extent.

In terms of violation 9, ABSENCE WITHOUT PERMISSION

29. The employee conceded that he did not get permission to be absent. The employee closed his case.

Analysis of the evidence and argument

30. Section 138 of the Labour Relations Act 66 of 1995 (as amended) ('LRA') requires me to provide brief reasons for the arbitration award. While I have considered all of the evidence submitted and presented to me, I have only included that which is pertinent and relevant to this arbitration award. I am empowered in terms of this section to conduct the hearing in a manner that I consider appropriate in order to resolve the dispute fairly and quickly, with the minimum of legal formality. In the execution of this statutory mandate I have asked parties not to use the criminal law language such as charges, punishment and sentencing. I advised the parties of the importance of the Labour court case in "Avril Elizabeth" as quoted above.

31. The CCMA guidelines in terms of article 11 of the guidelines, the arbitrator has a discretion to determine as to the form in which the arbitration is to be conducted. This form chosen by the arbitrator must not be like a court. I have informed both parties that I will be adopting the inquisitorial approach given that there was no legal representation. There was no objection from the parties in this regard. I have informed the parties that I am going to be even-handed in my approach. I will treat both parties the same way. I advised them that I was only interested in the truth based on the 9 allegations. That is exactly how I dealt with this matter.

32. In terms of section 189A (9) of the LRA, the arbitrator hearing the matter must, in the light of the evidence presented to him, and by reference to the criteria of fairness in the Act, rule as to what action, if any, may be taken against the employee. I do not intend to debate whether the word may in this section is peremptory or discretionary. In my award I shall use the same language.

33. The employer leveled 9 acts of misconduct, but one charge was withdrawn. In terms of the ruling mentioned above, I have found the employee responsible for the acts of misconduct most importantly on 3 acts of Gross insubordination, and one of Gross dishonesty and one act of gross negligence. While all these acts of misconduct are dismissible individually, the cumulative effect is worse than that. While I note

JT TE

the seriousness of these allegations individually and cumulatively, I must have regard to the totality of factors presented to me before I decide on the appropriate action that might be imposed on the employee. I have decided not to venture into the seriousness of the allegations through case law. It was common cause between the parties that these allegations are dismissible.

34. In coming to my decision on the appropriate action that may be taken by the employer against the employee, I have considered the aggravating and mitigating factors. On the employee's side, the factors I have considered are that the employee has been in the employ of the employer for 3 years, he is a bread winner, he has a father who is 81 years old, he has 5 children the youngest being 2 years, he recently bought property in Parktown and is still paying for it. The employee also submitted that he has conceded to almost all the acts of misconduct. What is disturbing though is that the concessions were done right at the end of the process. The employee only realized then that he was wrong. He submitted that he will not do it again. He is going to act differently against his supervisor.

35. The employer submitted that the employee was charged and dismissed before by the SABC but was saved by an appeal. The issues were almost the same as the one he is charged with now. The employer submitted that the employee has shown that he will repeat it. The employee has been in the field of labour relations for 20 years. He should have known better. All of his mitigations that he submitted were known to him but still he continued and committed all these acts of misconduct. Having considered all these factors, the only appropriate action that must be taken by the employer is the dismissal.

36. Having said so, in the exercise of my powers in terms section 189A (9) of the LRA as quoted in paragraph 32 above, I am considerate of the personal circumstances of the employee submitted in the form of mitigation. These mitigating factors were not strong enough to persuade me to grant a sanction less than a dismissal. Having regard to all of those factors I think the principles contained in section 1 of the LRA especially the one of social justice must be weighed against application, although in a limited way, I have decided that dismissal is an appropriate action as an award. It is not a contradiction for me to grant some consideration for the employee in the light of his personal circumstances that I have considered. It is in accord with the values of our constitution as contained in our preamble and of course chapter 1, section 1 of the LRA to grant the employee 3 months' notice pay despite the fact that he is dismissed. This is done to alleviate the adverse effect of this termination of employment in my award based on the mitigation submitted.

37. The employer is not completely blameless in its action against the employee hence the notice pays. The employer ought to have pursued the anger management remedy for the employee. It was led in evidence that the relationship between the employee and his supervisor was not healthy, however no action was taken to fix it. At time the relationship was at a low as a result of unresolved issues, the employer could

JT TE

have done more to save the situation. However, this does not detract from the fact that the employee could have contributed as well. There is no justification as to the conduct of the employee, especially that he had remedies in law that he could have undertaken, especially that he specializes in this field of work. Both parties were responsible although at varying degrees.

Award

38. The employer must terminate the contract of the employee with **3 months' pay in lieu of notice**. The termination is with immediate effect. The notice amount is payable within 14 calendar days after receipt of this award. The receipt shall be as determined in terms of any of the methods prescribed in rule 5 of the CCMA rules.

39. There is no order as to costs

Signature: 

Commissioner: ***Cameron Morajane***
Sector: ***Entertainment/Leisure***

JT TE

S188A ARBITRATION AWARD - QUANTIFICATION

Commissioner: Cameron Sello Morajane
Case No.: HO HO5140-18
Date of Quantification: 30 May 2019

In the ARBITRATION between:

TE Munyai (hereinafter referred to as" Employee")
(Union / Employee)

and

SABC (hereinafter referred to as" Employer")
(Employer)

Union/Employee's representative: No Legal or Union official
Union/Employee's address:
Telephone:
Telefax / E-mail:

Employer's representative: Allen Visser
Employer's address:
Telephone:
Telefax / E-mail:

JT TE

Background to the Quantification of Notice Pay:

1. On 28 May 2019 I had handed down an award in the above matter wherein the Employer was ordered to terminate the contract of the Employee with **3 months' pay in lieu of notice**. The termination was made with immediate effect. Furthermore, the notice amount was made payable within 14 calendar days after receipt of the award and receipt of the award would be determined in terms of any of the methods prescribed in rule 5 of the CCMA rules.

2. On 28 May 2019 case management of the CCMA requested a pay slip from the parties in order to quantify the 3 months' notice pay.

3. Such pay slip was received. Having perused the pay slip, the net income of the Employee is reflected as R51 530-45 per month.

Quantification:

1. I hereby determine that the 3 months' notice pay amounts to (R 51 530-45 x 3 equals R 154 591-35) to be paid within 14 days of receipt of the original award.

Cameron Sello Morajane
CCMA COMMISSIONER

JT TE

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

MBULU NEPFUMBADA

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement she shall not proceed with any and all past, present or future claims,

demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 3 010 114-52 (Three Million Ten Thousand One Hundred and Fourteen Rand and Fifty Two Cents).** This amount reflects a **TGRP** payment of **nineteen (19)** months. Accrued leave will be paid to the Employee separately.

1.4 The amount referred to in paragraph 1.3 above shall be subject to all statutory deductions; and

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive;

1.6 The last day of employment of the Employee will be **Tuesday 28 June 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties

and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

JTTE

SCE

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at JOHANNESBURG **on this** 29TH **day of** JUNE 2016 **in the presence of the undersigned witnesses.**

MBULU NEPFUMBADA

WITNESSESS

1.

2.

Thus done and signed at Auckland Park on this 29 day of June in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1. _____

2. _____

JT TE

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

MANDIWE PRECIOUS NKOSI

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 3 025 849-39 (Three Million and Twenty Five Thousand Eight Hundred and Forty Nine Rand and Thirty Nine Cents).** This amount reflects a **TGRP** payment of **TWENTY ONE (21)** months. The cash value of accrued leave will be paid to the Employee separately.

JT TE

1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions;

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive; and

1.6 The last day of employment of the Employee will be **Friday 23 September 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

JT TE

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

JT TE

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at Johannesburg **on this** 26th **day of** September **in the presence of the undersigned witnesses.**

MANDIWE NKOSI

WITNESSESS

1._____

2._____ JT TE

Thus done and signed at Johannesburg on this 26th day of September 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1. 100435

2.

SABC

Mrs MP Nkosi (102167)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	Oct 2016 - June 2018 (21 Months) (Cash Value of Remainder of Contract)
Basic Salary	1 154 836.80	96 236.40	2 020 964.40
Housing Allowance	23 640.00	1 970.00	41 370.00
Car Allowance	120 000.00	10 000.00	210 000.00
Other Cash	19 971.24	1 664.27	34 949.67
Special Allowance	141 664.20	11 805.35	247 912.35
Group Life	11 031.00	919.25	19 304.25
Medical Aid	0.00	0.00	-
RPM 13th Cheque Allowance	96 236.40	8 019.70	168 413.70
Pension Fund	161 677.15	13 473.10	282 935.02
Grand Total	**1 729 056.79**	**144 088.07**	**3 025 849.39**

Plus Current Leave Balance (30 Sep 2016)	**39.75**
Cash Value of Current Leave	**141 409.27**
Grand Total (TCTC Plus Leave)	**3 167 258.66**

jvs/26 September 2016

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

BHUTI LESLIE NTLOKO

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

   1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims,

JT TE

BM

demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 2 970 443-90 (Two Million Nine Hundred and Seventy Thousand Four Hundred and Forty Three Rand and Ninety Cents).** This amount reflects a **TGRP** payment of **THIRTEEN (13)** months. Accrued leave will be paid to the Employee separately.

1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions; and

JT TE

PDL

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive;

1.6 The last day of employment of the Employee will be **Friday 30 September 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties

JT TE

and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

JT TE

BPR

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at AUCKLAND PARK **on this** 27TH **day of** SEPTEMBER 2016 **in the presence of the undersigned witnesses.**

LESLIE NTLOKO

WITNESSESS

1._____

2._____

JT TE

Thus done and signed at Johannesburg on this 27th day of September 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1. _____

2. _____

JT TE

BOD

SABC

Mr BL Ntloko (13118)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	Oct 2016 - Oct 2017 (13 Months) (Cash Value of Remainder of Contract)
Basic Salary	1 664 579.88	138 714.99	1 803 294.87
Housing Allowance	23 640.00	1 970.00	25 610.00
Car Allowance	168 000.00	14 000.00	182 000.00
Other Cash	436 107.24	36 342.27	472 449.51
Entertainment Allowance	2 500.00	208.33	2 708.33
Group Life	15 900.12	1 325.01	17 225.13
Medical Aid	59 464.80	4 955.40	64 420.20
RPM 13th Cheque Allowance	138 714.99	11 559.58	150 274.57
Pension Fund	233 041.18	19 420.10	252 461.28
Grand Total	**2 741 948.21**	**228 495.68**	**2 970 443.90**

Plus Current Leave Balance (30 Sep 2016)	**35.75**
Cash Value of Current Leave	**181 813.23**
Grand Total (TCTC Plus Leave)	**3 152 257.13**

jvs/26September 2016

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

WINNIFRED NELISIWE NZIMANDE

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement she shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 899 273-44 (Eight Hundred and Ninety Nine Thousand Two Hundred and Seventy Three Rand and Forty Four Cents).** This amount reflects a **TGRP** payment of **SEVEN (7)** months. The cash value of accrued leave will be paid to the Employee separately.

1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions;

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive; and

1.6 The last day of employment of the Employee will be **Sunday 31 December 2016;**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

JT TE

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

JT TE

Thus done and signed at SABC on this 5th day of DECEMBER in the presence of the undersigned witnesses.

WINNIFRED NELISIWE NZIMANDE

WITNESSESS

1.

2.

Thus done and signed at Johannesburg on this 1st day of December 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE SABC SOC LTD

WITNESSESS

1.

2.

JT TE

SABC

Mrs WN Nzimande (15795)

Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	2 Months	3 Months	4 Months	6 Months	Remainder of Contract (7 Months)
Basic Salary	977,115.48	81,426.29	162,852.58	244,278.87	325,705.16	488,557.74	569,984.03
Housing Allowance	23,640.00	1,970.00	3,940.00	5,910.00	7,880.00	11,820.00	13,790.00
Car Allowance	120,000.00	10,000.00	20,000.00	30,000.00	40,000.00	60,000.00	70,000.00
Other Cash	137,217.00	11,434.75	22,869.50	34,304.25	45,739.00	68,608.50	80,043.25
Entertainment Allowance	1,680.00	140.00	280.00	420.00	560.00	840.00	980.00
Group Life	9,333.48	777.79	1,555.58	2,333.37	3,111.16	4,666.74	5,444.53
Medical Aid	54,403.20	4,533.60	9,067.20	13,600.80	18,134.40	27,201.60	31,735.20
RPM 13th Cheque Allowance	81,426.29	6,785.52	13,571.05	20,356.57	27,142.10	40,713.15	47,498.67
Pension Fund	136,796.17	11,399.68	22,799.36	34,199.04	45,598.72	68,398.08	79,797.76
Grand Total	**1,541,611.62**	**128,467.63**	**256,935.27**	**385,402.90**	**513,870.54**	**770,805.81**	**899,273.44**

Number of Leave Days	**19.25046667**
Cash Value of Leave	**59,109.77**
Total Amount	**958,383.21**

Calculation excludes Dec 2016 Salary which will be paid through Payroll

South African Broadcasting Corporation Limited

MOHLOLO LEPHAKA
GROUP EXECUTIVE: HUMAN RESOURCES (ACTING)
Radio Park , Cnr Artillery and Henley Roads , Auckland Park, 2092. Private Bag X1 , Auckland Park 2006 , Johannesburg, Gauteng, South Africa.
Tel +27 11 714 3331 www.sabc.co.za
Email: lephakam@sabc.co.za

25 OCTOBER 2016

MR C OLIVIER
GENERAL MANAGER : FINANCE & OPERATIONS
SABC
JOHANNESBURG

Dear Mr Olivier

RE : SABC // MR C OLIVIER – SEPARATION

The above matter and the meetings held on **24** & **25 October 2016**, have reference.

During the abovementioned meetings management made it very clear that there was a breakdown in the relationship between the SABC and yourself and that the SABC contemplated severing the relationship going forward.

You were also informed that management would prepare a separation agreement and would provide you with a breakdown of the amount being offered.

Attached are the following documents:

1. **Separation Agreement;** and
2. **Document reflecting on the breakdown of the separation amount offered.**

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/30
Non-Executive Directors: Prof M O Maguvhe (Chairperson); Ms L T Khumalo (Deputy Chairperson); Ms N M Mhlakaza; Dr N A Tshidzumba;
Executive Directors: Mr J R Aguma (Acting Group Chief Executive Officer); Ms B L Tugwana (Acting Chief Operations Officer); Ms A Raphela (Acting Chief Financial Officer); **Company Secretary:** Ms T V Geldenhuys

Please be informed that your last day in service of the SABC will be **31 October 2016**. You will also not be required to render any further services with immediate effect.

Furthermore, it should be noted that the SABC will effect payment of the said separation amount into your banking account within seven (7) days from having received the relevant tax directive.

The SABC herewith wants to thank you for your contributions made during your tenure with the SABC and we wish you everything of the best for the future.

Yours faithfully

MOHLOLO LEPHAKA
GROUP EXECUTIVE : HUMAN RESOURCES (ACTING)

I, CHRISTIAN OLIVIER, hereby acknowledge receipt of the letter and have noted the contents thereof.

SIGNATURE

25/10/16
DATE

I do not agree with this and reserve my rights.

JT TE

SABC

Mr C Olivier (1899)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	24 Months	36 Months	48 Months	60 Months	Remainder of Contract (62 Months)
Basic Salary	1,629,095.28	135,757.94	3,258,190.56	4,887,285.84	4,887,285.84	8,145,476.40	8,416,992.28
Housing Allowance	-	0.00	-	-	-	-	-
Car Allowance	120,000.00	10,000.00	240,000.00	360,000.00	360,000.00	600,000.00	620,000.00
Other Cash	130,056.00	10,838.00	260,112.00	390,168.00	390,168.00	650,280.00	671,956.00
Entertainment Allowance	-	0.00	-	-	-	-	-
Group Life	15,561.12	1,296.76	31,122.24	46,683.36	46,683.36	77,805.60	80,399.12
Medical Aid	49,341.60	4,111.80	98,683.20	148,024.80	148,024.80	246,708.00	254,931.60
RPM 13th Cheque Allowance	-	0.00	-	-	-	-	-
Pension Fund	228,073.34	19,006.11	456,146.68	684,220.02	684,220.02	1,140,366.70	1,178,378.92
Grand Total	**2,172,127.34**	**181,010.61**	**4,344,254.68**	**6,516,382.02**	**6,516,382.02**	**10,860,636.70**	**11,222,657.92**

Number of Leave Days	**55.75834**
Cash Value of Leave	**253,194.47**
Total Amount	**11,475,852.39**

Calculation excludes Oct 2016 Salary which will be paid through Payroll
***** 13 Old Leave Days included in leave calculation***

JT

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

CHRISTIAN OLIVIER

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

JT TE

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 11 222 657-92 (Eleven Million Two Hundred and Twenty Two Thousand Six Hundred and Fifty Seven Rand and Ninety Two Cents).** This amount reflects a **TGRP** payment of **SIXTY TWO (62)** months. The cash value of accrued leave will be paid to the Employee separately.

JT TE

1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions;

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive; and

1.6 The last day of employment of the Employee will be **31 October 2016**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

JT TE

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at _____ on this ____ day of _____ in the presence of the undersigned witnesses.

_____

CHRISTIAN OLIVIER

WITNESSESS

1._____

2._____

JT TE

Thus done and signed at Johannesburg on this 25th day of October 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1.

2.

JT TE

ANNEXURE "A"

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

BROADCAST ELECTRONIC MEDIA AND ALLIED WORKERS UNION (BEMAWU)

OBO

IVAN PIETERSE

(APPLICANT)

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

(RESPONDENT)

CASE NUMBER : GAJB 18869-15

SETTLEMENT AGREEMENT

1. Whereas **The Broadcast Electronic Media and Allied Workers Union (BEMAWU)** representing **Mr Ivan Pieterse,** referred a dispute to the CCMA claiming an **Unfair Labour Practice** under CCMA Case Number **GAJB 18869-15** and;

2. Whereas the **Applicant** and the **Respondent (SABC)** hereto agreed to settle the dispute referred to in **1** above, the parties herewith wish to regulate the terms and conditions of the settlement agreement as follows:

   2.1. By entering into this agreement, the **Respondent** does not admit or acknowledge that the **Respondent** committed an Unfair Labour Practice against the **Applicant** nor does the **Applicant** claim that the **Respondent** committed an Unfair Labour Practice against him;

2.2 The **Respondent** agrees to:

2.2.1 Effect an once off payment in the amount of **R 100 000 (one hundred thousand rand)** after tax to the **Applicant** which amount will be paid into the **Applicant's** bank account by way of electronic funds transfer ~~(within seven 7) days from having obtained the relevant tax~~ directive; and same will be paid by no later than 31 January 2016.

2.2.2 That the terms of this agreement shall be **in full and final** settlement of any or all claims and/or disputes of any nature whatsoever that either party has or may have against each other arising from the employment relationship between the parties, which include but not limited to the matter pertaining to the **Applicant's** referral under case number **GAJB 18869-15** with the Commission for Conciliation Mediation and Arbitration; and

2.2.3 Upon signing of this agreement the ~~Applicant~~ undertakes to withdraw the dispute from the CCMA with immediate effect;

2.3 No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

2.4 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

2.5 This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

2.6 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

2.7 The parties have read and understood the contents of this agreement and each party confirms that signature of this agreement has been done freely and voluntarily.

2.8 The **Applicant** confirms that **Mr. H du Buisson** from BEMAWU duly represents the **Applicant** in this matter and on behalf the union and that they were fully informed of the contents of this agreement and fully agree thereto.

2.9 It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

2.10 This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto in law;

2.11 Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

JT TE

Thus done and signed at JOHANNESBURG on this 13th day of January 2016 in the presence of the undersigned witnesses.

FOR THE APPLICANT
H-DU BUISSON-(BEMAWU)

WITNESSESS

1.

2.

FOR AND ON BEHALF OF THE RESPONDENT

WITNESSESS

1.

2.

JT-669

SETTLEMENT AGREEMENT

IN THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

Case Number: GAJB 18869-15

In the dispute between:

JUAN PIETERSE _____ *(Applicant)*

and

SABC LTD _____ *(Respondent)*

The undersigned parties record the settlement of their dispute in the following terms. By signing this agreement, the parties acknowledge that the agreement was read to them and interpreted (where necessary) and that they understand the content hereof. This agreement is in full and final settlement of the dispute referred to the CCMA as well as in full settlement of all statutory payments due to the applicant unless specifically excluded in paragraph 4 of this agreement.

1. ☐ REINSTATEMENT

1.1 The respondent agrees to reinstate the applicant on the same terms and conditions of employment which governed the employment relationship prior to the dismissal dated _____ *(date)*

1.2 The said reinstatement is to operate retrospectively with effect from _____ *(date)*

1.3 As a result of the retrospective effect of the reinstatement, the respondent agrees to pay remuneration due to the applicant in the amount of R _____ by no later than _____ *(date)*

1.4 The applicant must report for duty on _____ *(date)*

at _____ *(time)* at _____ *(place).*

2. ☐ RE-EMPLOYMENT

2.1 The respondent agrees to re-employ the applicant with effect from _____ *(date)*

2.2 The applicant must report for duty on _____ *(date)*

at _____ *(time)* at _____ *(place).*

2.3 The re-employment will be on the same terms and conditions of employment which governed the employment relationship prior to the dismissal unless specifically set out hereunder: _____

_____

3. ☐ MONETARY SETTLEMENT

3.1 The respondent agrees to pay the applicant the amount of R _____

by no later than _____ *(date)*

3.2 The amount in paragraph 3.1 is inclusive of all statutory payments due to the applicant unless specifically excluded in terms of paragraph 4 below.

3.3 In the event that the parties agree to settle the amount in instalments, the following plan is agreed with the specific understanding that the entire amount will become due and payable to the applicant on the first payment date if the respondent fails to meet its obligations to pay the applicant the specified amount on any date set out hereunder.

R _____ on _____ R _____ on _____

R _____ on _____ R _____ on _____

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

ELIJAH QWABE

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

JT TE

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 1 943 895-25 (One Million, Nine Hundred and Forty-three Thousand, Eight Hundred and Ninety-five Rand and twenty-five Cents).** This amount reflects a **TGRP** payment of **THIRTEEN (13)** months. Accrued leave will be paid to the Employee separately.

1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions; and

JT TE

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive;

1.6 The last day of employment of the Employee will be **Tuesday, 28 February 2017.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties

JT TE

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and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at Auckland Park **on this** 17 **day of** February **in the presence of the undersigned witnesses.**

ELIJAH QWABE

WITNESSESS

1. _____

2. _____

JT TE

Thus done and signed at Auckland Park on this 19th day of January 2017 in the presence of the undersigned witnesses.

Iseliso Ralitabo

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1. _____

2. _____

JT TE

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

TUMISO KHULU RADEBE

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 2 420 214-39 (Two Million Four Hundred and Twenty Thousand Two Hundred and Fourteen Rand and Thirty Nine Cents)**. This amount reflects a **TGRP** payment of **EIGHTEEN (18)** months. The cash value of accrued leave will be paid to the Employee separately.

JT TE

1.4 The amount referred to in paragraph 1.3 above shall be subject to all statutory deductions;

1.5 The amount referred to in paragraph 1.3 shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive; and

1.6 The last day of employment of the Employee will be **Friday 23 September 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

JT TE

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at Auckland Park **on this** 26 **day of** September 2016 **in the presence of the undersigned witnesses.**

Radebe

TUMISO RADEBE

WITNESSESS

1._____

2._____ JT TE

Thus done and signed at Johannesburg on this 26th day of September in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1.

2.

JTTE

SABC

Mr TK Radebe
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	18 Months
Basic Salary	1 023 428.16	85 285.68	1 535 142.24
Housing Allowance	23 640.00	1 970.00	35 460.00
Car Allowance	120 000.00	10 000.00	180 000.00
Other Cash	176 031.48	14 669.29	264 047.22
Entertainment Allowance	1 680.00	140.00	2 520.00
Group Life	9 775.80	814.65	14 663.70
Medical Aid	30 355.20	2 529.60	45 532.80
RPM 13th Cheque Allowance	85 285.68	7 107.14	127 928.52
Pension Fund	143 279.94	11 940.00	214 919.91
Grand Total	**1 613 476.26**	**134 456.36**	**2 420 214.39**

Plus Current Leave Balance (30 Sep 2016)	**44.92**
Cash Value of Current Leave	**143 618.45**
Grand Total (TCTC Plus Leave)	**2 563 832.84**

jvs/23 September 2016

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

MADODANA JOSEPH SHUSHU

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

JT TE

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims,

S.S.

demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the from the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 2 814 858-82 (Two Million Eight Hundred Thousand and Fourteen Rand and Eight Two Cents).** This amount reflects a TRGP payment of Fifteen (15) months. Accrued leave will be paid to the Employee separately.

1.4 The amount referred to in paragraph 1.3 above shall be subject to all statutory deductions; and

1.5 The amount referred to in paragraph 1.3 shall be paid into the Employee's bank account by way of electronic funds transfer within

seven (7) days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive.

1.6 The last day of employment of the Employee will **be Friday 30 September 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

SABC

Mr MJ Shushu (PN 102752)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	15 Months
Basic Salary	1,357,788.48	113,149.04	1,697,235.60
Housing Allowance	23,640.00	1,970.00	29,550.00
Car Allowance	168,000.00	14,000.00	210,000.00
Entertainment Allowance	2,500.00	208.33	3,125.00
Other Cash	185,897.64	15,491.47	232,372.05
Group Life	12,969.60	1,080.80	16,212.00
Medical Aid	59,464.80	4,955.40	74,331.00
RPM 13th Cheque Allowance	113,149.04	9,429.09	141,436.30
Pension Fund	190,090.39	15,840.87	237,612.98
Grand Total	**2,113,499.95**	**176,125.00**	**2,641,874.93**

Plus Current Leave Balance (30 Sep 2016)	**40.75** *
Cash Value of Current Leave	**172,983.88**
Grand Total (TCTC Plus Leave)	**2,814,858.82**

Balance Includes 21 forfeited days for 2015 due to staff member being suspended

jvs/28 September 2016

MUTUAL SEPARATION AGREEMENT

Between

SABC (Employer)

And

Sindiswa Sishuba (Employee)

1. The parties hereby agree to mutually terminate the employment relationship with the SABC with effect from 31 October 2014.

2. The SABC will pay the employee 6 months' salary based on the current salary earned by the employee, which payment will be subject to statutory deductions.

3. The employer will pay all statutory monies due to the employee together with the 6 months agreed to above.

3. That the payments in clauses 2 & 3 above will be paid to the employee by no later than 30 November 2014.

4. The SABC will seize any disciplinary action against the employee.

5. That neither party will seek any recourse against the other in respect of this matter and neither party admits any wrongdoing by virtue of this agreement.

6. The terms of the settlement agreement is confidential and both parties agree not to divulge the contents of this agreement, unless required by law.

7. This is a full and final settlement of this dispute.

Signed in Johannesburg on the 30 October 2014

.....

On behalf of the SABC

.....

Sindiswa Sishuba (Employee)

.....

Witness

.....

Witness

JT TE

Arbitration Award

CCMA
COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION

Case Number: *GAJB13971-17*
Commissioner: *Larry Shear*
Date of Award: *20-Jul-2018*

In the **ARBITRATION** between

BEMAWU obo Makalima, Ricky and 3 Others
(Union/Applicant)

and

SABC SOC Limited
(Respondent)

Union/Employee's representative:
Union/Applicant's address: *PO Box 203*
Wierda Park
0149

Telephone: *0800236298,0126613915,0829208669,0848728001,0820864630 ,0797011556,0789482232*
Telefax: *0866715585*
E-mail: *headoffice@bemawu.org.za, bemawu@gmail.com*

Employer's representative:
Respondent's address: *Private Bag X1*
Auckland Park
2006

Telephone: *0117143972,0117144717,0117144303,0117142708,0117142311 ,0117143819,0117144309,0841443109*
Telefax: *011 714-403-0300,0117143001,0117148040,0117146906*
E-mail: *potgieterjj@sabc.co.za, moufher@sabc.co.za, xamase@sabc.co.za, munyaite@sabc.co.za, motshekgamj@sabc.co.za, nkosipm@sabc.co.za, BareE@sabc.co.za, luthif@sabc.co.za*

JT TE

DETAILS OF HEARING AND REPRESENTATION

The matter was heard at CCMA House, Fox Street, Johannesburg on 9 July 2018.

ISSUE TO BE DECIDED

Whether the Applicants' dismissal was fair, at the conclusion of their Fixed Term Contract on 31 May 2017; in terms of the provisions of s198B of the Labour Relations Act.

SURVEY OF EVIDENCE

1. **Mr F Luthi**, the transport manager, testified.

2. Mr Luthi is responsible for the management of staff and vehicles and the maintenance of budgets within the Transport Department.

3. In terms of its operations, the respondent is responsible to provide transport to staff members who work unusually late hours. These would be the hours between 18:00 and 06:00.

4. The applicants in the current matter, were employed on Fixed Terms Contract basis to perform functions in respect of a "pilot project" established for this purpose.

5. In 2007, the respondent appointed a consultant to consider the costs and viability of employing its own drivers for this purpose, or whether to use the services of an external consultant. The consultant tabled a recommendation, and the respondents' management accepted a recommendation to commence with a "pilot project" in respect of providing after hours transport services.

6. The respondent set about purchasing vehicles, which took longer than anticipated. The plan was resuscitated during 2013 when the vehicles were actually purchased.

7. The respondent commenced the process of recruiting drivers for the after-hours transport project.

8. The positions were advertised in March 2014. Those applicants who were short-listed attended interviews. During their interviews, each applicant was informed that the respondent was running an "after-hours driving project" and that any contracts would be on a fixed term basis. They were also informed that the project was a "pilot project" and that there was no expectation of permanent employment. Candidates who were employed, were advised not to terminate their employment relationships, given the fixed term nature of any possible employment.

9. Mr Luthi testified that all the candidates understood this explanation and did not raise any objections.

10. The current applicants were employed in terms of a limited duration contract of employment which specified the period of their employment as running from 4 June 2014 until it would automatically terminate on 31 May 2017.

11. It was specifically stipulated in the contract that once the period specified above had expired, there would be no expectation of renewal or continuation thereof.

12. Mr Luthi explained that there had been some "issues" relating to the tender in respect of the vehicles, and prior to and even during the employment of the applicants' employment, an external service provider

had had and continued to provide afterhours transport services.

13. In fact, Mr Luthi said even during the duration of the pilot project, the applicants did not fulfil the requirements of the limited duration contract and the position stipulated therein. They were in fact idle.

14 In 2017, a decision was taken to terminate the pilot project and not to continue therewith. The services of the external service provider were used for this purpose.

15. **Mr S Mokhele**, one of the applicant's testified.

16. He said that he perused and responded to the advert for afterhour's drivers in March 2014. He referred to the advert (page 72 of the bundle) and said that no mention was made of a limited duration contract in the advertisement.

17. Mr Mokhele attended an interview and he said, likewise, no mention was made of the limited duration nature of the employment offered. The interview only dealt with issues such as driving qualifications and knowledge of Johannesburg roads.

18. He said he could not recall any mention of a limited duration contract, as had been testified by Mr Luthi.

19. After his interview, he received a call a few weeks later, and was requested to attend a driving test. Thereafter, he was required to attend a medical examination and thereafter, received a call from Mr Luthi, who offered his congratulations for his successful employment with the respondent.

20. On 4 June 2014 Mr Mokhele signed his contract of employment. Although he did concede that the contract did stipulate that it was valid for a limited duration, the contract did not make any reference to a pilot project or to any other project, at all.

21. Mr Mokhele denied that he and the other applicants merely "sat doing nothing" during the duration of their employment, and he testified that he and the other applicants were requested to perform airport shuttles and various administrative functions on behalf of the respondent.

22. It was put to Mr Mokhele that the contract was very clear and that it only applied for a limited duration i.e. between 4 June 2014 and 31 May 2017. He said that he was so excited to be offered the position, but he did not take note of this fact, and only became aware of the limited duration after commencing his employment.

ANALYSIS OF EVIDENCE AND ARGUMENT

1. The respondent submitted that in terms of s198B, a Fixed Term Contract is one which terminates upon :-

   - The occurrence of a specified event;
   - The completion of a specified task or project; or
   - A fixed date, subject to sub-section 3 thereof.

2. Section 198B(3) states that an employer may employ an employee on a Fixed Term Contract, for longer than 3 months only if –

   - The nature of the work is of a limited duration; or

JT TE

- The employer can demonstrate any other justifiable reason for the fixed term nature of the contract.

3. S198B(6) states that an offer to employ an employee on a Fixed Term Contract **must** –

   - Be in writing, and

   - State the reasons contemplated in sub-section 3.

4 It is common cause that the applicants did sign a Contract of Employment which is defined as a "Limited Duration Contract of Employment", with the respondent, which was valid from 4 June 2014 until 31 May 2017.

5. The applicants were employed in the capacity of afterhour's drivers.

6. It is also common cause that the advertisement which gave rise to their employment, did not stipulate the limited duration nature of their employment, nor did it stipulate any reference to a particular project.

7. It is further common cause that although the contract of employment did stipulate the limited duration period, it did not mention and nor did it refer to a specific project. The contract of employment did not stipulate the reasons for the limited duration period as is required in terms of s198B above.

8. S198B (6) is clear. An offer to employ on a Fixed Term Contract must be in writing, and, state the reasons contemplated in sub-section 3(a).

9. As already indicated, the contract did not stipulate the reasons for the Fixed Term Contract and nor did it make any reference to a project.

10. It is instructive to note that the respondent did not provide any written proof of the pilot project, in the form of recommendations made by the consultant, nor any reference to any acceptance thereof by the respondent's Board. The only reference to this project is that made by Mr Luthi in his evidence.

11. I am not making any negative inferences regarding Mr Lathi's credibility, but the simple fact is that the respondent has not complied with the provisions of s198B and, more particularly, s198B(6) which requires that the limited duration contract must be in writing and must state the reasons which require a limited duration contract. The contract signed by the applicants are silent on this aspect, and therefore, I must conclude that the exceptions contained in s198B do not apply in the present instance.

12. I therefore conclude that the applicants' fixed terms contracts were not valid, in terms of the provisions of s198B and that therefore the termination of their employment in June 20017 was unfair

13. The applicants are entitled to be reinstated into their positions as after-hours drivers with the respondent.

14. However, the applicants must, to a certain extent, accept responsibility for the fact that they signed a contract which stipulated their period of employment as being from 4 June 2014 until 31 May 2017. They did not query this. For that reason that it would be fair or equitable to award compensation for the full period that the applicants had been unemployed, and it is my intention to award compensation to each applicant, which is equivalent to five month's salary, i.e. R10 885.92 x 5 = R54 429.60.

JT TF

AWARD

1. For all the reasons set out above, I find that the Applicants dismissals were unfair.

2. The Respondent, The SABC is ordered to pay each Applicant, i.e. Mr Ricky Makaila, Mr Albania Siyothila, Mr Sechaba Mokhele and Mr Caiphus Masimula the sum of R54 429.60, each.

3. Payment is to be made by no later than 1 August 2018.

L Shear

Signature: _____

Commissioner: L SHEAR

Sector: _____

JT TE

Cecilia van Zyl

From: BEMAWU HEADOFFICE <headoffice@bemawu.org.za>
Sent: 13 December 2018 07:30
To: Sello Xama
Cc: Jonathan Thekiso
Subject: Arbitration Award | Makalima & others

Dear Sirs,

The arbitration award declaring the dismissals of Messieurs RICKY MAKALIMA, DIBANISA SIYOTHULA SECHABA MOKHELE and CAIPHUS MASIMOLA both substantively and procedurally unfair has reference.

The four BEMAWU members were employed on Fixed Terms Contracts as drivers at the SABC, earning below the threshold as published from time to time in the Government Gazette.

Despite being warned not to terminate the contracts of our members at the expiry of their contracts, the SABC proceeded with the termination of same.

The CCMA has found these dismissals to be unfair, and reinstated the four BEMAWU members.

Our members will report for duty on Monday, 17 December 2018.

Kindly ensure their smooth reintroduction to the workplace.

Sincerely,

Hannes du Buisson
BEMAWU

JT TE

SABC
Vuka Sizwe!

mandlasoko@gmail.com
Peglerae Complex
Unit 20
Odelia Street
Florida Glen

Mandla Soko
GM PBS Radio
Aucklandpark

21 November 2012

Dear Mr Soko,

RE : SABC // MR SOKO

1. The above matter, has reference.

2. As you are aware, you are employed by the SABC on a fixed term basis and your fixed term contract of employment with the SABC will expire by effluxion of time on **28 March 2013.**

3. As per our discussion with you on the 22 November 2012, you are hereby advised that the SABC will not be renewing or extending your fixed term contract of employment upon termination thereof on **28 March 2013.**

4. However, please note that the SABC has, in terms of its prerogative, resolved to waive its right to the provision of services and/or rendition of work by you to it for the remaining period of your current contract of employment. Accordingly, the SABC has resolved that the fixed term contract referred to, is herewith terminated with effect from **23 November 2012** and that subject to the provisions of paragraphs **5** & **6** below, the SABC will, in lieu of the notice period of two (2) months, pay you the following:

   - Remuneration as provided for in your fixed term contract of employment, payable as a once off lump-sum; and
   - Payment in lieu of accrued annual leave, if any.

JT TE

5. The SABC will, within the next 5 (five) business days following the date of this letter, apply for a tax directive from the South African Revenue Services ("SARS") for the

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/06
Non-Executive Directors: Dr Ben Ngubane (Chairperson);Mr Thami ka Plaatjie (Deputy-Chairperson)
Mr Sembie Danana; Mr Cedric Gina; Mr Desmond Golding; Prof Philippa Green; Advocate Cawe Mahlati; Dr Patricia Makhesha; Mr Lumko Mtimde;
Ms Clare O'Neil; Ms Suzanne Vos
Executive Directors: Ms Lulama Mokhobo (Group Chief Executive Officer) Ms Gugu Pride Duda (Chief Financial Officer)
Mr Hlaudi Motsoeneng (Acting Chief Operations Officer)
Company Secretary: Ms Theresa Victoria Geldenhuys

amount of tax to be deducted from the abovementioned payments. Kindly, when requested to do so by the SABC, furnish such information as the SABC may require for purposes of applying for the abovementioned tax directive.

6. The SABC will deduct and/or set-off from the amounts due to you, the value of any outstanding loans and/or debts that are repayable and/or due to the SABC.

7. The SABC will make payment of the aforementioned amounts (less the tax as per stipulation in terms of the abovementioned tax directive and loans/debts) within 10 (ten) business days of receipt of the tax directive from SARS into your banking account as per the SABC's records.

8. Because the SABC is discharging its full payment obligations to you upfront, you will, from **01 December 2012** be responsible for your own pension fund and medical aid arrangements. The SABC will inform the administrators of the pension fund and medical aid scheme in which you and the SABC participate of the relevant terms of this letter for the necessary adjustments to be made. Kindly cooperate with any requests that you may receive from the SABC and/or the administrations of the pension fund and/or medical aid scheme in this regard.

9. In light of paragraph 4 above, you will no longer require use of or access to the SABC's property, premises and assets. Please handover all SABC property and assets back to the SABC on or before **23 November 2012, 16:30 to the HR Manager: Radio.** This includes your access card, laptop computer and 3G card, as well as your forwarding address.

10. Please note that the provisions relating to confidentiality in your fixed term contract of employment are and remain applicable. We request that you comply therewith, which includes keeping this letter and the terms contained herein confidential.

11. We would like to take this opportunity to wish you everything of the best in your future endeavors.

JT TE

Please do not hesitate to contact us if you have any queries in this regard.

Yours faithfully,

MR LESLIE NTLOKO
GROUP EXECUTIVE: RADIO

CC : MR KEOBOKILE MOSWEU – ACTING GROUP EXECUTIVE: HCS
MS WINNY KUBHEKA – HR MANAGER: RADIO
MS PETRA CAMPHER – PAYROLL MANAGER
MR WAYNE SMITH – PENSION FUND OFFICE

I acknowledge receipt this notification and the contents thereof are understood by me. A copy of the letter is returned herewith.

Mr Mandla Soko

23/11/12.
Date

JT TE

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

ITANI FANWELL TSEISI

("Employee")

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

("Employer")

MUTUAL SEPARATION AGREEMENT

---

1. The parties hereto have agreed to mutually terminate the employment relationship on the terms and conditions recorded hereunder:

1.1. The Employee agrees that upon signing of this agreement he shall not proceed with any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties;

1.2 By entering into this agreement, the Employer does not admit or acknowledge that the Employee's services were unfairly and/or unlawfully terminated;

1.3 The Employer hereby agrees to pay the Employee an amount of **R 3 221 808-30 (Three Million Two Hundred and Twenty One Thousand Eight Hundred and Eight Rand and Thirty Cents).** This amount reflects a **TGRP** payment of **FIFTEEN (15)** months. The cash value of accrued leave will be paid to the Employee separately.

JT TE

1.4 The amount referred to in paragraph **1.3** above shall be subject to all statutory deductions;

1.5 The amount referred to in paragraph **1.3** shall be paid into the Employee's bank account by way of electronic funds transfer within **seven (7)** days from having obtained the relevant SARS tax directive. In this regard the Employer shall apply to the SARS for such a tax directive. The Employee undertakes to do all that may be necessary to enable the Employer to obtain such a tax directive; and

1.6 The last day of employment of the Employee will be **Friday 23 September 2016.**

2. The terms and conditions of this agreement shall be in full and final settlement of any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation against the Employer which the Employee now has, or which may hereafter accrue or otherwise be acquired by the Employee, on account of, or in any way flowing from the termination of the employment relationship or any issue resulting from the employment relationship between the parties.

JT TE

3. No variation, modification or waiver of any of the provisions of this agreement or consent to any departure there from shall in any manner be of any force or effect unless confirmed in writing and signed by the parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

4. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this agreement.

5. This agreement constitutes the sole agreement between the parties and any representation not contained herein shall be of no force and effect between the parties.

6. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

7. The parties have read and understood the contents of this agreement. Each party confirms that signature of this agreement has been done freely and voluntarily.

8. It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

9. This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party unless such party is entitled thereto in law or without the written consent of the other party.

10. Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

Thus done and signed at Auckland park **on this** 26th **day of** September 2016 **in the presence of the undersigned witnesses.**

ITANI TSEISI

WITNESSESS

1._____

2._____ JT TE

Thus done and signed at Johannesburg on this 26th day of September 2016 in the presence of the undersigned witnesses.

FOR AND ON BEHALF OF THE
SABC SOC LTD

WITNESSESS

1.

2. MMkos

JT TE

SABC

Mr IF Tseisi (14579)
Contract Details

Item	Current Annual TGRP	Current Monthly TGRP	15 Months
Basic Salary	1 555 688.76	129 640.73	1 944 610.95
Housing Allowance	23 640.00	1 970.00	29 550.00
Car Allowance	168 000.00	14 000.00	210 000.00
Other Cash	405 855.96	33 821.33	507 319.95
Entertainment Allowance	2 500.00	208.33	3 125.00
Group Life	14 859.96	1 238.33	18 574.95
Medical Aid	59 464.80	4 955.40	74 331.00
RPM 13th Cheque Allowance	129 640.73	10 803.39	162 050.91
Pension Fund	217 796.43	18 149.70	272 245.53
Grand Total	**2 577 446.64**	**214 787.22**	**3 221 808.30**

Plus Current Leave Balance (30 Sep 2016)	**80.03**
Cash Value of Current Leave	**383 108.87**
Grand Total (TCTC Plus Leave)	**3 604 917.16**

jvs/23 September 2016

MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

JEREMY VAN WYK
(THE EMPLOYEE)
PERSONNEL NUMBER: 14841

AND

THE SOUTH AFRICAN BROADCASTING CORPORATION LIMITED
(THE EMPLOYER)

JT TE

1. Whereas the parties have agreed by mutual consent to terminate the employment relationship between them, the parties herewith further agree to do so on the following basis, terms and conditions:

1.1 The **EMPLOYEE** has requested that the fixed term employment contract entered into between the parties on **05 January 2004** be terminated prior to its automatic termination date of **31 October 2011** and the **EMPLOYER** had agreed to accede to the **EMPLOYEE's** request. It is specifically recorded that this agreement was entered into by the parties without any party being put under duress, instruction or force to do so;

1.2 The **EMPLOYEE's** last day of employment shall be **14 September 2011** , after which day the **EMPLOYEE** shall cease to be in the employment of the **EMPLOYER** and the **EMPLOYEE** will have no claim to any benefits previously enjoyed in terms of the said fixed term contract i.e. medical aid etc.;

1.3 Neither party shall have any claim against the other as a result of the termination of the said employment relationship;

1.4 The **EMPLOYER** will:

1.4.1 Effect payment to the **EMPLOYEE** equal to the **EMPLOYEE's** total cost to company remuneration package for the remainder of the fixed term contract of employment period in the amount of FORTY THOUSANDS, SEVEN AND FIFTY THREE RAND AND SEVENTY THREE CENTS **(R40753.73)** subject to taxation (payment will be equal to two (2) months' remuneration);

1.4.2 Supply the **EMPLOYEE** with all documentation and assistance reasonably necessary to obtain a tax directive; and

1.4.3 Payment referred to in 1.4.1 above, will be effected into the banking account of the **EMPLOYEE/hand cheque to be generated** within seven (7) working days upon receipt of the tax directive;

1.4.4 Furnish the **EMPLOYEE** with a certificate of service;

1.5 The **EMPLOYEE** will:

1.5.1 Return all property of the **EMPLOYER** in its possession or under its control on the date of termination of the contract of employment, as per **clause 1.2** above; and

1.6 The **EMPLOYEE** specifically records, acknowledges and agrees that:

1.6.1 The **EMPLOYEE**, by reason of association and service, has acquired and gained knowledge and information of the **EMPLOYER's** trade secrets, marketing strategies, customer base, pricing, trade connections, development of programmes, compositions, ideas, improvements or inventions, that are the property of the **EMPLOYER**. Such knowledge and information could be advantageous to outsiders and/or competitors of the **EMPLOYER**. The **EMPLOYEE**, therefore, undertakes not to directly or indirectly disclose to any third party or use for her own benefit after termination of her employment with the **EMPLOYER** such information that is hereby regarded by the **EMPLOYER** as confidential, without first having obtained

written consent from the Group Chief Executive Officer of the **EMPLOYER**;

1.6.2 On termination of the **EMPLOYEE's** employment, the **EMPLOYEE** shall return to the **EMPLOYER** all the documents, catalogues, memoranda, notes, minutes of meetings and any other such material (including any copies) that the **EMPLOYEE** may have in his possession or used whilst being in the **EMPLOYER's** employ. The provisions of this paragraph shall apply irrespective of who was the author of such documents and material;

1.7 The **EMPLOYEE**

1.7.1 Hereby assigns all intellectual property created by the **EMPLOYEE** in the scope of his employment to the **EMPLOYER** and the **EMPLOYER** accepts such assignment of rights;

1.7.2 Hereby waives all moral rights the **EMPLOYEE** may have in any intellectual property created by the **EMPLOYEE** in the scope of his employment;

1.7.3 Hereby warrants that intellectual property created, is original and not an infringement of any third party rights;

1.7.4 Shall not, directly or indirectly and notwithstanding the termination of employment with the **EMPLOYER**, use, allow others to use or in any other manner benefit from the **EMPLOYER's** intellectual property;

1.7.5 Shall not use, copy, distribute reverse-engineer, modify or adapt or in any other manner deal with the **EMPLOYER's**

JT TE

intellectual property without the **EMPLOYER's** prior written consent;

1.8 For the avoidance of doubt, intellectual property shall include, but not be limited to, copyright assets, trademarks, trade name(s), domain names, patents, trade secrets, software, source code, know-how, business knowledge, client details or parts thereof;

2 This agreement will be private and confidential between the parties and no term and/or condition hereof may be disclosed to any other party, unless such party is entitled thereto in law;

3 Both parties undertake to, prior to disclosure to a party entitled in law thereto, to inform the other party of such contemplated disclosure and to jointly, if necessary, take all reasonable and lawful steps possible to prevent the disclosure;

4 This agreement constitutes the only and entire agreement between the parties and will be the full and final settlement between the parties in terminating the employment relationship between them and neither party may institute further and/or alternative claims in respect of the said termination of employment between the parties;

5 It is specifically recorded that this agreement will not set and/or create a precedent of any nature whatsoever.

THUS AGREED TO AND SIGNED ON THIS 15th **DAY OF** September **AT** Sunward Park

EMPLOYEE

David Moloto

WITNESS

M E Matsena

JT TE

General Manager
For and on behalf of the
EMPLOYER

WITNESS

Duly authorised thereto