

# **IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/APN/126/2021**

In the matter between

**ˆMABOHLOKOA LETSIE-RABOTSOA**

**APPLICANT**

**AND**

**PRINCIPAL SECRETARY MINISTRY OF  
COMMUNICATIONS AND TECHNOLOGY**

**1<sup>ST</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION**

**2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL**

**3<sup>RD</sup> RESPONDENT**

**Neutral Citation:** ˆMabohlokoa Letsie-Rabotsoa v Principal Secretary Ministry of Communications and Technology (CIV/APN/126/2021) [2021] LSHC 67 (17 JUNE 2021)

## **JUDGMENT**

**CORAM: MOKHESI J**  
**DATE OF HEARING: 14 JUNE 2021**  
**DATE OF JUDGMENT: 17 JUNE 2021**

## SUMMARY

**ADMINISTRATIVE LAW:** *The Principal Secretary initiating proceedings to terminate the applicant's appointment on account of procedural irregularities- The court having been approached on an urgent basis and interim prohibitory interdict issued- Questions being raised about the court's involvement at the show-cause stage- Held, for the reason that the Principal Secretary did not have jurisdiction to issue the show-cause letter, the court was justified to intervene at the stage of unterminated proceedings- Furthermore, on the issue whether the Principal Secretary could ignore the decision of his predecessor, and whether the court can determine the validity of appointment in the absence of a reactive challenge embodied in a counter application to review the impugned decision, the **Oudekraal** and **Kirland** principles discussed and applied.*

### **ANNOTATIONS:**

#### **Legislation:**

Public Service Act 2005

Public Service Regulations, 2008

#### **Cases:**

Setlogelo v Setlogelo 1914 AD 221

Camps Bay Rate Payers Association and Others v Augustides and Others (2005/209) [2009] ZAWCHC 30; 2009 (6) SA 190 (WCC)

Mda and Another v Director of Public Prosecutions LAC (2000 – 2004) 950

Motlatsi Mofokeng v Commissioner of Police and 2 others CIV/APN/375/2020 [2021] LSHC 40 (22 April 2021)

Walhaus & others v Additional Magistrate, Johannesburg & Another 1959 (3) SA 113 (AD)

Guardian National Insurance Co. Ltd. v Searle NO [199] ZASCA3; 1999 (3) 296 (SCA)

Union of India v VICCO Laboratories; Appeal (Civil) 5401 of 2007 (11) TMI 21 S

OudeKraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA)

Department of Transport and Others v Tasima (Pty) Limited [2016] ZACC 39; 2017 (1) BCLR; 2017 (2) SA 622 (CC)

MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd [2014] ZACC 6; 2014 (3) SA 481 (CC)

Merafong City Local Municipality v Anglogold Ashanti Limited [2016] ZACC 35

Mothobi and Another v The Crown LAC (2009 – 2010) 465

Khumalo and Another v MEC for Education: Kwazulu Natal (CCT10/2013) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC)

[1] **Introduction**

This matter was lodged on an urgent basis seeking to review the administrative decision at the show-cause stage. The applicant had sought an interim relief *pendente lite*, staying the decision to terminate the applicant's contract, pending finalization of this matter. I formed a *prima facie* view that the interim interdict should be granted, and I duly granted it promising to deliver written reasons in the main judgment. Before I can delve into the reasons for the interim relief and the main, it is apposite to deal with the preliminaries first.

[2] **Factual background**

The applicant had signed a contract of employment for a fixed period of three years on the 05<sup>th</sup> January 2021 engaging her as a Director General Information and Communication Technology in the Ministry of Communication Science and Technology (the Ministry). When the said contract was signed the Public Service Commission (Commission) was not involved as the statutory body responsible for hiring public officers, and this is made abundantly clear by the Minutes of its sitting on the 08<sup>th</sup> April 2021(annexure 'PS3'). In PS3 it appears a proposal was made to the Commission to 'appoint'. I used single quotation mark because, although a proposal was made to the Commission to 'appoint' the applicant on contract, she was already three months into a three-year contract. The Commission, at this sitting deferred its decision and directed the 1<sup>st</sup> respondent's predecessor to review its submission in the light of the fact that; (a) the job specification for the job is not standard, and (b)the proposal to convert the position into a contractual one had not been presented to the Minister of Public Service in terms of regulation 9 of the Public Service Regulations 2008.

[3] When the contract was signed, the Ministry was represented by the 1<sup>st</sup> respondent's predecessor (Principal Secretary (hereinafter "The P.S")). On the 20<sup>th</sup> April 2021, the new incumbent to the office of Principal Secretary (1<sup>st</sup> respondent) wrote a show-cause letter to the applicant in terms of which he solicited the applicant's response to his expressed intention to terminate her contract of employment on account of what he says are procedural irregularities. The said letter was couched as follows (in relevant parts):

*"Dear Madam*

*RE: REQUEST TO PROVIDE REASONS FOR TERMINATION OF  
EMPLOYMENT CONTRACT*

*Reference is made to the employment contract between yourself and the Ministry of Communications, Science and Technology which was signed on the 05<sup>th</sup> January 2021.*

*In terms of the Public Service Act 2005, the Public Service Commission vested with the authority to appoint public officers following due processes as provided in the Public Service Regulations, 2008.*

*You are invited to note that the Public Service Commission as the appointing body in its 9282<sup>nd</sup> Item 441/21 dated 08<sup>th</sup> April 2021 has decided to defer its decision to your appointment on the ground that your qualifications are not relevant for the position of Director General ICT, Grade L, as you have acquired Master's Degree in Administration (MBA).*

*On the foregoing, you are kindly requested to show cause why your contract (sic) cannot be terminated with immediate effect as your appointment was made without following necessary procedures as stipulated in the Public Service Regulations, 2008.*

*You are required to provide your response to this letter within two days, failure to submit your response, the Ministry shall continue to make decision without further reference to you.*

*Yours sincerely*

*SIGNED*

*Tankiso Phapano (Mr)*

*Principal Secretary”*

- [4] On the 21<sup>st</sup> April 2021, the applicant did respond to the show-cause letter, but then quickly followed that response with the current application seeking the following reliefs on an urgent basis:

*“1. That the matter rules of this Honourable Court pertaining to normal modes and periods of the service be dispensed with on account of the urgency hereof.*

*2. A rule nisi be and is hereby issued returnable on the date and time to be determined by this Honourable Court calling upon the respondents to show cause (if any) why; an order in these terms shall not be made absolute.’*

*(a) That the decision to terminate the applicant’s contractual appointment to the position of Director General Communication Information and Communication Technology in the Ministry of Communications, Science and Technology be stayed pending finalization of this application.*

*(b) The first respondent be interdicted from termination (sic) the applicant’s contractual appointment to the position of Director-General Information and Communication Technology in the Ministry of Communications, Science and Technology save by following due*

*process of law and contractually stated grounds for termination of contract.*

- (c) The process embarked upon by the 1<sup>st</sup> respondent in terms which he intends to and or is terminating the applicant's contractual appointment to the position of Director General Information and Communication Technology in the Ministry of Communications, Science and Technology be reviewed, corrected and set aside.*
- (d) The first respondent's decision to purport to terminate the applicant's contractual appointment to the position of Director General Information and Communication Technology in the Ministry of Communications Science and Technology be set aside on the grounds of being premature and ultra vires the powers of the first respondent per Public Service Act 2005.*
- (e) That the applicant be granted costs of suit.*
- (f) That the applicant be granted further and alternative relief.*

*3. That prayers 1 and 2, should operate with immediate effect as interim relief."*

[5] In his answering affidavit the 1<sup>st</sup> respondent avers that he is justified to deal with the applicant in the manner being complained about, but in the process himself complains about this Court's lack of jurisdiction to entertain this matter, as he puts it at para. 4.

*"AD PARA 1, 2, 3, 4, 5, 6, 7, 9, 10*

*Contents are not denied. However, I challenge the jurisdiction of this court to determine and grand (sic) any of the prayers because the matter is still pending before the administration of the Ministry and if the court so decides, that would amount to interference with the administrative powers of another arm of Government."*

[6] As I see it the matter turns on whether this court has jurisdiction to interfere with uninterminated administrative proceedings or processes, and not so much about interfering with administrative powers of another arm of Government.

[7] Respective Parties' cases:

It is the applicant's case that she has been properly appointed and if the 1<sup>st</sup> respondent has any issue with how she was appointed due process of the law must be followed to address those concerns. On the one hand, the government, through the 1<sup>st</sup> respondent argues that the applicant's appointment was marred by constitutional breaches and procedural irregularities: constitutionally, the respondent argues that the applicant was not appointed by the Public Service Commission as the body which has been given exclusive constitutional powers to appoint public officers; Regarding procedural irregularities, the 1<sup>st</sup> respondent argues that regulation 9(3) of the Public Service Regulations, 2008 in that a permanent position on the establishment list was converted into a contractual position without the approval of the Minister of Public Service, and without the same position being advertised in terms of regulation 23 of the same Regulations. In support of the 1<sup>st</sup> respondent Minister Motlohi Maliehe for the Ministry of Public Service projects this contention in the following manner in his supporting affidavit(para.6.3):

*“6.3 The second point this Honourable Court must know is that since this position of Director General is an established position and is permanent, before it could be filled by any particular person on contractual basis in terms of Regulation 9, the Ministry ought to have made an application justifying why it intends to have the position filled in terms of Regulation 9 and not Regulation 8. Again, before*



*filling the position with a particular person, that is, headhunting, the Ministry ought to have first advertised the position and if nobody positively responded, then in such a case, the Ministry must seek authority from the Ministry of Public Service to do headhunting, All these were not done.”*

[8] **Issues for Determination**

- a) Whether this Court had jurisdiction to grant the interim reliefs sought
- b) The merits, in case the court finds that it has jurisdiction.

[9] **Interim interdict *pendente lite*:**

The principles applicable to interim interdicts are now entrenched in our law; (a) there must be a *prima facie* right, (b) well-grounded apprehension of irreparable harm if the interdict is not granted, (c) the absence of any other satisfactory remedy, (d) the balance of convenience (**Setlogelo v Setlogelo 1914 AD 221**). The approach, when *prima facie* right is alleged, is to determine the prospects of success in the main matter and where the balance of convenience lies in the light of determination. The greater the prospects of success on review represents the strength of the applicants alleged *prima facie* right. The weaker the prospects of success the greater the need for the balance of convenience to favour the applicant (**Camps Bay Rate Payers Association and Others v Augustides and Others (2005/209) [2009] ZAWCHC 30; 2009 (6) SA 190 (WCC) at paras. 7 – 10** and the authorities cited therein).

[10] In the instant matter I considered that the 1<sup>st</sup> respondent should not be allowed go ahead and terminate the applicant’s contract in circumstances where he did not have jurisdiction to do so. The applicant has a *prima facie*

right to remain in her position pending the determination of this case. The applicant's prospects of success in the main matter are great, as will be shown in due course, and therefore, the balance of convenience favoured keeping the *status quo ante*, pending final determination of the main issues.

[11] **Review of unterminated administrative proceedings.**

It is a trite principle of our law that only in rare circumstances/situations can unterminated proceedings of tribunals or administrative proceedings be allowed to be reviewed by this court (**Mda and Another v Director of Public Prosecutions LAC (2000 – 2004) 950; Motlatsi Mofokeng v Commissioner of Police and 2 others CIV/APN/375/2020 [2021] LSHC 40 (22 April 2021) at para. 16**). These two decisions have in turn relied on the famous case of **Walhaus & others v Additional Magistrate, Johannesburg & Another 1959 (3) SA 113 (AD) at 119G – 120B**. In this case it was held that the unterminated proceedings can only be reviewed in situations where “grave injustice might otherwise result or when justice might not by other means be attained.” This attitude is premised on the need to avoid piecemeal appeals and reviews of inferior courts and tribunals (**Mda and Another v Director of Public Prosecutions(supra); Guardian National Insurance Co. Ltd. v Searle NO [199] ZASCA3; 1999 (3) 296 (SCA) 301A – C**). Where the proceedings are initiated without jurisdiction, this court will not wait until they are terminated to allow the party to challenge them on review or appeal.

[12] In the **Motlatsi Mofokeng v Commissioner of Police (supra)** I endorsed the views expressed in the Indian Supreme Court decision of **Union of India v VICCO Laboratories; Appeal (Civil) 5401 of 2007 (11) TMI 21** Supreme Court, wherein the court made the following observations:

*“Normally, the writ court [review court] should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is a normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at that stage of issuance of show cause notice stage should be rare and not in a routine manner mere assertion by writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”*

- [13] In the **Motlatsi Mofokeng** matter, I mentioned that, because jurisdiction is threshold issue, where the show-cause letter is issued without jurisdiction on the part of the issuer, the proceedings must not be allowed to be concluded before the issuance of that letter is brought on review, and this is what I said, at para 19 p.19;

*“... Where the show-cause letter is issued without jurisdiction, the proceedings should not be allowed to be concluded before a review application is brought challenging jurisdiction to issue such a letter. The reason for this is not difficult to fathom; proceedings which are conducted without jurisdiction are a nullity. In fact in a different context, in this jurisdiction, the ruling in favour of the jurisdiction of this court was appealed against in medias res in the matter of **Masinga***

*and others v Director of Public Prosecutions (CRI) NO. 11/2011  
[2012] LSCA 28 (27 April 2012); LAC (2011 – 2012) 283.”*

- [14] In order to fully appreciate the thrust of this judgment it is apposite to recall that the 1<sup>st</sup> respondent initiated proceedings to terminate the applicant’s contract of employment on the ground that it was irregularly concluded. It is an established principle of our law that a purportedly irregular or invalid administrative decision-maker cannot be corrected outside of the review process/procedure because “an unlawful act can produce legally effective consequences.”(**OudeKraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA) at para. 7 (Oudekraal)**). Whether the decision is valid or not, is not for the decision-maker to say, but the court of law through proceedings for judicial review. The decision so taken may not be ignored as it has notional or presumptive validity and legal consequences until set aside in proceedings for judicial review. This position was put as follows, at para.26, of **Oudekraal**:

*“For those reasons it is clear, in our view, that the Administrator’s permission was unlawful and invalid at the outset.....But the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the Administrator’s approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view, it was not. Until the Administrator’s approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending*

*upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.”*

[15] Concerns that the **Oudekraal** principle may tend to offend constitutional supremacy clause or the doctrine of objective invalidity, were dealt with in **Department of Transport and Others v Tasima (Pty) Limited [2016] ZACC 39; 2017 (1) BCLR; 2017 (2) SA 622 (CC) (Tasima)** at paras.147-148,where the court said:

*“[147] This position does not derogate from the principles expounded in cases like Affordable Medicines Trust and Pharmaceutical Manufacturers. These decisions make patent that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its invalidity. This includes the exercise of public power. Moreover, when confronted with unconstitutionality, courts are bound to by the Constitution to make a declaration of invalidity. No constitutional principle allows an unlawful decision to ‘morph into a valid act’. However, for reasons developed through a long string of this court’s judgments, that declaration must be made by the court. It is not open to any party, public or private, to annex this function. Our Constitution confers on the courts the role of arbiter of legality. Therefore, until a court is appropriately approached, and allegedly unlawful exercise of public power is adjudicated upon, it has binding effect merely because of its factual existence.*

*[148] This important principle does not undermine the supremacy of the Constitution or the doctrine of objective invalidity. In the interest of certainty and the rule of law, it merely preserves the fascia of legal authority until the decision is set aside by a court: the administrative act remains legally effective, despite the fact that it may be objectively invalid.”*

[16] This principle was applied and articulated in the later decisions such as **MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd [2014] ZACC 6; 2014 (3) SA 481 (CC) (Kirland)** and in **Merafong City Local Municipality v Anglogold Ashanti Limited [2016] ZACC 35 (Merafong)**. In **Merafong**, the import of **Oudekraal and Kirland** was explained as follows at paras 41 – 43:

*“[41] The import of **Oudekraal and Kirland** was that government cannot simply ignore an apparently binding ruling or decision on the basis that it is invalid. The validity of the decision has to be tested in appropriate proceedings. And the sole power to pronounce that the decision is defective, and therefore invalid, lies with the courts. Government itself has no authority to invalidate or ignore the decision. It remains legally effective until properly set aside.*

*[42] The underlying principles are that the court’s role in determining legality is pre-eminent and exclusive; government officials, or anyone else for that matter, may not usurp that role by themselves pronouncing on whether decisions are unlawful, and then ignoring decision erroneously taken may well continue to have lawful consequences. Mogoeng CJ explained this forcefully referring to **Kirland**, in **Economic Freedom Fighters**. He pointed out our constitutional order hinges on the rule of law:*

*‘No decision grounded [in] the Constitution or law be disregarded without recourse to a court of law. To do otherwise would ‘amount to a licence to self-help: Whether the Public Protector’s decisions amount to administrative decisions or not, the disregard for remedial action by those adversely affected by it, amounts to taking the law into their own hands and is illegal. No binding and constitutionally or statutorily sourced decision may be disregarded willy-nilly. It has legal consequences and*

*must be complied with or acted upon. To achieve the opposite outcome lawfully, an order of court would have to be obtained.'*

*[43] But it is important to note what **Kirland** did not do. It did not fossilise possibly unlawful – and constitutionally invalid – administrative action as indefinitely effective. It expressly recognised that the **Oudekraal** principle puts a provisional brake on determining invalidity. The brake is imposed for rule of law reasons and for good administration. It does not bring the process to an irreversible halt. What it requires is that the allegedly unlawful action be challenged by the right actor in the right proceedings. Until that happens, for rule of law reasons, the decision stands.”*

- [17] The **Oudekraal** principle is part of the law in the kingdom (see: **Mothobi and Another v The Crown LAC (2009 – 2010) 465 at 472**). The principle that the validity or otherwise of an administrative decision can only be tested before the courts of law in applications for a judicial review, is equally applicable in the context of the labour relations, and a case which exemplifies this principle at work is **Khumalo and Another v MEC for Education: Kwazulu Natal (CCT10/2013) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC)**. In this matter, the MEC, instead of taking it upon herself to unilaterally determine the validity of the respondents’ promotion, challenged the said promotions before the court of law in proceedings for a judicial review. The MEC lost the case, on certain technical grounds, but the MEC’s approach no doubt exemplifies the correct approach to dealing with allegedly invalid or irregular administrative decisions. In this case, like in **Merafong**, the court recognised the right of public functionaries to seek review of the administrative decisions they perceive as having been taken irregularly and unlawfully.

[18] There is an important issue which is allied to this discussion which must not be lost sight of, and that is, that, the determination of the validity or otherwise of an administrative act will be undertaken in proceedings not meant for that purpose- reactive or collateral challenge. However, reactive challenge will ordinarily be available to the public functionary when a counter application will have been filed seeking to review the said administrative act. In the absence of a counter application to set aside the decision, the decision stands and has legal consequences. The benefit of this approach is to require the counter applicant to explain why it delayed challenging the decision (majority view in **Kirland**).

[19] The **Oudekraal** principle does not, however, apply in every situation. The point of departure should always be the empowering statute. Where a public functionary's power to determine the validity of the act is sourced from the statute law, then, in that case, notional validity of an administrative act applies until the body or persons who are empowered to exercise the power to determine validity of the act will have made such a determination.(see: **Kirland** at para. 65) In that scenario there is no need for the public functionary to apply for a judicial review of the decision. Reverting to the instant matter, the powers of the Public Service Commission have been outlined in s. 6 of the Public Service Act, 2005, as follows:

*“Subject to the Constitution, the power to appoint persons to hold or act in offices in the public service (including power to confirm appointments) and the power to terminate appointments of such persons, save the power to discipline and terminate appointments of such officers for disciplinary reasons, is vested in the Commission.”*



In my view, the provisions of this section could not have been clearer: The Commission is given power to terminate the appointment of any public servant. The said section only excludes from the purview of the Commission's power of terminating appointments, only to termination linked to disciplinary reasons. It will be observed that the circumstances in terms of when the Commission can terminate the appointment, have not been spelled out. The reason for this was to avoid creating a *numerus clausus* of some sort- of circumstances when this power can be exercised- but instead to leave it to the Commission to determine on a case-by-case basis whether the circumstances of any particular case presents a legally cognisable ground for terminating appointment of a public servant. Of course, such power must be exercised guided by the hallowed notions of fairness. The circumstances of the present case fall within the purview of the Commission's power in terms of s.6.

[20] In the present matter, the PS did not have jurisdiction to write a show-cause letter to the applicant requesting her representations why her appointment could not be terminated was done without jurisdiction. Only the Commission can terminate the applicant's appointment for the reasons advanced by the 1<sup>st</sup> respondent. That power reposes exclusively in the Commission.

[21] Assuming that I am wrong to conclude that the power to terminate appointment of public servants for reasons of the circumstances of the present case, the PS's manoeuvres would be caught by the **Oudekraal** and **Kirland** principles: in the present case the PS took it upon himself to correct what he perceived to be an irregular appointment of the applicant. The law as already seen, for rule of law purposes, requires that he must challenge the applicant's appointment/contract before the courts of law in

review proceedings. He therefore did not have jurisdiction to initiate termination of applicant's appointment outside of review processes, as that in essence amounted to taking the law into his own hands. The final arbiters on the questions of legality are the courts of law and nobody else. Anything done outside these set parameters can only be a recipe for anarchy. It will further, be observed that the respondents did not counter apply to have the applicant's appointment reviewed and set aside. They merely contended themselves with raising the irregularities attendant to the appointment. That was not enough to invite the curial reversionary powers of this court, and on the authority of **Kirland** that is where the respondents's case falters. It follows from this discussion that this court had jurisdiction to interfere with the administrative process at the show – cause stage.

[22] Among the arguments raised by Adv. Tau for the respondents, was that the decision to appoint the applicant was 'not a decision' because it flouted the Regulations and the Public Service Act. The thrust of this argument was to say that because the act of appointing the applicant was a 'non-decision' the PS was justified in ignoring. I disagree. A definitive answer to this type of argument was provided in **Kirland**, when Cameron J, said (at para.66):

*“[66].....In answer, the government respondents made no move to set aside the approval. They took the attitude that they could withdraw or ignore it. They branded the approval a 'non-decision'. Their principal deponent resisted Kirland's application on the simple basis that the defective decision did not exist. That was a fundamental error. For the decision does exist. It continues to exist until, in due process it is properly considered and set aside.”*

[23] In the result the following order is made:

(a) The rule Nisi is confirmed in the following terms:

- (i) The process embarked upon by the first respondent in terms of which he intends to terminate the applicant's contractual appointment to the position of Director General Information and Communication Technology in the Ministry of Communications, Science and Technology is reviewed, corrected and set aside.
- (ii) The first respondent is interdicted from terminating the applicant's contractual appointment to the position of Director General Information and Communication Technology in the Ministry of Communications Science and Technology save by following due process of law.
- (iii) The applicant is awarded the costs of suit.

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**MOKHESI J**

**For the Applicant:**

**ADV. M. A. MOLISE**

**Instructed by Mukhawana Attorneys**

**For the respondents:**

**ADV. L. TAU**

**From Attorney General's Chambers**