

A Critical Analysis of the Dismissal of Public Officials for Breach of Fiduciary Duties

Konanani Happy Raligilia and Kola O. Odeku

School of Law, Faculty of Management and Law, University of Limpopo, South Africa

KEYWORDS Public Office Bearers. Fiduciary Relationship. Breach of Trust and Confidence. Workplace

ABSTRACT In the employment sphere, misconduct is an all-embracing term. This paper examines acts arising from the conduct of the public officials which have a negative effect on the business of the employer or employment discipline which may result to the breach of fiduciary duties. The misconduct might result to breakdown of trust and confidence by the employer especially when the employee fails to exercise due care in performing the duty. In South Africa, the deployment of cadre to public offices has been vehemently criticised because of the misconducts being perpetrated by the deployees. This paper examines some misconducts of the public officials especially senior public office bearers in virtually all spheres of government in South Africa and how they have impacted on their performances. The paper also analyses core obligation of mutual trust and confidence as they relate to the functioning and regulation of public officials in discharge of their duties to the public and the country.

INTRODUCTION

Termination of the employment of public officials in the workplace presents a number of interesting issues (Weiler 1990). Public officials are people who have been entrusted with the responsibilities to implementing government policies and deliver good services to the citizens in their different departments (Gray and Jenkins 1988). As senior government officials and public office bearers, they are expected to be above board in all their dealings by not compromising their positions in whatever way (Kuye and Mafunisa 2003). Barzelay and Armajani (1992) indicate that “*universal rules embodying the merit principle was expected to assure that government officials would act competently on behalf of the public interest.*” Incompetency manifesting in whatever form is tantamount to breach of fiduciary duty and misconduct (Pacheco 2012). It is also an admission on the part of the public officials as not fit and proper for the job. There are consequences for this in South Africa (Rose-Ackerman 1999).

South African courts and other courts from different jurisdictions have had the opportunities to adjudicate on the issues surrounding the

breach of fiduciary relationships of public officials in the workplaces (Ruggie 2008). In South Africa, the Courts have invoked the provisions of the constitution and in particular, the relevant labour legislation to bring to justice erring public officials for breach of fiduciary duties, mutual trust and confidence bestowed on them as exemplified in the policies and laws (Rotman 2011). It is therefore incumbent on senior public officials to, from time to time, conduct self evaluation regarding whether they are meeting the standards sets by the employers (Vedung 2008). To this end, response and opinion of a third party will be a useful tool that can be used to conduct such assessment and evaluation (Ammons 2012). If the public are satisfied with the services they are getting, this will be an indication of good performance (Hatry 2006). However, if it is the contrary, this will reveal inefficiency, betrayal of mutual trust and confidence and more importantly, the breach of the fiduciary relationship. Undoubtedly, the distinct aspect of the jobs of public officials relates to a degree of professionalism and expertise of an extremely high standard and as such, the slightest deviation from that high benchmark will attract consequences of a grave magnitude which might, if sufficient evidence is produced, result to an outright dismissal from the workplace (Kearns 2013). This paper is written against the backdrop of the gradual decline of public trust in the public officials either hired or deployed by the South African government at various levels. This paper therefore argues that there is need to put

Address for correspondence:
Kola O. Odeku
School of Law,
Faculty of Management and Law,
University of Limpopo,
South Africa
E-mail: kooacademics@gmail.com

people who can be trusted to do the job, those that have credible and requisite qualifications to do public jobs as opposed to people without requisite qualifications and expertise being deployed to public institutions and parastatals to do demanding and skilled jobs (Barrow and Mosley 2011).

METHODOLOGY

The methodology for this paper is qualitative research approach. The study used elaborately, contemporary literature relevant to the problem identified, the aim and objective of the study. Other relevant statutory, legislative and policy frameworks were also thoroughly examined, analysed and applied to solve the problem of breach of trust, fiduciary obligations and confidence by public officials in the workplace.

Objective

The objective of this paper is to explain how people who have been put in positions of trust and confidence by the government have been misbehaving and manifesting various acts of misconducts and maladministration in the course of performing their jobs and this is impacting negatively on the citizens service-receivers. The paper also highlights breach of trust and fiduciary duties by public officials to the employers which are rooted in numerous compromises, corruptions, nepotism, disloyalty and meeting of self-interest. The paper points out the consequences and impacts of these breaches on the employers and the citizens.

Literature Review

The discussion around the issues of fiduciary duty are dynamic in nature and cuts through other related principles such as trust, confidence, loyalty, good conduct and so on (O'Connor 1992). The dynamic nature of fiduciary duty is put this way by Hawley et al. (2011) thus *"fiduciary duty is grounded on a relatively stable set of legal principles that have survived for centuries. However, interpretation of fiduciary principles can be quite dynamic. We are again at an inflection point, where our understanding and appreciation of fiduciary duty is evolving rapidly."*

Therefore, the principle of fiduciary duty cuts across boundaries in virtually all employer and

employee relationships (Smith 2002). In governance, it is applicable to all public office holders whether in senior or junior positions but more responsibility and accountability are required from top and most senior public servants in all spheres of government (Fernando 2009). Mulgan (1997) writes *"there is sameness to writing on public accountability which does not always do justice to the subject. With responsibility and accountability conflated ..., ministers constantly appear irresponsible. Yet a more complex account of public accountability is possible, one which acknowledges that no single institution can undertake the important work of ensuring accountability from ministers, the parliament and public servants."*

It also applies to political cadre deployed to the various sectors of the government. These deployees are also bound by the principles irrespective of their party affiliation or loyalty. It is against this backdrop that Barzelay and Armanjani (1992: 3) admonished as follow *"imagine how government would work if almost every operating decision including the hiring and firing of individuals were made on partisan political grounds."*

The loyalty to the job should supersede and reign supreme at all-time over the loyalty to the political party. It should be pointed out that there is nothing wrong with deployments but the deployee should be able to abide by the policy and law governing and regulating where he or she was deployed (Tyler 2001). Anything done contrary to this will amount to breach of fiduciary duty of that sector the workplace.

According to Onselen (2012), *"cadre deployment can best be described as the appointment by government, at the behest of the governing party, of a party-political loyalist to an institution or body, independent or otherwise, as a means of circumventing public reporting lines and bringing that institution under the control of the party, as opposed to the state."* In the same vein, Kanyane (2012) indicates that *"the African National Congress Party (ANC's) policy of cadre deployment is adversely affecting public services mainly because the politically connected incompetent and unqualified people are unable to deliver services efficiently and effectively."* The insights provided by these authors clearly show that there is lack of accountability on the part of the deployees just because they are well connected to the ruling party. This

notwithstanding, being connected will not exonerate any erring deployed public officials from facing the consequences of breach of fiduciary duty if misconduct is alleged and proved. Competence, requisite skills, ethical standards and so on are some of the things that a public official should possess in order to discharge the responsibility of the office. This is supported by Kenyane (2012) where the view was expressed that “*competency and ethical standards are critical for an effective public service.*” The reality in most of the government departments is that there are massive misconducts, unethical conducts and so on being perpetrated by these officials with impunity.

A consideration of how to make erring public official accountable (by dismissal) may be analysed from the common law perspective (Lowe 2011). Pursuant to this, it will be proper to first highlight the classical background of the common law duty of trust and confidence in the employment relationship.

To consider whether misconduct had been perpetrated, there is a need to look at this vis-à-vis the nature of the individual employment relationship recognised under the common law principles (Hill 2004). This is pertinent because common law is still crucial as the principles governing the individual employment relationship are derived from common law despite legislative inroads into employment relationships (Weiler 1990). Grogan (1993) asserts that “*the contract of employment constitutes the foundation upon which the employment relationship is predicated.*” To some extent, this view is a true reflection of the employment relationship; however, such relationship must derive its validity from the Constitution and the enabling labour law and legislation (Rousseau and Tijoriwala 1999).

Although Grogan (1993: 2-3) asserted that “*the common law contract of employment remains the basis of the employment relationship in the sense that the legal relationship between the employer and the employee is created by it,*” Jordaan (1990) argued that “at some stage in the history of its development, the contract of employment probably reflected reality with a reasonable measure of accuracy. It no longer does so and its continued survival can only be explained in terms of its being a figment of the legal mind.”

Indeed, the common law, according to Rycroft and Jordaan (1992) treat the contract of

employment as “*a species of the contract of letting and hiring. More particularly, it is treated as a contract of letting, by an employee, of his labour potential to the employer.*”

However, Brassey (1990: 893) points out that “*Judges and scholars on labour law have found it extremely difficult to define a contract of employment. This is understandable as that which needs to be defined in legal terms is a social relationship.*” Brassey (1990: 920) explains the complex nature of the employment relationship and the problems that are being encountered in determining the existence of such a relationship as follows:

“*Employment is a complex and multifaceted social relationship; its forms are protean, and its existence must be viewed by a process whose application goes unremarked in most other branches of the law, the process of assessing all the relevant facts.*”

The following definition by Du Plessis et al. (1998: 7) is in accordance with the views held by most South African writers on what constitutes a contract of employment:

“*[a] contract of employment ... [s] an agreement in terms of which one party (the employee) agrees to make his personal services available to the other party (the employer) under the latter's supervision and authority in return for remuneration.*”

It is important to distinguish between the lawful termination of an employment contract and the fair termination of an employment contract (Rousseau and Aquino 1993). If the termination is in accordance with the contract, the termination is lawful. If not, it will be a breach of the contract and thus renders such termination unlawful (Burton 1980).

Fouche (2003) contended that the common law does not concern itself with the reason for the termination of the employment contract, as long as the contractual and statutory provisions relating to notice have been complied with, the requirements of the common law are satisfied and the termination is regarded as lawful. In the case of Sidumo and another v Rustenburg Platinum Mines Ltd and others [2007] 12 BLLR 1097 (CC) at paragraphs 78 to 79, the court held that the concept of fairness originates from the Labour Relations Act of 1995 (LRA) and the terms thereof and explicitly prescribes that a dismissal must be fair in all respects whenever it is applied as sanction against an employee (Summers 1976).

Against this backdrop, even if a public official is in breach of fiduciary duty, there is still the need to follow the due process and procedure before dismissal (Brown 1970). It is pertinent to mention that sometimes a dismissal is lawful, it does not necessarily follow that such a dismissal is fair (Perritt 1989). Therefore the dismissal of the public officials must comply with certain substantive and procedural requirements (Bellace 1982).

BASIC VALUES AND PRINCIPLES GOVERNING CONDUCTS OF PUBLIC OFFICIALS

Section 195 of the South African constitution clearly articulates the standards of professionalism and expertise expected to be possessed by any public official and more importantly senior public officials in all sphere of government institutions. Section 195(1) asserts that *"a high standard of professional ethics must be promoted and maintained. Efficient, economic and effective use of resources must be promoted. Services must be provided impartially, fairly, equitably and without bias. People's needs must be responded to. Public administration must be accountable."* The implication of these is that a public official is expected to perform and ensure the implementation of the provision of sections 195 and 195(1). These sections call for good administration and accountability. Failure to administer as prescribed or omission to act will render the erring official to account. If the erring official is unable to perform his or her duties and fails to account, this might lead to disciplinary process and if found guilty could be dismissed for any of these; for maladministration, incompetency, unethical behaviour, corruption and so on depending on the charges.

In the report, the Public Protector outlined the significance of section 195 from the perspectives of the recent decision of the Constitutional Court in the matter of Khumalo and Another versus the MEC of Education in KwaZulu-Natal that:

"Section 195 provides for a number of important values to guide decision-makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if

need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1)(f) and (g) and the requirement of a high standard of professional ethics in section 195(1)(a). These provisions found not only standing in a public functionary who seeks to review through a court process a decision of its own department, but indeed they found an obligation to act to correct the unlawfulness, within the boundaries of the law and the interests of justice. Public functionaries, as the arms of the state, are further vested with the responsibility, in terms of section 7(2) of the Constitution, to "respect, protect, promote and fulfill the rights in the Bill of Rights." As bearers of this duty, and in performing their functions in the public interest, public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it." (Madonsela 2014)

The recently released report on Nkandla private home of the President of the Republic of South Africa, Jacob Zuma reveals how public officials who have been entrusted with state resources mismanaged tax payers' money through compromises, corruption, improper conducts and maladministration (Madonsela 2014). The report revealed that section 195 was transgressed by most of the public officials and government institutions that were entrusted with installing security devices in the President's private home-stead. The Public protector indicted majority of the public officials and even, the President and concluded that their actions amounted to misconducts which call for disciplinary actions to be taken against all the persons indicted. The Public Protector pointed out that *"incidentally, if the state had heeded its duty from 2009 when the media broke the story on the Nkandla Project, it would have saved the citizens who invested trust and taxes in the public administration millions of rand"* (Madonsela 2014). Because of this wilful and intentional acts and omissions on the parts of all the role players in the Nkandla saga, there is need for accountability and those found guilty to be accordingly dismissed apart from other measures or sanctions that have been recommended in the report. The office of the Public Protector has intervened as required by the Constitution and its findings are in line with the observation of Bar-

zelay and Armajani (1992: 3) thus “*if many agencies spent their entire annual appropriation in the first three months of fiscal year, if appropriations were made to agencies without anyone having formulated a spending and revenue budget for the jurisdiction as a whole; and if no agency or person in the executive branch had authority to oversee the activities of government agencies.*”

THE DISMISSAL OF SENIOR PUBLIC OFFICIALS

The South African Public Enterprises Minister, Malusi Gigaba stated that cadre deployment to parastatal boards is acceptable if the individuals concerned are skilled for the position (Gigaba 2013). The underlying words are skilled for the position. However, most of the deployees are unskilled for the positions they have been deployed and the manifestation of this is the poor services and various compromises being exhibited as deployees in various positions in the government sectors (Modisha 2013). If found wanting for breach of fiduciary duty, the principles of fiduciary duty will call the erring official to render account (Rosen 1963). The House of Lords observed in the case of *R v Secretary of State ex parte Council of Civil Service Unions* 1985] AC 374 that in the interests of national security, a public official might be obliged to give up union membership or face dismissal. In the New Zealand case of *Deynzer v Campbell* (1950) New Zealand Law Report, 790 the position was explained as follows, “*a servant owes a duty of loyalty to his employer’s interests and if he develops opinions or associations, whether political or otherwise, which do or might endanger the interests of his employer then he cannot complain if his employer take steps by way of dismissal or transfer to other work so as to abate the danger, [especially where] the department in which the plaintiff was employed is one in which the loyalty and discretion of its components cannot be in doubt.*”

The issue of irremediable breach of trust in the upper echelons of the public service came for consideration in the case of *Masetlha v President of RSA and another* 2008 (1) 566 (CC). In the case, the President had first suspended and later terminated Masetlha’s employment as Head and Director-General (D-G) of the National Intelligence Agency. The was a fallout between the

most senior public officials, the President and the Minister of Intelligence concerned in the so-called “Macozoma affair” which broke into the public domain (*Masetlha v President of RSA and another* at paragraphs 9-16). In making the decision, the President asserted that the relationship of trust between him, as head of state, the national executive, and the Head and D-G of the National Intelligence Agency (NIA), had disintegrated irreparably. The public official then launched legal proceedings before the High Court and later the Constitutional Court seeking reinstatement to his previous position. The respondent opposed application. While finding in favour of the appellant in so far as unlawful termination of his contract, Moseneke DCK writing for the majority declined to re-instatement (*Masetlha v President of RSA and another* at paragraph 98) and held that: “*this is so because it would not be proper to foist upon the President a Director-General of an important intelligence agency he does not trust. Nor would the public interest be served by a head of an intelligence service who says that he has lost trust and respect for his principals, being President and the Minister.*”

A complete trust between the President and the head of the NIA is essential. Otherwise, the security of the country may be compromised. Trust is thereof fundamental to the relationship between the President and the head of NIA.

Ngcobo J subscribed to the views of Moseneke J in the case of *Masetlha v President of RSA and another* at para 17. (as he then was) who commented thus at paragraph 17: “*regrettably, on the record before us, the relationship between the President and the applicant has deteriorated at least since the “Macozoma affair” broke out. One need only have regard to the allegations and counter allegations made in the papers. The subjective views of the President on the state of the relationship between him and the applicant bear testimony to this. The applicant, while accepting that the relationship between him and the President has deteriorated nevertheless believes it may still be repaired. This implicit acknowledgement of the breakdown in the relationship by the applicant serves to confirm the state of the relationship. Viewed objectively therefore the relationship of trust between the applicant and the President, which is fundamental to the relationship between the head of the NIA and the*

President, has dropped to its lowest ebb. And in my view, it has broken irreparably. It is not necessary to consider who is responsible for this breakdown. It is sufficient to hold that, viewed objectively; the relationship has indeed broken down."

This case implies that the deployment of senior members of the ruling party, the African National Congress (ANC) as public officials in government did not immune the deployee from being dismissed on the bases of the breach of trust and confidence.

THE SIGNIFICANCE OF DUTY OF COOPERATION

The duty of cooperation derived from a single important case of Secretary of State for Employment v Aslef [1972] ICR 19. The issue here was whether a work to rule by employees of British Rail constituted a breach of contract. The work to rule operated here involved minute observance of the British Rail rule book with the intention of throwing the entire railway system into chaos. The men insisted that they could not possibly be breaking their contracts merely by observing their strict terms. Lord Denning, however, identified a breach if the employee, with others take steps willfully to disrupt the undertaking, to produce chaos so that it will not run as it should, then each one who is a party to those steps is guilty of a breach of contract'. He gave 'a homely instance of what he had in mind as a breach at paragraph 18: "*suppose I employ a man to drive me to the station. I know there is sufficient time, so that I do not tell him to hurry. He drives me at a slower speed than he need, with the deliberate object of making me lose the train, and I do lose it. He may say that he has performed the letter of the contract; he has driven me to the station; but he has wilfully made me lose the train, and that is a breach of contract beyond all doubt.*"

However, Lord Denning disapproved of the term suggested by Donaldson at first instance that the employee should actively assist the employer to operate his organisation. It was going too far to suggest 'a duty to behave fairly to his employer and do a fair day's work.

Every public official owes a duty of good faith and trust to his employer, which involves an obligation not to work against his employer's interests (Lee 2006). This duty is automatically a

consequence of any employment, and exists even if it does not expressly form part of the employment contract (Johnston 2005). It is not even regarded as an implied term of the contract, but an integral part of that contract (Femi 2010). The Appellate Division affirmed the importance of trust and confidence in the employment contract in the following (Council for Scientific and Industrial Research v Fijen (1996) 17 ILJ 18 (A) at 26D-E) that, "*it is well established that the relationship between employer and employee is in essence one of trust and confidence and that, at common law, conduct clearly inconsistent therewith entitle the 'innocent party' to cancel the agreement ... It does seem to me that, in our law, it is not necessary to work the concept of an implied term. The duties referred to simply flow from naturalia contractus.*"

The governing principles are succinctly summarized by Hiemstra J quoting with approval the following passage from Rob v Green (1895) 2 QB 1: "*I have a very decided opinion that, in absence of any stipulation to the contrary, there is involved in every contract of service an implied obligation, call it by what name you will, on the servant that he shall perform his duty, especially in these essential respects, namely that he shall honestly and faithfully serve his master, that he shall not abuse his confidence in matters appertaining to his service, and that he shall, by all reasonable means in his power, protect his master's interest in respect of matters confined to him in the course of his service.*"

Perhaps, one of the most concise authoritative statements of which is generally encompassed by the duty of fidelity and good faith is to be found in Blyth Chemicals v Bushnell (1933) 49 CLR 66. In that case Dixon and McTiernan said at 81-82 that "*conduct which in respect of important matter is incompatible with the fulfilment of an employee's duty, or involves an opposition, or conflict between his interest and his duty to his employer, or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between employer and employee, is a ground of dismissal... But the conduct of the employee must itself involve incompatibility, conflict, or impediment, or be destructive of confidence. An actual repugnance between his acts and his relationship must be found. It is not enough that ground for uneasiness as to future conduct arises.*"

THE OBSERVANCE OF POLICIES BY EMPLOYERS

It can also be asserted with some certainty that the duty of mutual trust and confidence can assist in the construction of the contract of employment (Cabrelli 2005). For example, the employer's duty not to destroy mutual trust and confidence obliges an employer to honour any of its policies and procedures concerning treatment of employees which have been communicated to employees (McDermott 2009). This issue was considered in the case of *Denel (Pty) Ltd v Vorster* (2005) 4 BLLR 313 (SCA). This case involved an appeal which was confined to a claim for breach of contract. There was no dispute that the government parastatal Denel (employer) had proper substantive grounds for summarily terminating the respondent's employment. The public official's complaint was confined to the process that was adopted.

The procedures that had to be followed when disciplinary action was taken against an employee, and the identities of the persons who were authorised to take such disciplinary action, were circumscribed in the employer's disciplinary code (Modise 2004). The terms of the disciplinary code were expressly incorporated in the conditions of employment of each employee with the result that they assumed contractual effect. They did not follow the prescribed procedure in the disciplinary code (Modise 2004).

Through the employer's disciplinary code as incorporated in the conditions of employment, the employer undertook to its employees that it would take a specific route before it terminated their employment and it was not open to the employer unilaterally to substitute something else.

If the new constitutional dispensation has the effect of introducing into the employment relationship a reciprocal duty to act fairly it does not follow that it deprives contractual terms of their effect (Landman 2004). Such implied duties would operate to ameliorate the effect of unfair term in the contract, or even to supplement the contractual terms where necessary, but not to deprive a fair contract of its legal effect. The procedure in the disciplinary in the matter was held to be unfair one and the employee was entitled to insist that the employer abide by its contractual undertaking to apply it (Bosch 2008).

It is therefore submitted that in the light of the fundamental right to fair labour practices, there is an implied reciprocal duty of fairness on the part of employer (England 2002). However this duty of fairness does not displace contractual terms which are fair and accordingly a party is entitled to rely on such terms (Ribstein 2004).

In Australia, the Federal Court of Australia in *Thomson v Orica Australia Ltd* (2002) 116 IR 186 case found that an employer had breached its duty of mutual trust and confidence by flouting its own policy for return to work after maternity. The court held that even if the policy was not incorporated into the employment contract, ignoring the policy signalled the employer's lack of regard for the employee and so constituted breach of mutual trust. In the same vein, in the case of *Dare v Hurley* [2005] FMCA 844. It was observed that an employer's best practice of human resources procedures manual had been ignored when the employee was summarily dismissed. The procedures manual provided that employees should be given warnings if they failed to meet certain performance standards, which were also set out in the manual. Ms Dare's letter of appointment required that she agree to be bound by these procedures, and although the letter did not expressly commit the employer to do likewise, it was held that the employment contract would be unworkable unless the obligation to observe the procedures manual was reciprocal. Driver FM noted that the employer had 'taken the trouble to become a quality endorsed business by Standards Australia' and that its proprietor, Mr Hurley, 'placed great store on following procedures' (*Dare v Hurley* [2005] FMCA 844 at paragraph 112). Of particular importance, it was held that it would be inconsistent with the mutual obligation of trust and confidence implied by law into all employment contracts if the employer were free to ignore the procedures that bound the employee (*Dare v Hurley* [2005] FMCA 844 at paragraph 121).

It appears that in Australia, breach of duty of mutual trust and confidence will not give rise to an entitlement to claim damages for hurt feelings, distress or humiliation upon termination of employment in a harsh and rude manner. The principle in *Addis v Gramophone Co Ltd* (1909) AC 488 stipulates that no damages flow from the manner of breach of a contract appears entrenched in Australian law (Godfrey 2003).

CONCLUSION

This paper highlights the importance of public officials, office bearers and those entrusted with public responsibilities to be above board in exercising and discharging their duties. Undoubtedly, governments institutions are the major employers of public officials. Sometimes the officials could be political deployees. No matter who was deployed, high professional standard is expected to perform the job. Compromises, corruptions, nepotisms, maladministration and incompetencies are all products of misconducts that could lead to outright dismissal if the official is found guilty of their fiduciary duty, trust and confidence.

RECOMMENDATIONS

It is recommended that even if the government in power wants to deploy members of the parties as cadres to work in a position of responsibility in any spheres of the government institutions, qualified persons who will be able to discharge the responsibility should be deployed. Senior public officials should act professionally and desist from compromises, corruption and nepotism as these are the sources of poor services delivery which are generating vicious protests in the country. Institutions that have been put in place should be strengthened in order not to be swayed or undermined by political office bearers. Notable pronouncement made by the Public protector to the effect that those who corruptively looted the public funds during the course of installing security devices to the President's house should return the money is welcome as a remedial sanction against the culprits.

REFERENCES

- Ammons DN 2012. *Municipal Benchmarks: Assessing Local Performance and Establishing Community Standards*. New York, USA: ME Sharpe Publishers.
- Barrow S, Mosley R 2011. *The Employer Brand: Bringing the Best of Brand Management to People at Work*. West Sussex, UK: John Wiley and Sons Ltd.
- Barzelay M, Armajani BJ 1992. *Breaking Through Bureaucracy: A New Vision for Managing In Government*. Oxford, UK: University of California Press.
- Bellace J R 1982. Right of Fair Dismissal: Enforcing a Statutory Guarantee. *University of Michigan Journal Law Reform*, 16: 207-308.
- Bosch C 2008. Bent out of shape?: critically assessing the application of the right to fair labour practices in developing South African labour law. *Stellenbosch Law Review*, 19(3): 374-389.
- Brassey M 1990. The nature of employment. *Industrial Law Journal*, 11: 889-897.
- Brown H 1970. Franchising a fiduciary relationship. *Texas Law Review*, 49: 650-661.
- Burton SJ 1980. Breach of contract and the common law duty to perform in good faith. *Harvard Law Review*, 94: 369-378.
- Cabrelli D 2005. The implied duty of mutual trust and confidence: An emerging overarching principle? *Industrial Law Journal*, 34(4): 284-307.
- Does Employer Self Interest Lie? From <<http://works.bepress.com/748ca51a-3269-44d8-a692-f6aec9e77e6e/>> (Retrieved on April 11, 2012).
- du Plessis JV, Fouchei MA, van Wyk MW 1998. *A Practical Guide to Labour Law*. Durban, South Africa: Butterworth Publishers.
- England G 2002. Recent developments in individual employment law: Tell me the old, old story. *Canadian Labour and Employment Law Journal*, 9: 43-52.
- Femi J 2010. Professional Ethics, Standards and Social Responsibility. From <http://works.bepress.com/joseph_adebisi/4> (Retrieved on December 4, 2013).
- Fernando AC 2009. *Corporate Governance: Principles, Policies and Practices*. Delhi, India: Dorling Kindersley (India), Pvt. Ltd.
- Fouche MA 2003. *Common Law Contract of Employment' in A Practical Guide to Labour Law*. Durban, South Africa: Butterworth Publishers.
- Gigaba M 2013. Deploying Skilled Cadres Acceptable. City Press Newspaper. From <<http://www.citypress.co.za/politics/deploying-skilled-cadres-acceptable-gigaba/>> (Retrieved on February 27, 2014).
- Godfrey K 2003. Contract of employment: Renaissance of the implied term of trust and confidence. *Australian Law Journal*, 77: 74-83.
- Gray A, Jenkins B 1988. Codes of Accountability in the New Public Sector. Home> Accounting, Auditing and Accountability. From <<http://www.emeraldinsight.com/journals.htm?articleid=869612&show=abstract>> Retrieve on February 4, 2012).
- Grogan JR 1993. *Basic Employment Law*. Johannesburg, South Africa: Juta and Co. Ltd.
- Hatry HP 2006. *Performance measurement: Getting results*. Washington, USA: The Urban Institute Press.
- Hill S 2004. Employment relations act and dependent contractors: A real relationship. *Auckland University Law Review*, 10: 143-152.
- James Hawley, Keith Johnson, Ed Waitzer 2011. Reclaiming fiduciary duty balance. *Rotman International Journal of Pension Management*, 4(2): 4-16.
- Johnston JF 2005. *Business and Religion: A Clash of Civilizations*. Salem, Canada: MandM Scrivener Press.
- Jordaan B 1990. Law of Contract and the Individual Employment Relationship. From <<http://heinonline.org/HOL/LandingPage?handle=hein.journals/>

- actj1990anddiv=9andid=andpage=> (Retrieved on July 4, 2012).
- Kanyane M 2012. Cadre Deployment a Serious Obstacle. From <<http://www.citypress.co.za/politics/cadre-deployment-a-serious-obstacle-hsrc-20120712/>> (Retrieved on February 15, 2014).
- Kearns 2013. Professional HR: Evidence-based People Management and Development. From <<http://google.co.za/books?hl=enandlr=andid=pni27uxfn1ecandoi=fndandpg=pp1anddq=>> (Retrieved on March 19, 2014).
- Kuye JO, Mafunisa MJ 2003. Responsibility, accountability and ethics: The case for public service leadership. *Journal of Public Administration*, 38(4): 421-437.
- Landman AA 2004. Fair labour practices-The Wiehahn legacy. *Industrial Law Journal*, 25: 805-902.
- Lee K 2006. Anti-Employer Blogging: Employee Breach of the Duty of Loyalty and the Procedure for Allowing Discovery of a Blogger's Identity before Service of Process is Effected. From <<https://litigation-essentials.lexisnexis.com/webcd/app?action=>> (Retrieved November 16, 2013).
- Lowe R 2011. *The Official History of the British Civil Service: Reforming the Civil Service, Volume I: The Fulton Years, 1966-81*. New York, USA: Routledge Publishers.
- Madonsela T 2014. Findings on Nkandla. From <<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=572596andsn=Detail.>> (Retrieved on 21 March, 2014).
- McDermott K 2009. The Significance of the Implied Mutual Duty of Trust and Confidence in the Employment Relationship. From <<http://arrow.dit.ie/aaschssldis.>> (Retrieved on July 16, 2012).
- Modise S 2004. Commission for conciliation and arbitration mail. From <<http://ccma.org.za>> (Retrieved on March 1, 2014).
- Modisha NJ 2013. The Role of Rural-Based Municipalities to Promote Socio-economic Development: The Case of Molemole and Blouberg Municipalities in Limpopo Province. From <<http://ul.netd.ac.za>> (Retrieved on March 6, 2014).
- Mulgan R 1997. The Processes of Public Accountability. *Australian Journal of Public Administration*, 56(1): 25-36.
- O'Connor MA 1992. How should we talk about fiduciary duty - directors' conflict-of-interest transactions and the ALI's principles of corporate governance. *George Washington Law Review*, 61: 954-967.
- Onselen G 2012. South African Political Dictionary: Cadre employment and cadre deployment. Inside Politics Organisation. From <<http://inside-politics.org/2012/08/30/south-african-political-dictionary-cadre-employment-and-cadre-deployment.>> (Retrieved on February 17, 2014).
- Pacheco S P 2012. Fiduciary litigation: Avoiding (or minimizing) the traps, tribulations, and trials. *Estate Planning and Community Property Law Journal*, 5: 95-106.
- Perritt HH 1989. The Future of Wrongful Dismissal Claims: Where Does Employer Self Interest Lie? From <<http://works.bepress.com/748CA51A-3269-44D8-A692-F6AEC9E77E6E/>> (Retrieved on April 11, 2012).
- Ribstein LE 2004. Fiduciary duties and limited partnership agreements. *Suffolk University Law Review*, 37: 927-938.
- Rose-Ackerman S 1999. *Corruption and Government: Causes, Consequences, and Reform*. Cambridge, UK: Cambridge University Press.
- Rosen SJ 1963. Fair Representation, contract breach and fiduciary obligations: Unions, union officials and the worker in collective bargaining. *Hastings Law Journal*, 15: 391-409.
- Rotman LI 2011. 91 Boston University Law Review, 921 (2011)
- Fiduciary Law's Holy Grail: Reconciling Theory and Practice in Fiduciary Jurisprudence. From <<http://heinonline.org/HOL/LandingPage?handle=hein.journals/bulr91anddiv=32andid=andpage=>> (Retrieved on October 10, 2012).
- Rousseau DM, Aquino KI 1993. Fairness and implied contract obligations in job terminations: The role of remedies, social accounts, and the procedural justice. *Human Performance*, 6(2): 135-149.
- Rousseau DM, Tijoriwala SA 1999. What's a good reason to change? Motivated reasoning and social accounts in promoting organizational change. *Journal of Applied Psychology*, 84(4): 514-528.
- Ruggie J 2008. Protect, respect and remedy: a framework for business and human rights. From <<http://www.mitpressjournals.org/doi/pdf/10.1162/itgg.2008.3.2.189.>> (Retrieved on June 4, 2012).
- Rycroft A, Jordaan B 1992. *A Guide to South African Labour Law*. Cape Town, South Africa: Juta and Co Ltd.
- Smith DG 2002. Critical resource theory of fiduciary duty. *Vanderbilt Law Review*, 55: 1399-1411.
- Summers SW 1976. Individual protection against unjust dismissal: Time for a statute. *Virginia Law Review*, 62(3): 481-532.
- Tyler TR 2001. Trust and law abidingness: A proactive model of social regulation. *Boston University Law Review*, 81: 361-372.
- Vedung E 2008. *Public policy and program evaluation*. New Jersey, USA: Transactions Publishers.
- Weiler PC 1990. Governing the Workplace: The Future of Labor and Employment Law. From <<http://books.google.co.za/books?hl=enandlr=a ndid=0z4owbw KOXACandoi=fndandpg=PA1andd=>> (Retrieved on February 6, 2012).