

Former Prasa employee ordered to pay damages for CV fraud

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In a recent case, *Passenger Rail Agency v Mr Daniel Mthimkhulu* the High Court ordered a former executive employee to pay his old employer an amount of approximately R5.7 million in damages for misrepresenting his qualifications.



Image source: Getty Images

On 1 April 2010, the Passenger Rail Agency South Africa (Prasa) appointed Daniel Mthimkhulu to the position of Executive Manager: Engineering. Prasa alleged that Mthimkhulu misrepresented to Prasa that he held a National Diploma and Bachelor's Degree in engineering from the Vaal University of Technology (VUT).

A few months into his employment with Prasa, Mthimkhulu misrepresented to Prasa that he had been awarded a doctorate by the Technische Universitat Munchen (a university in Germany). He also claimed that he had received a job offer for a position as an engineering services specialist at an annual salary of R2,800,000. In order to retain Mthimkhulu, Prasa increased Mthimkhulu's salary to match that of the alleged offer.

In July 2015, various media reports circulated around Mthimkhulu's qualifications and whether he actually possessed those qualifications. In light of such reports, Prasa conducted an internal investigation into Mthimkhulu's qualifications (and registration with the Engineering Council of South Africa). Prasa discovered that Mthimkhulu had misrepresented his qualifications. He did not hold any qualifications from VUT and/or the Technische Universitat Munchen. After following a disciplinary process, Prasa dismissed Mthimkhulu.

Delictual claim by Prasa

Prasa instituted a delictual claim for damages based on fraudulent misrepresentation against Mthimkhulu in the High Court. Prasa's claimed that it had suffered extensive patrimonial loss as a result of -

- Mthimkhulu falsely and expressly misrepresenting, in writing in his curriculum vitae, to Prasa prior to 31 March 2010 that he had a National Diploma and a Bachelor's degree from the VUT. Due to this misrepresentation, Prasa appointed Mthimkhulu to the position of Executive Manager: Engineering Services; and
- Mthimkhulu misrepresenting to Prasa prior to 14 September 2010 that he had been awarded a doctorate by the Technische Universitat Munchen and that he had received a job offer for a position as an engineering services specialist at an annual salary of R2,800,000. As a result Prasa then made a counter-offer which Mthimkhulu accepted resulting in him earning an annual salary of R2,800,000. Mthimkhulu's response was a denial of the allegations and his defence was that the allegations were an attempt by Prasa to destroy his career.

Misrepresentation by Mthimkhulu

After considering all of the evidence presented by both parties, the High Court was satisfied that all the elements of Prasa's delictual claim had been established. The High Court found that Prasa had proven, on a balance of probabilities, that Mthimkhulu presented fraudulent qualifications to Prasa. It was on this basis that Prasa appointed Mthimkhulu to the senior position which he occupied.

Damages awarded to employer

As a result, the High Court awarded damages to Prasa in an amount of approximately R5,771,854.39 which constituted the remuneration he received from Prasa as a result of his fraudulent misrepresentations.

The quantum of damages was determined by calculating the difference between Mthimkhulu's salary as at September 2010 and his monthly salary at the normal annual increases for his level.

Previous e-alert

This judgment follows the introduction of newly tabled legislation (under the National Qualifications Authority Amendment Act 12 of 2019) which provides that any person found to be misrepresenting their qualifications (or being dishonest about their educational background) could be liable for a fine or imprisonment for up to 5 years.

The judgment sets an important precedent in dealing with employees who misrepresent their qualifications to their employer and the remedies available to such an employer.

ABOUT THE AUTHOR

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