

REPUBLIC OF SOUTH AFRICA



NORTH GAUTENG HIGH COURT, PRETORIA  
REPUBLIC OF SOUTH AFRICA

CASE NO: 56321 /13

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>6/10/2014</u> DATE	
<u>[Signature]</u> SIGNATURE	

10/10/2014

In the matter between:

**NTSHAVHENI PRINCE MAKWATHANA**

Applicant

and

**STATE SECURITY AGENCY**

First Respondent

**MINISTER OF STATE SECURITY**

Second Respondent

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**JUDGMENT**

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**LAZARUS AJ:**

1. In this application the applicant seeks the termination of his suspension from work with the first respondent (the State Security Agency) and his reinstatement to his former position within the State Security Agency as Manager: Cover Support Unit.
2. On 1 April 2004, the applicant was appointed to the position of Manager: Cover Support Unit within the then National Intelligence Service, the predecessor of the State Security Agency. On 18 November 2010 the applicant was suspended with full pay pending the outcome of an investigation into certain misconduct alleged by the first respondent to have involved the members of the Cover Support Unit including the applicant.
3. According to the respondents that investigation has not yet been finalised and consequently no disciplinary hearing has yet been held and no charges have been put to or laid against the applicant. The respondents further state in their answering affidavit that the applicant's former position of Manager: Cover Support Unit has ceased to exist within the State Security Agency and thus reinstatement of the applicant to this position is no longer possible.
4. The disciplinary procedure applicable to the applicant's employment with the State Security Agency is governed, inter alia, by Chapter XVIII of the Intelligence Services Regulations, 2014 made in terms of section 37 of the Intelligence Services Act 65 of 2002. While clause 9 of this Chapter

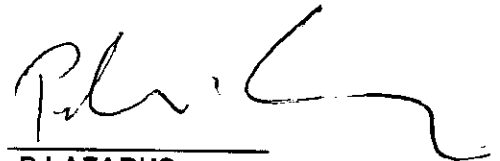
provides for the suspension of a member of the State Security Agency pending the outcome of an investigation into misconduct or a disciplinary hearing, clause 9(8) provides that the total period of such suspension must not exceed 18 months.

5. In argument before me the respondents' counsel conceded that the applicant's suspension was indeed not in compliance with the aforesaid regulations. In light of this concession the respondents' counsel indicated that the State Security Agency would be willing to consent to an order that within a reasonable period of time either a disciplinary hearing must be held with the applicant or the applicant must be entitled to return to work with the Agency. Since the respondents' contend that the position of Manager: Cover Support Unit has ceased to exist, the respondents' counsel indicated that should reinstatement ensue, the applicant ought to be reinstated to the position of Operational Co-Ordinator – the position the respondents' allege the applicant held immediately before his suspension. I should add that the applicant disputes that he was ever appointed to the position of Operational Co-Ordinator.
6. The respondents' counsel suggested to me during argument that a period of two to three months would be reasonable for the State Security Agency to conclude its investigation into the misconduct alleged to have taken place within the Cover Support Unit and to conduct any disciplinary hearings pursuant thereto.

7. It is not in dispute that the suspension of the applicant for a period longer than 18 months is not in compliance with the regulations applicable to the applicant's employment relationship with the State Security Agency. Suspension from work in the absence of a disciplinary hearing for more than three and a half years is also inconsistent with the right to fair labour practices enshrined in the Constitution.
8. In my view, the State Security Agency has had more than sufficient time to conclude its investigations into the activities of the Cover Support Unit and to conduct any disciplinary hearings pursuant thereto. As a result of the Agency's tardiness in this regard the applicant has suffered and continues to suffer prejudice.
9. In the result I make the following order:
  - 9.1. Within 14 days of this Order, the first respondent must either:
    - 9.1.1. convene a disciplinary hearing with the applicant, which disciplinary hearing must be conducted in accordance with the time periods and procedures stipulated in Chapter XVIII of the Intelligence Services Regulations, 2014; or
    - 9.1.2. reinstate the applicant's employment with the State Security Agency in a position with a similar ranking (and

similar employment benefits) as his former position as  
Manager: Cover Support Unit.

- 9.2. The first and second respondents are to pay the applicant's costs  
on a party and party scale jointly and severally, the one paying the  
other to be absolved.



**P LAZARUS**  
**ACTING JUDGE OF**  
**THE HIGH COURT**

CASE NUMBER: 56321/13

HEARD ON: 15 AUGUST 2014

COUNSEL FOR THE APPLICANT: A Vilakazi  
INSTRUCTED BY: AM Vilakazi Tau Attorneys

COUNSEL FOR THE RESPONDENTS: M Malowa  
INSTRUCTED BY: The State Attorney, Pretoria

Date of Judgment: <sup>10</sup>~~8~~ October 2014