

## RECUSAL RULING

Commissioner: James Matshekga

Case number: PSHS219-20/21

Date of ruling: 18 March 2021

In the matter between:

**PSA OBO RIRHANDZU REGINAH NYATHI** 

**Applicant** 

and

**DEPARTMENT OF HEALTH- MPUMALANGA** 

1st Respondent

and

ADELAIDE MABOGOANE

2<sup>nd</sup> Respondent

- 1. This is a written for my recusal.
- 2. This ruling confirms the oral ruling I made during the arbitration proceedings that took place on 18 March 2021 at Witbank Hospital.
- 3. The applicant in this matter is Ms. Rirhandzu Reginah Nyathi. The applicant was in attendance and represented by Mr. Kobus Heyneke from the registered trade union Public Servants Association of South Africa (PSA).
- The 1<sup>st</sup> respondent in this matter is Department of Health- Mpumalanga. The 1<sup>st</sup> respondent was represented by its employee Mr. Jerry Mnisi.
- 5. The 2<sup>nd</sup> respondent is Ms. Adelaide Mabogoane. The 2<sup>nd</sup> respondent represented herself.

6. The applicant alleged that on or about 19 August 2020 she telephoned me on my private cellphone number and discussed a "jurisdictional ruling" made in the matter. The applicant alleged she obtained my private cellphone number from a receptionist of the Council.

7. The legal test for recusal is well- established. The parties deserve to have their matter arbitrated by a Commissioner where an issue of reasonable apprehension of bias does not arise.

8. Although the applicant confirmed that she does not know me and has no relationship with me, the fact that the applicant is in possession of my private cellphone number has compromised my position as a Commissioner in the matter. The respondents can reasonably apprehend that the applicant and I are in communication whereas that is not the case.

9. In my view, it will be in the best interests of everyone involved that the matter be heard by another Commissioner other than myself. I therefore made the following ruling:

## **RULING**

10. I recused myself as a presiding Commissioner.

11. The Council must reschedule the matter for arbitration before another Commissioner.



Sector: Public Health & Social Development