Arbitration Award

Case Number: ***GATW3866-25***
Commissioner: ***Hilda Grobler***
Date of Award: ***02 November 2026***

In the **ARBITRATION** between

Sanele Dlamini
(Union/Applicant)

and

National Lotteries Commission
(Respondent)

Applicant's representative: Sifundo Ntshaba and Ntokozo Mlangeni

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Respondent's representative: Prinoleen Naidoo; Courtnage Mahada

DETAILS OF HEARING AND REPRESENTATION

1. The matter proceeded virtually to arbitration on 12 May 2025; 27, 28, 29, 30 and 31 October 2025; 19, 20, 21,22 and 23 January 2026; 1 and 2 April 2026; 24 June 2026; 7 October 2026, 8 October 2026 and 9 October 2026

2. The applicant was initially legally represented by Mr Sifundo Ntshaba and thereafter by Ntokozo Mlangeni of Ndumiso Voyi Inc. Attorneys while the respondent was represented by attorney Ms Prinoleen Naidoo of Cheadle Thompson & Haysom Inc. Attorneys.

3. All attempts to settle the matter failed.

4. Both parties submitted voluminous bundles, and together the bundles exceeded some 3000 pages, and agreed that the documents are what they purport to be and there was no need to formally prove any of the documents.

5. The parties testified under oath, in English, and the proceedings were digitally recorded.

ISSUE TO BE DECIDED

6. I was required to determine whether the applicant's dismissal was procedurally and substantively unfair.

6.1 The disciplinary hearing was held on the papers due to the applicant's health issues at the time.

6.2 The parties agreed that I would be required to "determine whether the dismissal of the Applicant was for a fair reason and whether the sanction of dismissal was appropriate under the circumstances".

6.3 If I found that the applicant's dismissal was substantively unfair, the applicant seeks an order of retrospective reinstatement without any loss of salary, benefits, increases and bonuses.

BACKGROUND INFORMATION

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7. The parties entered into a pre-arb agreement on or about 12 May 2025.

8. It was agreed that it was common cause that:

8.1 The Applicant commenced employment with the then National Lotteries Board ("the NLB") on 27 February 2013 in the post of Office Manager in the office of the Chief Executive Officer.

8.2. On 01 July 2014 the Applicant was transferred internally from the position of Office Manager in the Office of the CEO to the position of Provincial Manager: Kwa-Zulu Natal Province.

8.3 On 03 January 2022 the Applicant was appointed to the position of Senior Manager: Grant Operations, in the Office of the NLC's Chief Operations Officer.

8.4 The Applicant was suspended and issued with a notice to attend disciplinary enquiry on or about 11 December 2023.

8.5 The disciplinary enquiry was scheduled to be heard physically on the dates of 27 to 29 February 2024.

8.6 The Applicant was called to the disciplinary hearing to answer to 6 charges of alleged misconduct as captured in the Charge Sheet.

8.7 On 24 September 2024, the Chairperson issued his outcome wherein he recommended the summary dismissal of the Applicant on charges 1, 2, 4 and 6.

8.8 The Applicant was subsequently served with a Notice of Dismissal on 27 September 2024. The Notice of Dismissal dated 27 September 2024 stated that the Applicant could appeal his dismissal using the Respondent's Standard Operating Procedures **("SOP")** or alternatively he can approach the Commission for Conciliation, Mediation and Arbitration (the **"CCMA").**

8.9 In line with the aforesaid Notice, the Applicant then took the outcome of the disciplinary hearing on appeal.

8.10 The appeal hearing was held on 20 February 2025 when the Chairperson of the disciplinary appeal hearing reserved his Ruling.

8.11 The Chairperson issued his Ruling on 03 March 2025. In his Ruling, the Chairperson dismissed the Applicant's appeal and upheld his dismissal.

8.12 The Applicant was then dismissed with effect from 03 March 2025.

9. Investigations were conducted by the SIU, which investigations formed the basis of the allegations the applicant faced when called to a disciplinary hearing.

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9.1 The first investigation was conducted after the Internal the Audit and Advisory Services Division ("the IAAS Division") of the NLC received a request on 27 March 2023 to determine how funds were utilised on project 56304 by Phumelela Educational Training Projects ("PETP").

9.2 The second investigation related to acts of alleged impropriety in relation to the process followed by NLC officials when reviewing and approving the Progress Reports for grant funding of Motheo Sports and Entertainment (“Motheo”).

9.3 Apart from the allegations which emanated from the two investigations, there was a third investigation relating to the applicant’s conduct to the audit conducted by the Auditor General of South Africa for the 2022/23 financial year.

10. The applicant was found guilty of the following allegations, styled as charges:

CHARGE 1: SIGNATURE OF A PROGRESS REPORT THAT AUTHORISED PAYMENT OF MONIES TO PETP

26 On 5 October 2017, in your capacity as Provincial Manager, you co-signed a Progress Report Review which authorised the payment of the second tranche of R3,596,627.61, despite the fact that PETP had not complied with the conditions set out in its Grant Agreement for receipt of the second tranche payment. In December 2017, and on the strength of this Progress Report Review, the NLC made payment to PETP of the second tranche.

27 Your conduct constitutes gross misconduct, for one or more of the following reasons:

27.1 it constitutes fraud or dishonesty

27.2 you enabled the commission of corrupt or fraudulent activities;

27.3 you failed to safeguard the assets of the NLC and, in particular, caused a loss to the NLC of R 3,596, 627.61;

27.4 you acted against the interests, or to the detriment of the NLC; and/ or

27.5 you were grossly negligent and/or derelict in your duties.

CHARGE 2: THE PROVISION AND SIGNATURE OF A LETTER OF RECOMMENDATION THAT CONTAINED FALSE OR DISHONEST STATEMENTS

28 You gave the PETP a letter of recommendation dated 6 August 2019 on an official NLC letterhead, in which you made the following false statements for which you are hereby charged:

28.1 PETP had been granted NLC funding for the preceding five years arid that PETP consistently furnished credible reports to the NLC;

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28.2 PETP demonstrated commendable accountability for all funds received from the NLC.

29 Your conduct as aforestated constitutes gross misconduct because it amounts to one or more of the following:

29.1 gross dishonesty involving making false statements in the execution of your duties;

29.2 conduct contrary to good governance and ethical decision-making;

29.3 conduct against the policies and principles of the NLC;

29.4 a failure to safeguard the assets of the NLC;

29.5 conduct against the interests and/or to the detriment of the NLC in that such conduct could have the effect of preventing alternatively limiting the prospects of the NLC recovering such money as was not spent by PETP in accordance with its Grant Agreement.

CHARGE 4: REVIEW AND APPROVAL OF PROGRESS REPORTS WITHOUT AUTHORITY TO DO SO

35 On or about 2 February 2022, you reviewed and approved the progress report for Project M33064 submitted by Motheo, in circumstances where it was inadequate or non-compliant with the Grant Agreement.

36 By doing so, you acted dishonestly and/or with gross negligence and/or exceeded your authority within the NLC as you were not authorised by the NLC, nor was it within your job functions, to approve the review of Progress reports.

37 Your conduct as aforestated constitutes gross misconduct, for one or more of the following reasons:

37.1 you enabled the commission of corrupt or fraudulent activities;

37.2 it was dishonest;

37.3 you acted without authority;

37.4 you represented, by signifying your approval of the progress report that Motheo had complied with the terms of the Grant Agreement and consequently enabled the second tranche payment of R 3 000 000, to the detriment and loss of the NLC;

37.5 it led to irregular expenditure in contravention of section 45 (c) of the PFMA;

37.6 you failed to safeguard the assets of the NLC;

37.7 you acted against the interests and to the detriment of the NLC.

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CHARGE 6: GROSS NEGLIGENCE INVOLVING A DERELICTION OF YOUR DUTIES

PARTICULARS OF THE CHARGE

40 The Auditor General requested key audit information for the purposes of the 2022/2023 audit report from the CFO. In line with your position and responsibilities as the Acting Chief Operations Officer, you were required to do all things necessary to ensure that the required key audit information was provided to the CFO for submission to the Auditor General.

41 Despite being requested to do so over several months, you failed to discharge your duties and/or were grossly negligent in failing to provide key audit information to the CFO for submission to the Auditor General.

42 Your conduct led to the Auditor General communicating on 25 July 2023, at the special EXCO meeting, that it would be issuing a finding of limitation of scope in its report on the NLC's financial statements, as repeated requests for key information was not received,

43 Your conduct as aforestated, amounts to gross misconduct for one or more of the following reasons:

43.1 it amounts to refusal to comply with a lawful and reasonable instruction;

43.2 it amounted to a gross dereliction of your duties;

43.3 you caused prejudice and reputational harm to the NLC.

11. On 25 May 2025 the parties made their opening statements, and the respondent led its first witness on 27 October 2025.

12. The respondent called 2 witnesses, namely Buyisa Gwam and Ruezani Osborne Masikhwa

12.1 The applicant called 3 witnesses apart from testifying on his own behalf, namely Yanga Mthetwa, Thendo Resnic Ramagoma and Katiso Molefe

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THE EVIDENCE

Gwam's evidence

13. Buyisa Gwam ("Gwam") was employed by the NLC in 2009 and was seconded to the forensic unit under the control of the Internal Audit division in 2023. In addition to his academic qualifications and experience in auditing and tax management, he is a member of the Association of Fraud Examiners.

14. The Phumelela Educational Training Project (PETP) - project 56304 - investigation report was drafted by Gwam on 11 August 2023.

14.1 Gwam's evidence in chief related largely to the investigation report in question.

14.2 The report spoke to the PETP project 56304 for the construction of Chief Mghabi Cultural Village and Grave, the Princess Nandi Documentary, and the Princess/Queen Nandi Musical Production.

15. The investigation was conducted by Gwam and a Mr Thinandavha Nesengani after receiving an incident report from the acting Provincial Manager of the KZN NLC provincial office, Ms Geveza ("Geveza"), requesting an investigation into the utilisation of the funds re the PETP project 56304, and an assessment as to whether the funds approved for Project M54014 should be paid given that the buildings were unfinished, were unsuitable for human use and inhabited by livestock and other animals.

16. This was not the first time that a funded PETP project was investigated - in January 2014 the NLC Risk and Audit Unit found that PETP had submitted fraudulent invoices, fraudulent attendance registers and fraudulent financial statements in the progress report submitted. The grant agreement was duly cancelled in December 2014.

17. On 2 June 2023 the investigation team conducted a PETP project site visit at Melmoth. Its findings aligned with Geveza's report.

17.1 It further found that there were instances of substandard workmanship and given the state of the buildings on site, the team concluded that the site was abandoned.

17.2 Despite the incomplete state and disrepair of the buildings, the investigation sought to establish how the funds were used.

17.3 The project manager, a Mr Mhlongo ("Mhlongo"), justified the depletion of the first tranche by citing shortages of water and essential resources.

17.4 The investigation found that the grantee (PETP) could not account for funds that were allocated and that it failed to provide the investigation team with supporting documentation for expenditure incurred in the project.

17.5 The investigation report stated that Mhlongo told the team

> 2.19 … that Mr. Dlamini provided substantial backing for their project. Mr. Mhlongo claimed that Mr. Dlamini possessed comprehensive knowledge about their Melmoth project, and he even shared a letter of recommendation from Mr. Dlamini as evidence. The letter, dated August 6, 2019, was transmitted to us by Mr. Mhlongo.

17.5.1 The letter confirmed

> 20.2 …that PETP had been granted NLC funding for the preceding five years. He attested that PETP consistently furnished credible reports to the NLC and demonstrated commendable accountability for all received funds. When interviewing Mr. Dlamini, we inquired about his motivation for composing such a letter, considering that PETP had not finalized the project and had not provided comprehensive accountability for the disbursed funds.

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2.21. Mr. Dlamini indicated to us that he wrote the letter only to direct Mr. Mhlongo away from NLC to other funders as he was now dependent on NLC.

18. The applicant had issued an instruction via email to Geveza on 31 January 2022.

18.1 The email contained a template for a letter of recommendation which would favour a further tranche to be released to PETP.

18.2 When questioned, the applicant denied that he had issued such an instruction.

18.2.1 The applicant maintained this version when he testified during this arbitration.

18.3 When the team asked the applicant why organisations were allowed to submit progress reports which did not contain the required supporting documents, his response was that the NLC did not have the staff with audit skills to evaluate invoices and consequently relied on the submitted financial statements and photographs.

18.4 The investigation team consequently concluded that

> 2.24 Mr. Dlamini's actions, involving the composition of a letter of recommendation for an organization that lacked credible progress reports, failed to provide full financial accountability, and left a funded project incomplete while depleting the funds, contradicted NLC's policies and principles. These actions were incongruent with NLC's expectations for all employees, particularly those in managerial positions, to uphold rigorous standards of integrity and good governance.

19. Apart from recommending that disciplinary steps be taken against Geveza (and a Mr Mpungose and Ms Zondi), the team recommended that steps be taken against the applicant.

due to his negligent, and integrity-compromising actions which included the letter of recommendation

> falsely asserting credible progress reporting and complete financial accountability, despite evidence to the contrary. Furthermore, the organisation failed to finalise the project and violated the Grant agreement terms.

19.1 Disciplinary steps were also recommended because applicant had furnished Geveza

with the template to compose another recommendation letter for PETP, mirroring the content of the prior letter he authored.

20. Apart from the recommendation that disciplinary steps be taken against the above-mentioned employees, the team further recommended that a criminal charge be laid

to pursue of case of fraud against the representatives of PETP given that

> Mhlongo submitted fraudulent invoices and falsified progress reports on projects 61153 and falsified financial statements in project 56304.

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21. Despite lengthy cross-examination, Gwam's evidence, which was supported by photographs - showing overgrown grass, abandoned construction and grazing livestock - and various documents (which were not in dispute), could not be disturbed.

22. Gwam was a calm, reasoned and persuasive witness.

Masikhwa's evidence

23. The respondent's remaining witness, Rudzani Osborne Masikhwa, was an investigator employed by the Special Investigations Unit ("SIU"), who was tasked to conduct an investigation into serious maladministration at the NLC.

23.1 Masikhwa testified that he had obtained access to the documents utilised during his investigation either directly from the NLC or from the files in the SIU storeroom following an earlier search and seizure operation at the offices of the NLC.

23.2 His evidence focused on the Motheo project and turned largely on his affidavit in this regard.

23.3 Motheo was a non-profit organisation registered with the Department of Social Development and had submitted an application for grant funding on 5 June 2020.

24. He testified that he understood from the applicant's letter of appointment and key performance areas ("KPAs") that the latter was required to oversee this proactively funded project, which was originally allotted an amount of R70 000, which it declined.

24.1 After a Mr Ramatsekisa (a manager who dealt with grant funding projects) submitted a proposal on 14 April 2021, Motheo was allocated a grant of R9 million on 13 May 2021, to be paid in three (3) tranches.

24.2 Based on the documentary evidence he testified in some detail as to the process to be followed before the next tranche would be released.

24.3 He *inter-alia* said that the progress report would be reviewed by the monitoring and evaluation officer and thereafter by the monitoring and evaluation specialist amounting to what was described as "more or less like" conducting a "quality assurance" exercise.

24.4 The investigation found that the first person, a Ms Dorah Maodi, who reviewed the progress report, lacked the necessary authority because she was an executive assistant to the COO. The applicant was the second reviewer.

24.4.1 These two reviews resulted therein that an amount of R3 million was advanced to Mateo when that should not have happened.

25. His evidence was further that the name Petrus Sedibe ("Sedibe") did not appear on the grant application. Despite that Sedibe took an active role in January 2022.

26. The following timeline was indicative thereof that the Motheo project was not above board, so to speak:

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26.1 The progress report was submitted on 30 November 2021.

26.2 On 31 January 2022 Sedibe wrote to the NLC in his capacity as the 'Chairperson', stating that he was writing on behalf of Motheo.

26.2.1 The email was addressed to Ramatsekisa and copied to Marito Mabunda, Njoni and Dorah Maodi.

26.3 The purpose of the email was to advise that the councillors were happy, that the naming Board would be erected, and to ask when the R3 million second tranche would be paid.

26.4 Ramatsekisa replied the next day on 1 February 2022 by writing to the applicant advising that he had instructed one Hendrica

> "to submit the progress report for Motheo that is signed off by our engineers to your office, Dorah. You may release the second tranche if **you** are happy with the progress report. It looks satisfactory (My emphasis).

26.5 On 2 February 2022 both Dorah Maodi, the Executive Assistant to the COO, and the applicant in his capacity as Senior Manager Operations, signed off on the progress report review in terms of which the second tranche of R3 million

was released despite the fact that a "correctly signed financial report" was not included.

26.5.1 Instead of having included a "correctly signed financial report", the grantee had submitted bank statements.

27. Maodi stated in her affidavit (respondent's bundle page 523) – which was drafted by Masikhwa after he had interviewed her - that reviewing a progress report was not part of her responsibilities, but she did so on the instructions of the applicant.

27.1 The applicant denied that he had given such an instruction.

27.2 Maodi also told Masikhwa she had a close relationship with Sedebi, saying that they were "more or less business partners".

28. On Masikhwa's version there was no basis to have signed off the progress report on 2 February 2022, that is, to release the second tranche of R3 million because the signage had not yet been erected - nor was there any proof that the NLC contribution had been acknowledged in any way.

28.1 His version was supported by Sedebi's correspondence which categorically stated on 31 January 2022 (two days before the release of the second tranche was approved) that they would start preparing the boards.

28.2 This information/email was before Maodi and the applicant - by signing the progress report review they knew that Motheo had failed to comply with this requirement.

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29. His version was further supported either fact that bank statements were not required - the grantee was required to have provided a correctly signed financial report.

29.1 Both Maodi and the applicant were aware that Motheo had failed to provide a correctly signed financial report they knew that Motheo had not met all the requirements justifying the release of the second tranche.

30. During the investigation Masikhwa compared the bank statements that were attached to the progress report with statements that were subpoenaed from FNB.

30.1 The comparison showed that the bank statements attached to the progress report did not come from the bank, but were 'self-created', and therefore fraudulent.

30.2 Although he conceded during cross-examination that NLC employees did not have the necessary powers to subpoena bank statements, it was his evidence that the applicant had sufficient information before him not to have signed off on the progress report.

30.3 Masikhwa testified that the applicant knew that no construction had taken place because he had conducted a site visit on 8 November 2022 when he and the provincial manager, Molefe, (who accompanied him), found that no construction had taken place since the first tranche was paid.

30.4 Instead of concluding that he was lied to, the applicant accepted the progress report which was submitted not quite three months later after which he authorised the second tranche of R3 million to be paid.

30.5 Not much had changed after the second tranche was paid because when Masikhwa conducted a site visit (where he took pictures), he found that there still wasn't a fence but saw that tractors were on site. He further noted that the signboards acknowledging the financial support of the NLC were also not yet erected.

31. Masikhwa also interviewed Lipolelo Motsomi ("Motsomi"), an M and E officer, whereafter he drafted the affidavit which she signed.

31.1 Ms Naidoo resolved not to call Motsomi on the basis that Masikhwa had interviewed and obtained the information contained in the affidavit. This information was before the disciplinary hearing and consequently constituted part of the documents which formed part of the respondent's stated case, and which were not in dispute as per para 8.3.1 the pre-arbitration agreement.

32. Motsomi stated at paragraph 8 of her affidavit that:

> 8. The main purpose of the M&E unit is to provide a clear and accurate reporting on results achieved by an Intervention, project or program. The scope of work of the M&E officials entails site visits to the grantees to monitor as well as the review of progress reports submitted in accordance with the grant agreement (My emphasis).

32.1 She confirmed in her affidavit that progress reports are reviewed by the M and E officer to determine whether it meets the requirements as recorded in the signed grant agreement.

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32.2 The requirements speak to the format of the progress report, the inclusion of a financial report and proof of expenditure.

32.3 If the M and E officer is satisfied with the report, s/he would sign the progress report checklist whereafter it was quality assured by an M and E specialist and signed off by that specialist if satisfied. Only at that point would the Provincial Manager be required to approve the payment on the system before it was sent to the finance department for payment.

33. Based on this affidavit, Masikhwa testified that an M and E officer must perform site visits to give effect to the requirements of a proactive funding policy as stated in the said policy dated June 2018. Any deviation from these requirements had to be approved by the Commissioner. Based on the documentary evidence as contained in the review of the progress report (respondent's bundle, page 512), the review was not done in line with the policy, and there was no evidence to show that a deviation from the policy been approved.

34. Masikhwa was subjected to lengthy cross-examination.

34.1 He conceded that the applicant's version was not obtained during the investigation but explained that there was no obligation on the SIU to have interviewed the applicant and emphasised that the *audi alteram partem* was complied with during the disciplinary hearing.

35. The cross-examination focused on the affidavit provided by Katiso Molefe ("Molefe"), a provincial manager who was acting as a Senior Manager: Operations when he attested to his affidavit on 13 June 2024.

35.1 When par 5.5 of Katiso Molefe's affidavit was put to him in defence of the applicant's conduct, Miskhwa's response was that

> This particular paragraph was meant to mislead… There is a policy… You cannot say there is a practice because there is a rule…

35.2 In respect of paragraph 5.5 of Molefe's affidavit Masikhwa emphasised that the NLC policies made it clear that

> … every proactive funded project should be subject to monitoring and evaluation. There was no exception.

36. Masikhwa disputed the version that the applicant would say that the panel of engineers were appointed to among other tasks provide progress reports which would form the basis for trans recommendations. He said that the grant agreement specifically stated that it was the grantee's responsibility to provide a progress report.

37. Although he accepted that the applicant did not release the tranche payment, he emphasised that it was released by finance based on the documents on which the applicant that signed off.

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38. Masikhwa elected not to respond to submissions that were put to him as to what occurred when the SIU remove documents as he was not present during the search, nor would he commit himself when it was put to him that the CFO at copies of those documents as he had no knowledge thereof. It was, however, a fact that the applicant failed to produce the documents as requested by the AGSA.

39. Masikhwa was a very good, stable and persuasive witness. His evidence was very clear and supported by the documents before these proceedings. Despite lengthy cross-examination his evidence was not disturbed.

The applicant's evidence

40. The applicant testified and was cross-examined over a period of some five (5) days.

41. The applicant's letter of employment dated 22 December 2021 stated that he was employed as a Senior Manager Grant Operations in the Chief Operations Office ("COO"), reporting to the COO.

41.1 He was suitable for the appointment as he had obtained a wealth of experience developing strategy, policies and procedures, the grant funding process and having managed an office with 16 employees whilst he was the provincial manager in the KwaZulu-Natal office.

41.2 It was stated in his key performance areas that he would now *inter alia* be responsible for the project management of proactively funded projects.

41.3 According to the Ethics and Conduct Policy the applicant - and all other employees at the NLC - were required to perform their duties consciously, honestly and in the best interest of the NLC and its stakeholders. They were to avoid conduct which would be perceived to be or was in conflict of interest with the employer.

42. The applicant pleaded not guilty to the charges and went so far as to say that he should not have been charged.

43. In respect of the PETP project the applicant testified that he had conducted a site visit in March 2017 to determine "what is happening" because the project was awarded less (R8 million) than what it had asked for (R19 million).

43.1 He met Mhlongo at the site where excavations had been done, a fence was erected and various structures were already roof height.

43.1.1 Despite this progress not all the documents were in place, and he could not find the feasibility study, the plans, the bills of quantity or the environmental assessment in the system, but later he testified that these documents "were not a requirement".

43.2 Mthethwa conducted a formal site visit on his own on 31 August 2017 when he found that the progress was in line with the grant agreement and further recorded that the project experienced severe water shortages which meant that water had to be brought from approximately 50 km away.

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43.2.1 The second tranche was released based on an interim report and financial statements prepared by an independent bookkeeping service. Given that financial statements were submitted, the applicant said that there was no need for "invoices and slips" to be produced.

43.3 He testified that he did not make payments - these were made by finance once it was satisfied that all the requirements had been met.

43.4 Although a previous investigation had found that PETP was one of the organisations involved in fraudulent conduct and removed from the system, it was later reinstated.

The letter of recommendation

44. Asked why he had recommended that PETP's application be entertained, he responded by saying that they had (earlier) shown good accountability for the funds received and that they had provided credible progress reports. He further said that he could not have overruled the Board's decision to reinstate the organisation.

44.1 He maintained that he did the correct thing when he wrote the letter of recommendation

44.2 He challenged the respondent's version that he was guilty of some wrongdoing by saying that PETP was in the NLC system since 2013 and was "approved by the board to be in the system".

44.3 His version was further that when he wrote the letter of recommendation in August 2019, it was after PETP was reinstated and was accordingly in line with Regulation 14.

44.4 Later during the cross-examination he conceded that he wrote the letter of recommendation based on a request from Mhlongo who had written to the Commissioner telling her that "there's going to be a shortage of funds". The Commissioner had referred Mhlongo's letter to him, causing him to have written the letter of recommendation.

44.5 There was no obligation on him to have written that letter - he only did so because "it was part of my work as stakeholder management function"; it was based "on the information that was at my disposal"; and to enable Mhlongo to look for funds "elsewhere". Are

44.6 His letter of recommendation was dated 6 August 2019 after the project was closed out on 11 June 2019. It was consequently put to him that

> …you are being dishonest in repeating this continuously about 2017 about how he wanted to look for funds for the project. All of that is dishonest information, because we know the project closed up.

44.7 He denied that the information contained in the letter of recommendation was false despite not being able to deny that the site visit report noted that no progress was made in relation to the project, no financial reports were submitted, and signage was not put up.

44.8 Later during the cross-examination he attempted to justify his conduct by adding that he went into Google Earth where "I could see the signage". This was the first time that he tendered this version.

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44.9 He denied that he had made factual statements when stating that PETP had provided credible progress reports and had shown good accountability for the funds that they had received, when stating that he had access to the GM system at the time and therefore to all the documents on which he based his recommendation.

44.10 He denied that the content contained in his letter of recommendation had compromised the respondent from claiming against PETP, saying that the letter was necessary to "empower people", to "develop people", and to make sure that "people get access to funds to enhance their projects and implement community projects".

44.11 He denied that he *instructed* Gaveza to provide a letter of recommendation to PETP and that he had attached a template for doing so, saying that he had only *requested* her to write such a letter and that the template was merely to serve as an example because she had ostensibly said that she had never written a letter of recommendation before.

44.12 He conceded that a later site visit had shown that the site was abandoned to grazing animals.

44.13 He was of the view that the musical had taken place at the Playhouse because he had received an invitation to attend but did not do so.

45. The applicant testified that he had approved the PETP progress report in October 2017, but some six years later charges were served on him in August 2023. The charges were based on a site visit which was conducted on 13 March 2023 (after a new application was submitted by PETP) when it was established that the site was abandoned to grazing animals.

45.1 Since the GM system was no longer operative, it was not possible to access the documents that were in the system at the time.

Documents requested by the AGSA

46. The applicant denied that he was guilty of dereliction of duty (Charge 6), testifying that he was ordered out of his office when the SIU came to conduct a search and seizure exercise during which the documents the AGSA required, were removed from his files.

46.1 His version was further that the CFO was accountable for the audit process, and that finance was not raided by the SIU. In the circumstances, he testified, the CFO should have provided the information, which was already backed up in her office, knowing that the grant funding division was raided, but elected not to do so.

46.2 Consequently he was surprised and confused when was required to answer to this charge.

46.2.1 However, he conceded during cross-examination that during the 2021 and 2022 audits the AGSA's staff who were conducting the audit, came to his office to access the files in relation to proactively funded projects.

46.2.2 He denied that his version - that the CFO should have provided the documents - was a fabrication, saying that she was in a different division, the letter was written to her and his response to the request for the documents was a response on behalf of his division.

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46.2.3 He denied that he was lying despite the fact that he could not show where in the document under discussion he had mentioned that the CFO had the documents.

Contradicting witnesses and/or statements made in affidavits during cross-examination

Bhengu's affidavit

47. The applicant testified that once the second tranche was delivered, a Ms Bhengu took over - the applicant did not have a "document that talks to how the second tranche was delivered".

47.1 Although Bhengu was not called, her rather damning progress report dated 28 May 2019 co-signed with Mthethwa recommending that the project should be

closed, was part of the respondent stated case and was consequently before these proceedings.

48. The applicant denied that Bhengu had conducted an actual site visit, stating that it was a desktop exercise and that Bhengu's report was informed by the Commissioner's instruction that all projects that were older than 2014 had to be closed.

48.1 It was further the applicant's version that all the information provided by Bhengu and Mthethwa on the form recommending that the project be closed, was wrong and that Mthethwa would explain why he provided wrong information when he came to testify.

49. When interviewed, Bhengu told Gwam (respondent's bundle, p 267) that the project was recommended for closure and that all the questions in the progress report were answered in the negative because:

> …there had been no final progress report submitted to the NLC after a reminder had been sent and a memo from the then Commissioner that made provision for M and E to close ageing projects (My emphasis).

49.1 On the applicant's version the old projects were closed because they were migrating from the GM system into a new system.

50. Bhengu further told Gwam that:

> In addition, please note I had never engaged with the project or approved anything at this point (2017) as I was still an M&E Officer. The then Provincial Manager (Mr. Sanele Dlamini) would have been solely responsible for overseeing projects and/or any related approvals. This is why you will note that the interim progress report review checklist was signed by him, as well as the first site visit report written by Yanga (My emphasis).

51. It is apparent from the applicant's version that he was selective as to the facts on which he relied to challenge the statements in Bhengu's affidavit.

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51.1 The only conclusion that can be drawn from this fact is that the applicant did not want to draw attention to the fact that a final progress report was not submitted as such would have a negative impact on his version.

Contradicting and challenging Gwam's evidence

52. Regarding Gwam's evidence the applicant had the following to say:

- He denied that the PETP progress report he allegedly reviewed and signed against did not exist, stating that it would have been in the (closed down) GM system, but could not provide any written proof that he had requested access to the GM system when this disciplinary process started. He was adamant that he had seen the progress report which he described as a 'mandatory document to release the tranche' as well as the M and E officer's notes. He emphasized that without the progress report, which would have included the financial report that Gwam could not find, the tranche could not be paid.
- Although he could not deny that Mhlongo had failed to send all the applicable documents when so requested by Gwam, he stated that it might be necessary to "get a perspective from Mr Mhlongo to whom I haven't spoken in a long time". However, he indicated that Mhlongo would "come and testify"- but it is common cause that Mhlongo did not testify.
- He could not deny that the second tranche was released although the logo was not displayed as required at the outset, and it was intended that it would only be displayed once the second tranche was paid.
- He could not deny that he had signed off on the report despite this breach of the grant agreement, saying that Mthethwa would have seen the acknowledgement when he did his site visit. This version changed during cross-examination when his version was that had seen the signage when he had gone onto the Internet and had seen the signage displayed when he accessed Google Earth.
- Given the respondent's version that the alleged report did not exist, the applicant could not deny that there were no photos available at these proceedings which would have confirmed the display of the logo. He restated his version that all the documents were in the inaccessible GM system.
- The applicant testified that it was merely Gwam's opinion that the project could not be completed with the grant "because he expected the project to be completed with 60% allocation (of R8 million) which was not going to be practical" because PETP had applied for R19 million. As he was never interviewed, he was not in a position to respond to this opinion.
- The applicant's version that Gwam had conceded during his evidence at these proceedings that he had not read the NLCs Regulations was denied by Ms Naidoo. However, he could not dispute that Gwam had addressed the provisions of the grant agreement in detail and had pointed out that it provided for audited financial statements, that is, that proof of expenditure was required. The applicant replied that it was the practice to act according to the Regulations and not in terms with "the internal documents". He was not able to challenge the submission that the grant agreement constituted a contract between the parties and therefore that the terms and conditions of that agreement prevailed.

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- Ms Naidoo listed nine (9) incidents - a number of which appear in Gwam's report - where accusations were levelled against PETP regarding how it utilised the grant monies. Ms Naidoo put it to him that his version

  "appears to corroborate some aspect of their (PETPs) version",

and that such reflected that he had a corrupt relationship with PETP.

In a lengthy answer he broadly denied the submission, repeating his version that PETP was on the system, that the applicable documents were in the GM system, and that he was implementing the Regulations.

Further to that his conduct should be seen in the context that he was passionate about infrastructure projects - particularly in the rural areas. Therefore, he said,

> It has absolutely nothing to do with PETP. It had everything to do with the job creation" and the opportunities it created in an area where there was "no economic activity".

52.1 It is my finding on a balance of probabilities that the applicant's challenge to Gwam's version was without substance, and that no reliance can be placed on his improbable version in response. The improbability of his version was, for example, demonstrated when he initially testified that although there were no photographs, Mthethwa 'would have seen the signage' and therefore he could accept that the logo was indeed displayed when his much later version was that he had seen it himself when he went into 'Google Earth'.

Contradicting and challenging Masikhwa's evidence

53. Contrary to Masikhwa' s evidence he testified that

- M and E officers were not required to do site visits and therefore he did the monitoring thereof himself.
- M and E officers were required to conduct site visits in respect of funded projects.
- Engineers were appointed to provide the NLC with inspection and progress reports.
- He did not have a personal assistant when he took up his new position in January 2022 and could not have given Maodi any instructions relating to the Motheo progress report.
- While Motheo was funded before his "time" he conceded that he co-signed (with Maodi) a progress report review on 2 February 2022, and had recommended a further tranche payment on 5 February 2022, but did so based on a progress report which had the necessary supporting documentation and which was submitted in November 2021.
- Although he could not deny that Maodi had signed the progress report, he testified later during the cross-examination that her signature only confirmed that the documents were submitted and, perhaps that it was a mistake to have headed this document as a "review" when all she was required to do, was to perform a checklist duty.
- He conceded that he had not produced a job description for Ramatsekisa in terms of which the latter had the authority to review or approve a progress report.

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- He conceded that he had not produced a document which showed that Maodi had the responsibility to review and approve a progress report.
- Masikhwa testified in terms of the respondent's policies, progress reports were done by the M and E officer and specialist whereafter the progress report was approved by the provincial manager - which meant that the applicant in the position of the Senior Manager Grant Operations had no power or authority to either review or approve a progress report.
- He denied the correctness of Masikhwa's evidence that he (the applicant) did not have the authority to review the progress report for Motheo, testifying that Masikhwa was misinformed, but could not produce a document which showed that he had the authority as claimed.

53.1 He persisted with the version that he had in fact taken over Ramatsekisa's job and, by implication, his KPAs.

53.2 However, on his own evidence he filled a newly created position for which there was no predecessor but testified that the KPAs of the two managers that merged to form the position of the senior manager (as per page 554 of the employer's bundle) meant that he derived the authority therefrom to review the progress report.

- He repeated his version that proactively funded projects were not monitored by M and E officers, and that they accordingly lacked the responsibility to do so. Despite this assertion he could not deny that the documentary evidence showed that Masikhwa was specifically directed to do an investigation into Motheo, which was a proactive funded project.
- He did not deny that Motsomi confirmed Masikhwa's version that proactively funded projects were monitored by M and E officers but said that her affidavit was signed after he (the applicant) had given M and E officers the authority on 23 January 2023 to do so.

53.3 However, when it was put to him that her affidavit confirmed that this was the position since 2017, and therefore directly contradicted the version that he had just provided, he replied to say that Ms Naidoo misunderstood the affidavit in this regard.

53.4 He would not concede that paragraph 7 of the affidavit was clear, testifying that "there were no proactively funded projects in 2017" and that Motsomi was referring to "applications-based processes".

53.5 In response to the submission that there was "no difference between proactive funding and application-based funding when it comes to the role of the M and E officers, he insisted during a lengthy answer that the grant funding policy showed that there was a distinct difference between these two processes.

53.6 At this point it was put to him that he made "speeches", turned the question "around on its head" giving "an incorrect version" of what was asked in "an attempt to evade the question".

53.7 Following an objection from his representative, he reiterated that authority was only granted on 23 January 2023 "when I issued a memo".

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53.8 Although he testified that Molefe would support that version, Molefe's evidence was severely curtailed as it was opinion based on therefore it carried no weight.

- He would not concede that Ramatsekisa's Motheo proposal stated that the proactive funding policy included a monitoring and evaluation component, testifying that "it doesn't say monitoring and evaluation officers will be involved".

  He could not dispute that the document at page 653 (respondent's bundle) directly referred to monitoring and evaluation and stated that M and E site visits would be conducted to establish compliance with the agreed terms of the grant but disagreed that monitoring compliance was an essential component of the funding.
- He confirmed that it was his version that he and Ramatsekisa would conduct the monitoring and evaluation of the proactive funding projects.
- Ms Naidoo summarised his evidence as meaning that he conducted the monitoring and evaluation of the progress on a proactively funding project whereafter he reviewed the progress reports, and approved the progress reports, and that the entire process was in his hands. He confirmed that he was the manager who was responsible for those functions at the time.
- Explaining why his was not the first signature on the progress review report, he said Maodi signed it first because she had "received the documents. So her job was more of a checklist".

53.9 This version was contradicted by Maodi's affidavit and Masikhwa's evidence relating to the said affidavit.

- When it was put to the applicant that his version meant that she only had to check that all the documents were received when the task of a review approving a progress report entailed the verification of the documents -which meant that the documents had to be interrogated - he repeated his answer that she had to do nothing more than to ensure by way of the checklist that all the documents received.

- When Motheo failed to submit a further progress report despite having been reminded a number of times to do so, he, in his capacity as the acting COO, recommended that the project should be withdrawn and recovery initiated.

53.9.1 It is my finding on a balance of probabilities that the reasons provided by the applicant for his denial of Masikhwa's evidence not only kept changing, but at times bordered on the absurd such as when he had reduced Maodi's conduct during the review and approval of the progress report to having constituted nothing more than a checklist.

53.10 In the circumstances it is my finding on a balance of probabilities that the veracity of Masikhwa's versions clearly showed that the applicant's response to this evidence was improbable in every instance.

53.11 It is further my finding on a balance of probabilities that in all the instances where the applicant challenged or attempted to contradict Masikhwa's evidence, the latter's version must prevail.

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53.12 It is also my finding on a balance of probabilities that the applicant's attempt to reduce Maodi's role to that of having to do nothing more than to check that all the documents were there, support her version that she was instructed by the applicant to participate in the review and approval progress. Put differently, it is my finding on a balance of probabilities that the applicant's denial that he had issued such an instruction, stands to be rejected.

Contradicting and challenging Mthethwa and Ramagoma's evidence

54. Although applicant had called Mthethwa to support his version, a comparison of the two versions showed that the applicant materially contradicted Mthethwa's version.

55. Contrary to the version provided by his own witness, Mthethwa,

- The applicant testified that a site visit was conducted at the PETP project in March 2027, and that it was arranged at his insistence to acquaint himself with the progress.

- Mthethwa testified that they went to the site at the spur of the moment when they were driving back from another site because they saw some road signs signalling that there was a PETP project at Melmoth. He denied that was a planned site visit – or even a site visit in the normal sense of the word as used by M and E officers.

- The applicant testified that he saw pictures displaying the logo when he reviewed the progress report.

- This version was in direct contradiction to Mthethwa's version. The latter had stated in the alleged progress report that the logo would be erected once the second tranche became effective.

- However, when the applicant was referred to page 1259 of the respondent's bundle where it was recorded that on 19 April 2018 (as per Mthethwa's report)

  > There was no proof of signage in any of the photographs submitted

  his response was that he had relied on the M and E report in this regard and therefore stated that:

  > … I was misled to believe in the correctness of the reports and appended my signature.

- In response to the submission that he was contradicting his own earlier version in an attempt to shift the blame to Mthethwa, he said he saw the signage posted on the main road in Melmoth and therefore

  > … at the time when I signed … the signage was there.

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56. The applicant conceded that he relied on Mhlongo's say so that the area was drought stricken which meant that water had to be transported from approximately 50 km away, resulting in an unforeseen cost - consequently there was no evidence before these proceedings to justify this rather exorbitant cost for which no provision had been made in the grant application/agreement.

57. The applicant denied that he had provided false information when he reviewed the progress report on 5 October 2017. He relied on this denial

57.1 Despite the fact that he had no proof (other than an invitation to the Queen Nandi musical) that it was in fact staged

57.2 The evidence further showed that there were no deviations on record. In summary no deviations existed in respect of the water transportation costs, the overspending on construction costs, and the failure to have stopped the project.

57.3 The evidence showed that there were no pictures which reflected the logo on site.

57.4 The evidence further showed that there wasn't a progress report containing the financials (and invoices). The applicant denied that he had provided false information when he reviewed the progress report on 5 October 2017 in terms of which the second tranche was released to PETP.

58. It is my finding on a balance of probabilities that the applicant's changing versions, such as from where he sourced information, stand to be rejected.

58.1 His evidence in this regard persuasively show that he tailored his evidence in such a way that he protected himself despite what the facts - as contained in the documentary evidence - show.

58.2 By way of an example the applicant said that there was proof in the documents before him that the signage had been erected; that Mthethwa would have "seen" the signage when he did the site inspection; at the disciplinary hearing he said he relied on (and was misled by) the M and E report; during the latter half of the cross-examination he said that he saw the signage when he went into Google Earth.

59. His version that the 'engineers' had to provide the progress reports, was challenged by his second witness, Ramagoma.

59.1 Ramagoma agreed during cross-examination that grant operations oversaw grant implementation, payment processing and the monitoring-related administration. He further conceded that the policies and agreements did not assign the monitoring and evaluation duties to the engineers, and that the NLC has a monitoring and evaluation unit.

59.2 He conceded that the grant agreement between Motheo and the NLC did not make provision for quantity surveyors/engineers or any other entity to submit progress reports.

59.2.1 He thus confirmed that progress reports had to be submitted by the grantee in question and therefore, in *casu*, Motheo had to provide the progress report.

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The applicant was a poor witness

60. During the lengthy and very detailed cross-examination it became apparent that the applicant was not a good witness.

60.1 He was told more than once by Ms Naidoo not to attempt to control the direction of the cross-examination but to rather answer her direct questions instead of providing lengthy answers which were not required.

60.2 In some instances, as the applicant embroidered on his answer, he gave contradictory evidence such as that his March 2017 site visit found that not all the documents were in place just to later testify that these material documents were not a requirement (par 43, above).

60.3 His version in respect of the March 2017 PETP site visit, was contradicted by his own witness, Mthethwa.

60.4 His version in respect of Motheo that the engineers/quantity surveyors had to draft progress reports, was contradicted by his own witness, Ramagoma.

61. In challenging the evidence of Gwam and Masikhwa - where their respective versions were supported by documentary evidence - his attempts to dispel the veracity of these versions were not supported by the voluminous bundles of documents before these proceedings.

62. In each instance when he claimed that his answers were informed by certain documents which were not before these proceedings, he said that those documents were before him at the time, but that he no longer had access thereto because they were in the GM system which could not be accessed.

62.1 The applicant failed to provide any proof that he had attempted to obtain access to the GM system after it had closed down.

63. It must therefore follow that the persuasive and corroborated (by documentary evidence which formed part of the respondent's stated case) versions provided by Gwam and Masikhwa must be preferred to the applicant's version.

64. In other instances, his answers at times (see par 44 above) were so improbable that they bordered on the absurd.

65. One of two inferences can be drawn from the fact that the applicant did not take active steps to ensure that the documents sought by the AGSA were delivered. These inferences implicate the applicant in the misconduct detailed in Charge 6.

65.1 The first inference turns on the issue of why the applicant did not take active steps if the documents indeed existed:

- Why did he either not approach the CFO to provide the documents, or to obtain copies from the CFO that he could transmit to the AGSA?

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- Alternatively, why didn't he immediately inform the AGSA that the documents were now held by the CFO and/or SIU?

65.2 The second inference turns on the question of whether he was precluded from responding to the AGSA simply because the documents did not exist.

65.3 Despite the applicant's repeated insistence that the documents existed but were now inaccessible because the GM system had closed down, it is my finding on a balance of probabilities that the second inference is the more probable inference in the circumstances. In other words, the applicant did not provide the documents or take steps to obtain copies because they simply did not exist.

66. Based on a conspectus of all the evidence there is a clear pattern in the applicant's responses which were designed to exonerate him by shifting the blame or the responsibility or the steps that were taken, to others.

66.1 This was designed to create the impression that he had done nothing wrong and that he had to shoulder the consequences of the conduct of others.

66.2 Ms Naidoo accordingly cautioned him not to "focus on every other person in the NLC but yourself", as he tended to blame everyone else whilst styling himself as a victim.

67. In the circumstances it is my finding on a balance of probabilities that the applicant was not a reliable witness and that he had failed to take these proceedings into his confidence.

Mthethwa's evidence

68. Yanga Shekuyise Lubaralo Mthethwa ("Mthethwa"), was the applicant's second witness.

69. He stated in his affidavit that he was employed as a Monitoring and Evaluation Officer at the NLC, and that the purpose of the affidavit was to provide an explanation of and support to the applicant in respect of Charges 1 and 2, relating to the Phumelela Educational Training Project ("PETP").

69.1 He confirmed that the project was initiated in April 2016, and that an amount of R5 394 941.42 was paid to PETP to construct a cultural village aimed at preserving and collecting the heritage of Elangeni KwaMhlongo clan.

69.2 Following a site visit on 31 August 2017 the interim progress report as well as the existence of financial statements was confirmed. The issues experienced with water shortages were noted.

69.3 The report relating to this site visit justified the release of the second tranche in the amount of R3 596 627.61 which was paid in December 2017, for the completion of the project.

69.4 During the second site visit on 19 April 2018 it became apparent that no further progress had been made to complete the construction. The project manager attributed this failure to water shortages.

69.5 Mthethwa's evidence was further that the next site visit occurred on 13 March 2023 after Phumelela had made a new application for a different use of the site. It was apparent that the initial construction was still not complete.

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69.5.1 The site was now intended to be used by the community for its activities.

69.6 He testified that his involvement with the PETP project was to monitor at the implementation thereof and to review any progress reports. Given that it was a large grant, he requested the applicant to accompany him on a number of site visits, and that the first visit took place in March 2017 when they observed four

training halls, two of which were at roof level, while two others had windows, and the property was fenced.

69.6.1 During cross-examination he said that the March 2017 visit was not

> an official site visit as we were coming back from another official site visit which was on route.

69.7 A second site visit was conducted in August 2017.

69.8 He confirmed that a progress report dated 6 December 2017 and a further report dated 28 May 2019 were signed off by him. He further confirmed that PETP had not supplied a final report and that the project was closed after a memo instructed "us to close out all projects that are older than 2014".

70. Mthetwa started giving his evidence in a very confident manner, when he provided detailed evidence in support of the applicant's version. However, once the cross-examination started, his carefully constructed version largely imploded.

70.1 He conceded that at least 12 versions of the evidence that he had provided under oath were not referred to in his affidavit. His oral evidence contradicted some of the statements he had recorded in his affidavit.

70.1.1 His oral evidence also contradicted his 2023 site report (pages 157 *et seq* of the respondent's bundle) where he had stated that:

> "The actual facility is not suitable for human occupation".

70.1.2 This version was in direct contradiction to his version where he had said during his evidence that PETP had shown good accountability for the funds they had received from the NLC.

70.1.3 He could not dispute that he had compiled a report in March 2023 (respondent's bundle, p 158) in which he recorded that there wasn't a clear sustainability plan in place and that no program activities had taken place since the inception of the project some five years ago.

70.1.4 Although he had not made any reference to the Queen Nandi musical in any report, he led oral evidence relating to the said musical. However, his evidence

in this regard was extremely vague and based on assumptions rather than actual knowledge.

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71. Mthethwa was not able to provide documentary proof that grantees were informed that they no longer had to meet the requirements in the grant agreement and that they could, instead, submit financial statements only. When challenged, his only response was that that was not his evidence.

71.1 When challenged to provide proof as to what the CFO had informed them at a meeting where the ostensible changes in respect of the grant agreement requirements were announced, he could not provide any documentary evidence to show that his tendered version was based on the CFO's instructions revising the grant agreement requirements.

72. He conceded that the progress report review for the second tranche (date stamped 5 October 2017) recorded that the logo was not displayed.

72.1 When Ms Naidoo put it to him that he was making up his evidence as he was going along, he denied that that was so and said his evidence was based on "what I recalled and what I saw".

73. He denied that the applicant had acted against the interests of the NLC or that he was grossly negligent when he signed a progress report, saying that the applicant had taken reasonable means to satisfy himself that the project had advanced as claimed following the two site visits with Mthethwa.

73.1 Apart from this opinion he had expressed other opinions, which carry no weight and stands to be rejected.

74. His credibility was seriously impacted during cross-examination.

75. It is my finding on a balance of probabilities that Mthethwa was not a reliable witness.

75.1 Despite denying that he was consulting notes while testifying in chief, it was noticeable that he had a very clear recollection of what happened almost 9 years ago in instances where that recollection favoured the applicant's version but could not recall some crucial details that did not favour the applicant's version.

75.1.1 A clear example hereof related to the March 2017 site visit, now saying that this was due to the fact that these incidents occurred about eight (8) years ago, and that he couldn't remember exactly what happened.

75.1.2 He said his lapse in memory was due to the fact that it was not an official site visit. He repeated his earlier version that they were merely passing by when they ostensibly saw a road sign. Referring to it as an unofficial site visit, Mthethwa claimed not to have taken note of the site activity and could therefore not remember what he had observed.

76. It is consequently my finding on a balance of probabilities that Mthethwa's evidence did not assist the applicant's version. Quite the opposite. The contradictions between the versions provided by the applicant and Mthethwa showed that neither was a reliable witness.

Ramagoma's evidence

77. The evidence provided by the applicant's third witness, Thendo Resnic Ramagoma ("Ramagoma") , spoke to the theoretical policy framework, infrastructure projects and project payments, in respect of Charges 1 and 2.

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77.1 His evidence made reference to his statement - which was made under oath and frequently referred to as an affidavit - in which he focused on the Inqaba Yokulinda project.

78. He testified that he had no personal knowledge of the finance department's roles or job descriptions, causing Ms Naidoo to object to his testimony in this regard on the basis that it would constitute hearsay.

79. Having only joined the NLC in December 2016, Ramagoma confirmed that he had no first-hand knowledge of the monitoring and evaluation of the Motheo Sports and Education Foundation (Motheo) project as from 2015 and could accordingly not testify as to the applicant's role therein.

80. It was not in dispute that the funding policies applied to all the recipients of the NLC grant funding.

81. Much of the cross-examination focused on his evidence about the proactive funding policy and the involvement of third parties like engineers.

82. When it transpired during Ramagoma's re-examination that some of his answers relating to the role of the engineers were contradictory to his responses during cross-examination, Ms Naidoo challenged these contradictions during further cross-examination.

83. Ramagoma agreed that grant operations oversaw grant implementation, payment processing and monitoring-related administration. He further conceded that the policies and agreements did not assign the monitoring and evaluation duties to the engineers, and that the NLC has a monitoring and evaluation unit.

84. He conceded that the grant agreement between Motheo and the NLC did not make provision for quantity surveyors/engineers or any other entity to submit progress reports. He thus confirmed that progress reports had to be submitted by the grantee in question and therefore, in *casu*, Motheo had to provide the progress report.

85. Apart from his testimony that Motheo and not a third party had to provide progress reports, it is my finding on a balance of probabilities that his remaining evidence did not take the matter any further.

86. Given the contradictions in his version which necessitated a second round of cross-examination, and the repeated hearsay evidence, it is my finding on a balance of probabilities that Ramagoma wasn't a reliable witness.

87. I undertook to determine the objection to the hearsay at a later date, and hereby confirm that, insofar as his evidence related to hearsay, such would be excluded.

88. The applicant's last witness was Katiso Thomas Molefe ("Molefe"), a provincial manager who was acting as a senior manager operations at the NLC when he deposed to his affidavit on 13 June 2024.

89. Although he was called to testify in respect of charges 2, 4 and 6, much of his evidence was opinion based whereafter the objections thereto were upheld.

90. He did, however, testify to the Motheo site visit on 8 November 2022 where he was present.

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91. It is common cause that paragraph 4 of his affidavit sets out the purpose of having made the affidavit, stating that it was to

> give clarity and support to Mr. Sanele Collen Dlamini's (the applicant's) explanation regarding charge 4 concerning Motheo … of the charge sheet in the above-mentioned matter. This is to further outline the sequence of events that led to the Motheo Sports & Entertainment Foundation being withdrawn by the NLC.

91.1 His oral evidence confirmed the content of his affidavit which stated at paragraph 5.2:

> There was nothing on site when we met with the organisation. The construction had not commenced. The site was even not fenced, and we were advised by Mr. Sedibe that they did buy the fence, which is kept at the storage to avoid theft.
>
> Mr. Sedibe explained that the construction had not begun because they were waiting for the approval and report of the environmental impact assessment, which was expected to be submitted before the end of the month of November 2022**.** Mr. Sedibe promised to send the NLC a copy of this report.
>
> Mr. Sedibe also indicated to the meeting that the construction will commence in the second week of December 2022. If not, the site will have been established so that construction can begin early in January 2023.Mr. Dlamini informed the meeting that the project was long overdue, and that the organisation must do everything in its powers to kick start the project to avoid a situation where it will be withdrawn.
>
> It was concluded that Motheo be given an opportunity to kick start the process. Although this is a Pro-Active funding project, the organisation will be managed through the provisions of the grant funding policy in terms of reporting. Failure to report, will then result in the project being withdrawn in terms of the policy and the delegation of authority.

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91.2 His evidence was further that the progress report was not submitted whereafter Motheo was reminded on 23 January 2023 and again on 22 February 2023 that a progress report was due. On 7 March 2023 an application for an extension to submit such a report was received by the NLC. The extension was refused.

91.3 Consequently the approval for the remaining Motheo tranche was withdrawn by the applicant on 16 March 2024.

91.4 These facts were not in dispute.

92. Molefe conceded that he had no personal knowledge of the letter which formed the subject of Charge 2.

93. The applicant elected not to lead Molefe in respect of Charge 6.

94. In view of the objections to the opinion and irrelevant evidence the applicant sought Molefe to lead, Ms Naidoo declined to cross-examine this witness.

95. At this point the applicant closed its case whereafter the matter stood down for purposes of proceeding to the closing submissions on 9 October 2026.

96. The value of Molefe's evidence lay in paragraph 5.2 of his statement in which he confirmed that the Motheo site visit on 8 November 2022 showed that construction had not yet started, and that the fence had not yet been erected. This version corroborated Masikhwa's evidence (see par 30.3 above).

Evidence as applied to the charges

97. The applicant had pleaded not guilty to all the charges.

98. It is quite apparent from the evidence in respect of Charge 1 that the applicant had indeed co-signed a progress report review on 5 October 2017, authorising the payment of the second tranche to PETP knowing that PETP had not complied with the conditions contained in the grant agreement.

98.1 His evidence relating to the question of whether the signage was on site was not only contradictory, but also improbable – especially when he added late into the cross-examination that he had seen the signage when he accessed Google Earth.

98.2 In the circumstances it is my finding on a balance of probabilities that the applicant had knowingly and deliberately misled these proceedings and that such corrupt conduct enabled Mhlongo and/or PETP to fraudulently gain access to the second tranche of some R3.5 million. It is not in dispute that the second tranche was paid after the applicant had co-signed the progress report on 5 October 2017.

98.3 It is accordingly my finding on a balance of probabilities that the applicant is guilty of Charge 1, that is, of dishonesty, in that he enabled the commission of corrupt or fraudulent activities, and that he failed to safeguard the assets of the NLC.

99. In respect of Charge 2, the evidence showed that the applicant's version that he only issued the letter of recommendation to enable Mhlongo to seek funding elsewhere, is improbable.

99.1 The evidence showed that the issuing of the letter of recommendation (issued on 6 August 2019) contained false, and therefore dishonest statements, such as that PETP had accounted for all the funds received when not a single structure was completed, and the costs ascribed to the transport of water was based on Mhlongo's say so.

99.1.1 it is not in dispute that the investigation reports found that the site had been abandoned to grazing animals, and was not fit for human habitation.

99.2 It is accordingly my finding on a balance of probabilities that the applicant is guilty of Charge 2 in that his actions constituted gross misconduct, that is, that he is guilty of gross dishonesty; that he was in breach of the

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NLCs policies; and that he failed to safeguard the assets of the NLC given that his conduct was contrary to good governance and ethical decision-making.

100. In respect of Charge 4 the evidence conclusively showed that he did not have the authority to have instructed Maodi to sign the progress report and that he lied to these proceedings when he finally said that she was not a signatory to the progress report but had rather performed a duty relating to doing a checklist only.

100.1 The evidence also showed that he did not have the authority to have signed off on that progress report.

100.2 It is my finding on a balance of probabilities that the applicant is guilty as alleged in Charge 4, that is, that his conduct was dishonest; enabled the commission of fraudulent and corrupt activities; and that he had acted without authority. All in all he had acted against the interests and to the detriment of the NLC and thus caused the NLC to have incurred irregular expenditure in contravention of section 45 (c) of the PFMA.

101. In respect of Charge 6 the evidence conclusively showed that he had not performed his duties when he failed to either provide or to secure copies of the documents - which he insisted existed – when such were sought by the AGSA.

101.1 The applicant (and others) were instructed by the CFO on 3 May 2023 to upload the documents requested by the AGSA by 12 pm on 4 May 2023.

101.2 The applicant failed to do so.

101.2.1 There is nothing before these proceedings to show that he had informed the CFO (or the AGSA) that he could not comply because the SIU had removed the documents.

101.3 It is accordingly my finding on a balance of probabilities that the applicant failed to comply with a lawful and reasonable instruction.

101.4 The AGSA required this information as explained in an email addressed to Prof B Pityana (the Accounting authority of the NLC) on 21 June 2023:

> 9. Once we have received this information, we will perform additional audit procedures to determine whether there are remaining uncorrected misstatements (My emphasis).

1015. It is my finding on a balance of probabilities that the applicant's failure to have complied caused prejudice and reputational harm to the NLC.

102. Having had regard to a conspectus of the evidence, and my finding on a balance of probabilities that the applicant is guilty as alleged in Charges 1, 2, 4 and 6, it is further my finding on a balance of probabilities that the sanction of dismissal was an appropriate sanction. Put differently, the respondent had a fair reason to dismiss the applicant.

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103. It is common cause that both the disciplinary and appeal hearings proceeded on the papers, and that the applicant was legally represented at all times.

103.1 It was; however, the applicant's version that proceeding by way of a stated case was procedurally unfair.

104. The Labour Court held in *Kongo*[1] *v CCMA* that:

> [55] The procedural challenge regarding the paper inquiry is equally unfounded. As mentioned, the decision in *PRASA v Moreki* and *Rand Water Board v CCMA & Others* held that pre-dismissal procedures need not be formalistic, and a departure from internal policy guidelines does not invalidate a dismissal absent demonstrable prejudice. Kongo was medically unfit to attend the workplace in person, which was the very reason her disciplinary hearing could not proceed. Inviting written representations, which she prepared with the benefit of legal representation, afforded her a full and fair opportunity to state her case.

104.1 In *casu* the chairperson decided to proceed on the papers because the applicant was medically unfit to attend the workplace proceedings.

104.2 Given that he was legally represented and had utilised the opportunity to respond on the papers, meant that the applicant, like Kongo, was afforded a full and fair opportunity to state his case.

105. It is therefore my finding that the applicant's dismissal was not procedurally unfair.

106. In summary it is my finding on a balance of probabilities that the applicant's dismissal was not procedurally and substantively unfair.

AWARD

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107. I hereby issue the following Award:

107.1 The applicant's dismissal was procedurally and substantively fair.

107.2 This application is dismissed.

Signature: _____

Commissioner: ***Hilda Grobler***

[1] *Kongo v Commission for Conciliation, Mediation and Arbitration and Others* (C93/2024) [2026] ZALCCT 185 (22 October 2026)


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