

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: HC-MD-CIV-MOT-REV-2022/00532

In the matter between:

**JOSEPH LIFASI MUTELO**

**APPLICANT**

and

**PRIME MINISTER**

**1<sup>st</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION**

**2<sup>nd</sup>**

**RESPONDENT**

**MINISTER OF EDUCATION, ARTS**

**& CULTURE**

**3<sup>rd</sup>**

**RESPONDENT**

**REGIONAL DIRECTOR OF EDUCATION**

**4<sup>th</sup> RESPONDENT**

**Neutral citation:** *Mutelo v Prime Minister* (HC-MD-CIV-MOT-REV-2022/00532)  
[2024] NAHCMD 16 (25 January 2024)

**Coram:** COLEMAN J

**Heard:** 10 November 2023

**Delivered:** 25 January 2024

**Flynote:** Review application – alleged failure to give applicant a hearing before he was dismissed from his employment as a teacher.

**Summary:** The applicant was a primary school teacher convicted of sexual harassment of a minor learner. The Disciplinary Committee recommended his demotion and transfer. The Public Service Commission instead recommended to the Prime Minister that he be dismissed without giving him a hearing.

**Held:** Although applicant's right to a hearing may have been breached the Prime Minister was still justified in dismissing him. Application dismissed with costs.

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### ORDER

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1. The application is dismissed with costs.
2. The matter is removed from the roll and regarded as finalised.

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### JUDGMENT

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COLEMAN J:

#### Introduction

[1] This is an application to review and set aside the decision of the Prime Minister (1<sup>st</sup> respondent) taken on 17 January 2022 dismissing applicant's appeal against his dismissal as a teacher, plus ancillary relief.

#### Relevant allegations and facts

[2] Applicant was employed as a Grade 8 teacher at Omaruru Primary School until 18 January 2022 when he was dismissed. On 9 March 2018 he was charged

with misconduct in terms of s 25(1) of the Public Service Act, 1955 (the Act). The charges are related to alleged sexual misconduct towards a minor female school learner. He was eventually found guilty of sexual harassment by a disciplinary committee. Evidence was presented of applicant making sexual advances towards the learner, amounting to ‘...indecent and un-proper activities...’.

[3] On 18 September 2018 the disciplinary committee recommended that applicant be demoted and transferred to another primary school. On 15 March 2021 applicant was informed by the Regional Director of the Ministry of Education, Arts and Culture (4<sup>th</sup> respondent) that the Prime Minister, on the recommendation of the Public Service Commission, decided to discharge applicant and to not demote and transfer him as recommended by the disciplinary committee. He was also given the opportunity to appeal, which respondents contend constituted a right to be heard.

[4] On 29 March 2021 applicant appealed to the Prime Minister against his dismissal. In his appeal the applicant objected against his dismissal without a hearing and asked for an opportunity to make representations in this regard. Instead of a hearing, applicant was informed on 18 January 2022 that his appeal was dismissed.

[5] Respondents raised the issue of jurisdiction of this court since it is an employment matter. It is also contended on behalf of the respondents that the Labour Commissioner should have been a party to these proceedings. Furthermore, on the merits, the respondents contend that due to the transgression here the Prime Minister was justified in her conclusions.

### Conclusion

[6] I have considered all the facts and submissions herein. In my view, this is a review application challenging an administrative decision, pure and simple. Although it concerns an employment relationship, and dismissal, I am satisfied that this court has jurisdiction. Equally there is no reason why the Labour Commissioner should be joined.

[7] It is trite that this court has the discretion to dismiss a review application even if a case had been made that the decision is reviewable. In this matter applicant did not challenge the conclusions of the disciplinary committee convicting him of sexual harassment. While the disciplinary committee recommended applicant's demotion and transfer, the Public Service Commission recommended to the Prime Minister that the applicant be dismissed instead.

[8] Applicant's case is that he was entitled to be heard, either before the Public Service Commission made its recommendation to the Prime Minister, or before the Prime Minister took the decision to dismiss him. In addition, the applicant requested an opportunity to make representations to the Prime Minister as part of his appeal. This was not granted either. At worst it appears applicant was denied a hearing at least when the Public Service Commission decided not to follow the recommendation of the disciplinary committee. In the employment context this could be taken as a procedural failure.

[9] On the substantive level, applicant was a primary school teacher and he clearly showed sexual interest in, and made advances to, a learner. As a consequence he was convicted of sexual harassment. This raises serious concerns about his continued employment as a teacher. This concern is in my view not alleviated by a demotion or a transfer. Applicant transgressed one of the most fundamental duties of a teacher.

[10] While the Public Service Commission may have breached its duty to grant applicant a hearing it does not in my view justify setting aside applicant's dismissal and a reinstatement.

[11] Consequently, I make the following order:

1. The application is dismissed with costs.
2. The matter is removed from the roll and regarded as finalized.

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G Coleman  
Judge

**APPEARANCES**

**APPLICANT:** R Rukoro  
Of ENSafrica

**1<sup>st</sup> TO**

**4<sup>th</sup> RESPONDENTS:** J Ncube  
Of Government Attorneys