

**IN THE LABOUR COURT OF SOUTH AFRICA  
HELD IN DURBAN**

**CASE NO: D 234/08**

In the matter between:

**MODIDIMA PALMERSTON MANNYA                      APPLICANT**

and

**THE PREMIER, KWAZULU – NATAL                      1<sup>ST</sup> RESPONDENT**

**MEC, DEPARTMENT OF AGRICULTURE  
AND ENVIROMENTAL AFFAIRS,  
KWAZULU – NATAL                      2<sup>ND</sup> RESPONDENT**

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**BRIEF JUDGMENT**

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**CELE AJ**

- [1] It has become necessary to give brief reasons for the order which follows them so as to guide the parties hence forth, an order alone, as requested by the applicant might have created confusion.
- [2] Brief reasons herewith
- [3] An independent investigation was conducted to probe the allegations of misconduct levelled against the applicant. An executive report was produced and from it 27 charges of

misconduct were drawn. The applicant has now been formally charged with the same. The allegations against the applicant might very well be described as somewhat serious. In the descriptive words of the Public Hand book the applicant is alleged to have “committed serious offences”.

- [4] At the time of the suspension of the applicant, investigations against him had been finalised and a report had been submitted to the first respondent. Accordingly, the employer could not reasonably believe that the presence of the applicant at his workplace might jeopardize the already finalised investigations into the alleged misconduct by him. There never was an allegation that the presence of the applicant at his workplace might endanger the well being or safety of any person or state property in this matter.
- [5] The second part of the condition for the suspension of the applicant, in terms of Chapter 7 of the Public Service Handbook is accordingly lacking.
- [6] The allegations against the applicant, prima facie cut across a wide spectrum of areas tending to do with efficient and effective public administration. The complainants are mostly senior officials some of whom are reporting to him. He occupies such a senior position as Head of the Department that it is conceivable that he might be tempted to frustrate their standing as witnesses in an enquiry against himself. In the circumstances, it would not be in the interest of the justice of this matter that he should wield his

authority over those of the witnesses as are to testify against him. He did not opt to take a special leave as was suggested to him.

[7] It is my view that the provisions of Chapter 7 of the Public Service Handbook, in so far as they prescribe the two conditions for the suspension of the Head of the Department, should be construed as directory and not peremptory. In which even, I find that the first respondent was entitled to impose the suspension of the applicant as a precautionary measure justified by a need to have a fair hearing to all parties concerned.

[8] It came to light that the Director- General held weekly meetings with the first respondent. Complaints against the applicant formed part of the material for discussions they held. The Director-General has invariable been acting in consultation with the first respondent in this matter. Such is capable of a construction that he was acting under the authority of the first respondent. That would not be delegated authority but it would be actions of the first respondent through his agents.

[9] When therefore, the Director-General constituted the panel members of the disciplinary committee as the initiator or prosecutor and a presiding officer, he was executing a decision of the first respondent. Such appointment was in my view, regular.

[10] The following order will issue:

1. The orders prayed for by the applicant in his amended papers are accordingly dismissed.

2. The applicant is ordered to pay the cost, inclusive of those of senior counsel for the second respondent, of this application.

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**Cele AJ**