OSCAR SHEEHAMA *versus* **INSPECTOR-GENERAL OF THE NAMIBIAN POLICE**

CASE NO.: (P) A 284/2005

Silungwe, J.

2005.10.11

PRACTICE - Suspension of a police officer – When it is necessary to observe an *audi alteram partem* before suspension – Once observance of the rule is necessary, failure to do so renders the suspension invalid.

PRACTICE – Interpretation – Section 23(3) of Police Act – Application of the golden rule of interpretation – Meaning of the expression: "in the interest of the Force" – Meaning of the term: "immediately".

PRACTICE – Interpretation – Section 23(3) of Police Act – The general rule and the exception thereto – The application of ---.

CASE NO.: (P) A 284/2005

IN THE HIGH COURT OF NAMIBIA

In the matter between:

OSCAR SHEEHAMA **Applicant**

and

INSPECTOR-GENERAL OF THE NAMIBIAN POLICE
Respondent

CORAM: Silungwe, J.

Heard on: 2005.09.29

Delivered on: 2005.10.05

JUDGMENT

SILUNGWE, J: This is an urgent application brought on a notice of motion in which the applicant seeks the following interim relief:

(a) condoning the non-compliance with the Rules of Court and hearing the application for an interim relief set out in (b), (c) and (d) below on an urgent basis as is envisaged in Rule 6(12) of the Rules;

(b) issuing a *Rule Nisi* interdicting the respondent from persisting with the decision made by him to suspend the applicant and conveyed to the applicant in his notice of September 13, 2005, as is set out in Annexure "OS3" to the applicant's founding affidavit, and directing that the applicant be reinstated to his position in the Namibian Police with effect from September 13, 2005, pending the finalisation of the application reviewing that purported decision referred to below and which application is served herewith and set out below;

(c) directing that the order granted under paragraph (b) operates as an interim interdict with immediate effect;

(d) directing that the respondent pays the applicant's costs;

(e) granting the applicant such further and/or alternative relief as this Court deems fit.

The second part of the application, which relates to anticipated review proceedings, et cetera, is, of course, not a live issue at this stage.

The applicant is a Chief Inspector in the Namibian Police and Head of the Serious Crime Unit. The respondent is the Inspector-General of the Namibian Police.

The primary issue for resolution at this stage is whether or not the application is one of urgency, in the sense of semi-urgency. Mr Smuts, SC, argues on behalf of the applicant that the application is semi-urgent on the basis, not only that it raises a financial issue (that is, the applicant's suspension without pay), but also that the suspension is invalid because of the applicant's denial of the right to be heard which is a fundamental human right issue. However, Mr Marcus of the Government Attorney's Chambers, who is assisted by Ms Katjipuka-Sibolile, opposes the application, contending that the suspension is lawful and that the applicant's financial prejudice could have been addressed within the confines of section 24 of the Police Act 19 of 1990, as amended by the Police Amendment Act 9 of 1999 (the Act). The section, as amended, provides that-

> *"24(1) Any member who has been suspended from office shall in respect of the period of his or her suspension, not be entitled to any salary, allowance, privilege or benefit to which he or she would otherwise have been entitled as a member if he or she had not been suspended, except to the extent as the Minister may at the request of such member direct otherwise."*

Reacting to the submission by Mr Marcus, Mr Smuts, SC, claims that section 24, which authorises the Minister to grant, as an exception, some pay and

benefits to the extent that he directs, cannot avail the respondent, upon an assumption that the suspension is invalid.

I now return to the issue of urgency. Urgency does not only relate to a threat to life or to liberty but also to commercial interests. (See: *Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd* 1982(3) SA 582(W) at 586G; *Bandle Investments (Pty) Ltd v Registrar of Deeds and Others* 2001(2) SA 203 at 213D-F).This is not to mention other interests that may justify the invocation of Rule 6(12) of the Rules of the Court such as an infringement or threatened infringement of a fundamental right. There are, of course, degrees of urgency, ranging from extreme urgency to semi-urgency. In *IL & B Marcow Caterers v Greatermand SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) and Another* 1981(4) SA 108, the Cape Provincial Division expressed itself in these terms, at 110B-C (per Fagan, J):

> *"There are degrees of urgency. In an attempt to deal with this diversity, a semi-urgent roll is in terms of a Court Notice operated in this Division alongside the ordinary roll. Opposed matters which are not of extreme urgency but are nevertheless too urgent to await hearing in the ordinary course on the continuous roll, are placed on the semi-urgent roll."*

In the case of *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd, supra,* Goldstone, J. (as he then was) made the following comments, at 586F-G:

> *"In my opinion the urgency of commercial interests may justify the invocation of Uniform Rule of Court 6(12) no less than other interests. Each case must depend upon its own circumstances. For the purpose of deciding upon the urgency of this matter I assumed, as I have to do, that the applicant's case was a good one and that the respondent was unlawfully infringing the applicant's copyright in the films in question."*

See also: *Bandle Investments (Pty) Ltd v Registrar of Deeds and Others, supra*, at 213D-F.

On the basis of the papers before me and the ensuing argument thereon, it is quite clear that the applicant is firmly of the view that he had a right to a hearing in terms of section 23(3) of the Act; that he was denied such right; that such denial was a violation of his fundamental right with the result that his suspension from duty was/is invalid; that, as such, it is unnecessary for him to invoke the provisions of section 24 of the Act, as amended; that his case is a good one; and that he is entitled to approach this Court for relief on a semi-urgent basis.

It seems to me that the principal ground relied upon by the applicant on the question of urgency is the alleged violation of his fundamental and common law right to be heard which purportedly renders his suspension invalid. In my view, a claim that a fundamental right or freedom has been infringed or threatened may justify the invocation of Rule 6(12) of the Rules of the Court. I am satisfied that there is present, in *casu*, a sufficient degree of urgency to

warrant the application (which was brought without delay) being heard on a semi-urgent basis. Accordingly, I hold that the case for urgency has been made out.

I now turn to the merits of the case. This matter comes in the aftermath of the death of the late Mr Lazarus Kandara who seemingly committed suicide (by shooting himself) at about 22h30 on August 24, 2005, whilst under police custody at Windhoek Police Station.

Prior to Mr Kandara's death, the respondent had instructed the applicant to lead criminal investigations relating to allegations that emerged from the section 417 inquiry proceedings under the Companies Act. The inquiry was in connection with the provisional liquidation of the Avid Investment Corporation (Avid), following the disappearance of an investment of N$30 million by the Social Security Commission.

Mr Kandara, who was the Chief Executive Officer of Avid and the central figure in the inquiry proceedings, commenced giving his testimony on August 23, 2005, which continued on the next day. Shortly after a late afternoon adjournment by the High Court on August 24, and, acting on the respondent's instructions, Sergeant Linekela Hilundua, whose immediate supervisor was the applicant, arrested Mr Kandara on charges of fraud and theft of N$30 million, the property of the Social Security Commission. The

arrest was effected in the presence of (*inter alios)* the applicant. Thereafter, Mr Kandara had discussions with Mr Lucius Murorua, his legal representative, in the presence of Mr Dirk Conradie, a legal practitioner. What transpired shortly afterwards is not clear. According to the applicant, he was approached by Mr Murorua with a request to allow Mr Kandara to be taken home to fetch some medication as the latter was suffering from high blood pressure and other ailments. However, Mr Murorua disputes having made such a request.

According to Sergeant Hilundua, it was Mr Kandara who requested the applicant, in the presence of the two lawyers, to be taken home for the purpose of fetching his tablets, toiletries and to change clothes.

The applicant avers in his founding affidavit that it was on the basis of the request of Mr Kandara' s legal representative that he, after making all necessary arrangements, "tasked" three of his subordinates, namely: Sergeants Linekela Hilundua and Jacky Kantema and Constable Tjitemisa (Sgts and Const.) "to take Mr Kandara to his house to obtain his medication and the doctor's prescription and to return with him to the police station within thirty minutes." I pose here to bring into perspective the respondent's reaction to the applicant's favourable consideration of the request by, or on behalf of, Mr Kandara.

In paragraph 10 (para) of his answering affidavit, the respondent avers as follows:

> *"I have no personal knowledge as to what transpired between applicant and Mr Kandara's legal practitioner and Mr Dirk Conradie and what caused applicant to act the way he did. I wish to state the following in this regard. Applicant's instruction to take Mr Kandara to his home, was not in accordance with the assurance he had given to me earlier on, that Mr Kandara would be locked up immediately, following his arrest. He did not obtain my permission, or that of his immediate supervisor, Deputy Commissioner Visser before giving instruction to take Mr Kandara to his home. I refer to Deputy Commissioner Visser's confirmatory affidavit. I further fail to understand why medication could not be brought to the police station, instead of taking Mr Kandara to his house. I further fail to understand, given the visible unstable condition that Mr Kandara was in, why applicant gave the particular instruction and did not ensure that Mr Kandara was locked up under safe custody."*

The applicant replied, denying that he had provided an express assurance about Mr Kandara being locked up immediately following his arrest. He recalled having told the respondent that Mr Kandara had been arrested and that he would be incarcerated. He continued in paras 10.2 and 10.3 of his replying affidavit (at p. 96):

> *"10.2 It is correct that I did not obtain express permission from the respondent or Deputy Commissioner Visser before permitting Mr Kandara to be taken home upon his lawyer's request. Nor is such permission necessary. Significantly the respondent does not refer to any standing instruction or regulation in support of his point in this*

regard. I further point out in the very investigation a certain Mr Nico Josea was arrested for the same reason as Mr Kandara. He was in my presence taken to his residence as well as to the offices of the provisional liquidators and even once to his lawyer's office whilst under arrest. No permission was necessary for this. My unit in other cases on a regular basis takes arrested suspects to their homes or elsewhere, such as to hospital or their lawyers.---

10.3 I deny that the condition of Mr Kandara was visibly 'unstable'. This was not evident to me. I deny that there is any basis for the respondent to state this, given the fact that he himself did not see Mr Kandara. Nor has any statement (sic) been made in this respect to my knowledge. It was indeed because Mr Murorua had stated that Mr Kandara required medication and was concerned about his condition that I permitted him to be taken home under supervision under my instruction of constant and close supervision in order to obtain his medication. I deny that he ever stated to me that he feared that Mr Kandara may or had threatened to commit suicide. Had this been the case, I fail to understand why he did not inform me of this. I would not have permitted Mr Kandara to go home had this been brought under my (sic) attention, without being handcuffed."

The applicant states in para. 11 of his founding affidavit that Sgt. Hilundua reported to him just before they took Mr Kandara to his residence that Mr Murorua had said to him:

"Mr Kandara does not look good, please take care of him."

Although the applicant found it "very difficult" to interpret what that statement meant, he tried to be proactive and cautious; and so, given Mr

Kandara's blood pressure problems, et cetera, he instructed Sgt. Hiludua, Sgt. Kantema and Const. Tjitemisa (para. 12 of the founding affidavit):

> *"[T]o make sure that Mr Kandara was in their full view at every moment and that they must not lose sight of him or move any inch away from him during transportation to his residence, at his residence and also on the way back to the police station. I further indicated that Mr Kandara should and would only be permitted to use medication if there was a doctor's prescription and only to that extent."*

After instructing his three subordinates aforesaid to escort Mr Kandara to his residence, the applicant made necessary arrangements at the police cells for Mr Kandara's detention and thereafter returned to his home. At about 22h30, he received a telephonic report to the effect that Mr Kandara had shot himself at the Windhoek Police Station. He at one visited the scene and found that Mr Kandara had passed away. The respondent was apprised of the tragic event.

First thing the following morning, August 25, 2005, the respondent convened a management meeting at which the applicant gave a briefing of the circumstances that had led to Mr Kandara's demise and his role in the matter. Shortly after the meeting, the respondent ordered two separate investigations into the matter, one of which had to do with an inquest: this was assigned to the Criminal Investigations Department; and the other was to look into possible misconduct charges against those that had been charged with the responsibility of safeguarding Mr Kandara. Commissioner H.

Mootseng, Commanding Officer: Complaints and Discipline Division, was tasked with the responsibility of investigating possible wrongdoing against those concerned. The respondent gave a deadline for such investigation to be finalised by September 6, 2005.

On September 8, Commissioner Mootseng submitted his report in writing (Annexure "SHN3") to the respondent. In that report, Commissioner Mootseng made the following findings (at p. 82-83):

> *"1. The lawyers warned the police of Mr Kandara's state---.*
> *2. The request to take Mr Kandara to his house was not from the lawyers,---*
> *3. The possession of the fire-arm by Mr Kandara was due to negligence of the members.*
> *4. Mr Kandara committed suicide by shooting himself while in police custody.*
> *5. There is no evidence that the members committed any criminal offence neither did they intentionally allow Mr Kandara to commit suicide nor were they grossly negligent."*

Commissioner Mootseng concluded his report with the following recommendations: (at p. 83):

> *"(a) The inquest docket be submitted to a Magistrate for the purpose of holding an inquest in terms of the Inquests Act No. 6 of 1993.*
> *(b) The Magistrate be requested to determine the cause of death of Mr Kandara.*

(c) The police be charged for the negligent discharge of their duties, however, that this be put in abeyance until the inquest hearing is finalized.

(d) The charges and even any action must be suspended until such time that the inquest is finalized---."

Although the respondent expressed displeasure at the perceived inadequacies and omissions of the report, he nonetheless took note of the "vague and vacillating findings and recommendations." He then directed, *inter alia* (p. 85)-

> *"that all members who were responsible for the handling, escort, safety, and security of the deceased, Mr Lazarus Kandara should be charged and suspended, with immediate effect, for gross negligence in the execution of police duties for having failed to prevent the suspect from getting hold of a fire-arm which (sic) was used to commit suicide."*

On September 13, the applicant was served with a "Confidential Suspension Notice" addressed to him under the hand of the respondent which read, in part (p. 40)*:*

> *"1. According to evidence at my disposal, you have allegedly committed a Departmental offence in terms of Regulation 15(d).*
>
> *2. You are hereby suspended in the interest of the Force from the office in terms of section 23(3) of the Police Act, 1990(Act 19 of 199) as amended, from 13 September 2005, until further notice pending the institution of disciplinary proceedings in terms of section 18 of the Police Act 1990.*
>
> *---*

5. In terms of the provisions of section 24(1) of the Police Act, 1990---you shall not be entitled to any salary, allowance, privilege or benefits to which you (sic) would have been entitled as a member if you had not been suspended, except to the extent as the Minister may at your request direct otherwise."

Regulation 15(d) relates to an officer being: "negligent or indolent in the discharge of his or her duties."

It is common cause that, until his suspension from office on September 13, 2005, the applicant had continued with investigations into the Avid matter.

Having sketched in *extenso* the factual situation in this case, it remains for me to consider and to apply the relevant law to the facts for the purpose of determining the application before me.

The issue, in so far as the legal implications are concerned, turns on the construction to be placed upon section 23(3) of the Act, as amended. As subsection (3) thereof makes reference to subsection (2), it is convenient to reproduce both subsections, and this I now do.

"23(2) The Inspector-General shall suspend a member from office during any period which he or she is under arrest or detention or is serving a term of imprisonment.

(3) Except in a case contemplated in subsection (2), or <u>where it is in the interest of the Force that the member be immediately suspended</u>, the Inspector-General shall, at least seven days before suspension of a

> *member, conduct a hearing at which the member concerned shall be given an opportunity to make representations as to why he or she should not be suspended."*

(Emphasis is provided)

It is not in dispute that from August 24, when the fatal incident occurred, up to September 13, when the applicant was suspended, the period was twenty days. Mr Smuts, SC. submits that the applicant's suspension was not immediate, as it occurred 20 days after the tragic event. He goes on to say that the respondent misconstrued the subsection and that the misconstruction fundamentally vitiates his decision to suspend the applicant. He argues that, on a proper interpretation, the word "immediately" means that the respondent must act without delay, instantly, or forthwith, not 20 days later; otherwise he must accord a hearing to the person concerned. The section, he asserts, must be properly interpreted as failure to do so results in a denial of the affected person's fundamental right to be heard. According to him, to suspend "immediately" means you suspend someone because you haven't got the time for a hearing, it being in the interest of the Force and the exigencies of the moment that you must suspend right away. He refers to the New English Oxford Dictionary which shows that the word "immediate" means: "present, nearest in time, most urgent, without delay, done at once". He gives an illustration of 100 police officers going on strike, in which case action needs to be taken immediately to suspend them in the interest of the Force, in terms of the section. He claims that suspension of a police officer

without giving him or her a hearing is a drastic power which must be invoked in exceptional circumstances, such as those contemplated in subsections (2) and (3) of section 23.

Acting on behalf of the respondent, Mr Marcus contends that the applicant's suspension was imposed "immediately", that is, as soon as the respondent had received Commissioner Mootseng's report, since he needed to be apprised of the facts (after relevant evidence had been gathered) before he could suspend the applicant. He submits that the expression "in the interest of the Force" has not been defined but that it must be determined with regard to the functions of the police, that is: to protect life and property and to maintain law and order in accordance with the Constitution and the Act. Mr Marcus further submits that it is clear from the papers that the respondent did act within the requirements of section 23(3); that September 6 was set as a deadline to facilitate the gathering of facts; and that the period of 20 days is thus adequately explained.

After hearing Mr Smuts, SC. and Mr Marcus, to both of whom I am indebted for their industry and assistance in the matter, and having regard to the papers filed, with particular reference to the interpretation of the provisions of section 23(3) of the Act, as amended, I am inclined to accept the argument advanced by Mr Smuts, SC. I agree that the term "immediately" in subsection (3) means what is says in its ordinary or literal meaning. In other

words, the golden or general rule of construction applies. I quote with approval what Joubert, JA., said in A*dampol (Pty) Ltd v Administrator, Transvaal* 1989(3) SA 800 at 804A-C:

> *"The plain meaning of the language in a statute is the safest guide to follow in construing a statute. According to the golden or general rule of construction, the words of a statute must be given their ordinary, literal and grammatical meaning and if by so doing it is ascertained that the words are clear and unambiguous, then effect should be given to their ordinary meaning unless it is apparent that such a literal construction falls within one of the exceptional cases in which it would be permissible for a court of law to depart from such a literal construction, e.g. where it leads to a manifest absurdity, inconsistency, hardship or a result contrary to the legislative intent. See: Venter v Rex 1907 TS 811 at 813-814; Shenker v The Master and Another 1936 AD 136 at 142; Ebrahim v Minister of the Interior 1977(1) SA 665 (A) at 678A-G."*

See also: *Paxton v Namib Rand Trails (Pty) Ltd* NLLP 1998(1) 105 NLC at 107; and *S v Russel* 1999 NR 39 at 43F-G.

According to the Shorter Oxford English Dictionary, Vol. 1, 3rd ed. at 1025, the term "immediately" means, *inter alia:*

> *"closely, without any delay, instantly, in an immediate way, directly with no person, thing, or distance intervening in time, space, order or succession; the principle of immediate action."*

And the Collins Wordfinder, 1998 ed., offers the following and more extensive definition of the term, at 479:

> *"at once, --- directly, forthwith, instantly, now on the nail, post haste, promptly,---right away, right now, straight away, this instant, this very minute,---unhesitatingly, without delay, without hesitation, at first hand, closely, directly --"*

It follows in this case that, in order to bring himself within the purview of the exception under section 23(3), the respondent was required to suspend the applicant "promptly", "without delay", "forthwith", "at once", et cetera. Although

the word "immediately" connotes a sense of urgency, it is possible that a lapse of a day or two might, in certain circumstances, be considered to fall within the definition of "immediately", but certainly not a period of 20 days! If there is time for the Inspector-General to wait that long (20 days) in order to carry out preliminary investigations or further investigations, then there should be time enough to conduct a hearing at which the member affected should be accorded an opportunity to make representations as to why he or she should not be suspended. To suggest that the term "immediately" means "as soon as possible" is to place an undue strain on the meaning thereof.

With regard to the phrase: "in the interest of the Force", I am not aware of any judicial definition that has been assigned thereto. I do, however, find that an attempt at definition by Mr Marcus is too general and, therefore, unsatisfactory. Be that as is may, and, although an attempt at such a

definition is not easy, it is within the realm of possibility that what was in the contemplation of the law-giver was perhaps an occurrence of something so weighty or breathtaking as to give rise to: a very serious, an emergency or an emergency-like, situation that necessitates the taking of drastic or emergency measures, such as an immediate suspension from office, with no right of hearing beforehand, in terms of the exception contained in section 23(3) of the Act. An example of such occurrence could be a mutiny or a strike, or where it is/was, for one reason or another, impractical to afford the person concerned a hearing beforehand.

Mr Smuts, SC., is quite right when he contends that section 23(3) sets out a general rule as well as one exception thereto; the other exception - the first one of the two - being found in subsection (2). Obviously, the general rule is:

> *"[T]hat the Inspector-General shall at least seven days before suspension of a member, conduct a hearing at which the member concerned shall be given an opportunity to make representations as to why he or she should not be suspended."*

The general rule is thus the benchmark which serves to highlight the significance of the *audi alteram partem* rule ("hear the other side", that is, the right to be heard).

The second exception is embodied within subsection (3), to wit:

> "---where it is in the interest of the Force that the member be immediately suspended".

(Emphasis is provided)

These are the two exceptions that justify the invocation of the drastic measure previously referred to, with the attendant devastating effect upon the officer concerned, as the legislature expressly intended to exclude the operation of the *audi alteram partem* rule before a suspension can take place, pending disciplinary proceedings in terms of section 18 of the Act at which such officer would then be provided with a full opportunity to be heard in this regard. Hence, a decision to suspend, in pursuance of any of the two exceptions, does not involve the obligation to firstly hear the person affected before the suspension can be ordered. In contrast, however, an officer who is considered eligible for suspension under the general rule enjoys the right to be heard before a decision to suspend him or her can be made. Once a decision to suspend a member of the Force is made under the general rule, such suspension, like a suspension made in pursuance of any of the exceptions aforesaid, will be operative pending the institution of disciplinary proceedings against him or her in terms of section 18 of the Act.

What the Cape Provincial Division said in *Muller and Others' v Chairman Ministers' Council, House of Representatives and Others 1992(2) SA 508 (C), is* salutary. This is what it said at 516H-I:

> *"Now the correct approach to the question whether the audi rule applies in a statutory context is this. When the statute empowers a public body or official to give a decision prejudicially affecting an individual in his liberty, property, existing rights or legitimate expectations, he has the right to be heard before the decision is taken unless the statute expressly or impliedly indicates the contrary: Administrator, Transvaal and Others v Traub and Others 1989(4) SA 731 at 748G---"*

See also: *Gerrit Johannes Viljoen and Jacomina Hendrina Viljoen v Inspector-General of the Namibian Police,* Case No. (P) A 280/2003 (unreported – delivered on 14 December 2004).

It follows that, in the instant case, the *audi alteram partem* rule ought to have been observed by the respondent before the applicant could be suspended, as failure to do so was/is fatal.

The fact that the Avid inquiry proceedings excited much interest in the public domain and thus assumed high profile proportions did not of necessity bring the circumstances surrounding the late Mr Kandara's death within the ambit of the exception contained in section 23(3) of the Act to justify the respondent's exercise of drastic or exceptional powers against the applicant *(inter alios).*

Finally, I come to a consideration of the requisites of an interim interdict, the classic formulation of which is settled law. It is here appropriate to make

reference to what the Appellate Division said in *Hix Networking Technologies v System Publishers (Pty) Ltd and Another* 1997(1) SA 391 at 398H-J – 399A, namely:

> "The legal principles governing interim interdicts in this country are well known. They can be briefly stated. The requisites are:
>
> *(a) a prima facie right;*
> *(b) a well-grounded apprehension of irreparable harm if the relief is not granted;*
> *(c) that the balance of convenience favours the granting of an interim interdict; and*
> *(d) that the applicant has no other satisfactory remedy.*
>
> "To these must be added the fact that the remedy is a discretionary remedy and that the court has a wide discretion."

See also: Prest. The Law & Practice of Interdicts, 1996 ed. at 50-51.

In considering the requisites of an interim interdict, I do not deem it necessary in this matter to deal with such requisites in great detail.

Starting with the first requisite, it suffices to say that, as it is apparent that the respondent's decision to suspend the applicant, thereby denying the latter's fundamental right to a hearing, was influenced by a misconstruction of section 23(3) of the Act, the said decision was patently fatal. Consequently, the applicant enjoys good prospects of success on review in

this regard. It goes without saying that a *prima facie* right has at least been established.

The next requisite requires the applicant to show a well-grounded apprehension of irreparable harm if the relief sought is not granted. Here, the applicant's averments point, *inter alia,* to the prejudice occasioned by the suspension, including the stigma thereof, that cannot be assuaged even if the applicant were ultimately vindicated at the disciplinary hearing and restored to office. See: the *Muller's case, supra*, at 522H. It seems to me that this requisite too has been made out.

Coming to the third requisite, it is apposite to quote what was said in *Bandle Investments (Pty) Ltd v Registrar of Deeds and Others, supra,* at 215I-216A:

> *"In considering the balance of convenience, it behoves me to take cognisance of the fact that the refusal of the relief sought will cause the loss of the right, whilst granting the relief will cause the further respondents no loss whatsoever. In fact if the right lapses, it reverts to the third respondent who thereby acquires an extremely valuable right. What should be avoided is the possibility of doing an injustice. It is apposite in this context to refer to the remarks of Hoffman, J. in the English case of Film Rover International Ltd and Others v Cannon Film Sales Ltd (1986) 3 All ER 772 (Ch) at 780 – 1, where he stated:*
>
> *'The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sence of granting*

> *an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.'*
>
> *There is furthermore no question that the applicant has no other remedy. I am therefore satisfied that neither authority nor principle precludes me from granting the relief sought by the applicant."*

As previously shown in this judgment, when I was considering the issue of a *prima facie* right, the applicant has, in my view, good prospects of success on review. In any event, it is clear to me that the balance of convenience does favour the applicant.

The last requisite is that the applicant has no other satisfactory remedy. Faced with the apparent invalidity of his suspension, with the attendant devastating effect upon the applicant and his family, I think that the relief now sought would be more satisfactory to the applicant than any other remedy, in the sense of redeeming his *status quo* forthwith. Hence, this requisite has also been met by the applicant.

Having given much thought to this matter, and conscious that the respondent's decision to suspend the applicant is, to all intents and

purposes, nothing less than an empty shell, there is nothing that precludes me from exercising my discretion in favour of the applicant.

In the circumstances, I am satisfied that the case for the interim relief has been established. Accordingly, the application is granted in terms of paragraphs (a), (b), (c) and (d) of the notice of motion, including the costs of one counsel.

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SILUNGWE, J.

ON BEHALF OF THE APPLICANT: **Adv. D. F. Smuts, SC**

Instructed By: **Sisa Namandje & Co.**

ON BEHALF OF THE RESPONDENT: **Mr N. Marcus**

Assisted by Ms U. Katjipuka-Sibolile

Instructed By: **Government Attorney**