



## ARBITRATION AWARD – S142A

Case No: PSCB62-18/19

Date: 10 October 2019

Panellist: Vuyiso Ngcengi

In the matter between

**PSA obo Stuart Raquel and Samuel Candice**

**Employee**

**And**

**Department of Health – KZN**

**Employer**

**Employee representative: Perfect Zulu**

Telephone: 033 392 7608 / 082 885 7114

Email: perfect.zulu@psa.co.za

**Employer Rep: Blessing Msane**

Telephone: 033 398 3858 / 063 931 5060

Email: blessing.msane@kznhealth.gov.za

### **DETAILS OF HEARING AND REPRESENTATION**

1. This is an award which follows the failure by the Employer to honour the Settlement Agreement reached by the parties on the 17<sup>th</sup> of April 2019.
2. The arbitration was held on 17 April 2019 at the Employer's premises in Pietermaritzburg, KZN.
3. Both parties were represented as stated above.
4. The hearing was held under the auspices of the Public Service Co-ordinating Bargaining Council ("the Council") in terms of section 24 (4) 24 (5) of the Labour Relations Act, No 66 of 1995 as amended ("the Act").
5. The dispute is about failure by the Employer to implement an Occupational Specific Dispensation – Collective Agreement, Resolution 1 of 2007 (the Resolution).
6. The Employer signed an agreement that it would implement the Resolution by no later than 31 May 2019, which it became apparent that it failed to do so, hence this award.
7. After being apprised of the said failure by the Employer, I asked the Employees to provide me with the details of the amounts that are due to the Employees.
8. I received the information above on 10 October 2019 and it includes: Salary scales on which the Employees are being paid and the Salary scales on which they would have been paid had the Resolution been correctly interpreted and implemented; Service records of both Employees dating back to August 2007 (Persal printouts); Calculations of how much is owed to each Employee and the Settlement agreement.
9. I received no communication from the Employer in this regard.

### **ISSUE TO BE DECIDED**

10. I am required to determine whether the Employer has failed to interpret and apply Resolution 1 of 2007 when it failed to translate the two Employees in accordance with clause 14.1.33 of the Resolution with effect from 01 July 2009.
11. The Employees wants to be translated in terms of the Resolution.
12. The Employees are employed in the capacities reflected below:-
  - 12.1 R Stuart – Control GISc Technician
  - 12.2 C Samuel - Chief GISc Professional

### **BACKGROUND TO THE ISSUE**

13. Both parties signed a settlement agreement on 17 April 2019.
14. The settlement agreement was supposed to be implemented by no later than 31 May 2019.
15. The Employer failed to implement the settlement agreement.
16. The Employees therefore referred the matter to the Council for the enforcement of the Settlement Agreement.
17. This award is therefore issued for the aforementioned purposes.
18. In light of the aforesaid, no evidence was therefore led on this matter and the determination is based on the signed Settlement Agreement.
19. The Union submitted the table below as calculations and the totals owed to the Employees:-

### **UNDERPAYMENTS**

#### **RAC STUART 1/7/2009 to 31/05/2019**

<b>PG</b>	<b>Basic Salary Arrears</b>	<b>NP Allowance arrears</b>	
1	R 39 337.20		R16 858 .80
	R38 449.25		R16 478.25
2	R8 206.10		R3 516.90
	R41 644.75		R17 847.75
3	R8 912.05		R3 819.45
	R40 705.87		R17 445.37
4	R14 464.27		R6 198.97
	R44 044.83		R18 876.37
5	R15 768.37		R6 757.87
	R48 012.30		R20 576.70
6	R17 124.45		R7 339.05
	R52 143.52		R22 347.22
7	R18 702.07		R8 015.02
	R56 945.70		R24 405.30
8	R20 367.90		R8 729.10
	R62 025.07		R26 582.17
9	R22 019.02		R9 436.87
	R67 050.90		R28 736.10

10	R15 749.30		R6 749.70
<b>TOTAL BASIC SALARY DUE</b>	<b>R631 672.92</b>	<b>TOTAL NP ALLOWANCE DUE</b>	<b>R 270 716.96</b>

### UNDERPAYMENTS

CB SAMUEL 1/7/2009 to 31/05/2019

PG	Basic Salary Arrears		NP Allowance arrears
1	R 135 130.80		R 57 913.20
	R135 572.50		R 58 102.50
2	R28 958.30		R12 410.70
	R61 801.25		R26 416.25
3	R13 225.80		R5 668.20
	R7 118.82		R3 050.92
4	R16 783.20		R7 192.80
	R4 473.00		R1 917.00
5	R25 056.63		R10 738.57
	R8 970.15		R3 844.35
6	R27 310.50		R11 704.50
	R9 740.85		R4 174.65
7	R29 667.69		R12 714.75
	R10 639.65		R4 559.85
8	R32 399.28		R13 885.38
	R11 587.80		R4 966.20
9	R35 284.69		R15 121.98
	R12 467.16		R5 343.06

10	R37 960.65		R16 268.85
	R8 846.24		R3 803.24
<b>TOTAL BASIC SALARY DUE</b>	<b>R652 994.96</b>	<b>TOTAL NP ALLOWANCE DUE</b>	<b>R 279 796.95</b>

20. The Union further submitted that the two Employees' basic salaries should from be as follows: -
- 20.1 R Stuart : R 902 389.88
- 20.2 CB Samuel: R 932 791.91
21. The union mentioned as part of the back-pay from 01 August 2009 to September 2019, the Employees are owed the amounts below -:
- 21.1 R Stuart : R 270 716.96
- 21.2 C Samuel : R 279 796.95
22. The union submitted that the salaries stipulated above should be applicable going forward, as the back-pay is not included in the amounts indicated above with effect from October 2019.

#### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

23. Clause 4.13 of the Resolution states that *these dispensation will be implemented over the next three years commencing with effect from 01 July 2007. The priorities for implementation for new occupations will be determined by agreement within the sectoral bargaining council.*

4.1.4 *The revised salary structure per occupation shall be implemented as follows:-*

\*\*\*\*

4.1.4.3.3 *Engineers, architects, environmentalists and other identified professionals, jointly agreed to in the relevant sector with effect from 01 July 2009.*

24. It is common cause that the Employer has failed to implement the Resolution on this matter, hence it entered into a Settlement Agreement with the intention to do so.
25. The union submitted that this dispute is based on clause 4.1.4.3.3 above.
26. Based on the documentation and the accompanying calculations submitted by the PSA on behalf of the two Employees, the Employees are owed from 01 July 2009 to 30 September 2019 as follows:-
- 26.1 R Stuart : R 270 716.96
- 26.2 C Samuel : R 279 796.95

27. The Employer has failed to correctly interpret and apply the Resolution when it failed to respond to the Employee's grievance within 30 days.
28. Given the fact that the Employer has on 17 April 2019 signed a settlement agreement, acknowledging and agreeing that it needed to interpret and apply the resolution correctly, such interpretation and implementation has been clarified by the union to mean the submissions stated above.
29. The Employer has further failed to submit any differing version from that submitted on behalf of the two Employees.
30. In the consequences, I have only the version from the union and I have no reasons not to accept it.

#### **AWARD**

31. The Employer has failed to correctly interpret and apply the Resolution when it failed to translate the two applicant Employees accordingly.
32. The Employer is ordered to translate the two Employees correctly and place them on the notches below:
  - 32.1 30.1 R Stuart: R 902 389.88
  - 32.2 CB Samuel: R 932 791.91
33. The Employer is further ordered to pay the Employees back-pay from 1 July 2009 to September 2019, and the amounts are as follows:
  - 33.1 31.1 R Stuart : R 270 716.96
  - 33.2 C Samuel : R 279 796.95
34. Furthermore, the Employer is ordered to implement the aforementioned by no later than 31 October 2019.



PSCBC Panelist

Vuyiso Ngcengeni

## Mlungisi Vilakazi

---

**From:** Dineo Choshi <dineoc@pscbc.org.za>  
**Sent:** Wednesday, 23 October 2019 09:50  
**To:** Raquel.Stuart@kznhealth.gov.za; Mlungisi Vilakazi  
**Cc:** Koketso Mocheko; Lebogang Papo  
**Subject:** RE: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD  
**Attachments:** We sent you safe versions of your files; PSCB62-18-19-S142A-Ruling-111019.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Dear Sir / Madam

Kindly find the attached.

Kind regards

Dineo Choshi  
Case Management Officer

---

**Office** +27 (0)12 644 8100 x 266  
**Direct** +27 (0)12 644 8112  
**Cell** +27 (0)72 181 7829  
**Fax** +27 (0)12 664 5834  
**Email** [dineoc@pscbc.org.za](mailto:dineoc@pscbc.org.za)  
**Website** [www.pscbc.org.za](http://www.pscbc.org.za)



*"Education is the most powerful weapon you can use to change the world." – Nelson Mandela*

Disclaimer: This message, including any attachments is intended only for the persons or entity to which it is addressed, and may contain privileged or confidential information. Retransmission, dissemination, copying, distribution, modification and / or publication of this message by a person other than the intended recipient is strictly prohibited by the sender. The views of the author may not necessarily reflect those of the PSCBC. The PSCBC accept no liability or responsibility whatsoever should the contents of this e-mail be corrupted, or e-mail fail to reach its intended destination or be amended after it was sent. If you have received this message in error, or you feel it is unacceptable communication, a chain letter or offensive material of any nature, please delete the material and any copies from all systems and report it to: [info@pscbc.org.za](mailto:info@pscbc.org.za)



Please consider the  
environment before printing  
this email

Please  
rate  
our  
service:



Good



Average



Poor

**From:** Lebogang Papo  
**Sent:** 23 October 2019 08:48 AM

**To:** Koketso Mocheko  
**Cc:** Dineo Choshi  
**Subject:** FW: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD  
**Importance:** High

Hi

See email below.

Regards

Lebogang Papo  
Administrator: Dispute Resolution

---

**Office** +27 (0)12 644 8100 x 269  
**Direct** +27 (0)12 644 8020  
**Fax** +27 (0)12 664 5834  
**Email** [lebogangp@pscbc.org.za](mailto:lebogangp@pscbc.org.za)  
**Website** [www.pscbc.org.za](http://www.pscbc.org.za)



*"Education is the most powerful weapon you can use to change the world." – Nelson Mandela*

Disclaimer: This message, including any attachments is intended only for the persons or entity to which it is addressed, and may contain privileged or confidential information. Retransmission, dissemination, copying, distribution, modification and / or publication of this message by a person other than the intended recipient is strictly prohibited by the sender. The views of the author may not necessarily reflect those of the PSCBC. The PSCBC accept no liability or responsibility whatsoever should the contents of this e-mail be corrupted, or e-mail fail to reach its intended destination or be amended after it was sent. If you have received this message in error, or you feel it is unacceptable communication, a chain letter or offensive material of any nature, please delete the material and any copies from all systems and report it to: [info@pscbc.org.za](mailto:info@pscbc.org.za)



Please consider the  
environment before printing  
this email

Please  
rate  
our  
service:



Good



Average



Poor

**From:** Mlungisi Vilakazi [<mailto:MLUNGISI.VILAKAZI@psa.co.za>]  
**Sent:** Wednesday, October 23, 2019 8:42 AM  
**To:** Lebogang Papo <[lebogangp@pscbc.org.za](mailto:lebogangp@pscbc.org.za)>  
**Subject:** PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD  
**Importance:** High





# Choose better in 2019

## JOIN the PSA

Good day Lebogang

The above-mentioned matter together with the email below refers.

We have been advised that a copy of an Arbitration Award was previously sent to the PSA.

I have checked everywhere and could not find any.

Could you please forward us a copy of an Arbitration Award on this matter.

Regards



**Mlungisi Vilakazi**

Members' Affairs Coordinator : Pietermaritzburg

TEL: +27 33 392 7608 | FAX: +27 87 234 7718 | CELL: -

EMAIL: [mlungisi.vilakazi@psa.co.za](mailto:mlungisi.vilakazi@psa.co.za)

[www.psa.co.za](http://www.psa.co.za)



DISCLAIMER

**From:** Stuart Raquel <[Raquel.Stuart@kznhealth.gov.za](mailto:Raquel.Stuart@kznhealth.gov.za)>

**Sent:** Monday, 21 October 2019 16:03

**To:** Mlungisi Vilakazi <[MLUNGISI.VILAKAZI@psa.co.za](mailto:MLUNGISI.VILAKAZI@psa.co.za)>

**Cc:** Perfect Zulu <[PERFECT.ZULU@psa.co.za](mailto:PERFECT.ZULU@psa.co.za)>; Samuel Candice <[candice.samuel@kznhealth.gov.za](mailto:candice.samuel@kznhealth.gov.za)>

**Subject:** FW: PSCB62-18-19

Dear Mlungisi,

Please could you refer to the email received .

Kindly provide us with a copy of the award.

Thank you,  
Raquel

**From:** Mbulaheni Netshifhefhe [<mailto:mbulahenin@pscbc.org.za>]  
**Sent:** 21 October 2019 03:22 PM  
**To:** Stuart Raquel  
**Subject:** PSCB62-18-19

Dear Ms Stuart

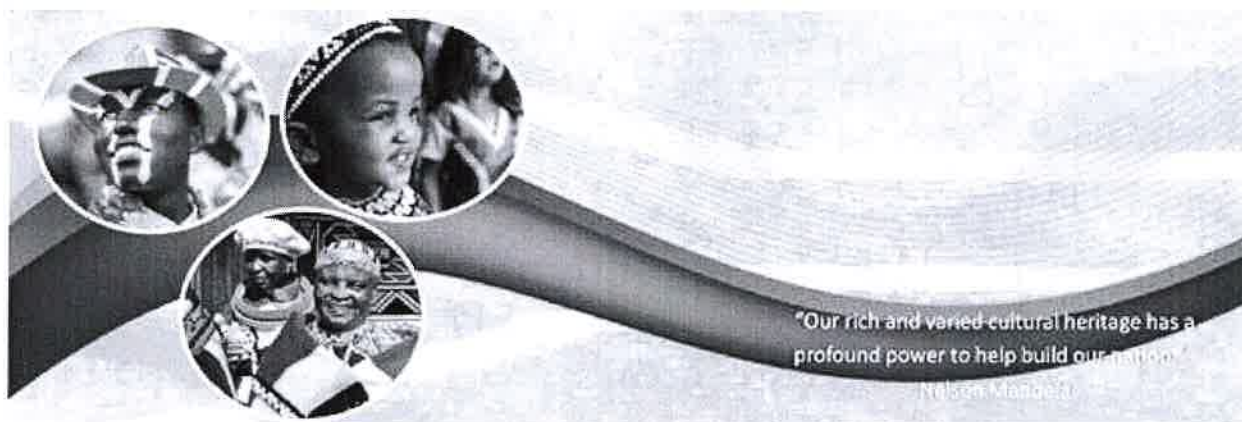
Please take note that the award was sent to your PSA representative (Mr Ngubane)

Kindly check with him.

Hope the above is in order

Regards  
Mbulaheni Netshifhefhe  
Resident Panelist

**Office** +27 (0)12 644 8100 x 306  
**Direct** +27 (0)12 644 8196  
**Cell** +27(0)72 671 2894/ 076 689 3257  
**Fax** +27 (0)12 664 5834  
**Email** [mbulahenin@pscbc.org.za](mailto:mbulahenin@pscbc.org.za)  
**Website** [www.pscbc.org.za](http://www.pscbc.org.za)



Disclaimer: This message, including any attachments is intended only for the persons or entity to which it is addressed, and may contain privileged or confidential information. Retransmission, dissemination, copying, distribution, modification and / or publication of this message by a person other than the intended recipient is strictly prohibited by the sender. The views of the author may not necessarily reflect those of the PSCBC. The PSCBC accept no liability or responsibility whatsoever should the contents of this e-mail be corrupted, or e-mail fail to reach its intended destination or be amended after it was sent. If you have received this message in error, or you feel it is unacceptable communication, a chain letter or offensive material of any nature, please delete the material and any copies from all systems and report it to: [info@pscbc.org.za](mailto:info@pscbc.org.za)



Please consider the  
environment before printing  
this email

Please  
rate  
our  
service:



Good



Average



Poor

## Mlungisi Vilakazi

---

**From:** postmaster@psa.co.za  
**Sent:** Wednesday, 23 October 2019 09:47  
**To:** Mlungisi Vilakazi  
**Subject:** We sent you safe versions of your files

**mimecast**

### We sent you safe copies of the attached files

If you want the originals, you can request them. If you trust the sender, you can choose to always receive the original files they send you, after security checks.

#### Files

**PSCB62-18-19-S142A-Ruling-111019.pdf** (349.2 KB)

#### Message Details

**From**

"Dineo Choshi" <dineoc@pscbc.org.za>

**Subject**

RE: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

**Sent**

23 Oct 2019 09:50

Request Files

Request and Trust Sender

Powered by **mimecast**

© 2016 - 2018 Mimecast Services Limited.

## Mlungisi Vilakazi

---

**From:** Mlungisi Vilakazi  
**Sent:** Wednesday, 23 October 2019 12:59  
**To:** Samuel Candice  
**Cc:** Perfect Zulu; Charles Ngubane; Stuart Raquel  
**Subject:** PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD  
**Attachments:** We sent you safe versions of your files; PSCB62-18-19-S142A-Ruling-111019.pdf  
  
**Importance:** High

FYA

**From:** Dineo Choshi <dineoc@pscbc.org.za>  
**Sent:** Wednesday, 23 October 2019 09:50  
**To:** Raquel.Stuart@kznhealth.gov.za; Mlungisi Vilakazi <MLUNGISI.VILAKAZI@psa.co.za>  
**Cc:** Koketso Mocheko <KoketsoM@pscbc.org.za>; Lebogang Papo <lebogangp@pscbc.org.za>  
**Subject:** RE: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

---

Dear Sir / Madam

Kindly find the attached.

Kind regards

Dineo Choshi  
Case Management Officer

---

**Office** +27 (0)12 644 8100 x 266  
**Direct** +27 (0)12 644 8112  
**Cell** +27 (0)72 181 7829  
**Fax** +27 (0)12 664 5834  
**Email** [dineoc@pscbc.org.za](mailto:dineoc@pscbc.org.za)  
**Website** [www.pscbc.org.za](http://www.pscbc.org.za)



*"Education is the most powerful weapon you can use to change the world." – Nelson Mandela*

Disclaimer: This message, including any attachments is intended only for the persons or entity to which it is addressed, and may contain privileged or confidential information. Retransmission, dissemination, copying, distribution, modification and / or publication of this message by a person other than the intended recipient is strictly prohibited by the sender. The views of the author may not necessarily reflect those of the PSCBC. The PSCBC accept no liability or responsibility whatsoever should the contents of this e-mail be corrupted, or e-mail fail to reach its intended destination or be amended after it was sent. If you have received this message in error, or you feel it is unacceptable communication, a chain letter or offensive material of any nature, please delete the material and any copies from all systems and report it to: [info@pscbc.org.za](mailto:info@pscbc.org.za)



Please consider the environment before printing this email

Please rate our service:



**From:** Lebogang Papo  
**Sent:** 23 October 2019 08:48 AM  
**To:** Koketso Mocheko  
**Cc:** Dineo Choshi  
**Subject:** FW: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD  
**Importance:** High

Hi

See email below.

Regards

Lebogang Papo  
Administrator: Dispute Resolution

**Office** +27 (0)12 644 8100 x 269  
**Direct** +27 (0)12 644 8020  
**Fax** +27 (0)12 664 5834  
**Email** [lebogangp@pscbc.org.za](mailto:lebogangp@pscbc.org.za)  
**Website** [www.pscbc.org.za](http://www.pscbc.org.za)



*"Education is the most powerful weapon you can use to change the world." – Nelson Mandela*

Disclaimer: This message, including any attachments is intended only for the persons or entity to which it is addressed, and may contain privileged or confidential information. Retransmission, dissemination, copying, distribution, modification and / or publication of this message by a person other than the intended recipient is strictly prohibited by the sender. The views of the author may not necessarily reflect those of the PSCBC. The PSCBC accept no liability or responsibility whatsoever should the contents of this e-mail be corrupted, or e-mail fail to reach its intended destination or be amended after it was sent. If you have received this message in error, or you feel it is unacceptable communication, a chain letter or offensive material of any nature, please delete the material and any copies from all systems and report it to: [info@pscbc.org.za](mailto:info@pscbc.org.za)



Please consider the environment before printing this email

Please rate our service:



**From:** Mlungisi Vilakazi [<mailto:MLUNGISI.VILAKAZI@psa.co.za>]  
**Sent:** Wednesday, October 23, 2019 8:42 AM  
**To:** Lebogang Papo <[lebogangp@pscbc.org.za](mailto:lebogangp@pscbc.org.za)>  
**Subject:** PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD  
**Importance:** High



## Choose better in 2019 JOIN the PSA

Good day Lebogang

The above-mentioned matter together with the email below refers.

We have been advised that a copy of an Arbitration Award was previously sent to the PSA.

I have checked everywhere and could not find any.

Could you please forward us a copy of an Arbitration Award on this matter.

Regards



### Mlungisi Vilakazi

Members' Affairs Coordinator : Pietermaritzburg

TEL: +27 33 392 7608 | FAX: +27 87 234 7718 | CELL: -

EMAIL: [mlungisi.vilakazi@psa.co.za](mailto:mlungisi.vilakazi@psa.co.za)

[www.psa.co.za](http://www.psa.co.za)



DISCLAIMER

**From:** Stuart Raquel <[Raquel.Stuart@kznhealth.gov.za](mailto:Raquel.Stuart@kznhealth.gov.za)>

**Sent:** Monday, 21 October 2019 16:03

**To:** Mlungisi Vilakazi <[MLUNGISI.VILAKAZI@psa.co.za](mailto:MLUNGISI.VILAKAZI@psa.co.za)>

**Cc:** Perfect Zulu <[PERFECT.ZULU@psa.co.za](mailto:PERFECT.ZULU@psa.co.za)>; Samuel Candice <[candice.samuel@kznhealth.gov.za](mailto:candice.samuel@kznhealth.gov.za)>

**Subject:** FW: PSCB62-18-19

Dear Mlungisi,



Please could you refer to the email received .

Kindly provide us with a copy of the award.

Thank you,  
Raquel

**From:** Mbulaheni Netshifhefhe [<mailto:mbulahenin@pscbc.org.za>]  
**Sent:** 21 October 2019 03:22 PM  
**To:** Stuart Raquel  
**Subject:** PSCB62-18-19

Dear Ms Stuart

Please take note that the award was sent to your PSA representative (Mr Ngubane)

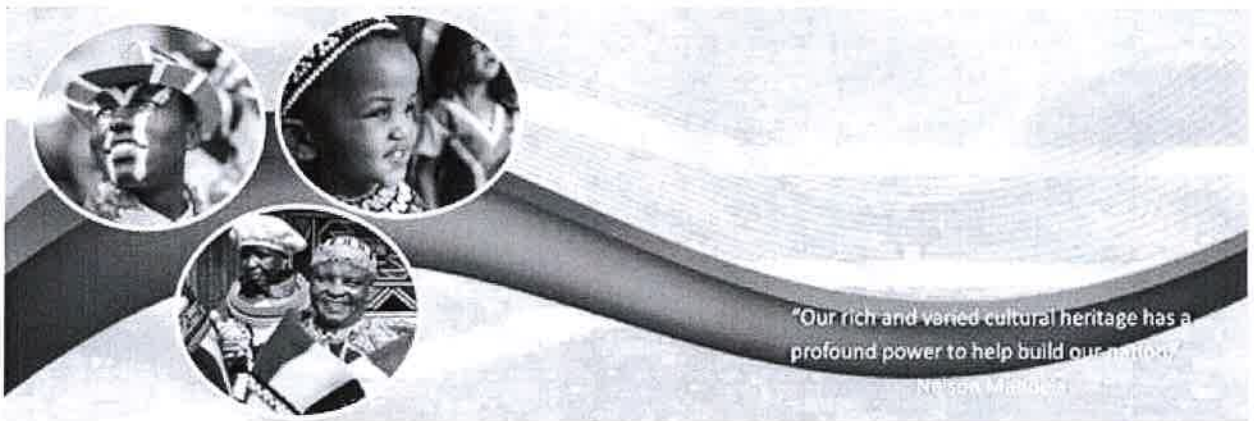
Kindly check with him.

Hope the above is in order

Regards  
Mbulaheni Netshifhefhe  
Resident Panelist

---

**Office** +27 (0)12 644 8100 x 306  
**Direct** +27 (0)12 644 8196  
**Cell** +27(0)72 671 2894/ 076 689 3257  
**Fax** +27 (0)12 664 5834  
**Email** [mbulahenin@pscbc.org.za](mailto:mbulahenin@pscbc.org.za)  
**Website** [www.pscbc.org.za](http://www.pscbc.org.za)



Disclaimer: This message, including any attachments is intended only for the persons or entity to which it is addressed, and may contain privileged or confidential information. Retransmission, dissemination, copying, distribution, modification and / or publication of this message by a person other than the intended recipient is strictly prohibited by the sender. The views of the author may not necessarily reflect those of the PSCBC. The PSCBC accept no liability or responsibility whatsoever should the contents of this e-mail be corrupted, or e-mail fail to reach its intended destination or be amended after it was sent. If you have received this message in error, or you feel it is unacceptable communication, a chain letter or offensive material of any nature, please delete the material and any copies from all systems and report it to: [info@pscbc.org.za](mailto:info@pscbc.org.za)



Please consider the  
environment before printing  
this email

Please  
rate  
our  
service:



Good



Average



Poor





## Mlungisi Vilakazi

---

**From:** Microsoft Outlook  
**To:** Perfect Zulu  
**Sent:** Wednesday, 23 October 2019 12:59  
**Subject:** Delivered: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

**Your message has been delivered to the following recipients:**

Perfect Zulu ([PERFECT.ZULU@psa.co.za](mailto:PERFECT.ZULU@psa.co.za))

Subject: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

**Mlungisi Vilakazi**

---

**From:** Microsoft Outlook  
**To:** Charles Ngubane  
**Sent:** Wednesday, 23 October 2019 12:59  
**Subject:** Delivered: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

**Your message has been delivered to the following recipients:**

Charles Ngubane (charles.ngubane@psa.co.za)

Subject: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

## Mlungisi Vilakazi

---

**From:** Microsoft Outlook  
**To:** Samuel Candice; Stuart Raquel  
**Sent:** Wednesday, 23 October 2019 13:00  
**Subject:** Relayed: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

Samuel Candice (candice.samuel@kznhealth.gov.za)

Stuart Raquel (Raquel.Stuart@kznhealth.gov.za)

Subject: PSCB62-18-19 REQUEST FOR A COPY OF AN AWARD