IN THE HIGH COURT OF LESOTHO

CIV/APN/412/2013

In the matter between:

TSENYEHELO RAMOTSABE	**1ST APPLICANT**
MALESEBO THETHE	**2NDAPPLICANT**
BOLAE LETSAPO	**3RDAPPLICANT**
KEKELETSO MOTSELILI	**4THAPPLICANT**
SEBOLELO MARIBE	**5THAPPLICANT**
ABIA MONYANE	**6THAPPLICANT**
MAPUSO MOHLOMI	**7THAPPLICANT**
TSELISO MOTLOTLO	**8THAPPLICANT**
THANDIWE MAPONZO	**9THAPPLICANT**
REFILOE MOLIKO	**10THAPPLICANT**
LEHLOHONOLO MOSALA	**11THAPPLICANT**
MALEFU LEKOMOLA	**12TH APPLICANT**
NTHOTO PHEPHETHO	**13THAPPLICANT**
TEBOHO MATABANE	**14TH APPLICANT**
MATSELISO MARAISANE	**15TH APPLICANT**
MOLEMANE MALEFANE	**16TH APPLICANT**
MOTSAMAI LEHLOKA	**17TH APPLICANT**
MAPASEKA SEPAMO	**18TH APPLICANT**

AND

RECTOR, LEROTHOLI POLYTECHNIC	**1ST RESPONDENT**
LEROTHOLI POLYTECHNIC	**2ND RESPONDENT**

JUDGMENT

Coram : Honourable Acting Justice E.F.M. Makara
Dates of Hearing : 26 September. 2013

Date of Judgment : 24 October, 2013

Summary

Applicants lunched an application challenging a resolution of the Senate of the 2nd respondent to withdraw its earlier decision allowing them to repeat their respectively failed subject(s) in the current semester – The previous resolution allowing them to complete their diplomas within a minimum period of 2 years as it had originally been the case – The Senate further in the exercise of its statutory powers extending the applicants' duration of study from 2 years to 3 years – The applicants lamenting that the decisions were taken without the Senate having observed the audi alteram partem rule – The respondents maintaining that the contractual relationship between the parties was contractual and, therefore, exclusively governed by the principles of the law of contract and the rules of natural justice including the audi alteram partem rule had no application – The court in rejecting the respondents' position, found that the applicants' common law rooted procedural rights had been violated by being denied the audi alteram partem entitlement where it hadn't been statutorily expressed or by necessary implication excluded – A court order issued directing the 2nd respondent to reinstate the applicants to their registered status and to be taught for them to possibly complete their diplomas within a minimum period of 2 years as it had originally been agreed between the parties – The respondents further ordered to pay the costs.

ANNOTATIONS

CITED CASES

Nkoebe v Attorney general & Others 2000 -2004 LAC 295; Supreme Furnishers (Pty) Ltd v L Hlasoa Molapo 1995 -1996 LLR, S v Ngwerela 1954 (1) SA 12. Mkhize v University of Zululand and Another 1986 (1) S A 901.Tyatya v University of Bophuthatswana 1994 (2) SA 375, Mokgoko and Others v Acting Rector, Setlogelo Technikon, and Others 1994 (4) SA 104 (BG) Sibonyane and Others v The University of Fort Hare 1985(1) SA 19 (CKS) Mhloniswa Masilela and 9 Others v University of Swaziland Civil Case No. 263/04. Sebonyane and Others v The University of Fort Hare (supra) Lesotho Electricity Corporation v Moshoeshoe LAC 1995 – 1999.Russel v Duke of Norford [1949] 1 All ER 109, Maseabata Ramafole v National University of Lesotho CIV/APN/156/80.

LEGISLATION

Electricity Act No. 7 of 1969
Lerotholi Polytechnic Act 1997

Lerotholi Polytechnic General Academic Rules 2012

MAKARA A.J.

Introduction

[1] The applicants have through an urgent application sought for refuge underneath the shelter of the justice of this Court seeking for its issuance of an order in terms of which the respondents are called upon to show cause (if any) why their following decisions shall not *inter alia* be declared as arbitrary, wrongful and unlawful :

1. The respondents' decision to phase out the two year Diploma in Business Management, Marketing Management and Office Administration & Management in respect of which the applicants have registered and enrolled;[1]
2. The respondents' decision to withdraw their earlier decision to allow the applicants to repeat the subjects and complete the programmes;[2]

[2] In the 2nd terrain of the applicants' prayers they have asked for a Court order directing the respondents to show cause (if any) why the respondents shall not be ordered and directed to:

1. Enrol and allow the applicants to attend classes to complete their final year in the two year programme in Business Management, Marketing Management and Office Administration & Management forthwith;[3]

[1] This is projected under prayer 1 (b) in the applicants' Notice of Motion.
[2] Ibid prayer 1 (c)
[3] Ibid prayer 1 (d)

2. Offer the applicants relevant courses in their final year of study to enable them to complete their Diploma in Marketing Management and Diploma in Office Administration & Management respectively;[4]

[3] The applicants would also subsequently be referred to as the students; the 1st respondent would interchangeably be called the Rector while the 2nd respondent would also be described as the Polytechnic or the school.

[4] The application was heard on the 26th September 2013 and an *ex tempore judgement* was delivered on the 3rd October 2013. It was, however, not inclusive of the *point in limine* raised by the counsel for the respondents on the question of the *locus standi in judicio* of the 4th, the 5th and the 15th applicants' to have brought this notice of motion. This preliminary decision was punctuated with an explanation that the Court reserves its power to subsequently write its full and final version and hence this judgement.

[5] A foundation of the application is in summarized terms that the 2nd respondent has breached the contractual agreement between itself and the applicants by **unilaterally** extending their respective years of study from 2 years to 3 and by suddenly reversing a decision of its Senate's decision allowing them to repeat the subject (s) which they had failed in the previous academic year. They have specifically illustrated this by charging that the 2nd respondent has in the process undermined their *Natural Law* right

[4] This appears under prayer 1 (e) of the Notice of Motion.

to be heard before those decisions which they maintain are adverse to them were taken.

[6] The respondents have vigorously opposed the application and as it has already been stated, raised a *point in limine* on the question of the *locus standi* of 4th , 5th and 15th applicants. A gist of their counter case is that the applicants are labouring under a miscomprehension of the powers of the Senate of the 2nd respondent under the Lerotholi Polytechnic Act 1997. The Enactment will hereinafter also be referred to as the Act. The have in pursuit of that answered the applicants' founding papers and simultaneously relied upon the apposite laws.[5]

The Common Cause Background

[7] The genesis of this notice of motion constitutes of the factual landscape which is basically of a common cause nature between the parties. This is straightforwardly that the applicants are the students of the 2nd respondent who is a public educational institution of a higher learning established under the Lerotholi Polytechnic Act 1997 and that the 2nd respondent is its Rector. The majority of the students have enrolled with the polytechnic in July 2010 and 2011 respectively while the 5th applicant had been registered as a student in 2009. They had originally registered for the two (2) year diploma programmes in the School of Enterprise,

[5] Their counsel has in particular relied upon the Lerotholi Polytechnic Act 1997 and the regulations thereunder which she elucidated by further reference to the analogous case law albeit from outside the jurisdiction.

Marketing and Management (SEM) for a Diploma in Business Management or in Marketing Management and others in Office Administration and Management.

[8] Notwithstanding the above basic picture, there are convergence of views that there is some technical uncertainty and controversy between the parties concerning the status of the said 4th, 5th and 15th applicants. This has been introduced by the issue raised by the respondents on the *bona fides* and the truthfulness of their assertion that they are the students of the 2nd respondent. Another dimension brought by the respondents is that the 3rd and the 9th respondent have already registered for the three year programme. Be that as it may, the parties seem to subscribe to a common position that the applicants were or remain the students of the 2nd respondent and that the question of their present status as its students remains to be determined by the Court with reference to the facts presented before it and the applicable legislation. The Court is nevertheless, conscientious that the respondents haven't in their answering affidavit denied the averment that the applicants are the students of the Polytechnic and that they have already started attending classes in the current academic year.[6]

[6] This is so *ex facie* para 8 of the founding affidavit of the 1st applicant which has been supported by the other applicants. The respondents haven't clearly disputed that and consequently rendered it to stand as a fact unless it is persuasively controverted otherwise.

[9] A common denominator with all the applicants is that they have in the course of their originally two (2) years diploma programmes, failed one or some subjects. This has necessitated their repeat of the affected subject(s) within the two years or within the years double the normal academic years scheduled for the completion of the course.[7]

[10] There is no dispute between the parties that the Senate which is the Academic Board of the 2nd respondent, had on the 31st July 2012, reached a decision that all students who had previously registered for two year programme and who have failed subjects and thus failed to complete the programme in 2 years' time frame, should join the 3 year programme. The restructuring and the conversion of the initial programme has culminated into the designing of a commensurate new syllabus, classes' roster and examinations for the current semester which runs from August to December 2013. The Senate had passed the resolution which introduced the reforms in the exercise of the powers entrusted upon it under **S18 (2) (b)** read in conjunction with **S18 (2) (b) (i) of the Act.** The section expressly empowers the Senate to amongst others, design, develop and implement appropriate programmes of study.

[11] The parties are *ex facie* their papers before the Court in harmony that the students were upon registration informed that

[7] This is in terms of Regulation 6. 14. 1 of the General Academic Regulations 2012.

their 2 year diploma has been converted into a 3 year curriculum and that as such, they would do all the courses in the 1st semester and graduate in March 2014 instead of in the normally scheduled December 2013. This was communicated to them by the school management on or around the 2nd September 2013. The communication further advised them that the Senate has withdrawn its earlier decision to allow them to repeat the courses and consequently complete their studies in December 2013. A testimony of that decision is a memo which had, on the face of it, been addressed to the students in the 2 year programme by the Dean of the SEM. It is dated the 21st September 2013 and is headed, '*Phasing Out of the Two year Programme*'. A copy of the correspondence has been annexed to the founding affidavit of the 1st applicant as Annexure TR2. It basically advised the addressees that the Senate has withdrawn its decision for the affected students to complete their programme in 2013 and had been copied to the Deputy Rector Academic Affairs and Research and to the Registrar of the Polytechnic.

[12] The 11th applicant and other students who felt adversely affected by the resolution reacted to the letter by writing to the 1st Respondent pleading for his intervention for the reversal of the resolution. They cited the family, financial and other connected logistical problems which would be occasioned to them by it. In the earlier developments, the Students Representative Council (SRC), had addressed to the Chairperson of the Council of the 2nd

respondent a request for him/her to have a meeting with the concerned students over the issue of the conversion of their 2 years programme to 3 years. The evidence of that appears in Annexure TR5 attached to the 1st applicant's founding affidavit and has been subscribed to by the rest of the applicants. The letter is dated the 6th September 2013.

[13] It should suffice to indicate that the Senate adhered to its resolution throughout. This was resonated in a letter written to the 1st applicant by the Dean of the SEM advising her that the Senate has resolved that since she has failed the course(s) of the 2 years programme, hence having to repeat, she should join the 3 years curriculum because the 2 years one has been phased out and that if she has any 1st year course(s) of the 3 years programme which she has not done, she will have to register for them and do them simultaneously with the 2nd year courses. The letter has been copied to the Deputy Rector Academic Affairs and to the Registrar.

[14] There has been no contestation regarding the self explanatory fact that a document titled **Student Proof of Registration** is indicative that its holder has unless proven otherwise, attained a status of being a *bona fide* registered student of the Polytechnic and thereby entitled to the applicable student's rights and privileges. The document presupposes that all the antecedent procedural requirements have been satisfied and acknowledged as such. In

this background, it is imperative to present here below a matrix of the applicants who have exhibited these registration certificates and their respective dates of registration. This would lay a foundation for reference in the determination of the issues involved.

Students' Names		Date of Registration (Per the Student Proof of Registration)
T Ramotšabi	(1st Applicant)	23rd August 2013
T Thethe	(2nd Applicant)	23rd August 2013
B Letsapo	(3rd Applicant)	28th August 2013
A Nonyana	(4th Applicant)	29th August 2013
M Mohlomi	(7th Applicant)	2nd August 2013
T Matlotlo	(8th Applicant)	28th August 2013
T Mponzo	(9th Applicant)	26th August 2013
R Moliko	(10th Applicant)	26th August 2013
L Mosala	(11th Applicant)	2nd August 2013
M Lekomola	(12th Applicant)	2nd August 2013
N Phephetho	(13th Applicant)	30th August 2013
T Matabane	(14th Applicant)	2ndSeptember 2013
M Malefane	(16th Applicant)	26th August 2013
M. Lehloka	(17th Applicant)	9th September 2013
M Sepamo	(18th Applicant)	16th August 2013

[15] In concluding this part, it has to be projected that the parties mutually understand each others case and that their differences emanates from their conflicting views on their appreciation of the law applicable to the basic facts upon which they do not materially share divergences. This could, be illustrated by the fact that it is their common understanding that the key lamentation of the applicants is simply that the 2nd respondent had **unilaterally if not dictatorially**, converted their originally their 2 year curriculum into a 3 year one. They are not in any manner whatsoever contesting the authority of the Senate of the Polytechnic to redesign the curriculum or vary the duration of study in any area of study or to prescribe

the years of study for the completion of any of the diplomas awarded under its authority.

[16] The respondents' adamant position is, on the contrary, that the applicants ought not to have been heard before the decision was taken.

The Identified Main Issues

[17] Consequently, on the merits the determinative issues which have been precipitated by the facts *in casu* are whether the Senate of the 2nd respondent ought to have extended the *Natural Law* principle of *audi alteram paterm* to the applicants before passing the resolution in question. The incidental issue hereof centres on the *locus standi* of the 4th, 5th and the 15th applicants in the matter. There is further a legal concern advanced by the respondents' Counsel on the applicability of the *audi alteram paterm* rule in contractual relations.

The Arguments Advanced Before the Court

[18] The approach adopted would be to firstly concentrate on the representations made by both Counsel on the merits of the case and subsequently on those relating to the *point in limine* on the question of the *locus standi in judicio* of the 4th, the 5th and the 15th applicants. This notwithstanding, at the decision making stage, the

latter would be addressed first and then the former. The merits concerning these three applicants would be traversed provided that the point fails.

[19] The arguments have been presented through the heads of arguments and augmented *viva voce*. The Counsel for the applicants has proceeded from the key premise that the applicants are before Court as a result of the decision of the Polytechnic which has violated the initial agreement concluded between the parties. According to him, the *curriculum* for which they were respectively registered was **in principle** scheduled for 2 years. The impression given was that the parties had from the beginning, shared a common understanding that each of the applicants could take a minimum duration of 2 years to complete the diploma and therefore, that they had at all material times within those years retained the right and the legitimate expectation to have that honoured by the Polytechnic. The Counsel had in developing the argument implied that he was mindful that the applicants could achieve the qualification within the minimum period, provided that they passed all the requisite subjects within that time and that would include successful resisting for supplementary examinations.

[20] He pointed out that the current relationship between the applicants and the 2nd respondent was legally established through a two staged process. The first one occurred at the time the Senate

reached the earlier decision that the applicants could repeat the subject(s) which each had failed and complete their programme in December 2013 and secondarily though more determinatively, this materialized at the time when each student was registered for the course(s). The first development is evidenced in the memo dated 2nd September 2013 which is authored by the Dean of SEM and addressed to the relevant students. It bears the subject "*Phasing Out of the Two Year Programme."* For the purpose of this case, the important part of the correspondence is captured in the words, *"The Senate has withdrawn its decision for you to repeat subjects and complete your programme in December 2013 and the Senate has further resolved that you join the three year programmes".* The same message was reiterated in a letter written to the 1st applicant by the same Dean. The registration of the majority of the applicants is exhibited in the said document form headed, "*Student Proof of Registration"* which bears a clear testimony of the registered applicants as it has already been presented in the matrix above.

[21] In an endeavour to demonstrate to the Court that the right to a fair hearing exists in our law and that it should be observed in all the deserving circumstances, the Counsel cited a number of local and foreign decisions on the subject. These include **Nkoebe v Attorney General & Others 2000 -2004 LAC 295; Supreme Furnishers (Pty) Ltd v L Hlasoa Molapo 1995 -1996 LLR & LLB 377 and to S v Ngwerela 1954 (1) SA 12.**

[22] Noticeably, the Counsel for the applicants didn't in any manner whatsoever challenge the authority of the Senate of the 2nd respondent to redesign any *curriculum* of the Polytechnic or to lengthen the period of study for a particular diploma. This appeared to have been dictated by his recognition of the powers vested upon the Senate.[8] He nevertheless, charged that in the instant case the Senate hadn't procedurally exercised those powers and consequently violated the applicants' *Natural Law rights* which are Common Law based. He conspicuously didn't lay emphasis on the contestation that the 2nd respondent has breached the contractual agreement between the parties and instead founded his case upon the infringement of the *due process rights* herein mentioned. He specifically described the infringement of the applicants' *Natural Law Rights* to have manifested itself in the failure of the 2nd respondent to have accorded the applicants a fair hearing before deciding on passing a resolution phasing out the 2 year programme and yet that would adversely impact on their social, financial and legitimate expectations to complete their diploma in December 2013 and thus graduate a year earlier.

[23] The counter representations advanced before the Court by the Counsel for the respondents originated from her belligerence that the issues involved in this case must primarily be perceived within the context of the relationship between the applicants and the

[8] S 18 of the Act empowers the Senate to re design the study programmes and to regulate the admission of the students.

Polytechnic. She then interpreted it as a contractual one and, therefore, governed exclusively by the principles applicable within the province of the Law of Contract. In her illustration of the point she explained to the Court that the contract which exists between an individual students and the Polytechnic remained periodically subject to its renewal by the parties to it. In that respect, she invited the attention of the Court to Regulation 1.1.3 of the Polytechnic General Regulation which specifically details that a registration of a student must be renewed at the beginning of each semester.[9]

[24] The Counsel in interfacing the Law of Contract and Regulation 1. 1. 3 with the facts on the ground maintained that the Polytechnic hasn't for the current semester concluded a contract with the applicants. She made an analysis that the prospects for the Polytechnic to have concluded a new contract with the applicants, by accepting their applications and then registering them as its students in the 2 year programme; was superseded by the Senate decision of the 31st July 2013. On that note, the Counsel hurriedly advised the Court that the Senate is authorised under S18 (2) of the

[9] The renewal according to her is indicative that the contract would be established provided that the Polytechnic accepts the offer presented in the student's application for registration at the commencement of each semester. Thus, the Polytechnic is not expressly or by necessary implication compelled to accept the offer and therefore register a student. Ultimately, a completion of a diploma course means that a student has been registered throughout each of the semesters until he completed the requisite semesters required to satisfy its academic requirements. The emphasis was made on the point that the Polytechnic is not obliged to accept a student's offer and therefore to register him / her on a strong note that it has a discretion in the matter.

Act to introduce changes to the programmes of study[10] and to regulate the admission of the students.[11]

[25] The logical stronghold of the Counsel's position is appreciably that the resolution passed by the Senate on the 31st July 2013, determines the status of the applicants. She elucidated the point by contending that by operation of the decision, the applicants could not be properly admitted to study or to continue their studies in the current semester since the registration would have to be in accordance with it.

[26] She ultimately at the conclusion of her representations projected a thesis that the acceptance of the applications by an administrative official of the institution acting contrary to the resolution of the Senate, any regulation or statute cannot bind the Polytechnic. Her submission was consequently that in the absence of acceptance of an offer, a contract cannot exist. In precise terms, her position was that there was no contract concluded between the applicants and the Polytechnic and that as such, they were not currently its lawfully registered and *bona fide* students as they were purporting to be.

[10] Sec 18 (2) (b) of the Act *inter alia* empowers the Senate to design, develop and implement appropriate programmes of study.
[11] Sec (18) (2) of the Act enjoins the Senate to regulate and control the admission of students to the courses.

Point in *Limine: Locus Standi*

[27] It is at this juncture found logical to narrate the point in *limine* dimension of the respondents' reaction to the charges brought against them by the applicants. The concern raised hinges on the question of the *locus standi in judicio* of the applicants to have initiated the proceedings.

[28] In challenging the credentials of the applicant to have filed the notice of motion, the Counsel for the respondents commenced with a statement that in the current semester, there is no contractual relationship between the Polytechnic and the applicants. Her incidental explanation was that whatever connection that could be conjectured from the circumstances, cannot satisfy the essentials of a contract in that here there was no acceptance of an offer. The indication is that the Polytechnic didn't accept the offer made by the applicants that it accepts them as its students for the existing semester. She throughout her presentation on this point stressed the acknowledged fact that a contract between the Polytechnic is made at the beginning of each semester. From there she maintained that during the obtaining one, there was no existing contract between the parties.

[29] On the same note, she singled out the 4th and the 5th applicants by highlighting their lack of *locus standi* in the matter since according to her the Polytechnic had refused their

registration. It is an intriguing question as to the significance of addressing the status of the two students differently from the rest of the applicants. This deserves a special attention because all the applicants supposedly lack the requisite qualifications to have brought the application by reason that their applications to be registered as the students were rejected by the Polytechnic in accordance with the resolution of the Senate.

[30] The respondents have in support of the mainstay of their case that the relationship between the Polytechnic and the applicants is a contractual one, governed exclusively by the principles of the Law of Contract and that the rules of natural justice do not apply within the said relationship; by referring the Court to a plethora of the judicial decisions from the Republic of South Africa and one from the Kingdom of Swaziland. Perhaps, due to inadvertence and the pressure of time, their Counsel found no local judgment which has a precise guidance on the subject. There was a heavy reliance upon the South African case of **Mkhize v University of Zululand and Another 1986 (1) S A 901**. The pertinent part of the judgement would be extracted in *extenso.* It details thus:

> **It seems to me that the relationship between a student and the University is a contractual one** (Schoeman v Fourie 1941 AD 125 at 133 and 136; Sibanyani and Others v University of Fort Hare 1985 (1) SA 19 (ck) at 30D-31B) **and that it is a contract in respect of each academic year. It is entered into by acceptance of the student's application for admission; be it a first or a subsequent admission.** It seems to follow that, **in the absence of an implied term** binding the University to acceptance in years subsequent to the first year, **the University**

> **would be free to accept or refuse the offer contained in the application for re-admission. In the absence of such an implied term, there would be no reason why an applicant for admission or re-admission should be in any better position than an applicant for membership of a club** (Johnson v Jockey Club of South Africa 1910 WLD 136; Ransfird v Trustee of the Salisbury Club 1914 SR 65; Ricardo v Jockey Club of South Africa 1953 (3) SA 351 (W); Carr v Jockey Club of South Africa 1976 (2) SA 717 (W)); **or an applicant for a permit** in terms of S24 (1) or Act 18 of 1936 to go upon trust property (Laubscher v Naive Commissioner, Piet Retief 1958 (1) SA 546 (A)); **or an applicant for a job** (Rajab v University of Durban – Westville and others, an unreported judgement by Magid AJ delivered in this Court on 10 January 1984).
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> **The decision of a person not to accept an offer to enter into a contract with another is ordinarily not a reviewable decision and not one which has to be arrived at after application of the rules of natural justice** (emphasis supplied by the counsel)

[31] From there the Counsel sought for further reliance upon **Tyatya v University of Bophuthatwana 1994 (2) SA 375, Mokgoko and Others v Acting Rector, Setlogelo Technikon, and Others 1994 (4) SA 104 (BG) @ 110, Sibonyane and Others v The University of Fort Hare 1985(1) SA 19 (CKS) @ 30 and on the Swaziland case of Mhloniswa Masilela and 9 Others v University of Swaziland Civil Case No. 263/04.** These cases in essence echoes the legal principles enunciated in Mkhize v University of Zululand and Another (supra). It should, perhaps, be mentioned that in the case of **Sebonyane and Others v The University of Fort Hare *(supra),*** it was interestingly added that:

> The rules of natural justice, on the basis of *audi alteram partem,* have no application in matters of contract; contractual rights and obligations are governed by laws of contract as they are known to us.

[32] She further sought to persuade the Court to recognise that at present the School is engaged in the teaching of the subjects which are scheduled for that in the current semester. According to her, it would be practically impossible to include the other courses. In the same logic, she compared that with a situation where a shop owner had invited the potential customers to come and buy some items and later run out of stock. Her position was that the customers, who couldn't find the goods to buy, can not sue the shop owner for their unavailability on the simple basis that they have made an offer to buy and that the owner is not reciprocating accordingly. In that analogy she explained that currently the School is not providing the subjects failed by the applicants and that it has moved further with the different ones. The understanding which she projected was that the School had in the circumstances of this case, turned down the offers made by the applicants to enter into a contract with it and that they are wrongly asking the Court to force it to accept their offer.

The Findings and the Decisions of the Court

[33] The Court recognises from the onset that the respondents' Counsel has in advancing her proposition of the law to be applied in this case, relied predominantly on South African statutory regimes through which the Legislature in the Republic, has established the individual universities involved in the cases she cited. She has in that approach endeavoured to persuade this Court to follow the

jurisprudence on their material provisions. These pertains to the legislative parts governing the procedural processes leading to the acceptance and registration of a student, the nature of the relationship between a student and the University, the authority of the University to decline the student's offer to become its student and its statutory powers to change the *curriculum* and the duration of study for a particular programme without necessarily consulting the students. It has in this background, transpired to this Court she has proceeded from the hypothesis that the determinative South African legislative provisions to which she referred the Court, are in essence couched in *pari materia* terms with the relevant ones in the Lerotholi Polytechnic Act when read in conjunction with the **Lerotholi Polytechnic General Academic Rules 2012.**[12]

[34] Notwithstanding the relative commonness in the legislative schemes in both jurisdictions, the facts which form the *substratum* of the foreign decisions referred to by the Counsel for the

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12 The respective universities have legal regimes through which they *mutatis mutandis* regulate the study programmes and are empowered to exercise their discretion on the renewal of the student's registration during the beginning of each academic year. On a comparative note, S 20 (2) of the University of Bophuthatswana requires the registration of a student to be renewed annually and S 23 of the former University of Durban – Westville had the same requirement. There are similarly provisions about the powers of the Senate in the S 2 of the Lerotholi polytechnic Act defines a student as a person admitted and registered into an academic programme of the Polytechnic whether fulltime or part time; S 10 (s) gives the Counsel the authority to determine a criteria for admission of students in the Polytechnic; S 18 (2) of the Act empowers the Academic Board to design, develop and implement appropriate programmes of study and to regulate the admission of persons to courses of study; Regulation 1.1.3 of the Polytechnic General Academic Regulations requires that a registration of a student should be renewed at the beginning of each semester and Regulation 1.5 provides that a student shall not be permitted to register if has outstanding fees in his/ her account and has been discontinued or expelled.

respondents differ in material respects from the facts in the instant case. This Court is, most significantly, not convinced that it is an accurate proposition of the law that the case should be decided exclusively on the basis of the Law of Contract as a result of the admittedly contractual relationship between the parties. The real challenge before this Court is to apply the law to the relevant facts on the ground and in that endeavour, receive key guidance from the existing judgements which have established direct or analogous precedence in the Kingdom on the issues. Clear distinctions would have to be realized between the foreign legal provisions and the local ones. The same would have to be done in relation to the divergences of facts which justified the judgements upon which the Counsel had relied.

[35] It is at this stage of the judgement considered appropriate for the Court to pronounce itself unequivocally that it totally disagrees with the respondents' legal position that the impasse between the parties should be judicially resolved through the application of the principles of the Law of Contract exclusively. This was simply reasoned on the grounds that the relationship between the learning institution and a student is a contractual one and that it is renewed on semester to semester basis subject to the acceptance of the applicant's offer for registration as a student in the institution concerned.

[36] The Court has considered the relevant South African universities statutory provisions and the judicial interpretations assigned to them regarding the issues in consideration. In the process, it has emerged that our case law development is not in harmony with a position adamantly maintained by the respondents that the questions at hand can only be answered through the instrumentality of the principles of the Law of Contract and that the *Natural Law* principles have no application in the relationship between the parties. The Court has, in addressing the controversy, received valuable and precise guidance from the abundance of the judicial decisions which have comprehensively and systematically ascertained the position of the law in the country.

[37] The developed judicial precedence in the country amounts to a thesis that the *Natural Law principles* which owe their existence from the Common Law should be observed whenever a possible decision could adversely affect another person's existing rights or legitimate expectation. The exception has, nevertheless, been allowed where the obligation to have those principles honoured, has been expressively or by necessary implication statutorily excluded. This applies even to the relationship between a student and a University or a Polytechnic. The direction demonstrates the profundity of the principles and their entrenchment in the horizontal governance of the human relationships in the Kingdom.

[38] It then, at this juncture, becomes appropriate to traverse the phenomenon of the *Natural Law principles* for the appreciation of their significance in the relationships between men or between them and the entities with a legal personality such as a statutorily created learning institution. *Natural Law or Natural Justice* is, as it has already been stated, a Common Law concept which recognises a paradigm that man has a natural procedural right to be given a fair hearing before a decision which could negatively affect his vested rights or legitimate expectation could be taken.

[39] According to Lawrence Baxter the *principles of natural justice* are expressed in two Latin maxims: *audi alteram partem* ('hear the other side') and *nemo iudex in propria causa* ('no one may be a Judge in his own court').[13] In the present case the applicants' protestation concerns the fair hearing *(audi alteram partem* rule. The rationale behind the *audi alteram partem* natural law principle is to enable the repository of the *quasi judicia*l powers to be well informed for his decision to be in the public interest and to accommodate the relevant values. It must be highlighted that the rules would invariably be relevant where the powers entrusted upon some authority are *prima facie* purely administrative and yet the decision based thereon, is characteristically, of a *quasi judicial* effect. In the process, the authority which is vested with the powers should have a holistic picture of the relevant and material facts to

[13] Baxter L. Administrative Law Juta p537, the principle was recognized in the ancient Egypt, Greece, and in Germanic and African tribal customs. Its testimony appears in the Scriptures, the Magna Carta, the Roman Law and in English Law.

be considered before reaching the decision. This would assist to mitigate the potential prejudices, facilitate for fairness and objectivity in decision making. The *audi alteram partem* principle has been comprehensibly explained in the following classical and rather poetic expression:

> If you are a man who leads, listen calmly to the speech of one who pleads;
> don't stop him from purging his body of that which he planned to tell.
> A man in distress wants to pour out his heart more than that his case be won.
> About him who stops a plea one says: "Why does he reject it"?
> Not all one pleads for can be granted, but a good hearing soothes the heart.[14]

[40] Voet describes the *audi alteram partem rule* of natural law to rest on the highest equity least a person be condemned unheard. [15] Vromans have been quoted as having acknowledged the foundational nature of this principle in the administrative affairs of men as being a Godly created due process procedural right which He Himself had accorded to the devil.[16] Perhaps, God had given the devil and the rebellious angels an opportunity for them to show cause why as a result of their high treason in heaven, He should not condemn them to hell to suffer from eternal fire.

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[14] Instruction of Ptahhotep, from the 6th Dynasty (2300 – 2150 BC), referred to in Lawrence Baxter, **Administrative** Law Kenwyn : Juta 1984 p 539.

[15] Voet 2.4.1(Gane's translations) referred to in Lawrence Baxter op cit p 537.

[16] Vromans 2.4.3. also referred to in Lawrence Baxter op cit p 537.

[41] The naturality of the *Natural Law* and its principles is ascribed to the understanding that it has been ordained by nature itself and that it embraces the principles of justice which are inscribed in the hearts and minds of the mankind or sucked from nature's own breast. This explains the reason why some ancient two Judges are quoted to have associated the origins of the *audi alteram partem rule* with God the Almighty and that its recognition transcends all the civilizations of nations and the legal systems.[17] There is in that regard, a perception that God Himself demonstrated the indispensability of that procedure at the Garden of Eden where He had asked Adam about what had suddenly gone wrong. Adam responded that the cause of the wrong was the woman whom God had given to him. God then extended His hearing to Eve by asking her what had gone wrong. She answered that the serpent had brought her into temptation to do the wrong. It was only the serpent which was not accorded the hearing because the right to a hearing before a punishment is considered belongs to humans and the angels exclusively. Ultimately, God pronounced the sentences upon Adam and Eve respectively and upon their descendants. As for the serpent, a severe punishment was just imposed. [18]

[42] It must be clearly and in all fairness be explained that there is no suggestion whatsoever that the applicants are complaining that they have been punished without having been heard or that any of

[17] According to Baxter L. Administrative Law Juta p537, the principle was recognized in the ancient Egypt, Greece, and in Germanic and African tribal customs. Its testimony appears in the Scriptures, the Magna Carta, the Roman Law and in English Law.
[18] Genesis 3: 9 - 19

the respondent was exercising *quasi judicial powers* at the material time. The sole idea in the preceding three paragraphs has been to locate the origins of the Common Law procedural right of fair hearing and its underlying philosophy. The centrality of their case is that the Polytechnic had in the exercise of its pure administrative powers vested upon it by the law, reached the decisions in consideration in violation of their *audi alteram partem* principle.

[43] It would appear that it is in full recognition of the sacrosanct nature of the *audi altram partem rule* and its instrumentality in acknowledging the *right to a human dignity* and giving it a practical acknowledgement that it may only be dispensed with where there is an express or implied statutory provision for its exclusion. The understanding is that the latter dimension could be conjectured from the circumstances of each case.

[44] A typical case in which the Court found that the Legislature has for a contextually perceptible reason excluded a compliance with this Common Law procedure is in the Court of Appeal decision in **Lesotho Electricity Corporation v Moshoeshoe LAC 1995 – 1999.** The appellant in this case had unilaterally disconnected the electricity supply to the residence of the respondent since it was found that there had been a tempering with the system. The latter had consequently brought an urgent application seeking for a *rule nisi* directing the appellant to restore *omnia ante* the disconnected power supply on the basis that the act had been done without

having followed the *audi altarem partem* rule. The High Court had issued the temporary order prayed for and ultimately confirmed it on the reasoning that the rule hadn't been complied with. The Court of Appeal set aside the decision on the ground that **S 26 (4) of the Electricity Act No. 7 of 1969 read in conjunction with S 31 (1) (a) (vii)** of same, empowered the Appellant to do the disconnection without according a prior hearing to anyone where there has been a tempering with the supply system. This is indicative that there are limitations to the application of the rule such as where it has been statutorily expressly or by necessary implication excluded.

[45] This Court is, however, mindful of the legal position that besides the statutorily sanctioned exclusion of the procedure, this could be conjectured from the particulars of the enactment when considered side by side with the facts upon which the litigation is based. In this Court's view, even if for example, there was no **S 26 (4) of the Electricity Act**, it would by necessary implication be readable from the text as a whole that the relevant authorities who manage the electricity supply, could where they discover tempering with the system, disconnect it. This would be a reasonably inferable conclusion since the tempering *per se* could occasion an urgent need for a disconnection to avert a potential disaster. Tucker L J elucidated this legal position in **Russel v Duke of Norford [1949] 1 All ER 109** in these terms:

> The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.

[46] The Courts in the Kingdom have found otherwise where there is no statutorily sanctioned express or inferable provision for a departure from the salutary procedural principle in consideration. The same have been maintained where the facts on the ground would not justify a construable conclusion that the *Natural Justice* principles may not in the circumstances be followed.

[47] In '**Maseabata Ramafole v National University of Lesotho CIV/APN/156/80,** the Court in reviewing the respondent's Disciplinary Committee proceedings found that the University Disciplinary Rules specifically provided for the adherence to the principles of *Natural Law* to ascertain fair justice and that the Committee had , nevertheless, not observed them in its conduct of the proceedings. Cotran CJ (as then was) emphasized the importance of the *audi alteram partem* as a procedure which facilitates for the attainment of justice on the informed basis.

[48] It would appear from the case law literature that the *Natural Law principles* transcend across all the provinces of the law. This is indicative that generally its application is not restricted to any particular law governing the human relationship with others. Instead, the main law that sustains the different associations demonstratively interfaces with the other incidental laws. There are incidences where the Constitution, the Law on the Interpretation of Statutes, Customary Law, and Administrative Law etc automatically

apply to the relationships. The Natural Law rights may depending on the circumstance of each case such as the present one, have to be readable into the contract between the parties. This leads to the Court's resolute conclusion that the submission tendered by the Counsel for the respondent that the matter should be exclusively resolved through the application of the principles of the Law of Contract; to be misplaced.

[49] The necessity of the inter dependence of the Law of Contract and the *Natural Law enigma* within the student and a learning institution environment was acknowledged by Freedman J in **Tyatya v University of Bophuthatswana 1994 (2) SA 375** in which he cited with approval a judgement by Howie J that ***though*** *the relationship between the student and the University is a contractual one, held nevertheless that natural justice should indeed be read into the contract between the two.*

[50] The entrenched predisposition of the case law jurisprudence in the kingdom is totally in disharmony with the Counsel's proposition. This applies specifically to her contention that the contractual relationship between the Polytechnic and the applicants automatically excludes the School from a need for its compliance with the rules of *Natural Justice* in deciding upon the renewal of their registration, change in their original curriculum and the duration of their studies. The decision referred to in **Mkhize v University of Zululand and Anor *(supra)***; has no relevance and

application to the Common Law principles developed in this country. A clear testimony of our law on the subject has been elucidated in the case of **The Commander of the Lesotho Defence Force, the Minister of Defence and the Attorney General v Pakiso Paul Mokoena and Others C of A (CIV) No 12 of 2002.** It was in this case detailed that:

> Whenever a statute empowers a public official or body to do an act or give a decision prejudicially affecting an individual in her liberty or property or liberty or property or existing rights, unless the statute expressly or by implication indicates the contrary, that person is entitled to the application of the *audi alteram partem* principle.

[51] The Court of Appeal in its articulation of the above position had cited with approval similar pronouncements in (**Attorney General, Eastern Cape v Blom 1988 (4) SA 1(A) – B; Dupreez v Truth and Reconciliation Commission 1997 (3) SA 204 (A) @ 231 231 C-D** . It in the same vein traced the roots of the *audi alteram partem principle* to the Common Law of Lesotho and other international jurisdictions.

[51] It is of great significance to be highlighted that in the **Commander Lesotho Defence Force and Others v Pakiso Paul Mokoena And Others** *(supra),* the decision culminated in the setting aside of the Order made by His Majesty the King pursuant to **S 21 (b) and (e) of** the **Lesotho Defence Force Act 1996.** The King had acted on the advice of the Prime Minister. In terms of the Order, the King had terminated the commission of the respondents. The basis of the Court decision to set aside the Order was mainly and specifically that the Prime Minister hadn't given the applicants a hearing before

considering forwarding to His Majesty a recommendation which would adversely impact on the rights of the respondents. The Commander was also found to have committed the same transgression while making the negative recommendations to the Minister. This was punctuated with a strong warning that the higher is the authority vested with the described powers, the more is the obligation to respect the *audi alteram partem rule.*

[53] The Constitutional Court has recently in **X v The Commander Lesotho Defence Force, the Minister of Defence and the Attorney General Const. Case 8 of 2011;** entrenched the same jurisprudence. In this case, the Court held that the respondents had respectively violated the applicant's *Natural Law right* by having denied him a hearing before making recommendations which had culminated in the termination of his employment as a soldier. Both authorities had in the exercise of their statutorily rooted powers, recommended that the applicant be released from his army employment because he had been diagnosed to be legally blind as a result of his HIV and AIDS related health condition. The Court having pronounced that the decision had been unlawfully arrived at, went further to judge that the undermining of the procedural right of the applicant which originates from the Common Law, incidentally impacted adversely against his constitutional right to *human dignity.* The latter right was recognised as core right together with the *right to life* since all other constitutional rights are anchored on them.

[54] The Lerotholi Polytechnic Act does not expressly or by necessary implication exclude the *audi alteram partem* principle when it comes to the considering of the decisions in question. It follows from the case law literature referred to above that in the absence of such a legislative prescription, the school was obliged to have, in the circumstances, observed the *Natural Law Rules* specifically its fair hearing dimension.

[55] The facts in the cases relied upon by the respondents' Counsel differ materially from the present ones. It should suffice to illuminate the fact that those cases do not involve a case where a learning institution had already concluded a valid contract with the students and subsequently unilaterally rescinded it by altering its material terms. The contract had created corresponding obligations and legitimate rights between the parties and as such, a party couldn't unilaterally compromise its terms. It is self explanatory that the Polytechnic had *inter alia* violated the students' legitimate expectations after the conclusion of the contract as exhibited in their respective certificates of registration which have also been signed by the Registrar on behalf of the School.

[56] It would appear indispensable to explain the fact that the Polytechnic is a public institution which has been created as such by an Act of Parliament. It is dedicated for national and international educational and scholastic endeavours. This alone should generate the understanding that the candidates particularly

the nationals who qualify for admission into the institution have a preferential right to be considered for enrolment as students. This shouldn't be subjected under the mercy of the authorities of the Polytechnic. Thus, an applicant for a place of study or for the renewal of his registration on semester to semester basis, has a right to know the reason for the refusal of his admission or re admission through the re registration process. In the perception of this Court that would represent recognition of a citizen's right to *self development* and to *human dignity*. It became more imperative for the respondents to have provided the applicants whom they had declined to register as the continuing students in the present semester with a reason for the decision. This became obligatory since all the affected students had directly and through the Student Representative Counsel (SRC) sought for it.

[57] The Court finds that the applicants had concluded a valid and a binding contract with the 2nd respondent. *The Proof of Registration Certificate* is a clear documentary testimony of the created relationship between the individual applicants and the Polytechnic. It duly bears the signature of each student concerned and that of the Registrar of the 2nd respondent which has even been authenticated with the official stamp of her office. The document is clearly reflective of the course (s) which the Polytechnic undertook to provide to each student during the current academic year.

[58] A Registrar of the Polytechnic is an office created under **S 14 of the Lerotholi Polytechnic Act 1977**.[19] The office is high ranking and is strategically situated within the hierarchical structures of the Polytechnic. This is attested to by the fact that in addition to its status, it coordinates its administrative and academic affairs. The general picture is that it serves as a face of the institution. Understandably, such an office of prominence would have its own subordinate officers according to their hierarchy. These officers would, under the qualifying circumstances, be assigned to execute some of the duties on behalf of the Registrar. Thus, the 2nd respondent cannot correctly deny that the Registrar's office had at the material times signed the overwhelming numbers of the applicants' *Certificates of Registration* and thereby on its behalf concluding a binding contract with the individual students. It is resultantly, estopped from denying the authority of the Registrar to enter into agreements with the applicants. Otherwise, this would create uncertainties whenever contracts are made with the Polytechnic or any such institution. There is no indication that the authority had previously disassociated themselves from this transaction which had been authenticated by the Registration.

[59] The applicants' case is strongly reinforced by the standing fact that the Senate had earlier resolved that they should repeat their failed subject(s) and that this was done without any qualification that they would do so within the 3 years programme. This explains

[19] S 14(1) *inter alia* provides that the Registrar shall perform such functions and a function as may be specified in the statutes while (2) elevates him to be the Secretary to the Council and the academic Board.

the content of the Senate's subsequent decision that it withdraws its earlier decision and substitutes it with the one that *all the students in the 2 year programme should covert to a 3 year one.* It is precisely the latter unilaterally taken resolution which has triggered this litigation. Seemingly, the contradicting decisions of the Senate confuses the office of the Registrar and everyone affected.

[60] The impression that the applicants were on their day of registration informed about the changes cannot rescue the respondents from the procedural defect that they hadn't given the concerned students a fair hearing before the Senate had reached the decision. It would rhyme with sound reasoning that the students should have been given some reasonable time to consider the proposed idea and to consult accordingly but not have it imposed upon them as it is found to have been the situation in this case. There had effectively been no meaningful conversation between the parties over the changes.

[61] Now the Court turns to address the impasse of the 4th, the 5th and the 15th applicants. These are the applicants against whom the respondents have raised a legal point in *limine* that they do not have a *locus standi* in the matter since they haven't been registered and are, therefore, not the students of the Polytechnic.

[62] It appears to be more convenient to start with the 15th applicant because her case ultimately became self evident. This

became a turn of the events when she subsequently at the replying stage, exhibited her *Certificate of Registration as* a student of the *Polytechnic* for the current academic year. The end result is that the *point* raised *in limine* that she lacks a *locus standi* for want of registration, has no legal basis and it is accordingly rejected by the Court.

[63] The 4th applicant's right in the matter is a purely technical one in that the Senate of the 2nd respondent had undisputedly recommended that she repeats the *BMFF2204 Fundamentals of Finance Course* despite the fact that she should, by operation of the appropriate Regulation, have simply been *discontinued* from her studies.[20] The Court while acknowledging this Regulatory fact recognises the authority of the Senate to dispense with any Regulation under the deserving circumstances.[21] The Senate could, in the thinking of the Court, have relied upon the same in deciding to extent the time of study for the applicant beyond the normal years allowed under the relevant regulation. This created a legitimate right for her to register for the academic year. The understanding would be otherwise if the Senate had revoked its earlier decision perhaps on the explanation that it had inadvertently overlooked the Regulation. Thus, the point is equally destined for a failure.

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[20]She should normally have by operation of Regulation 6.14.1, have been discontinued from her studies. The Senate, nevertheless, in its wisdom gave her what amounted to an indulgence by resolving that she repeats her failed course. Her legitimate expectation stemmed from the decision.

[21] The preamble of the Regulations of the School stipulates that the Senate reserves the right to alter, amend, replace or change any of the academic regulations, and has the power to exempt a student from any of the said regulations.

[64] The case of 5th applicant is *mutatis mutandis* the same as that of the 4th applicant save that she didn't qualify for a discontinue. The Senate had allowed her to repeat Commercial Law and Communication Skills but was later refused by the officers of the 2nd respondent to register herself as a student of the Polytechnic for the existing academic year. The officers' decision is found to have been *ultra vires* that of the Senate and consequently null and void. The applicant is by virtue of the decision of the Senate held to have had a legitimate expectation to be registered accordingly. The right still obtains and the officers are enjoined to respect it.

[65] It should on another terrain be realized that the applicants have established their *locus standi in judicio* in the matter because of the sound reasons advanced as the basis for their direct and substantial interest in the proceedings. They have individually demonstrated that they stand to benefit from the decision which would uphold the application. These requirements for the qualification to institute the proceedings were *inter alia* pronounced in the Leading decisions in **Lesotho Human Rights Alert Group v Ministry of Justice and Human Rights and Others 1993- 94 LLR & LB 264 and in K. Thabang Khauoe v Attorney General & Another 1995 – 1996 LLR & LB 470**. It was basically in these cases stated that a litigant who institutes proceedings against the other party should demonstrate that he has a direct and substantial interest in the litigation and that he qualifies to personally benefit from the decision thereof.

[66] The Court finds that the comparison which the Counsel for the respondents made about the shop owner who ran out of stock of the items which he had invited the potential customers to come and buy to be totally irrelevant to this case. Here we are concerned with a public educational institution and the nationals with whom the Polytechnic had already entered into a contract in terms of which it was to provide tutorship to them in the courses specified in the *Certificate for Registration.* This is their contractual covenant.

[67] This is a typical case of a litigation which could have been avoided through simple negotiations. The authorities of the 2nd respondent should have realized the strategic significance of having held a conference with the applicants in a genuine endeavour to persuade them to appreciate a value in the 3 year diploma in the employment market or in their future individual enterprises. This should have been done within the atmosphere of mutual respect, discipline and order instead of a demonstration of institutional power; this holds so regardless of the Court's believe that the changes were introduced in good faith and in the interest of the applicants.

[68] The Court in the final analysis resolves that the legal propositions, upon which the respondents anchored their case in an endeavour to apply same to the facts on the ground, do not resonate the case law jurisprudence which has for over 20 years been consistently developed in the Kingdom. It has been

demonstrated so with reference to a catalogue of the decisions of the superior courts in the country.

[69] Though the Court doesn't largely subscribe to the legal representations advanced by the Counsel for the respondents, it would be remiss for it not to acknowledge the outstanding contribution made by their Counsel in the advancement of our jurisprudence within the relevant province of the law. She has demonstrated her ability to mount impressive, thoughtful and systematic heads of arguments within a very limited period of time. The Counsel for the applicants also intuitively acknowledged the value of her legal industry. On the legal issues involved.

[70] It is logically ultimately held that the applicants have on the balance of probabilities proven that they are entitled to the relief which the have sought for before this Court. Their prayers are consequently granted as prayed with a corresponding order for costs against the respondents.

A Ruling on the Stay of the Execution of the Judgement Pending Appeal

[71] After the *ex tempore judgement* was delivered by the Court and made clear that it reserves a right to write its full comprehensive version, the respondents had on the following day or so, noted an appeal against it and complemented that by mounting an application for a stay of its execution. A resume of the reasons in

support of the application for the stay were that it was impossible for the 2nd respondent to implement the judgement because it didn't have the logistics, the infrastructure and human resource. Another ground for the relief sought for was that the respondents would be irreparably prejudiced by the execution of the judgement since the sitting of the Court of Appeal is scheduled for April 2014.

[72] The Court having considered the incidental application brought by the respondent finds that it is predominantly based upon selfish thoughtfulness since it doesn't take into account the interests of the affected students. It became incumbent upon the Polytechnic to teach each of the subject(s) which appears in the *Certificate of Registration* of the individual applicants since it represents a contractual obligation between each of them and itself. This is its exclusive responsibility and it should fulfil it. The students should expectedly reciprocate accordingly by honouring their part of the contract. It has to be reiterated that the Registrar of the 2nd respondent had personally or through her agents signed the contract on behalf of the School. It was not the responsibility of the applicants to know about the bureaucratic complications and the politics involved. All that the students seem to have been aware of was that the Senate had decreed that they should repeat the relevant subjects and that in accordance with that they concluded a contract in terms of which the School would teach them the apposite subjects.

[73] It is a standing fact that the applicants had from the onset registered themselves for the two (2) year diploma course. The stay of the execution of the judgement pending the sitting of the Court of Appeal in April 2014 will have the effect of prolonging the duration of their studies indefinitely. In any event, there is no certainty that the matter would be heard in the next session of that Court. The measure would place the applicants in a highly risky position which could shatter their legitimate expectations and occasion an irreparable damage to their future.

[74] The Court finds that the application lacks merit and simply seeks to frustrate the operation of the judgement in the main to the detriment of the applicants.

[75] The end result is that the application for the Staying of the Execution of the Judgement in the main is refused with costs against the respondents. This is complemented with a specific and unequivocal order detailing the respondents to forthwith honour the judgement in the main.

E.F.M. MAKARA
ACTING JUDGE

For the Applicant	:	Adv. Shale instructed by K.M.T. Thabane Firm of Attorneys
For the Respondent	:	Adv. Van der Walt instructed by Messrs Webber and Newdigate. Firm of attorneys