CIV/APN/156/80

IN THE HIGH COURT OF LESOTHO

In the Application of :

'MASEABATA RAMAFOLE — Applicant

v

1. NATIONAL UNIVERSITY OF LESOTHO
2. B.A. TLELASE
3. P.A. WHITTLE
4. K.A. MAOPE

— Respondents

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice Cotran on the 29th day of October 1980

The applicant, Miss 'Maseabata Ramafole, a fourth year law student (hereinafter referred to as Miss Ramafole), moved this Court seeking orders against the respondents the National University of Lesotho and 3 others (hereinafter referred to collectively as NUL), couched in the following terms:

"(a) Quashing the judgment of the Senate Disciplinary Committee dated 23rd May 1980,

(b) Ordering First Respondent to release the examination results of Applicant to Applicant,

(c) Costs of suit,

(d) Further or alternative relief".

The Senate of the NUL derives its authority over its students from the provision of s.22 of the National University Act 1976. By University Statute No.7 the Senate is empowered to regulate the discipline of the students. The Disciplinary Regulations are found in the "students handbook" of 1979 (Exhibit 1). Regulation 4.3.4 (page 29 of the handbook) provides that the "Discipline Committee of Senate shall adopt and publish rules of procedure which ensure a fair hearing". These rules have been published and are found in annexure F of the founding affidavit.

On the 29th February 1980 a party of students at NUL were

/proceeding

proceeding by bus to Swaziland to participate in a basketball competition. A lecturer, Mr. Chris Goldman, of the Department of Government and Administration, was accompanying them.

On the 26th March 1980 i.e. almost four weeks after the event, Mr. Goldman wrote to the Registrar of the University and to the Dean of Students affairs as follows :

> "We arrived at Swaziland fifteen minutes after the border closed (this was on the night of Friday, February 29). Shortly after our arrival at the border, a minor dispute broke out at the rear of the bus. Many of the students had been drinking, and the dispute most certainly arose from that fact. After a short time, tempers appeared to have cooled down, when one of the students who had been seated at the front of the bus, and who had not been, to this point, involved in the disagreements, decided to intervene. This student, Miss Ramafole, claimed to be defending her friend (Miss Tsiu). Miss Ramafole's actions, however, were highly irrational, and I don't believe that she was ever very clear about the nature of the original dispute. I am convinced that she had absolutely no provocation for her subsequent actions.
>
> As Miss Ramafole became increasingly boisterous, attempts were made by myself and Nurse Anderson, among others, to calm her down. Nonetheless, Miss Ramafole became ever more uncontrollable, working herself into what can only be described as a frenzied state. Finally, she siezed two empty litre Coke bottles, smashed them together, and began brandishing them in a threatening manner. I distinctly heard her, several times, make direct threats on the life of one of the participants in the original dispute, Mr. Victor Sibeko. This only serves to demonstrate the degree of Miss Ramafole's irrationality, since Mr. Sibeko had consistently been defending Miss Tsiu.
>
> Fearing for the safety of the passengers on the bus (we were severely overcrowded, with 75 people on board), I attempted to persuade Miss Ramafole to put down the bottles. After half an hour, or so, of discussion, she could be persuaded to surrender only one bottle. Then, when Mr. Sibeko reached his hand in her direction (for what purpose I am unclear), she slashed out with the bottle, cutting both Mr. Sibeko and Miss Tsiu.
>
> After pushing the other people away, I made an attempt to take the bottle away from Miss Ramafole, only to be cut on the thumb myself. My next step was to endeavour to clear the bus, but at that point Miss Ramafole surrendered her weapon, and the incident ended."

Mr. Goldman wrote further. I will refer to this latter part of his memorandum later on in this Judgment suffice it now to

/say

say that Mr. Goldman :

(a) took, as member of the staff, a serious view of the incident and

(b) asked that the matter be taken up before the Senate Committee on Discipline(hereinafter referred to as the Committee).

Perhaps I ought to emphasise at this early stage that Mr. Goldman did not allege that Miss Ramafole had assaulted him certainly not deliberately. Both Mr. Sibeko and Miss Tsiu, who were directly involved in the fracas, did not complain, either to the Committee or apparently to the Students Judiciary(more about this body later).

On the 22nd May 1980, i.e. almost two months after Mr. Goldman's complaint, the Registrar wrote to Miss Ramafole as follows :

"Dear Miss Ramafole,

According to the Arrangements and Regulations for Student Discipline, you will be aware that "all students, whether on University premises or not, are expected to act at all times with a sense of responsibility, with courtesy and with consideration for others"

It has been brought to my attention that on or about 29 February 1980 (during the sport trip to Swaziland), you assaulted a fellow student, Mr. Victor Sibeko and a member of the teaching staff, Mr. Chris Goldman.

You are therefore charged with breach of the following University Regulations:-

1. Misconduct(Regulation 1.3)
2. Public Order (Regulation 1.1)
3. Alcoholic Beverages(Regulation 1.8).

You are summoned to appear before the Senate Committee on Discipline to answer the above allegations. You will be expected to appear on Friday, 23 May 1980 at 2.30 p.m. in the Senate Room. You may wish to invite your witnesses.

Yours faithfully,

B.A. Tlelase
REGISTRAR "

Regulation 1.1 (page 23 of the handbook) states.

"Public Order: No student shall interfere in any way with the legitimate freedom of any other person nor engage in any unlawful act of violence or intimidation towards any person on the University Campus".

Regulation 1.3 :

"Misconduct: No student shall indulge in conduct that is disgraceful or improper. This includes etc..."

Regulation 1.8 :

"Alcoholic Beverages: Excessive consumption of alcoholic beverages is discouraged and disorderly conduct arising therefrom is forbidden".

On the afternoon of the 23rd May 1980 Miss Ramafole duly appeared before the Committee accompanied by her representative Mr. Kambule, also a fourth year law student. The Committee consisted of a chairman, Mr. P.A. Whittle, and four members, Messrs. J. Kaburise, J. Mugambwa, M. Lekalake, and Mrs. M. Tuoane. The prosecutor was Mr. K. Maope and the secretary Mr. S. Pule. The "minutes" of the meeting of the Committee are found in annexure C of the founding affidavit. The charges relating to Public Order and Alcoholic Beverages were withdrawn and only the charge of Misconduct was proceeded with. Miss Ramafole was stated to have pleaded guilty to the charge but claimed she was pleading guilty to assaulting only Mr. Sibeko, not Mr. Goldman, who may have been injured accidentally, and in mitigation pleaded that she had no intention of assaulting Mr. Goldman. The Committee found that the powers of punishment that they have (a warning, a reprimand, a fine of up to M.30, rustication for up to two weeks) were inadequate to deal with Miss Ramafole but recommended to the Senate that she be rusticated from the University and her examination results withheld for a period of six months commencing from Monday 26th May 1980.

The secretary of the Committee is enjoined by regulation 4.3.5 of the Disciplinary Regulations (page 29 of the handbook) to ensure that "an accurate record is kept of all the proceedings of the Committee." The minutes however are silent on two or three very important matters that took place at the hearing.

It is now common cause that before she was asked to plead Mr. Kambule, on Miss Ramafole's behalf, raised two objections :-

(1) that clause 16.1 of the Students Union Constitution (The Union is a body established under s.26 of the National University Act 1976 and the text, approved it seems by the University Council, is found at pp 31-45 of the handbook) provides that in "any prosecutable offence whatsoever wherein a member of the Students Union is a party the Judiciary shall be the Court of first instance" and therefore the Committee had no jurisdiction to try the case.

(2) That regulation 4.3.1 (page 28) which provides that the student "shall be given at least four clear days notice in writing of the time and place of hearing and of the nature and substance of the charge against him" has not been complied with. Mr. Kambule was asking for time for Miss Ramafole to prepare her defence.

/Mr. Kambule

Mr. Kambule avers (paragraph 5 of his affidavit) and Miss Ramafole supports him (paragraph 8 of her affidavit) that he was "overruled" on both points. Mr. Whittle, the chairman, avers (paragraph 18) that Mr. Kambule was overruled on the first point only. On the second he states :

> "I indicated that the hearing could be postponed to a later date but that it would be difficult for the applicant to bring her witnesses because the University would have closed for the vacation. I also indicated to him it would depend on the applicant's plea whether a postponement was necessary."

He adds that the

> "applicant and her representative then consulted and withdrew the application for postponement whereupon the applicant pleaded guilty to the charge".

This latter assertion is, by implication, denied.

As we have seen, Mr. Goldman, who was instrumental in bringing the Committee into session, had not said in his memorandum that Miss Ramafole assaulted him. The details of the charge as framed in the Registrar's letter of the 22nd May 1980 states however that she did assault him and that she was not prepared to concede. The Committee on the other hand were interested in pinning her down to answer a charge of Misconduct within the broad ambit of regulation 1.3. It has been submitted by Mr. Modisane that the charge was "nebulous". He referred me to a passage by Watermeyer J in Bredell v. Pienaar & Another 1922 KPA 578 at 585, quoted by Hoexter J in Engelbrecht v. Voorsitter, Wetgewande Verg 1973(1) S.A. p.52 at p.65 that

> "prima facie the absence of a definite charge must cause serious prejudice to an accused person. He is entitled to know what accusation he has to meet so that he can bring the necessary defence to rebut it".

The charge cannot be faulted, but the particulars could have been better drafted by the Registrar. I do not think however that Miss Ramafole was under any illusion. According to the minutes of the trial (annexure C), and I have no reason to suppose (even though a lot of what happened was not recorded) that they are not, on the matters recorded, a true reflection of what had taken place. At the hearing the particulars of Misconduct were put to her in proper perspective, viz, that "during the [illegible] trip to the University College of Swaziland Miss Ramafole was involved in a fight (using two broken bottles) with Mr.Victor Sibeko and a member of the teaching staff Mr. Chris Goldman was

/injured

injured in the process of trying to stop the fight". I think the Committee members or some of them were rather impatient at two young budding lawyers trying to make too fine a point. It really matters not whether or not Miss Ramafole had assaulted Mr. Goldman, and when she said that she was guilty of assaulting Mr. Sibeko but not Mr. Goldman, the Committee may well have thought that she was being evasive and a plea of guilty was entered.

I have not heard viva voce evidence to resolve the issue (i.e. whether there was an unequivocal plea) with the confidence that I would have wished but the likelihood is, as Mr. Whittle avers, that she did plead guilty to misconduct but only, as I see it, in so far as that misconduct consisted of an assault on Mr. Sibeko. Mr. Koornhof argues that having pleaded guilty, whatever defects existed have been cured and Miss Ramafole cannot now complain to this Court either about her "conviction" or her "sentence". For reasons which will presently appear I am not sure that I agree.

The Senate met on the 9th June 1980 and upheld the recommendation of the Committee but did not have before it a full record of the proceedings. The decision was communicated to Miss Ramafole by letter from the Registrar dated the 16th June 1980 (annexure H in the opposing affidavit). There is a discrepancy in the date incidentally; in the minutes the effective date of rustication was the 26th May 1980 and the Registrar's letter the 24th May 1980. I take it this was a typing error.

On the 22 July 1980 Miss Ramafole, purporting to invoke the provisions of regulation 4.4.1 (page 29) "appealed" against the decision to the University Council (annexure D). A right of appeal to Council, however, is available only to a student that has been dismissed from the University and she was not. She was informed by letter (annexure E) on 21st August 1980 that the Senate's decision was "final".

She launched her urgent application on the 23rd September 1980 and moved the Court after notice to NUL on the afternoon of 24th September 1980. She was anxious to get a decision from this Court before the Annual Graduation Ceremony which was due to be held on the 27th September 1980 in which she hoped to receive a degree. She must surely have realised that an applicatior of this nature was bound to be opposed. The NUL had less than 24 hours to file affidavits. It was not possible to dispose of the

/case within

case within a day or two. She had known of the Senate's decision on the 16th June, 1980, certainly since the 21st August 1980, when this was reiterated by the Registrar's letter of the same date, (annexure E) and the consequences of delay cannot be blamed except on her.

The application came up for argument on the 14th October 1980.

It was submitted by Mr. Modisane on Miss Ramafole's behalf (I am not taking these in the order they have been made):

1. That the Committee had no jurisdiction to try the case in so far as the Court of first instance was the Student Judiciary. I have already referred to clause 16.1 of the Constitution of the Students Union (page 43 of the handbook). The NUL has several disciplinary bodies, viz:

(a) the house committees
(b) the warders of residences
(c) the Students Judiciary
(d) the Dean of Students Affairs
(e) the Vice Chancellor
(f) the Senate and its Discipline Committee
(g) the Council.

(Regulation 2.0 page 25 of the handbook).

Section I(2) of the Procedure Regarding Disciplinary cases (annexure F) provides :

> "Serious breaches of discipline which are deemed to be beyond the scope of the Student Judiciary shall be brought before the Senate Committee on Discipline. The normal channel is to direct the matter to the Dean of Students Affairs, who shall inform the Registrar, and the Chairman of the Committee on Discipline".

The areas of jursdiction of the various disciplinary bodies is covered by regulation 3.0 (page 27 of the handbook). This provides :

> "The areas of jurisdiction of each of the authorities in whom the disciplinary powers of Senate are vested will depend on the degree of seriousness of the offence under any particular regulation and each authority must use its discretion in deciding whether or not a case falls within its competence to determine".

These provisions indicate that there is concurrent jurisdiction at least. The incident moreover involved a mixed party of staff and students. It was serious, or so the Dean and the Vice

/Chancellor

Chancellor (via the Registrar) thought, and there was no reason why Senate should not deal with the matter through its Committee. This submission fails.

2. That the Vice Chancellor had not referred the complaint to the Committee as required by regulation 2.5.2 (paragraph 27 of the handbook); that it was up to him to take the appropriate action in suspected criminal offences under regulation 3.0(last sentence); and that it was his duty to designate a prosecutor. It was suggested that there was no evidence that the Vice Chancellor was personally apprised of this. But the Vice Chancellor need not go to the police if he thinks the NUL has adequate powers to deal with a problem. Mr. Goldman's letter of 26th March (annexure B) was addressed to both the Registrar and the Dean of Students Affairs thus complying with Section I(2) of the rule just quoted. Furthermore Section II(1) of the rules provides that -

> "The Vice Chancellor through the Registrar shall designate a staff member to draw a charge and to be present at the hearing to present the case against the student".

The maxim is omnia praesumuntur rite et solemnitur esse acta, donec probetur in contrarium, i.e. that all things are presumed to be done correctly until the contrary is proved. Nothing to the contrary has been proved. There is no substance in this submission and it also fails.

3. That regulation 2.5.1 provides that the Committee should consist of four members including the chairman. This is not how I read the section. The ordinary obvious meaning of the section is that the "chairman" was to be additional to the four ordinary members. This argument also fails.

4. That the Committee imposed a sentence beyond its jurisdiction. This matter has been earlier referred to in course of this Judgment and it is abundantly clear that the Committee simply made a recommendation to the Senate as it is entitled to under regulation 4.3.7 (page 29 of the handbook). The decision to accept the recommendation therefore becomes a Senate decision not the Discipline Committee thereof. This submission fails as well.

5. That the Committee has no powers under the regulations to withhold examination results and alternatively, if the decision was that of the Senate, the Senate had no such power either. It

/is true

is true that the regulations say nothing about the release of examination results but if the Senate has power to rusticate a student for up to one year and even to expel him, it is within their inherent power to withhold examination results on the principle that a larger power must necessarily include a lesser power. However in view of the conclusion that I have arrived at it is unnecessary to decide this point, but if an appeal is contemplated I hold that his submission also fails.

6. That the proceedings were not regularly conducted and the chairman was biased. These allegations, which were denied, (paragraph 17 of the opposing affidavit) merit scrutiny. I propose to approach this aspect by quoting at a little length perhaps one of the greatest authorities on administrative law, Prof. S.A. de Smith in his Judicial Review of Administrative *Action 3rd Ed. 1973, second impression 1976, (omitting what is* not relevant) under the chapter "Natural Justice" and "Audi Alteram Partem" Rule (at pp 198 and 199).

> "As we have seen, the courts have sometimes held the exercise of disciplinary functions to be non-judicial and therefore not subject to the rules of natural justice. But "discipline", like "privilege" is an unwieldy analytical concept. That the courts ought not to interfere in certain disciplinary situations is clear enough. A parent reduces his child's pocket-money, a schoolteacher gives a pupil a detention; the courts will have nothing to do with these matters for reasons of public policy and because the damage sustained is too trivial. It is equally clear that they should and will be prepared to set aside some disciplinary decisions for non-observance of procedural requirements. If procedural rules have been laid down those rules will be treated as mandatory except in so far as they are of minor importance, and upon them will be engrafted the implied requirements of natural justice."

> "It is now clear that disciplinary proceedings in higher educational institutions have to be conducted in conformity with natural justice, provided at least that the penalty imposed or liable to be imposed is severe."

After reviewing the authorities he concludes (at p.224) :-

> "The administration of internal discipline in educational institutions is apt to present special problems. Those who have to make decisions can hardly insulate themselves from the general ethos of their organisation; they are likely to have firm views about the proper regulation of its affairs, and they will often be familiar with the issues and the conduct of the parties before they assume their role as adjudicators. Application of the rules against bias must be tempered with realism".

/Miss Ramafole

Miss Ramafole made two complaints in her founding affidavit (paragraph 22) firstly that she was not given a fair chance to prepare her case (regulation 4.3.1 page 28 quoted supra) and secondly that the Committee failed to observe regulation 4.0 which provides :

> "It shall be the duty of all those involved in the following procedure (i.e. Disciplinary Procedure) to deal with cases promptly and fairly".

The word "promptly" has not been defined, but Section I(3) of the rules show what time was envisaged as being prompt. It reads :

> "During academic session disciplinary cases shall normally be heard within one month of the case being brought up".

We have seen that the complaint by Mr. Goldman was made on the 26th March 1980 so that normally the hearing should have taken place on or before the 26th April 1980. Neither Mr. Whittle nor the Registrar nor anyone else offered an explanation as it why there was a delay of a further four weeks before the Committee convened. I will refer to the possible prejudicial effect of breach of this rule at the end of this Judgment.

There is another matter on which the minutes of the proceedings are silent. Regulation 4.3.2 (last sentence) provides:

> "Before the presentation of the case all statements, reports, medical reports and other documents pertaining to the case shall only be available to the Vice Chancellor and the person presenting the case".

The object of the rule is to ensure that members of discipline committees should enter upon their deliberations with an open mind and without preconceived ideas. Of course in a small community like Roma the reports of the incident could easily have come to the ears of members of the staff (and students) who were not on the trip. That is understandable and excusable, but in this case, it is now common cause, the full text of Mr. Goldman's memorandum had been circulated to members of the Committee before the hearing, but at the same time withheld from Miss Ramafole. Who did this and why has not been explained. The Committee therefore had advance knowledge of the details and it seems to me it was this fact which may have prompted the chairman to say "whether a postponement was necessary would depend on the applicant's plea", an indication that the Committee may

/have already

have already formed the opinion that the version of the incident as recounted by Mr. Goldman was entirely correct. The Committee members were in effect telling Miss Ramafole : "We know what you have done, do not waste your time on procedural technicalities and fancy defences". On the duty of disclosure of prejudicial allegations Prof. de Smith, supra p.179 writes :

> "If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie breach of natural justice irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex-parte which is not fully disclosed......... the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked". (See footnotes 11 and 12 and also Rose Innes Judicial Review of Administrative Tribunals in South Africa - 1963 Edition - p. 162 et seq).

Mr. Koornhof argues that a domestic tribunal is not bound to follow the procedure of a Court of Law (Dabner v. South African Railways and Harbours, 1920 (AD) 583 at 598) and that prior knowledge of the facts in dispute will not invalidate the proceedings (Director of Education v. Wilkinson 1930 TPD p.471). In the former case the question was whether or not a regulation (made under the authority of statute) that debarred legal representation, was ultra vires, and it was held that it was not. This case before me has no resemblance to the above situation. In the latter case the substance of the complaint was not withheld from the accused teacher. Fernandez v. South African Railways 1926(AD) 60 is no authority for the proposition that it is regular for the adjudicators to have before them all the evidence before the hearing certainly not the personal views of the complainant. Mr. Koornhof also quoted N.T.C. and Another v. Chetty's Motor Transport(Pty)Ltd 1972(3) S.A. 726; Bell v. Van Rensburg 1971(3) S.A. 693; Capetown Municipality v. Abdullah 1974(4) S.A. 428; Pretoria City Council v. O-Oman(Pty)Ltd 1959(4) S.A. 439, but, with respect, these cases are not pertinent to my enquiry.

That a Court of Review should exercise "realism"(de Smith supra p.224), that it should not view the matter as if under "a strong magnifying glass and should not carpingly ferret out and unduly enlarge every minor deviation" (M.T. Steyn J in Motaung v. Mothiba, 1975(1) S.A. 618 at 626H and 627A) is self evident, but

/"latitudinarianism"

"latitudianarianism" (de Smith, supra p.224) and "the benevolent approach" (Steyn J in Motaung, supra) should not be carried too far.

The NUL in its wisdom had by its own regulations and rules decreed that disciplinary action against a student before the Committee be governed almost parallel to court proceedings with all the safeguards that an accused person enjoys before a judicially constituted body. Firstly a complaint has to be received, secondly a decision has to be made on the forum, thirdly a charge has to be laid with sufficient particularity, fourthly that a trial be held expeditiously, fifthly that time be given to prepare for defence, sixthly that there is a right to representation, seventhly that the case be presented by a prosecutor who should alone (with the Vice Chancellor) be familiar with the facts and other reports, eighthly that a full record of the proceedings be kept, and lastly but most importantly that the Committee enters upon its task at the date of the hearing with complete detachment.

It seems to me that in sum total these rules of procedure are mandatory and not merely directory and deviation therefrom may render void what has been done. Four rules were disregarded and I see nothing trivial in the irregularities (de Smith, supra, p.122 et seq, and pp 172-175).

Unfortunately Mr. Goldman's memorandum contained not only a bare statement of what he says happened at the Swaziland border, but also as between Miss Ramafole and the Committee, expressions of opinion, highly prejudicial, not disclosed to her earlier, but disclosed to the Committee before hand, which may well have coloured its approach on the merits and,if guilty, on the "sentence". Mr. Goldman had written :

> "Several facts, aside from the obvious seriousness of Miss Ramafole's activities, lead me to this course of action. First, Miss Ramafole has shown absolutely no remorse for what she did. She has not make the slightest effort to apologize to either Mr. Sibeko or myself; on the contrary, her feelings of ill-will, again for no apparent reason, seem to have increased. Second, the results of this violence have not been inconsequential. Miss Tsiu was cut quite deverely; it was fortunate that the campus nurse was on the bus. The injury to my thumb involved the severing of a tendon, meaning that I must go to Johannesburg next week in order to have an operation (I would have this surgery performed in Lesotho, but could find no one willing to do the operation, due to its complexity.)

/Finally,

> Finally, as a fourth year Law student, Miss Ramafole should know better than to engage in such unlawful, dangerous, immature, unprovoked violence. Nothing in Miss Ramafole's attitude during or since this episode has given me the slightest indication that she realizes the wrongness of her acts. I hope that, somehow, she can be convinced in the disutility of violence as a solution to minor problems."

The memorandum was read in full to Miss Ramafole only after she purportedly waived her right to notice and pleaded guilty (both of which she did under pressure), for the first time, including Mr. Goldman's views on her behaviour towards him personally after the incident. The Committee did not give her an opportunity to comment or explain or make further submissions to dispel any bad impression this may have created on the Committee members' minds. "Natural Justice may be violated" (de Smith, supra p.186) "by a refusal to allow a party(or his legal representative) to address the tribunal on the law or the facts, or after a finding of guilt, on the penalty to be imposed". To be sure, Mr. Kambule, it is now conceded, objected to part II of Mr. Goldman's memorandum when it was read. This objection was brushed aside by the chairman who avers that he told the other Committee members to "ignore" this part. No doubt, if asked, they will say that they did.

Reviews of decisions of administrative tribunals are not judged solely on whether they were arrived at in good faith. The Court is not concerned with good faith nor is it concerned with the question whether the tribunal was <u>in fact</u> partial or, to use the legal terminology, biased. All what I have to determine is whether there was either a <u>real likelihood of bias</u> or a <u>reasonable suspicion</u> of bias. "Real likelihood" tests are said to focus on the Court's own evaluation of the probabilities, the "reasonable suspicion" tests are said to look mainly to outward appearances. (de Smith, supra, p.231 and cases cited in footnotes 11-15). Whichever set of tests are adopted, I reach the same conclusion, viz, that the trial, in many respects, was not conducted either according to some of the prescribed rules, or in accordance with some canons of natural justice and the decision of the Senate, as recommended by the Committee, must accordingly be quashed.

What follows is not necessary for my decision but an elaboration on what I had said earlier about how disregard of the rule as to time can operate unfairly against an accused person in disciplinary actions. I will proceed on the basis that Miss

/Ramafole

Ramafole was guilty of misconduct of the nature described in part I of Mr. Goldman's memorandum and also on the assumption that his assessment of her character was correct. If the incident was so obviously serious, one would have thought, speaking in the abstract, that irrespective of Miss Ramafole's attitude, Mr. Goldman would have lodged his complaint soon after his return from the trip, but he did not. He was surely not unaware of some mitigating factors: the students had been drinking; 75 persons were confined into one bus which was overcrowded; they had been on their journey from Roma for several hours perhaps 8 or 9; they reached the borders of Swaziland after closing time; delay was inevitable; there was the prospect of them having to remain on the bus till the following morning, or to find some accommodation on the Republican side of the border, or with luck contacting their counterparts in Swaziland to obtain for them special permission from the authorities to open the border gates to pass through. Tempers no doubt were frayed and some students perhaps at the end of their tether. Miss Ramafole then flames up for no apparent reason, or so Mr. Goldman thought, and, according to her she assaults one student in defence of another,but according to him two,with whom she has not in any way been involved. He tries, as he has every right, and as a conscientious teacher, which he undoubtedly is, a duty, to intervene and cool matters down. He succeeds but is injured in the process. On subsequent days or weeks he expects, as anyone would, an apology, in which event he may possibly have let the matter rest, or may have taken less drastic action, but alas nothing is forthcoming. A salutory punishment is conceivably called for. But by the 23rd May 1980, (two months after the date of the complaint) the examinations were finished or about to finish, and the students had dispersed or about to disperse to their homes. If the hearing had taken place during session, as it should have, one would have thought that two kinds of punishment within the Committee's powers, as distinguished from the Senate's,may have been fairly salutory. A fine of M30 or rustication for two weeks would have become widely known amongst Miss Ramafole's family, friends, colleagues, lecturers, and other administrative staff, and the stigma attaching would have been effective both as punishment and as an example to others. In the dying hours of the academic year everyone was gone or about to go and what would remain would be an unnoticeable blot on a file soon forgotten and that would not bite. By the inordinate delay in bringing the proceedings

/timeously

timeously (of which Miss Ramafole could not be held responsible) the Committee's options were curtailed and its members were faced (perhaps the delay was due to machinery over which the Committee had no control) with a dilemma. On the one hand there was standing an aggrieved and injured colleague (the Committee members knew or were told that he had incurred expenses in excess of M500 for the operation on his thumb - annexure C, Section I, last paragraph, last sentence) with strong views on students attitudes to their superiors and expecting a stiff punishment, and on the other hand a strong headed unrepentant rebellious student with rather a distorted sense of values (regrettably still unchanged as we can see from paragraph 18(b) of her affidavit). If six months rustication was imposed during session a court of review could have concluded, with confidence, that the punishment meted reflected "the general ethos of the organisation" (de Smith, supra) but by the 23rd May and thereafter it can no longer be so sure. Whether the Committee was conscious of it or not, it was, by that time, deflected from striking a balance. Instead of imposing a punishment by considerations of the intrinsic nature of the offence committed combined with attitudes, the Committee appears to have been swayed primarily with attitudes, a slippery yardstick in the asseement of a proper sentence.

I have been asked to make an order that the date of Miss Ramafole's examination results be made "retroactive" so that she can be "deemed" to have graduated, if she had passed, on the 27th September 1980. I am not sure I have such powers. The conferring of degrees is a matter for Senate and is not fortunately a judicial function, not yet any way. I can only order that her examination results be now published. If she had passed and Senate is disposed to give her a degree it can be sent by post. If she wants glory she may have to wait for the next ceremony in 1981.

There remains the question of costs. It is quite clear that respondents 2, 3 and 4 should not have been cited at all. The papers before me show (as Mr. Modisane now admits) that Miss Ramafole was given access to all the documents that she needed well before she embarked on her application against the NUL. There was no need therefore to drag the Registrar, the chairman and the prosecutor in their personal capacities and she must be penalised on costs. I would allow her only half her costs on ~~client~~ party and ~~client~~ party scale.

S Cotran
CHIEF JUSTICE
29th October, 1980

For Applicant: Mr. Modisane
For Respondents: Mr. Koornhof