Arbitration Award Rendered

Case Number: ***ECEL1937-25***
Commissioner: ***Mxolisi Nozigqwaba***
Date of Award: ***27 Oct-2025***

In the **ARBITRATION** between

PSA obo Nokubonga Sweetness Lizo

(Union/Applicant)

and

National Health Laboratory Services (NHLS)

(Respondent)

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration was heard at CCMA East London offices on 06 August 2025, and 08 October 2025. Ms Nokubonga Sweetness Lizo (applicant) was in attendance in both sessions and was represented by Ms Nobuntu Mabandla, an official from PSA of which the applicant is a member of. National Health Laboratory Services (NHLS) (respondent) was represented by its employee relations specialist, Mr Adasa Tinga.

2. The applicant was dismissed by the respondent for misconduct in terms of section 186(1)(a) of the Labour Relations Act 66 of 1995, as amended (LRA). He is challenging the fairness if her dismissal in terms of section 185(a) and her dispute was arbitrated in terms of section 191(5)(a) of the LRA.

3. On the last day of the proceedings, parties elected and undertook file written closing arguments by not later than 15 October 2025, and they both submitted as agreed. I have taken these heads into consideration in penning this award.

ISSUE TO BE DECIDED

4. I am required to determine whether the applicant's dismissal was substantively and procedurally fair. Should I find that the dismissal was unfair I will order the appropriate relief.

BACKGROUND TO THE ISSUE

5. The applicant started working for the respondent on 19 January 2015. At the time of dismissal, she was a phlebotomy officer (or a phlebotomist) and earned a gross monthly salary of R37 670.66. She was placed at Frere Hospital in East London.

6. The applicant was dismissed on 10 April 2025 after she was found guilty of:

   (1) Gross negligence: It is alleged that in your capacity as a phlebotomist technician in East London Support Laboratory you have been practicing using an expired HPCSA certificate which expired in March 2021.

   (2) Breach of NHLS' standards, rules, procedures and manager's lawful instructions: It is alleged that you in your capacity as a phlebotomy technician in East London Support Laboratory you have failed to pay your HPCSA membership for the year 2021 which resulted to membership being suspended, you further failed to follow instructions as your manager instructed you to get yourself reinstated by HPCSA.

   (3) Bringing NHLS into disrepute: It is alleged that you in your capacity as a phlebotomy technician in East London Support Laboratory your HPCSA membership has been suspended since March 2021 and you have been practicing out of scope, bringing the company name into disrepute (page 2 of respondent's bundle R1).

7. The applicant is challenging both procedural and substantive fairness of her dismissal and is seeking reinstatement as relief, with back pay for the salary lost because of her dismissal.

SURVEY OF THE EVIDENCE AND ARGUMENTS

8. The respondent's case is that the health care sector is regulated by law. Medical professionals like phlebotomist cannot practice without being registered with the Health Professions Council of South Africa (HPCSA). Her employer would normally pay her money to enable her to register herself. In 2021 and subsequent years the respondent had paid her money for her to get registered. It was learnt that she never

got registration certificated from 2021 and subsequent years. When this was picked up in March 2024 her manager persistently instructed her to get registered in order to practice with a requisite certificate as required by HPCSA. The instruction was never heeded until she got alerted in August 2024 that disciplinary processes would be instituted. On the issue of the procedure the respondent's case is that the disciplinary hearing was heard, and the applicant was given opportunity to state her side. She then got dismissed and his salary was stopped. When she lodged her appeal, she was already out of the respondent's payroll.

9. The applicant is challenging the substantive fairness of her dismissal as she says that she had complied with the rule and obligation to register herself. She paid the Council registration fee in 2021. It is just that she mistakenly used an incorrect account when she was effecting payment. She had thought that payment went through until it got to her attention, after being alerted by the Council, that she had used incorrect account when paying. She was fined and she accordingly paid the fine and ultimately got registered. The applicant also takes issue with inconsistent application of dismissal sanction as she has former colleagues who have been found guilty of the same or similar offense but were given sanctions less of dismissal. There are two former applicants' colleagues in Amathole Region (Eastern Cape) who after being found guilty of similar misconduct of failing to get registered and practicing without being registered were given a sanction of one month suspension.

10. She is also challenging the fairness of the process leading to her dismissal. Her disciplinary hearing was held on 17 December 2024, and subsequently thereafter she and her union received a finding of guilty with no evidence advanced by the employer. An appeal was lodged on her behalf on 22 January 2025, and subsequently thereafter on 06 February 2025 the appeal decision was communicated wherein her dismissal was set aside and a hearing de novo was ordered. A new hearing was held on 07 March 2025, but that hearing was not finalized. Its next session was scheduled for 11 April 2025. While preparing to attend the 11 April 2025 session the applicant received another outcome of her appeal wherein her dismissal, by the 17 December 2025 hearing, was confirmed. The respondent abandoned the second hearing. The respondent last paid her salary on 31 December 2024.

RESPONDENT'S CASE

Mr Sithembiso Gudazi

11. Mr Sithembiso Gudazi (manager for Laboratory Support- East London Region) testified that his organisation provides laboratory services support to hospitals. It employs health laboratory technicians known as phlebotomists, amongst its staff members, whose core responsibilities are the testing of specimens. The company's main client is Department of Health.

12. The applicant worked under the witness' management and supervision. As a phlebotomist she had to be registered under the HPCSA and be issued with registration certificate as provided in section 17 of Health Professions Act 56 of 1974, as amended (HP Act). Section 17(5) provides that a person who practices a health profession without being registered commits an offense and could be convicted be sentenced to a fine or a term not exceeding 12 months imprisonment, or both. The registration certificate is renewed on an annual basis (at start of each financial year 01 April) and to assist its technicians towards fulfilling this legislative duty the respondent pays each technician the required registration fee. In clause 10.1 of the applicant's employment contract, it is unequivocally stated that she is required to remain registered with HPCSA at all times during his period of employment with the respondent (page 14 of R1).

13. The applicant's registration with HPCSA expired on 31 March 2021 and remained as such until processes to suspend her were engaged in August 2024. This happened notwithstanding the fact that the respondent had consistently deposited to her salary HPCSA registration fee on 31 March of every year from 2021 to 2024 (pages 30- 33 of A).

14. It was on 27 March 2024 that Mr Gudazi found out that the applicant had been practicing as phlebotomist without registration certificate from April 2021. He implored her to hastily attend to the issue as it had the potential of subjecting the respondent to civil suits by third parties. He kept on reminding her about addressing the issue, but the applicant never appreciated the seriousness of her non-registration and acted with haste. After realizing that the non-registration problem continued to be unresolved, he advised the applicant to travel to Pretoria HPCSA offices to have the issue sorted. Her response was that she had referred the issue to her lawyers.

15. On the issue of alleged inconsistent application of disciplinary sanction, Mr Gudazi testified that the applicant's circumstances were different to those of the stated comparators. Ms Thunzi, a laboratory assistant (working at Frere Hospital- East London) who worked without HPCSA certificate, was issued with a sanction short of dismissal (one month suspension without pay) after she had shown remorse and pleaded guilty to the charges (pages 66- 67 of applicant's bundle B). Ms Mbondwana, also a laboratory assistant (working at Frere Hospital- East London) also worked without HPCSA certificate and also got issued with a sanction short of dismissal (one month suspension without pay) after she had shown remorse and pleaded guilty to the charges (page 68 of B). Unlike these two comparators, the applicant pleaded not guilty in her disciplinary hearing. Furthermore, the two comparators period of non-compliance was far less than that of the applicant, which was more than three years. Ms Tunzi's certificate was suspended for a period of less than one year, while Ms Mbondwana's was suspended for less than two years.

16. Another employee charged and found guilty of the offense the applicant was dismissed for, Mr Ntshabele, was found to have worked without HPCSA certificate for a period closer to that of the applicant (from April 2022 to September 2024) was issued with dismissal sanction (pages 36- 37 of R1)). There is also Ms Molabe (pages 54- 56 of R1) who practiced from 2019 to 2024 without registration and after being found guilty of the charges was sanctioned with dismissal. Again, there is Ms Mthimkulu who practiced without registration from April 2019 to December 2024, who was also dismissed after being found guilty of charges pertaining to this offence (pages 57- 59 of R1). Mr Ntshabele, Ms Molabe and Ms Mthimkhulu have practiced for significantly longer period without registration, and their circumstances are similar to the applicant's. The sanction of dismissal was imposed on them as was done to the applicant.

17. On the issue of procedure Mr Gudazi testified that the applicant was given a fair hearing as he was lowed opportunity to challenge the employer version and to put her side. The applicant was timeously notified of her disciplinary hearing which was scheduled for 17 December 2024. On the day of the hearing, she was represented by a PSA official (Mr Benson), was given opportunity to plead and she pleaded not guilty. Mr Gudazi, who was the initiator at the hearing, presented evidence for the employer's case. He was cross-examined by Mr Benson. The applicant was then given opportunity to state her side, and she stated her version (pages 44- 45 of R1). Appeal processes were resorted to by the applicant in line with the respondent's DC Procedure (page 28 of respondent's bundle R2).

18. On cross examination the witness agreed that there was no witness called by the employer in the 17th of December 2024 hearing. He went further to say he presented the employer's case and was sked questions by the applicant on what he had presented. He confirmed that the applicant lodged an appeal against the December 2024 hearing outcome and sanction, and her appeal was upheld. He further confirmed that the appeal chairperson upheld the applicant's appeal and ordered a new hearing. He further agreed that the DC procedure does not make provisions for the overturning of the appeal outcome. He further confirmed that the applicant's 17 December 2024 got to be confirmed by Ms Makula's 10 April 2025 correspondence while the applicant's outcome processes were still running and incomplete (page 55 of B).

19. It was further put to the witness that the applicant had thought that she had paid for her registration in 2021 through her account but had instead mistakenly effected payment with her child's savings account which had no funds. His reply was that there is no evidence to substantiate that claim. It was further put to him that the applicant had actively taken steps to have her registration restored and there is proof that she even attempted fax the restoration form 30 November 2022 (page 57A of R1). The witness' reply was that the applicant as the affected employee was supposed to take the issue seriously, but she didn't as she didn't act and refaxed the document after it boldly appeared on top of the restoration form that the fax

transmission failed. She took long from 2021 to 2024 to have the issue addressed. Even after he had constantly persuaded her, as from March 2024, to hastily attend to the issue the applicant never appreciated that she needed to attend to the matter urgently. It was only after she got suspended that she actively acted on it.

APPLICANT'S CASE

Applicant

20. The applicant testified that when it was time to renew her membership towards end March 2021, she paid the registration fee through her banking electronic application (APP). She had thought that the payment went through, and her registration was accordingly renewed until she learnt in April 2022 that it was not paid for and renewed. It was then that she realized that she had mistakenly effected payment from her daughter's savings account which had no funds. She was advised that her membership was suspended.

21. She was fined R4 392.00 for not being registered and she paid the fine on 22 November 2022. She then signed the membership reinstatement form, and she faxed it to the Council on 30 November 2022. She didn't realize that the fax did not go through (page 57A of B).

22. It was in April 2022 that her manager, Mr Gudazi brought to her attention that her membership was still suspended and that she needed to attend to the issue. She brought receipts and documents proving that she had been attending to the issue without success. Mr Gudazi kept on seeking update about the matter and there is even an instance when he suggested that she should travel to Gauteng HPCSA offices and address the issue. She indicated that she would not afford to travel to Gauteng. She however alerted her manager that she was addressing the matter through her legal insurance. In pages 69 to 76 of B there is proof that the applicant's legal insurance (Scorpion Legal Protection) sent several emails to AmukelaniM@hpcsa.co.za seeking to have the matter resolved. The first email was sent 02 July 2024, and the last one was on 17 September 2024. Her membership got to be reinstated on 17 September 2025.

23. The applicant takes issue at the fact that her colleague, who also practiced at Frere Hospital (Ms Mbondwana) and had been without registration certificate for some time, was handed a sanction short of dismissal (suspension without pay) (page 68 of B). The comparator cited by the respondent, Ms Mthimkhulu, was employed at Bara Laboratory (pages 57- 59 of R1). The applicant's circumstances are different because she actively made endeavors to have her membership reinstated.

24. On the issue of procedure, the applicant testified that in her disciplinary hearing held on 17 December 2024 she is the only person who gave evidence. She then learnt that she was dismissed with effect from 31 December 2024. She lodged her appeal, which after it was heard on 22 January 2025 her dismissal was set aside pending a new hearing. When a new hearing was still on course and partly heard the applicant was on 10 April 2025 served with correspondence indicating that her initial appeal outcome was set aside as it talked about rehearing, which is not provided for in the DC code. Her 31 December 2024 dismissal was confirmed. She takes issue with the fact that while still busy with a re-hearing that was ordered she was served with the second appeal outcome.

25. On cross examination, she was taken to task with her carelessness of not confirming whether her payment went through in 2021. Her response was that she had honestly believed that the payment had gone through. She was also taken to task about her constant lack of attention on important things. She missed out on realizing that the email she had purportedly sent on 30 November 2022 had a writing in bold words 'Fax failed' (page 57A of B). Her reply was that she missed that. She acknowledged that she practiced without registration from 01 April 2021 to 17 September 2024. She went further to mention that she had made endeavors to have her membership restored. She referred to payments she made towards her membership restoration. She referred to R4 392 payment made in November 2022; R744.00 made on 31 March 2022 (page 59 of B); R759.00 made on 27 March 2023; and R774.00 made on 30 March 2024 (pages 58 to 61 of B).

Respondent's closing arguments

26. For the respondent it was argued that the applicant conceded to have practiced without any valid HPCSA certificate from 2021 to 2024. Her membership was only restored on 17 September 2024, after she had been served with suspension letter. She is a person with proven propensity to not take care of important things. Not attending to the important issue of her registration, even after being implored to attend to the issue proved that she just did not care. She breached her contractual obligations to ensure that her certificate is constantly renewed. She also breached section 17 of HP Act. The charges against her as proffered have all been proven. The respondent opted for dismissal as her gross negligence is the one that is inexcusable. She never heeded her manager's advice to travel to Pretoria and have the matter sorted. Trust has been irreparably broken as she lacks remorse and sees nothing wrong with what she did. His conduct had put the company in operational risk of potential civil lawsuits. In *De Beer Consolidated Mines Ltd v CCMA and Others*[1] the LAC remarked that dismissal is not expression of moral outrage, much less is it an act of vengeance. It is, so the LAC opined, or should be a sensible operational response to risk

management in a particular enterprise. The respondent had no option but to opt for dismissal as she never displayed any sense of appreciation for the seriousness of her misconduct. This was after the display of overwhelming evidence of her blatant negligence. The breakdown of trust relationships is apparent from nature the serious offenses she has been proven to be guilty of. There is therefore, in line with *Department of Home Affairs and Another v Ndlovu and Others*[2], no need to advance evidence to prove that trust relationship has broken down.

27. On the issue of procedure, it has been proven that the applicant was called to her hearing on 17 December 2024, where she had opportunity to file her not guilty plea. After having been found guilty of all the charges she was dismissed with effect from 31 December 2024. The appeal chairperson's decision was set aside and replaced with the one dismissing the appeal because the code does not make provisions for ordering a new hearing. Her dismissal was fair as she was given a fair opportunity to state her side, and it would not have been fair to subject her to more than one hearing.

Applicant's closing arguments

28. For the applicant it was argued that the respondent just sought to have the applicant dismissed. It could not wait for the ultimate completion of her rehearing ordered by its appeal chairperson. Her rehearing had sat on 07 March 2025 and a day before the second session, she received another appeal outcome confirming his dismissal.

29. Even though the applicant did not pay for her renewal in 2021 March, her intention had always been to have her membership renewed. She made a mistake of paying using an incorrect account. She paid the fine in 2022 after the anomaly was communicated to her, and from then going forward she continued to pay the in every year. It was after she had employed the services of her legal insurance that the matter ultimately got to be resolved on 17 September 2024. The applicant relies on *NUMSA obo Kohl v CRH Africa and Others*[3] where the LAC held that historic inconsistency may render dismissal unfair where there was no prior notice issued of the re-instatement of strict approach to discipline. The LAC held that the issue of comparators having pleaded guilty was not material in justifying applying dismissal sanction inconsistently especially where a proverbial line on the sand had not been drawn. There are two comparators the applicant has relied on, who are both deployed in Frere hospital, where she was also deployed. The two were not dismissed even though they were guilty of the same or similar offense as that of the applicant. The fact that they pleaded guilty is immaterial.

[1] [2010] ZALAC 10
[2] (2014) 35 ILJ 3340

30. The applicant's dismissal should be found to be procedurally and substantively unfair. He is seeking re-instatement.

ANALYSIS OF EVIDENCE AND ARGUMENTS

Procedural fairness challenge

31. The respondent subjected the applicant to a hearing which was held on 17 December 2024. Subsequently thereafter a dismissal sanction was issued with effect from 31 December 2024. The applicant lodged an appeal and after hearing her appeal was upheld and her dismissal was set aside pending a new hearing. The new hearing was partly heard on 07 March 2025 and a day before its next set down date the employer, through correspondence by another appeal chairperson set aside the initial appeal outcome and replaced it with the one indicating that her dismissal was confirmed. The reason advanced for taking the seemingly draconian step is that the initial appeal chairperson had misdirected herself by ordering a rehearing not catered for in the code. The respondent's DC Code (page 28 of the DC code) provides under the guideline section that after hearing the appeal the appeal chairperson may either reduce or issue a severe sanction or set aside or confirm the decision given at the disciplinary enquiry. It is also stated in the guidelines that the appeal chairperson is empowered to evaluate the matter before him or her and render a decision and reasons thereof within ten days. The bullet point about setting aside or confirming DC hearing decision is couched in directory terms (may') and not peremptory terms ('must' or 'shall') and from this the second appeal chairperson's reasons of interfering with the initial appeal outcome is not convincingly explained. The guidelines further mention that the appeal chairperson is empowered to evaluate the matter before him and render a decision and the reason thereof. That is what was done by the initial appeal chairperson. If the respondent wanted to have a closed list of what the hearing chairperson must decide it should have inserted a peremptory provision mentioning that the chairperson 'must' only decide the appeal on either of the stated options.

32. The respondent initially accepted the appeal outcome and convened a new disciplinary hearing, which set on 07 March 2025. While the applicant and her representative were preparing for the appeal's next set down date scheduled for 11 April 2025, they were served on 10 April 2025 with a second appeal outcome nullifying the awaited appeal session. That was most draconian step taken, taking into consideration that it was the same respondent who had initially upheld the appeal and allowed re-hearing to commence. This act surely prejudiced an employee who had prepared herself to vent out in an appeal process. In the circumstances I find that the process the applicant was subjected to leading to her dismissal on 10 April was not fair.

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[3] (PA 13/14) [2025] ZALAC

Substantive fairness challenge

33. The applicant had been practicing without a renewed certificate from 01 April 2021 to 17 September 2024 when her certificate was reinstated. This was as a result of her gross negligence which was occasioned in March 2021 when she negligently thought that she had effected payment towards her registration, while in fact she had not. She, again, after being alerted in 2022 that she was not registered acted negligently when she faxed her re-statement documents on 30 November 2022 and thought that her fax, which bore bold letters 'Fax failed', had been successfully transmitted to HPCSA. I am convinced that form these two acts the applicant aced in gross negligent manner.

34. There is proof though that the applicant made the following payments: R4 392.00 on 28 November 2022 being a fine for non-registration, R744.00 on 31 March 2022 for registration; R759.00 on 27 March 2023 for registration; and R774.00 on 30 March 2024 also for registration (pages 61- 64 of B). These payments did not automatically guarantee the reinstatement of her membership as the HPCSA had to be engaged and provided with proof of all the payments she had made. The applicant's manager picked up the anomaly between February and March 2024 and implored her to address it. Even though the applicant had already committed the above-mentioned gross negligence she was given opportunity to attend to the problem. She had also rendered herself guilty of having worked in breach of NHLS standards, rules and procedures for having worked from April 2021 to 2024 without registration certificate with HPCSA. She had further brought the company name into disrepute to the HPCSA officials, who had alerted her that her membership had not been renewed. There is no evidence that her non-registration was picked up by another person or entity.

35. Having been guilty of these three offenses from April 2021 to March 2024, her manager implored her to address her registration issue and kept on seeking update from her. The manager had even, at some point, advised her to travel to Gauteng and address the issue physically at HPCSA offices. The applicant did not take this advice as she said she could not afford to travel to Gauteng. The manager saw her as a person who sat at her laurels and who was not treating the problem with the haste it deserved. After being convinced that she was not serious about addressing the issue the respondent placed her on suspension with effect from August 2024. Disciplinary charges were proffered against her, and in addition to not having heeded her manager's call to hastily attend to the issue she was charged for having been not registered from April 2021.

36. The straw that seems to have broken the proverbial camel's back is the manager's comprehension of the applicant's conduct from March to August 2024 as not being working towards reinstating her registration as he had instructed her. There is however evidence she had consulted her legal insurance and a number of

emails from 02 July to 17 September 2024 had been sent to AmukelaniM@hpcsa.co.za wherein her reinstatement was sought. The manner of acting to the instruction might not have been as efficient as the manager would have liked, but what is key is that it was heeded. Furthermore, it has been proven that the applicant has paid for her registration from 2022 to 2024, including her fine amount. What had not happened until 17 September 2024 was the reinstatement of her registration.

37. In as much as I am convinced that she has adequately been found guilty of the three charges I hold the view that she also deserves to have been treated with leniency as was done with the two comparators who had pleaded guilty, also deployed at Frere Hospital. The respondent's assertion is that she does not deserve such leniency as she had pleaded not guilty and showed no remorse. In *SACCAWU obo Irvin & Johnson (Pty) Ltd* Conradie JA remarked as follows on the issue of consistent application of discipline:

'Consistency is simply an element of disciplinary fairness… Every employee must be measured by the same standards. Discipline must not be capricious. It really is a perception of bias inherent in selective discipline that makes it unfair.'[4]

38. Inasmuch as the consistency principle requires an employer to treat employees guilty of similar offense equally there is also recognition of the fact that circumstance under which the offenses were committed may be different. In that case application of different sanctions, one tougher and another lighter, might be justified.[5] In *SACCAWU obo Mokebe and Others v Pick 'n Pay Retailers*[6] the LAC held that clause 3(6) of Schedule 8 to the LRA envisages consideration of the employer's historical and contemporaneous treatment of employees.

39. In the case at hand the fact that there is evidence that her legal insurance corresponded with the HPCSA from July 2024 to September 2024 should count on her favour. Also, payments have been made for the fine and registration fees for all the years. On consideration of the *NUMSA obo Kohl* dictum I take a view that the fact that the comparators had pleaded guilty while the applicant did not, cannot justify subjecting her to the severe sanction of dismissal. There was action on her part to ensure that her registration was re-instated, even though to her manager it seemed lethargic and inefficient.

[4] (1999) 20 ILJ 2302 (LAC) at 2313 C to F

[5] ABSA Bank Ltd v Naidu (2015) 36 ILJ 602 (LAC) where it was held that the circumstance under which similar offenses were committed may be different. There are those circumstances that might call for lighter sanction and there are those that may call for a much tougher sanction. It was further held that consistency is not in itself a decisive consideration on whether dismissal is warranted in the circumstances.

[6] [2017] 12 BLLR 1196 (LAC)

40. In the circumstances I find that she should not have been dismissed. Her dismissal was therefore substantively unfair.

Relief

41. The applicant is seeking reinstatement. The applicant's dismissal has been proven to be both substantively and procedurally unfair. No evidence has been led to suggest that trust has been broken to a point of no repair. It has also not been proven that re-instatement is impossible. I find that re-instatement, without full backpay, for the lost emoluments, would be an appropriate remedy. I have considered the fact that the applicant cannot be said to have been without fault as it was because of her negligent actions that her registration was suspended from April 2021. She was correctly found guilty of the three charges but deserves to be treated with leniency owing to endeavors she engaged in towards ensuring reinstatement of her registration. In the circumstances I find that it would be fair and equitable to grant her back pay equivalent to two months' remuneration.

AWARD

42. I therefore make the following award:

42.1. The applicant's dismissal was substantively and procedurally unfair.

42.2. The respondent is ordered to re-instate the applicant to its employment with effect from 10 April 2025. As a result of re-instatement the respondent is ordered to pay the applicant two months back pay and not for the full period from date of dismissal, and the amount to be paid to her is R75 341.32 (R37 670.66 x 2 months), minus any deductions it is supposed to make in terms of the law, and must be paid by not later than 30 November 2025.

42.3. The applicant is to report for duty on the respondent's premises (last place of employment) by not later than 29 October 2025, or if it's a later date by not later than five days after receipt of this award.

Signature: ______________________

Commissioner: ***Mxolisi Nozigqwaba***
Sector: ***Parastatals***