

MADIBA AND OTHERS V MINISTER OF ARTS AND CULTURE AND OTHERS

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The South Gauteng High Court recently handed down judgment in a matter concerning the dissolution of the Board of the Pan South Africa Language Board (PanSALB). It is common knowledge that this constitutionally-established body has failed monumentally to meet its mandate and fulfil its objectives. This has been true from its inception. Whilst the decision is notable because it brought a much-needed halt to the hijacking of PanSALB for personal financial gain, an important ruling concerning unscrupulous legal practitioners was made.

Briefly, the facts of the case are that in January 2016, the Minister of Arts and Culture (the Minister) sent a letter to the First Applicant, Madiba - the Chairperson of the Board - informing him of his decision to dissolve said Board. Section 5(5A) of the *Pan South African Language Board Act* (PanSALB Act) authorises the Minister to dissolve the Board on any reasonable grounds. The applicants (all members of the Board) were appointed in April 2014. Following the receipt of the letter, Madiba, allegedly on behalf of the entire Board, applied to the Court requesting a declaration that the Minister's decision to dissolve the Board was unlawful and invalid. He also requested the decision to be reviewed and set aside.

The first issue identified by the Court was that Madiba lied about representing the will of all the Board members. This was evidenced by the absence of affidavits confirming this instruction, even after the Court requested them. The Court was therefore convinced that Madiba had intentionally misled the Court and found him to be the only applicant in the matter.

The second issue was that the attorney representing the applicants was one Advocate Feni. Feni was also the Chief Executive Officer (CEO) of PanSALB and was so appointed by the Board. At the time the case was before the Court, Feni was party to at least 17 other court proceedings, in both the High Court and the Labour Court, in matters concerning PanSALB and its state of affairs. The Court noted this and was concerned. It then notified the parties to the matter that it (the Court) would ask whether allowing Feni to represent the very Body he was employed by would not amount to a failure of justice. He was clearly part of the reason PanSALB is in shambles.

Despite the above, Feni appeared on behalf of the applicant(s) and the Court asked why he should not be joined to the proceedings and interdicted from representing the applicants, considering the obvious relationship between him and the Chairperson. It is worth noting that the circumstances surrounding Feni's appointment as CEO allegedly involve undue influence by Madiba over the Board. It is alleged that Madiba strong-armed the Board into approving Feni's appointment. Only then did Feni withdraw and another attorney replace him.

The events that led to the Minister’s decision to dissolve the Board include the fact that the latter had several periods of crisis since its establishment. These resulted in intervention by the Parliamentary Portfolio Committee on Arts and Culture, the Minister, as well as the Auditor-General (AG). The Board was found to have failed to meet its mandate on more than one occasion. Furthermore, the extent of financial mismanagement was such that at least 75% of the allocated budget was being spent on Board Members’ salaries. The Board also failed to provide the Minister with the necessary financial documentation. This hindered the Minister’s oversight function. Combined with the suspect manner by which Feni was hired and the procedural hiring and dismissal of over 40 employees, it is unsurprising that the Minister elected to dissolve the Board.

The Court came to the conclusion that the attorneys for the applicants had “acted unprofessionally or worse”. The Judge raised concerns about the role played by Feni in the events that led to the Minister’s decision to dissolve the Board, as well as his deliberate misleading of a court of law. The Court directed the State Attorney representing the Minister to deliver copies of the judgment to the Law Society of the Northern Provinces and the Pretoria Society of Advocates for such investigations and disciplinary actions as they might see fit. This ruling is important because it gives more than a mere slap on the wrist for legal practitioners who operate outside of the very law they took an oath to abide by and practice. It emphasises the high standard to which they are held. That this kind of corruption is present in constitutional institutions is telling of the times in which we find ourselves.

The Judge went as far as ordering the attorneys involved to pay the costs for both parties as a punitive measure. This is unusual, particularly in cases involving a State department. This illustrates the gravity of the conduct of those involved. Institutions created to advance a constitutional cause must be the paragon of transparency and accountability. Those tasked with ensuring this, must exercise their functions with that in mind. This ruling is also a lesson to State departments to maintain close oversight over their charges. That the rot at PanSALB went unchecked for long is worrisome.

In South Africa language is an emotive issue, and promoting multilingualism is a constitutional mandate of PanSALB. We cannot afford to have lack of leadership, self-interest and dishonesty play havoc with the interests and language rights of South Africans.