



# ARBITRATION AWARD

Case No: **PSHS292-19/20**

Commissioner: **Jerald Vedan**

Date of award: **12 February 2021**

In the matter between:

**NEHAWU obo Aubrey Sipehelele Mncube**

Applicant

and

**Department of Social Development- KwaZulu Natal**

Respondent

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## DETAILS OF HEARING, REPRESENTATION AND BACKGROUND

1. The hearing took place at the Department of Social Development Boardroom, 174 Mayors Walk, Pietermaritzburg on 17 March 2020, 29 July 2020, at the Lower Umfolozi Service Office on 22 October 2020, and concluded 29 January 2021 at 10:00 am.
2. The Applicant was represented by S. Dlamini, a Union Official.
3. The Respondent was represented by H.N. Jili, its employee.
4. The parties agreed to submit closing arguments in writing by 05 February 2021.

## **ISSUES TO BE DECIDED**

5. Whether the Respondent committed an unfair labour practice against the Applicant in terms of Section 186 (2)(b) of the LRA by imposing a sanction of two months suspension without pay against him.

## **OVERVIEW OF EVIDENCE AND ARGUMENT**

6. It is common cause that the Applicant was employed by the Respondent as a Social Worker at the Umfolozi Service Office at the time of the alleged incident. He was subjected to disciplinary proceedings. The charges were as follows:

### **“COUNT 1**

In that on or about 07 April 2011 at or near Lower Umfolozi Service Office while on duty, you contravened the provisions of Section 155 (2) of the Children’s Act No. 38 of 2005, in that you failed to conduct a prescribed investigation to determine client’s home circumstances, thereby unduly or improperly influencing a court order to be issued by the Children’s Court held at Ngwelezane Magistrate’s Court placing Nokwanda Mbatha ID No. 990326 0803 08 1 in custody of Esetina Mkhwanazi ID No. 320101 2551 08 2, this committing an act of misconduct.

### **COUNT 2**

In that on or about 07 April 2011 at or near Lower Umfolozi Service Office while on duty, you were negligent and contravened the provisions of Section 155 (2) of the Children’s Act No. 38 of 2005, in that you failed to conduct a proper investigation to determine the actual circumstances of the biological father Leoard Thembalakhe Mbatha ID No. 661120 5531 08 8 and foster child Nokwanda Mbatha ID No. 990326 0803 08 1, thus misleading the Children’s Court Inquiry, held at Ngwelezane Magistrate’s Court. Therefore your actions caused the State to suffer financial prejudice amounting to R44 090-00. By doing so you committed an act of misconduct.

### COUNT 3

In that on or about 07 April 2011, at or near Lower Umfolozi Service Office, while on duty you contravened Policy Guidelines for the course of Conduct, Code of Ethics and Rules for Social Workers Clause 4.4., which requires a Social Worker to uphold professional integrity, thus committing an act of misconduct.”

7. Thereafter, on 25 October 2018, the Applicant was found guilty by the Chairperson of the disciplinary hearing, and a sanction of two months suspension without remuneration was imposed on the Applicant. An appeal was lodged by the Applicant, and was subsequently dismissed.

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10.8. The Applicant alleged that the disciplinary hearing was unfair and improper, and maintained that he did his work diligently and professionally. He stated that the action by the employer was unlawful and improper.

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13.9. The Respondent, on the other hand, contended that the disciplinary procedure was fair as all procedures had been followed according to the Resolution as prescribed. The Respondent maintained that the Applicant did not properly conduct a home visit to determine the circumstances of the biological father of Nokwanda Mbatha.

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16.10. The Respondent further maintained that the Applicant failed to determine the home circumstances of Nokwanda Mbatha and influenced the court order to be issued in favour of placing the child into the custody of Esentina Mkwanazi.

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19.11. According to the Respondent, the Applicant did not uphold professional integrity in respect of the social work report that he compiled for presentation at the Magistrate’s Court on the child’s behalf.

## **APPLICANT'S EVIDENCE**

12. The Applicant testified that he is currently employed by the Respondent at the Vulindlela Service Office, as a Social Worker. His duties are to protect vulnerable children, to provide psychosocial services to the family, and to help people who cannot help themselves. He does this by placing children in proper care facilities in order to protect them.

13. He stated that at the time of the alleged incident, he was employed at the Lower Umfolozi Service Office. He had been appointed in June 2010, and in April 2012, he transferred to the Vulindlela Service Office.

14. The Applicant alleged that the reference to Section 155(2) of the Children's Act in the first count levelled against him is not consistent with the text of the Act itself.

15. According to the Applicant, a Social Worker investigates the circumstances of a case brought forward by a complainant. Thereafter the Social Worker will compile a report, and ensure that all documents required by the Court, as evidence, are submitted. A case is then lodged with the Court, or the documents are submitted in Court, for the Magistrate's perusal. Once the Magistrate is satisfied with the report, and the documents, they will issue a date of enquiry. The Social Worker will then contact the parties relevant to that particular matter. In foster care, the parties include the child in question, the Social Worker and the applicant who will become a foster parent after the enquiry.

16. The Social Worker then presents the case to Court, and the Magistrate will give each party an opportunity to add or pose questions. The Magistrate will then examine the child and the applicant. If the Magistrate is satisfied, a Court Order placing the child under the care of the foster parent will be issued.

17. The Applicant stated that it is therefore not possible to influence a Court's decision in this regard. He further stated that he recalls the case in question.

18. He referred to his report, and stated that the child was in need of care and protection. Therefore he made the recommendation to place the child under the foster care of her maternal biological grandmother, who was struggling to raise the child on her own. He then placed the child under the foster care. He stated that he did not remember the exact date the grandmother approached him, but that it was in 2011.

19. He added that he was in contact with the sources of information. The grandmother, who was the applicant with regard to the foster care, went to his office seeking help, as she was raising her deceased daughter's child on her own. The Applicant stated that he explained the process to her, and advised her of what was required in order for her to qualify for foster care.

20. According to the Applicant, he conducted an investigation. He went to the child's school and obtained a school report. He added that the school is the best way to seek information regarding a child, as they are an honest third party. He spoke to the Clerk, and the school gave him a chance to interview the child. He then interviewed the child, and completed a school form. He stated that the report is obtained from the child's teachers. He asked the child about her father, and she responded that she did not know where he was, and that she did not know him.

21. Following this, he advised the grandmother to produce the death certificate of the child's mother to prove that her mother is deceased. He further requested proof of residence, the child's birth certificate, and the grandmother's Identity Document.

22. The Applicant stated that the grandmother advised him that the child's father was unknown to her and the family. He then advised her to draw up an affidavit, as evidence of same, so that it can be submitted to the Court. He added that it was not possible to get further information on the father, as he was unknown to the family.

23. According to the Applicant, the main reason for placing a child under foster care is the child's protection. He added that in the case in question, the grandmother was taking care of the child, and indicated to him that the child's father was unknown to her. Therefore the circumstances proved that the child only had the grandmother to take care of her. The grandmother required assistance in doing so.

24. With reference to the second count levelled against him, he contended that the child's father was not present while he was conducting the investigation. He further added that the school did not know of the child's father, and advised him that the child

was being raised by her grandmother. This was confirmed by the child and her grandmother.

25. He stated that as a Social Worker, he took an oath to protect vulnerable children, and therefore could not delay the proceedings for years in order to locate an absent parent.

26. The Applicant stated that he used the provisions of section 150 (1)(a) of the Children's Act to place the child under foster care, as she had no parents. Her mother is deceased and the father's whereabouts were unknown. The child had no visible means of support, as her family relied on the grandmother's old age grant.

27. He referred to the proof of school attendance document, and stated that it was signed by the Deputy Principal, with permission from the Principal. The child's teacher also filled in the form. According to the Applicant, this document emphasises the importance of school attendance, which is in the best interests of the child.

28. With reference to the initial court order, the Applicant stated that the duration of the court order is two years.

29. The Applicant stated that he upheld his professional integrity throughout the case in question. He was able to assist a child who was in need of care and protection.

30. He added that after bringing a case to Court, the Social Worker will refer the foster parent to SASSA to make an application for a grant. Thereafter SASSA takes over, utilising the court order which is valid for two years. The foster parent will be registered by SASSA, and will thereafter receive a grant for the period of two years.

31. With reference to the High Court order, the Applicant stated once the two years lapses, the foster parent has to obtain an extension order. The procedure is the same as the application. He added that the child and foster parent do not have to be present during the application for extension. The Magistrate would only have to see the child and foster parent when re-applying for foster care.

32. Once the order for an extension is granted, it is given to the foster parent so that they may apply for the extension of the grant. He added that there were cases in which the orders had lapsed. According to the Applicant, the High Court order was for every case opened in a certain period. SASSA's system could not spot the date of court

orders and paid out grants. This should have been covered by an order with a report. Due to the backlog, the Department of Social Development could not meet the suggestion of SASSA that extension orders are required. He added that the Department of Social Development took the matter to Court to request that the Court make an order to cover the payments.

32. The Applicant stated that he does not remember if the code of ethics was included in his education, and further stated that he was not inducted in the ethics and guidelines. He stated that he is guided by the Children's Act, and works with the Children's Court. He added that he had not been inducted in the Children's Act either.

33. The Applicant stated that an investigation varies, and that there is no prescribed method or procedure.

34. He claimed to have been on probation while dealing with the case in question, and therefore he was working with his Supervisor, W.T. Ngcobo, who provided guidance. His Supervisor checked his reports, and gave him feedback. He stated that his Supervisor approved of his report and co-signed it, which is why he submitted it to Court. He added that a Social Worker would not submit any documents to the Supervisor without attachments.

35. The Applicant stated that he had erroneously referred to the child as "Mthethwa Nokwanda" on the first page of his report.

36. He added that in addition to enquiring with the grandmother, the school and the child, he asked the child's neighbours about the child's father. He could not include them in his report, as he could not take them to court as a source of evidence.

37. According to the Applicant, he did not do an advertisement for an unknown father.

38. The second witness for the Applicant, Xolani K. Mkhize, stated that he is a Senior Administration Clerk at the Children's Court section, and has worked there for about eleven years. He added that he was aware of the foster care program.

39. He stated that court orders are granted at the Court so that they have a link with the Social Workers and all required documents. They receive the report with other documents, and scrutinise them before forwarding to the Magistrate. He stated that

the Social Worker makes recommendations to the Court, but the Magistrate does not have to accept the recommendation.

40. He added that if anything is missing, they do not allow the report to be submitted.

41. At the enquiry, the Magistrate, the child, the Social Worker and the foster parent are present. The biological parents are often uncooperative and do not attend Court. The Magistrate confirms that the Social Worker who compiled the report is present, and will further confirm the details with the foster parent. The child is then asked if anything should be added to the report. The child and the foster parent are given the opportunity to dispute incorrect information.

42. Once the order has been granted, the Social Worker must apply for an extension of the order after two years has lapsed, and if the child is still in the foster care program.

43. He added that the Magistrate questions the Social Worker and the foster parent if he is uncertain about the report. The information provided in the report guides the Magistrate.

44. The third witness for the Applicant, Philiswa Zungu, testified that she is a Social Worker, and has been employed by the Department since 2008. She was employed at Maluti Service Office, and was transferred to Mooi River service office in 2010. In 2013 she was transferred to Vulindlela Service Office. She worked as a Probation Office from 2013 to 2015, and thereafter returned to ward based social work. In 2019 she was appointed as acting Supervisor at the Vulindlela Service Office. Her contract was terminated in 2020.

45. She stated that the foster parent applies for foster care by visiting the office of social development. The intake will be done by a Social Worker, and will then be allocated to a Supervisor within seven days.

46. The Social Worker has to conduct an investigation within ninety days of receiving the application. The investigation includes visiting the child's home and school, and conducting interviews. She further outlined the procedure involved, and stated that a Social Worker should support the child.

47. She stated that the role of a Supervisor is to support, advocate and mentor, and to scrutinise the report.



48. She further outlined the relevant procedure, and added that the enquiry will not proceed if the Magistrate is not satisfied.

49. According to Zungu, if the child's father is unknown, the Social Worker must place advertisements in accordance with the Children's Act. If there is no advertisement, an affidavit must be signed. While awaiting the advertisement, the affidavit can be used.

50. She outlined the procedure regarding the application for a grant, in accordance with the Applicant's testimony.

51. Zungu stated that, in terms of Section 21 of the Children's Act, if the child's father appeared and according to customary law paid damages to the child, the child can be registered with his surname. If he has shown good faith towards the child, the child can be given to the father through family preservation programmes. The child's father would need to support the child financially for the child to be discharged.

52. She added that Section 21 applied to the case in question. The father was not able to support the child.

53. She stated that the Applicant's report contained mistakes and that the Supervisor did not check the report before signing. The Identity Number on the report is incorrect. She added that the report was not professional, and noted that the Supervisor did not do her job properly. According to Zungu, the Children's Act framework guides the Supervisor. She further stated that the permanence plan portion of the report was omitted.

## **RESPONDENT'S EVIDENCE**

54. The first witness for the Respondent, Venetia Hlenzekiwe Thambi Ngcamu, testified that she is the Deputy Director for Professional Compliance and Quality Assurance employed by the Department of Social Development. She stated that she is responsible for ensuring compliance of social service practitioners in terms of registration with Statutory Bodies, compliance to development and continuing professional development, compliance to norms and ethics of the profession, and norms and standards regarding the development and social welfare services. She is also responsible for policy development, implementation, and monitoring.

55. She stated that she understood the foster care processes, and added that the processes are regulated by the Children's Act and Statutory Guidelines for the Management of Foster Care in South Africa.

56. According to Ngcamu, Section 150 of the Children's Act explains the characteristics of children in need of care. She added that the process may be initiated through a self-referral of a child, or an adult, who may wish to apply for foster care. It may also be referred through concerned communities. Once referred, the matter receives intake by a qualified Social Worker. Biobiodata is obtained in order to ascertain the biological circumstances of the child.

57. Upon receiving the information at intake, the matter is allocated to a Social Worker, who becomes the case manager. The case manager is then responsible for ensuring that all the planned interventions are being done. Relevant documentation is obtained. The Social Worker has the responsibility to validate all information being presented by the applicant, and this includes conducting an investigation.

58. Ngcamu stated that the investigation entails a comprehensive assessment, which includes detailed information about the child. This extends to the family members. The comprehensive assessment also includes undertaking home visits, and tracing biological parents. Upon completion of the investigation, the Social Worker compiles a report, which incorporates the professional opinion of the Social Worker.

59. The report is then signed by the relevant signatories, and is thereafter submitted to Court in order to secure a Children's Court enquiry. The report contains the Social Worker's recommendation. The Magistrate considers the report, and determines whether the child will be placed in foster care. The process may include non-grant placement. This depends on the recommendation.

60. Ngcamu outlined the procedure for the application for the SASSA grant. She added that the duration of the foster care runs for two years, if the child is under the age of eighteen. It then needs to be reviewed. The review entails checking whether the circumstances that were investigated are still the same. If so, the placement is extended.

61. Ngcamu stated that in 2016, she was part of a task team appointed to investigate the irregularities of foster care placement around the Lower Umfolozi Service Office.

Part of the investigation included verifying all foster care placements, which covered one thousand three hundred and seventy five cases.

62. During this investigation, it was established that at the time of placement for the child in question, no home visit was conducted by the Social Worker. The prospective foster parent had just presented the matter, and was thereafter called to attend the enquiry. It was further established that a biological father existed at the time of placement.

63. According to Ngcamu, the home visit is a compulsory step in terms of completing a comprehensive assessment. The Social Worker cannot continue with recommendations without properly understanding the needs and problems of the child. A home visit also allows the Social Worker to establish a rapport with people who may have information regarding the child. It further allows the Social Worker to scrutinise the documents submitted.

64. Ngcamu stated that the Magistrate's decision is influenced by the recommendations and contents of the report and the credentials of the foster parent. The Magistrate does not go out so he relies on the report. The Magistrate may ask questions to clarify certain aspects, and these questions arise out of the contents of the report and the recommendations.

65. She added that Section 155 was contravened as a comprehensive assessment had not been completed. Only one parent was deceased, and no information was put forth about the father. The Social Worker did not try to trace the father.

66. Ngcamu clarified that an affidavit is not an alternative to be used in lieu of publication. It is compiled by a prospective foster parent, and will include information that will be given during the interview with the Social Worker. The publication is facilitated by the Social Worker, and is placed in the press for the public to come forth with information.

67. When the child's mother was pregnant, the father did send a representative to pay for damages until the child was born. The family and neighbours know each other. It was further established that the father was never untraceable. The child grew up with her maternal family, as her father had lost his employment due to a car accident. He recovered but walked with a limp, and therefore applied for disability grant. Using that grant, he was able to contribute to the child. The child was in the vicinity of his residence.

68. She stated that if the investigation had been done, the child would have been assisted with a child support grant to assist the father, and not with a foster care grant. This type of grant does not warrant an enquiry, or any of the processes followed for a foster care grant.

69. According to Ngcamu, during her investigation, the child in question disputed having any interaction with the Applicant at school. The grandmother also disputed that she had been visited by the Applicant. If he had gone to the house and nobody was present, the Applicant cannot proceed to recommend foster placement. Such an investigation is an ongoing process, and a recommendation cannot be made after one day. Home visits also entail interviewing the neighbours and community members.

70. She stated that the integration of theory into practice for a Social Worker does not start when placed in employment. Interacting with clients and engaging with the process begins at study levels two and three. During study level four, equal amounts of time are spent on theory and practice. Therefore by the time a Social Worker is sent out into the field, they almost have a whole cycle of integration of theory into practice.

71. Ngcamu stated that the investigation does have a prescribed method, and that this is set out in regulations. The Applicant did not include a process note for a home visit in the file.

72. The second witness for the Respondent, Nokwanda Mbatha, stated that she is currently studying in Majuba College in Newcastle. She finished high school in 2018. In 2011, she was a grade six learner. She added that her teacher and Principal were named Mrs Lukele and Mr Msweli respectively.

73. She stated that she remembers the Social Worker visiting her at school in 2011, but he did not ask to see her home. Her school teacher did not inform her that the Applicant had been looking for her.

74. She stated that she always knew she had a father, but first met him in 2013. She also knows the Inkosi in the area her father resided.

75. She added that she saw her father when she was very young. Her grandmother told her that she had a father. She further added that her father was not assisting her in 2011.

76. The third witness for the Respondent, Leonard Thembalakhe Mbatha, testified that he resides in KwesaKwaMthethwa. He stated that he had two children, one of them being Nokwanda Mbatha, whose mother belonged to the Mkwanzazi family. He stated that when he first met them, they resided at Kwapata, however they now reside in his area of residence.

77. According to Mbatha, he was aware of Nokwanda before she was born, as her mother had advised him of her pregnancy. Her mother and aunt had taken her to his house when she was pregnant, and he later met them at a shop. He stated that he visited her often, and her brothers knew him. He paid damages to her in the form of one cow, and often visited her mother's home before the child was born.

78. Mbatha stated that the child's grandmother knew him, as she had asked for his Identity Document at one point. Later she took the child to his home, and stated that she wanted Nokwanda to know his family. He further added that he named Nokwanda. When she was born, he handed Nokwanda's mother his Identity Document and enclosed the name Nokwanda on a piece of paper.

79. According to Mbatha, Nokwanda was not in school when she first stayed at his house. He was still dating her mother at that point. He added that when he broke up with her mother in 2011, Nokwanda's grandmother refused to let the child visit him.

80. He stated that he receives a disability grant.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

81. The general rule is that he/she who alleges a fact must prove it on a balance of probabilities. In unfair labour disputes, such as the present case, the onus rests on the Applicant to prove the unfair practice. In *Lindsay v Ithala Development Finance Corporation Ltd (2)* (2002) 23 ILJ 418 (CCMA), the Commissioner considered that, "with regard to onus, the principles of our labour law is clear that the initial burden of proof is always on the employee to show that the employer did something, whether it be a dismissal, or a labour practice, and once the existence of that fact is established, the burden of proof moves to the employer to show that what it did was fair". The overall onus always rests on the employee to show the existence of an unfair labour practice. The Applicant has to prove his case on a balance of probabilities.

82. I have to ascertain whether the conduct of the Respondent in finding the Applicant guilty, and in imposing the sanction, was unfair. I also have to ascertain whether after finding the Applicant guilty whether the two months suspension without pay was a decision that a reasonable decision maker would have arrived at.

83. The matter to be decided is whether the Applicant, in not conducting a proper investigation, wasted state funds by engaging in a more costly route for the care of the child. Whether or not the Applicant was negligent in undertaking this process must be determined. The wastage of State funds cannot be without consequence, lest it sets a dangerous precedent.

84. In terms of Section 155 (2) of the Children's Act No. 38 of 2005 it is stipulated quite clearly that before the child is taken to the Childrens Court a report must be compiled by a designated Social Worker, after an investigation. There is a prescribed manner in which the report must be compiled, and it must be shown whether the child is in need of care and protection.

85. The Applicant alleged that the disciplinary action taken against him by the Respondent was unfair and unprofessional, and that he had completed a comprehensive investigation of the case at hand before making his recommendation. However it must be noted that the Applicant's alleged misconduct was established during a thorough investigation of a number of cases. This investigation was conducted with a task team, in order to find irregular foster placements.

86. According to evidence presented by both parties, an investigation into a child's circumstances includes undertaking home visits, and tracing biological parents. Upon completion of the investigation, the Social Worker compiles a report which incorporates the professional opinion of the Social Worker.

87. The Applicant claimed to have properly conducted a school and home visit for the child in question, and even submitted that he interviewed neighbours, but did not cite them in his report, as he could not present them as sources of evidence. Therefore his claim remains largely unsubstantiated.

88. The foster child, Nokwanda Mbatha, stated quite clearly that the Applicant did not ask her any questions. It is also a conundrum as to why the Applicant did not enquire into the reason why Nokwanda carried the surname of Mbatha. This would have alerted him to the fact that this was her father's surname. Another means to alert the

Applicant was that the foster mother's name was Mkhwanazi, while on the child's birth certificate the surname Mbatha was indicated.

89. The evidence of the child in question directly contradicts his claims. Nokwanda stated that he did not ask to visit her home. Venetia Hlenzekiwe Thambi Ngcamu, a witness for the Respondent, testified that the Applicant did not include a process note for a home visit in his file.

90. It is the Respondent's submission that the Applicant did not properly investigate the matter, in that he did not conduct a home visit, and he took no steps to trace the father. Had he done so, the child would have been supported through a child support grant, which does not require an enquiry, instead of a foster care grant. By following the process for foster care, the Applicant caused the State to suffer financial prejudice.

91. A home visit seems to be an integral aspect of an investigation into the circumstances of a potential foster care placement. The Applicant provided no substantial proof of such a visit.

92. Philiswa Zungu and Ngcamu gave evidence that were the father was unknown a publication needed to be done. This was not done by the Applicant, and neither was this evidence challenged by the Applicant.

93. The father and Nokwanda both indicated that they reside in KwesaKwaMthethwa, and have the same Chieftain Leadership, however they live in different areas not far from each other. He lived in Nhlabusile near Nkanyezi. It would not have been expensive to travel between the areas, which are relatively close by. This evidence was also not challenged by the Applicant. The Applicant was under a duty to do a thorough investigation, and if he had visited Nokwanda's home he would have ascertained that fact.

94. Although Nokwanda's father was perhaps not in a position to support Nokwanda, in the investigation this would not have been an overriding consideration, as the appropriate grant to have been obtained was child support grant and not foster grant.

95. In quoting the appropriate section of the Children's Act, which is Section 150 (1), the following needs to be taken into account with regards to foster care grant:

“(1) A child in need of care and protection if, the child-

- (a) Has been abandoned or orphaned and is without any visible means of support;
- (b) Displays behavior which cannot be controlled by the parent or care-giver;
- (c) Lives or works on the streets or begs for a living;
- (d) Is addicted to dependence – producing substance and is without any support to obtain treatment for such dependency;
- (e) Has been exploited or lives in circumstances that expose the child to exploitation;
- (f) Lives in or is exposed to circumstances which may seriously harm that child's physical, mental, or social well-being;
- (g) May be at risk if returned to the custody of the parent guardian or care-giver of the child as there is a reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
- (h) Is in a state of physical or mental neglect; or
- (i) Is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or family member of the child or by a person under whose control the child is.”

96. What needs to be taken into account is that as Leonard Thembalakhe Mbatha testified during 2011 his identity was known, and Nokwanda corroborated with the fact that she knew of the existence of her father, although she only met him in 2013. In this respect the Applicant is incorrect.

97. In considering whether one should attribute the incorrect completion of the data, and the investigation, to the fact that the Applicant was still on probation, one has to consider that the practice of social work study is done from the second year of academic study, and in this way the Social Worker acquires the necessary experience and exposure, and this is also in level three and level four. Furthermore a Social Worker is regarded as a professional.

98. It would seem that the Applicant did not take adequate steps to trace the child's father. He engaged in the costly process of obtaining a foster care grant for a child, when it was possible to facilitate the less costly process of obtaining a child support grant. His doing so can only be attributed to negligence on his part.

99. The child's father seemed to be traceable at every point during the investigation. Adding further to the Applicant's negligence, he did not properly conduct a home visit. His claims of doing so are unsubstantiated, and are directly disputed by the child herself.



100. The Respondent's witnesses gave their evidence in a clear and concise manner, and there is no reason to doubt the credibility of their evidence. They corroborated each other on material aspects of the case. However the Applicant made unsubstantiated claims, and failed to prove that his actions during the investigation were not negligent.

101. The Applicant himself outlined the proper procedure for conducting an investigation, and the evidence of Ngcamu indicates that the Applicant did not follow this procedure.

102. It is understood that the Magistrate's understanding of such cases arises from the Social Worker's report, and any questions put forth are based on the contents of the report, and the recommendations, put forth by the Social Worker. The Magistrate does not conduct any investigations personally. Therefore should the report be lacking in any way, it is bound to influence a Magistrate's decision.

## **FINDINGS**

103. Taking the abovementioned points into account, I therefore find that process of the disciplinary enquiry, and the subsequent sanction of a two month suspension with no remuneration, was fair.

## **AWARD**

104. The application is dismissed.

105. There is no order for costs.



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JERALD VEDAN

Commissioner