



ARBITRATION AWARD

Commissioner: **Khehla Khanyile**
Case No: **PSHS1004-18/19**
Date of award: **10 November 2020**

In the matter between:

PSA obo BONGUMUSA NGIDI

Applicant

and

DEPARTMENT OF SOCIAL DEVELOPMENT- KWAZULU NATAL

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration was held at the Department of Social Development in Richards Bay on 01 April 2019, 02 May 2019, 05, 08 August 2019, 03, 04, 05 March 2020, 06, 08, 22-26 June 2020, 16,17 July 2020., 03, 04, 05 August 2020, 01, 02 September 2020, 12, 13 October 2020. The applicant appeared in person and was represented by the Union Official, Mr. Charles Ngubane. The respondent was represented by Deputy Director Labour Relations, Mr. Nkululeko Hlongwane. The proceedings were digitally recorded and I also took notes down. The applicant party raised a point *in limine*.

PRELIMINARY ISSUE

Applicant

2. The applicant's representative, Mr. Ngubane raised a point in limine in that the respondent delayed to charge the applicant. He submitted that charge one (1) and charge two (2) occurred from 2003 and 2009, and the applicant could not defend herself

as she could not recall them. He further submitted that in 2016, the respondent initiated an investigation to determine reasons for non-renewal of court orders. He stated that the respondent placed the applicant on the special leave. He further stated that on June 30, 2016, the task team finalized its investigation and found that there were irregular placement meaning that there were ghost children and other children were receiving foster care grant whereas their biological parents were still alive or are employed.

Respondent

3. The respondent's representative, Mr. Hlongwane opposed the point in limine in that the respondent initiated an investigation to determine reasons for non-renewal of court orders at Lower Mfolozi office in 2016. He stated that all employees, including the applicant were placed on special leave. He further stated that the investigation was finalized on the 30th of June 2016. He submitted that the respondent charged the applicant and was subjected to a disciplinary enquiry in October 2016 and November 2016.

Analysis of submissions

4. I have considered all submissions before me. The respondent appointed a task team to investigate irregularities at Lower Mfolozi office in 2016 and the investigation was finalized on 30 June 2016. The respondent became aware of irregularities in 2016 and charged the applicant in between October 2016 and November 2016. In my view, the respondent did not delay in charging the applicant. The point in limine is hereby dismissed.

Ruling

Accordingly, I rule as follows:

5. The point *in limine* is dismissed.

APPLICATION FOR RECUSAL

The respondent

6. Mr. Hlongwane, brought an application for my recusal in that he felt that I was biased as there had been continuous raising of objections and I ruled in favour of the applicant. He stated that I had predetermined the outcome as I asked the parties to revert back to conciliation. He submitted that under cross examination, I criticized the first witness of the respondent, Ms. Ngcamu.

The applicant

7. Mr. Ngubane, opposed the application for my recusal in that the respondent brought a baseless application. He stated that I did not predetermine the outcome by invoking section 138(3) of the Labour Relations Act. He submitted that he had a right to raise objections and I had to rule it accordingly.

Analysis of submissions

8. The respondent's representative brought an application for my recusal in dealing with the matter. I am required to decide whether to grant the application for recusal or not. Mr. Hlongwane submitted that I was biased with the applicant in that Mr. Ngubane had been continuously raising objections and I ruled in favour of the applicant. I wish to state that both parties agreed on record to revert to conciliation. Mr. Hlongwane submissions that I had predetermined the matter were unfounded as the applicant first raised the point in limine and ruled in favour of the respondent.

Ruling

Accordingly, I rule as follows:

9. The application for recusal is dismissed.

ISSUE TO BE DECIDED

10. I am required to decide whether the dismissal of the applicant was fair or not.

BACKGROUND TO THE DISPUTE

11. The applicant was employed by the respondent as a Social Worker Supervisor on 14 February 1995. The applicant was earning R35,430.97 monthly at the time of dismissal on 07 December 2018.

12. The respondent leveled four (4) charges against the applicant as follows:

Count 1

In that on or about 21 November 2003 at or near Lower Umfolozi Service Office, you misrepresented yourself by presenting during the Children's Court Inquiry held at Ngwelezane Magistrate Court that Ntokozo Mngadi ID No.9806035931089, Thabisile Mngadi ID No.0012205702082 and Thokozani Mngadi ID No:0012200789084 were in need of care and protection, thereby unduly or improperly influencing a court order to be issued by the Children's Court placing the said children in the custody of Alosia Mchunu ID No.6206170572082, whilst these children never existed. Therefore your actions caused the State to suffer financial prejudice amounting to R69, 620.00, thus committing an act of misconduct.

Count 2

In that on or about the 08 July 2009 and at or near Lower Umfolozi Service Office, you misrepresented yourself in that you submitted at Statutory Unit an extension report for Ntokozo Mngadi ID No.9806035931089, Thabisile

Count 3

In that or near Lower Umfolozi Service Office, you were negligent in that you failed to provide guidance and support as well as ensuring proper implementation of relevant legislation with regard to the placement of children in alternative care, thus committing acts of misconduct in respect of the following cases:

Foster Child/ren	ID No of Foster Child/ren	Foster Parents	Date of reports
Mgobhozi Daluxolo Khanyile Sikhulile	0710126098080 9909030551082	Mkhwanazi Q.A	15 October 2014 11 July 2014
Mngadi Ntokozo Mngadi Thabisile Mngadi Thokozani	9806035931089 0012200789084 0012200789084	Alosia Mchunu	28 November 2012
Dlamini Sfundu J Dlamini Hlengiwe T	0112106367082 0401301192082	Ntombela Lindiwe	06 July 2007 29 October 2009
Mngomezulu Sinenhlanhla R	9606110910085	Zungu Doris	05 January 2015
Mthethwa Nokukhanya	9704071136087 0203256078088	Mkhize Fidirina	13 June 2012

Mthethwa Nduduzo			
Mkhize Nokwazi	9603271191084	Mkhize Sgameko	13 June 2012
Mkhize Andile	9802030559082		31 October 2012
Mkhize Thabo	9703036323080		17 April 2013

Count 4

In that during the period of October and November 2013 at or near Lower Umfolozi Service Office, while on duty, you conducted yourself in an improper, disgraceful and unacceptable manner when you unlawfully demanded the client by the name Bhekisiwe Kisi Mthembu to pay back the monies paid to her by the State amounting to **R800.00** after the child (Nokwazi Shandu) was removed from her custody for your own personal gain thus committing an act of misconduct.

SURVEY OF EVIDENCE AND ARGUMENTS

RESPONDENT'S CASE

Witness 1

13. **Miss Thembi Ngcamu (Deputy Director for Professional Compliance and Quality Assurance)** stated that she was appointed by the Head of Department in the task team to conduct foster care verification in the Lower Mfolozi Service Office in March 2016. She submitted that she perused the file in respect of Mngadi children (Ntokozo, Thokozani and Thabisile) there were two reports that were compiled by the applicant on 25 September 2003, presented in Court on 21 November 2003 placing the aforesaid children in a foster care under Mrs Alosia Mchunu, and the subsequent review dated 08 August 2009 extending the court order.

14. She testified that during the investigation she conducted school verification at Bhiliya Primary School to verify the information, and teachers revealed that the school had no records of the aforesaid Mngadi children. She further testified that a home visit was conducted the children were not found at home, Mrs. Mchunu was then requested to report at Lower Mfolozi Office. She further stated that interviewed Mrs. Mchunu (foster care parent) and requested her to bring the children the following day. She further testified that the foster care parent said she could not come with the children as the children had been taken by their elderly sister, Ms. Malungi Ndlovu to Cape Town. She testified that Mrs Mchunu failed to provide the address where the children were staying,

she then provided the cellphone number of the childrens foster care parent. However upon calling the number that was provided the person who answered introduced herself as Zilungile who was staying at Esikhawini Area. She submitted that she further interrogated the foster care parent to a point that she admitted that the children were non-existent and the applicant was aware of the fact. She further submitted that she requested her to depose an affidavit but she refused. She submitted that according to the F192M1 the aforesaid children were not linked with the deceased Julia Dladla, and the whereabouts of the biological father were said to be unknown. She further submitted that Makhwezini High School was unknown in the area, however it was submitted that the children once attended that school. She testified that the report indicated that Ntokozo was staying in Gauteng Province with relatives whilst on the other hand he was said to be attending school at Bhiliya Primary School including the grades that they were supposedly doing clearly showed that the information was fictitious.

15. She also testified that Mr. Sigameko Mkhize and Mrs Fridinah Mkhize were a married couple, and had more than six children placed in foster care with two persons sharing a common household which was contrary to section 185 of the Children's Act. She further testified that Mr Mkhize was a foster care parent for the children Andile, Nokwazi and Thabo Mkhize, and Mrs. Mkhize was also a foster care parent for the children, Nduduzo, Nokukhanya, Mxolisi Mthethwa and Vusimuzi Mthethwa. She further testified that the children in set under Mrs Mkhize were not blood related to make an exception to exceed the maximum limit in the social worker's report. She submitted that the report did not indicate that the aforesaid children were living in the same household. She stated that the applicant was a social worker supervisor and failed to guide a social worker on the interpretation and application of the legislation.
16. She stated that she perused the file in respect of Sinenhlanhla Mngomezulu the report dated 06 January 2015 was compiled by the social worker, Ms. Senzumusa Mthembu and the applicant signed the report on 15 January 2015. She further stated that a home visit was conducted to verify the information in the report, and it was discovered that the late Doris Zungu was very ill and was bedridden so the foster child was compelled to skip school to care for her grandmother. She stated that she realized that the late Zungu was not well at the time of placement of the child whereas the aforesaid social worker recommended her to be a suitable parent, and the report portrayed her as a child who was performing well at school. She further testified that the applicant failed to guide and

support the social worker to design a development plan that would assist the child was seen to be struggling with her progress at school as she had turned 18 years old but was still doing grade.

17. Under cross examination she submitted that it is not allowed that the foster child to be the one looking after the foster parent.
18. She testified that she perused the file in respect of Dlamini children (Sifundo and Hlengiwe) the report was compiled by the social worker, Ms. Mncwango under the supervision of the applicant dated 27 October 2009 placing both children in foster care of Lindiwe Ntombela. She further submitted that the investigation revealed that the children were not staying with Mrs Lindiwe Ntombela, but they were staying with Mrs Duduzile Chabalala who was the mother of Mrs Lindiwe Chabalala at Mabhuyeni and were schooling at Lubana Primary School whilst she was staying at Bomvini area, however, the grant was paid to Mrs Lindiwe Ntombela whilst she was not staying with the children. She stated that Mrs Chabalala was owning an unregistered facility which was not in-line with the provisions of the Children's Act 38 of 2005 and the requirement of the respondent as it was not supposed to keep the children. She further stated that Mrs Shabalala was not well to give her additional responsibility. She further testified that the report recorded that the father was said to be from Manguzi, and the applicant did not guide the social worker to invoke regulation 56 of the Children Act to trace the father by advertising his name in local newspaper.
19. She stated that the applicant was employed as a Supervisor her responsibilities among others was to guide the social worker practitioners, provide support, render training to Social Workers, quality checking and analyzing of Professional reports before they were presented at court. She submitted that the applicant failed to provide guidance and support as well as ensuring proper implementation of relevant legislation in that Daluxolo Mgobhozi had two (2) fathers (Philani Mgobhozi and Vusumuzi Zebon Ndlovu) the social worker, Mrs N Mthiyane was supposed to be guided to obtain the true identity of the child. She further testified that the applicant was the first intake officer and in consultation with the foster care parent and she found that the first intake report was poorly made since the social worker failed to track and trace the father of the child. She stated that the incorrect information was captured in the report dated 11 July 2014 and was counter signed by the applicant on 17 July 2014 which indicated the child was doing grade 1 at Sigisi Primary School contrary to the school confirmation dated 30 May 2014 indicated

that the child was doing grade 2 at Kangikho Primary School. She submitted that the child's father, Mr Mgobhozi in the report was said to be unknown, but when she interviewed the foster parent and the information surfaced that Mr Ndlovu was supporting the child. She stated that Daluxolo did not qualify to receive the foster grant since both parents were alive. She further testified that the applicant did not guide the social worker to trace the father, Mr. Mgobhozi as he was said to be in Pietermaritzburg they failed to advertise his name in the local newspaper.

20. Under cross examination she conceded that the investigation report was not in the respondent's bundle. She stated that Mngadi children never existed and that was confirmed with the Department of Home Affairs. She further stated that applicant submitted an extension report at Statutory Unit aware that the children were not existing. It was put to her that Mrs Alosia Mchunu would deny the children never existed. It was further put to her that Mrs Mchunu would deny that she telephoned Zandile while she was still in the office. She further submitted to her that the Children appeared before the magistrate, the birth certificates and the school attendance certificates as proof that the children were existing.

Witness 2

21. **Ms. Kisi Mthembu (Community member)** stated that she knows the applicant as a social worker supervisor at the Ngwelezane office. She submitted that she was a foster care parent for the child Nokwazi Shandu and received the foster care grant. She further submitted that the aforesaid child disappeared and she looked for her. She testified that Nokwazi's friend informed her that the child was taken by a white car. She then went to report the incident to the social workers at Ngwelezane office. Upon her arrival, she reported it to two social workers, Mrs Ngidi and Ngiba who then informed her not to bother about the child's disappearance.

22. Ms. Mthembu testified that she then went back to the social workers after two (2) months to check on the status of the disappearance of the child, but instead was questioned by the applicant about the grant money that she had still been receiving even though the child was no longer in her care. She further testified that the applicant instructed her to withdraw the money and return it back to her. She further stated that she withdrew the amount of R800 and presented it to the applicant who then instructed her to give it to another social worker Ms. Ngiba in a brown envelope.

23. Under cross-examination she conceded that she had no proof that she withdrew the money and gave it to the applicant. It was put to her that the applicant did not demand or instruct her to withdraw the money. It was further put to her that Ms. Ngiba would deny that she received the money in the brown envelope from her. She submitted that she went three times to Ngwelezane office. It was further put to her that applicant would testify that she came once to the office. It was further put to her that she was not telling the truth that she withdrew the money as she failed present the bank statement as evidence.

Witness 3

24. **Mr Thokozani Mabaso (Lower Mfolozi Circuit Manager)** stated that he is employed by the Department of Education stationed at Mfolozi Circuit Management Centre. He submitted that he is responsible for 40 schools. He further submitted that within Makhwezini Area there are four (4) schools namely Fuyeni Primary School, Nomuva Primary School, Enhlangwini Junior School and Mpephose High School and confirmed that there is no school called Makhwezini High School.

25. Under cross examination he conceded the report dated 28 September 2012, was not signed by the applicant.

Witness 4

26. **Mrs. Alice Mkhwanazi (Community member)** stated that she knows the applicant. She further stated that the deceased's Phumzile Zinhle Dhludhla was her daughter and the child Daluxolo Mgobhozi is her grandson. She submitted that after the death of her daughter, she applied for the foster care grant for the aforesaid child at Ngwelezane office, and was assisted by the Social Worker Ms. Ntombifuthi Mthiyane. She further submitted that she informed the Social Worker that the Daluxolo had two fathers being Mgobhozi and Ndlovu. She testified that she had a road map immunization card reflecting the child as Daluxolo Ndlovu, when she first came to apply for the foster care grant and the Social Worker advised her to obtain a birth certificate from Home Affairs. She was maintaining and paying school fees for the child, but she did not inform the Social Worker. She further testified that Mr. Ndlovu discovered that he was not a biological father and stopped maintaining the child. She submitted that no DNA was done to assist in finding the true father of the child.

27. Under cross examination it was put to her that the immunization card was a fake. She submitted that Daluxolo Ndlovu and Daluxolo Khethelo Mgobhozi is the same child. Contradiction she submitted that she did not inform the Social Worker that the child had two fathers Ndlovu and Mgobhozi.

Witness 5

28. **Mr Sigameko Mkhize (Community member)** stated that he was married and living with Mrs Fidirina Mkhize at one household. He submitted that his daughter Bazothile Mthethwa was incarcerated at Westville prison and Fidirina was receiving a foster care grant for the Mthethwa children Nokukhanya Mthethwa, Nduduzo Mthethwa, Mxolisi Mthethwa and Vusumuzi Ngcobo. He testified that he was also receiving a foster care grant for the Mkhize children Thabo, Andile and Nokwazi.

29. Under cross examination he submitted that Mthethwa children stayed at his home for two months and left

Witness 6

30. **Christian Vusumuzi Mjadu (Home Affairs Area Manager)** stated that he had been employed by the Department of Home Affairs since 2011. He submitted that he is responsible for overseeing the operations of the office. He further submitted that Department of Home Affairs is the custodian of the population register in order for them to be able to retrieve information about the relationship between the mother and the children and they use the identity number of the mother to retrieve all the information of children under her identity number. Mr. Mjadu testified that the Mngadi children were not linked to Julia Dladla F192M1 reflected that there were no children register under her identity number. He further stated that Mrs Alosia Mchunu was linked to seven children on F192M1.

31. Under cross examination he testified that he could not confirm whether the children exist or not as it was only Fraud and Corruption unit in Home Affairs could be able to confirm same.

Witness 7

32. **Mrs. Fidirina Mkhize (Community member)** stated that she was married to Mr. Sgameko Mkhize. She submitted that she was receiving the foster care grant for the four

(4) children Nduduzo Mthethwa, Nokukhanya Mthethwa, Mxolisi Mthethwa and Vusumuzi Ngcobo and Mkhize was receiving the foster grant in respect of three Mkhize children Andile, Thabo and Nokwazi. She testified that the Social Worker, Mr. Mlondolozzi Nkomonde did not inform them that no more than six children might be placed in foster care with a single or two persons sharing a common household hold.

33. Under cross examination she submitted that the children are still staying at home since their mother was still incarcerated. She further submitted that her husband made a mistake by saying the children left home after three months. It was put to her that the applicant was never dealt with Mxolisi Mthethwa and Vusumuzi Ngcobo application

Applicant's case

Witness 1

34. **Mrs. Bongumusa Grace Ngidi** stated that Mrs Alocia Mchunu came to the office looking for assistance with the foster care grant in respect of the aforesaid Mngadi children (Thokozani, Ntokozo and Thabisile). She submitted that the foster care parent brought the children birth certificates, the late Julia Dladla's death certificate and school attendance reports. She further submitted that a home visit was conducted at Bhiliya Area and saw three (3) the aforesaid children at home as informed by the foster care parent. Thereafter, she compiled and signed the report dated 25 September 2003. She submitted that she then took the children to court and the court orders were issued and the subsequent review on 08 July 2009 the order was extended by Statutory Unit. She submitted that she had no access to Home Affairs function to verify the information given to her by Mrs Mchunu. She testified that when Julia Dladla passed away the birth certificates had been issued by the Department of Home Affairs.

35. The applicant testified that the duties of Social Worker Supervisor are to lead, guide and support the Social Workers through supervision sessions, evaluate their progress check their work and growth. She further testified that the Social Worker, T Mngcwango compiled and she signed the report in respect of the Dlamini children (Sifundo and Hlengiwe). She stated that the children were placed under the unrelated foster care parent Ms. Lindiwe Ntombela, and she was unaware that the foster care parent took the children to her mother, Mrs Duduzile Shabalala, who was running an unregistered facility.

36. She stated that a home visit was conducted by the Social Worker, Ms. Amanda Mthembu in respect of the child Sinenhlanhla Mngomezulu. She submitted that the aforesaid Social Worker compiled the report and she signed it. She further submitted that the child was placed under the foster care parent, Mrs Doris Zungu and according to the report she was fit to take care of the child in 2015. She testified that she was unaware that the foster parent was ill and bedridden as she relied on the report. She testified that the respondent failed to prove that the foster care parent was unfit at the time of placement of the child. She further testified that the child had turned 18 years of age and the Social Worker could not be removed from the foster care parent. She submitted that she was not consulted by the respondent before being charged.
37. She testified that the Social Worker, Mr. Mlondolozzi Nkomonde conducted a home visit and subsequently compiled two reports dated 08 June 2012 and 25 September 2012 in respect of three Mkhize children (Nokwazi, Andile and Thabo) and two Mthethwa children (Nokukhanya and Nduduzo). She testified that she signed both reports on 13 June and 31 October 2012 respectively. She submitted that she was unaware of the two children Vusumuzi Ngcobo and Mxolisi Mthethwa as she did not sign the report and it was not in file. She further submitted that she complied with section 185 of the Children Act in terms of the two reports.
38. She stated that the designated Social Worker, Mrs. Mthiyane investigated the matter, compiled the report and presented it in court in respect of the child Daluxolo Khethelo Mgobhozi. She submitted that Mrs. Mkhwanazi informed her that the children Sikhulille Khanyile and Daluxolo Mgobhozi biological mother Phumzile Zinhle Mkhwanazi passed away and requested for assistance with the foster care grant. She submitted that she then completed the first intake form based on the information given by her which reads "Mrs Mkhwanazi is the maternal grandmother of the children". She submitted that she did not direct a designated social worker to trace the biological father of the child as it was not done at Lower Mfolozi office.
39. She testified that the school reported that the foster care parent, Ms. Kisi Mthembu was abusing the child Nokwazi Shandu. She further testified that the social worker removed the child and placed her in temporary safe care. She submitted that Ms. Mthembu came once to the office the next day and was informed of the removal of the child. She submitted that she never demanded an amount of R800.00 and Ms. Mthembu failed to provide proof that she gave her the money.

40. Under cross examination she testified that according to F192M1 the children were not linked to the late Julia Dladla, but she submitted that it did not mean that the children did not exist. She submitted that the respondent did not provide her with resources to verify with Home Affairs the Mngadi children. She conceded that it was impossible for the child to be staying in the Gauteng province and attend school at Bhiliya Primary School and submitted that it was typing error.

Witness 2

41. **Mrs. Alosia Mchunu (Community member)** stated that her late sister, Julia Dladla had three children Ntokozo, Thabisile and Thabisile Mngadi. She submitted that her sister was married with Mr Bheki Mngadi from Mabhuveni Area, KwaMthethwa. She testified that the aforesaid children were schooling at Bhiliya Primary School Ntokozo doing grade 5 and grade 3 respectively. She submitted that after the death of her sister, she went to Ngwelezane and applied for the foster care grant of Mngadi children. She testified that she was assisted by the social worker, Mrs. BG Ngidi. She stated that the applicant conducted home visit, and verified that the children were existing. She further stated that the aforesaid three children appeared in court and the order was granted. She testified that Ntokozo never stayed in Gauteng province. She submitted that three Mngadi children located to in Cape Town in 2014. She testified that she had seven children as per F192M1 from the Department of Home Affairs. She stated that she met with Ms. Ngcamu who then informed her the children were not existing. She further stated that she informed her that the children were not ghosts children and that they had relocated to Cape Town. She submitted that she provided Ms. Ngcamu with Malungi Ndlovu's contact details to verify that the children were staying with her. Mrs Mchunu submitted she had seven children recorded on the F192 M1 and then later changed the number to ten and then nine. She further contradicted herself in that she first met the applicant when she came to apply for the foster care grant at Ngwelezane but then changed her version that she knew the applicant when she was still assisting at the creche. She further contradicted herself in that Ntokozo never stayed in Gauteng and changed later her version that Ntokozo was ill and went for treatment to Gauteng.

42. Under cross examination, she submitted that she knew the applicant when she first came to apply for the foster care grant in 2003. She conceded that she has seven (7) children

recorded on the F192M1 from Home Affairs. She submitted that her sister had four (4) children. He put it to her that she did not appear in court with Thabisile, but it was another child who was born on 20 December 2001. She submitted that the Thabisile's date of birth in the report was incorrect. She conceded that she received the foster care grant from 2003 until 2014. He put it to her that she had no child born in 1983 as it did not appear on the social worker's report and F192M1.

43. Under further cross examination she submitted that the children were schooling at Bhiliya Primary School, Makhwezini Primary School and Nhlanguwini Primary School. He put it to her that teachers informed Ms. Ngcamu that there were no Mngadi children in their school. He further put it to her that the deceased had no children in terms of F192M1 from the Department of Home Affairs. She conceded that she had met with the applicant at the creche before she applied for the foster care grant. He put it to her that the Mngadi children did not exist. She conceded that the respondent requested to see the aforesaid children in 2014, and she had not been able to bring them.

Witness 3

44. Ms. Zanele Ngiba stated that the applicant was her supervisor when she was still employed by the respondent as a social worker. She submitted that she knows Ms. Kisi Mthembu as being a foster care parent for the child, Nokwazi Shandu. She further submitted that she received a complaint from the school that the child was not attending school and that she was being ill-treated by the foster care parent. She testified that she then removed the child from the aforesaid foster care parent. She further testified that the applicant telephoned her that Kisi Mthembu was in the office and looking for the child. She stated that she informed her that she removed the child and was in a safe place. She further stated that she never met with Ms. Mthembu after removal of the child in question. She testified that she did not receive an amount of R800.00 from the aforesaid foster care parent.

ANALYSIS OF EVIDENCE AND ARGUMENTS

45. The applicant referred an unfair dismissal dispute to the council in terms of section 191(5) (a) of the Labour Relations Act. I am required to decide whether the dismissal of the applicant was fair or not.

46. In terms of section 185 of the LRA an employee has a right not to be unfairly dismissed. In terms of section 192(2) the Respondent must prove that the dismissal was fair. In terms of section 188(1) of the LRA a dismissal that is not automatically unfair, is unfair if the employer fails to prove-

- (a) That the reason for dismissal is a fair reason.
- (b) That the dismissal was effected in accordance with a fair procedure.

47. In terms of item 7 of the code of good practice states that any person who is determining whether a dismissal for misconduct is unfair should consider-

- (a) Whether or not the employee contravened a rule or standard regulating conduct in, or relevance to, the workplace; and
- (b) If a rule or standard was contravened, whether or not –
 - (i) The rule was a valid or reasonable rule or standard;
 - (ii) The employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) The rule or standard has been consistently applied by the employer, and
 - (iv) The dismissal was an appropriate sanction for the contravention of the rule.

48. It appeared as common cause that the father Mr Mgobhozi of the child Daluxolo was said to be unknown and the applicant did not guide the social worker to trace him by placing an advertisement in the local newspaper. It further appeared as common cause that the father Mr Moses Ngema of two children Sifundo Dlamini and Hlengiwe Dlamini was said to be unknown and the applicant did not guide the social worker Ms. Thulile Mcwango to advertise his name on the local newspaper.

49. The respondent argued that the dismissal of the applicant was procedurally and substantively unfair. I find that the respondent's arguments to be more probably than that of the applicant. The evidence led by the respondent's witnesses Ms. Ngcamu and Mr. Mjadu was credible and consistent. I accept the evidence led by Ms. Ngcamu that the children did not exist in that a foster care parent reported to the office and was requested to bring the children the next day, but she failed. Mrs Mchunu informed her that the children moved to Cape Town and failed to provide her with the address where the children were staying, but she gave her cellphone number for someone who introduced herself as Zilungile from Esikhaleni area. According to the F192M1 system, the late Julia Dladla had no children linked to her.

50. I further accept the evidence led by Ms. Ngcamu that the applicant failed to guide and support the social workers to trace two fathers Mr Mgobhozi and Mr Ngema were said to be unknown in respect of the children Daluxolo Mgobhozi, Sifundo Dlamini and Hlengiwe Dlamini.
51. I further accept the evidence Mr Mjadu that according to the F192M1 system from Home Affairs, the late Julia Dladla had no children linked to her. I noted that Miss Ngcamu questioned the birth certificate for the Mngadi and the school attendance reports.
52. The evidence led by Ms. Kisi Mthembu failed to prove or bring a bank statement or withdrawal receipt to prove that the applicant unlawfully demanded her to pay back the monies paid to her amounting to R800.00 that argument stands to fail. The evidence also led by Ms. Qushu Mkhwanazi was contradictory in that she first testified that she informed the social worker that the child had two fathers Ndlovu and Mgobhozi, she later changed her version that she did not inform her that the child had two fathers that argument stands to fail.
53. In terms of section 185 (1) says not more than six children may be placed in foster care with a single or two persons sharing a common household, except where-
- (a) The children are siblings or blood relations; or
 - (b) The court considers this for any other reason to be in the best interest of all children.
54. In this stance, the respondent failed to prove that the social worker's report was in file as proof that the applicant was aware or ought to have been aware that Vusumuzi Ngcobo and Mxolisi Mthethwa were also receiving foster grant which caused to exceed the limit and this argument stands to fail.
55. I am mindful that Mr Hlongwane presented the death certificate as proof that Mrs Doris Mngomezulu demised. I reject the hearsay evidence adduced by Ms Ngcamu that Mrs Zungu was unfit to take care of the child at the time of placement as the social worker's report and the court order confirmed that she was suitable to take care of the child and the argument that the applicant failed to guide the social worker stands to fail.
56. I reject the applicant's argument that the respondent dismissed her for no plausible reason. The applicant and Mrs Mchunu evidence contradicted in that the applicant submitted that the discrepancy in the report was a typing error that Ntokozo Mngadi

stayed in Gauteng whereas Mrs Mchunu stayed with relatives in Gauteng. The questions that beg answers as to why the applicant did not escalate the matter to management that she had no resources to verify the documents or visit Home Affairs and in my view, the argument that the applicant had no resources stands to fail. It is an undisputed fact that the applicant failed to provide legislative guidance and support to the social workers to cause an advertisement to trace Mr Mgobhozi and Mr Ngema and the applicant's argument that the Lower Mfolozi office was not advertising in the newspaper stands to fail. I accept the applicant's submissions that according to the report the children Sifundo Dlamini and Hlengiwe Dlamini were staying with the foster care parent. The applicant would not have known that Lindiwe Ntombela moved the children to Mrs Shabalala and the argument that she was not aware that the children were living in an unregistered facility stands to pass. The evidence of the applicant and Ms Ngiba was credible that the applicant failed to prove that the applicant demanded money amounting to R800.00 from Ms. Mthembu.

57. Mrs Mchunu was not a reliable witness in that she contradicted herself that she had seven (7) children and changed later that she has nine (9) children. She further submitted that her late sister had four children. The F192M1 system was never objected by the applicant party. The inference that I can draw that applicant's representative was not aware of the above mentioned. The presence of the children has been repeatedly requested but she has not brought the children since 2016 to date.

58. In light of the above, the respondent on the balance probability proved that the dismissal of the applicant was fair. Therefore, the application is hereby dismissed.

AWARD

59. The dismissal of the applicant was substantively fair.

60. The applicant's claim is hereby dismissed.

61. There is no order as to costs.



Khehla Khanyile

