

Paul Ngobeni and related issues

Paul Ngobeni and his relationship with UCT received media attention over the period October 2007 to the present. Much of it has been negative for UCT. Inevitably, it has also been the subject of some debate on campus.

Paul Ngobeni, appointed as the Deputy Registrar in August 2007, has now (31 July 2009) departed from UCT in terms of a separation agreement reached. This followed a protracted, complicated disciplinary case that I believe was damaging to all parties involved. Council has appointed an ad-hoc committee to review the case and this committee will be reporting to Council in due course. Once it has done so I hope that we will be able to put the matter behind us.

I write on this now because:

- a) I feel it important to state my perspective on the case and my reasons for settling it in a particular way;
- b) I want to share my perspective on wider transformation issues that this case has apparently cast the spotlight on –and make suggestions on how to move forward.

In reflecting on the particular case, I share some information that would normally be private or confidential but I am only doing so with respect to information that has now already been in the public domain. Discussing the details of the case will serve very little purpose. I am, however, attempting to capture the essence of the case here in order to clear unnecessary misunderstandings and to highlight the complex dynamics of the issue.

The case was always going to attract attention as it involved several senior members of our staff. Some additional factors made this case a more complex one.

Allegation on USA matter and UCT error:

To start with – although it formed no part in the subsequent disciplinary case against Paul Ngobeni – we had to deal with the media attention around Paul Ngobeni's professional status in America. The media reported these as allegations of professional misconduct in his role as an attorney in Connecticut USA, as a result of which he had been suspended from practice in Connecticut, New York and Massachusetts. These charges were never proven and they were dropped in Connecticut after he resigned from the Connecticut bar and waived any future right to seek readmission to it. These facts were not known to UCT when Paul Ngobeni was appointed. Confronted with the public allegations, the UCT Council rightly raised concern about the substance of the allegations, about whether Paul Ngobeni ought to have told UCT about these matters at the time he was interviewed, and whether he had misrepresented his status as an admitted attorney in his application. The Council sought, and accepted, the independent legal advice that was given at the time, viz. that these matters had no bearing on his employment at UCT and that he was not obliged to reveal them if we did not specifically ask him about them. I believe UCT erred in not making it public at the time that we had cleared Paul Ngobeni of any suggestion that he misled the university. There can be no question that we should have done so.

The actual charges in the UCT disciplinary case:

The first charge brought against Paul Ngobeni was related to the fact that management believed a) that in the process of declaring his views in an article he had written, he had defamed certain colleagues in the Law Faculty and had subsequently refused to attempt to mend the working relationship and (b) that this had led to a serious breakdown in trust and an inability to perform his duties of providing legal services to the University which frequently required working with the same academic members in the Faculty of Law. Management believed that Paul Ngobeni had a responsibility to ensure working relationships that were enabling and productive. This raises the

complex issue as to how the right to express oneself balances with others' rights to be treated with respect and the intense complications this can bring in close working relations.

In relation to the second charge Paul Ngobeni and management differed on issues which related to Paul Ngobeni's behaviour towards Hugh Amoore, his supervisor. Mr Ngobeni argued that all negative behaviour on his part was due to his feeling unsupported, and even under attack, and ought to be understood in that light. By contrast, the management regarded his behaviour as unacceptable, no matter the circumstances, since it undermined relationships of trust and mutual respect, thereby detracting from his capacity to undertake the job for which he was employed.

Since the disciplinary case was annulled – I refer to this later - we have no independent judgement to rely on with respect to these charges. My sense is that an important discussion for the university community should be what constitutes 'respectful' behaviour and how we remain respectful even during intense disagreements and conflict situations.

The findings:

A factor that further complicated the case was that the findings and sanctions of the tribunal that heard the case were not conclusively in the favour of either of the parties i.e. Paul Ngobeni or the University. It is fair to say that there was some satisfaction for both parties, but probably even more frustration. The tribunal was divided in most of its findings and sanctions. The outcome posed a challenge, as it did not really resolve matters conclusively for either party. The dissatisfaction of both parties could have led to taking the case on appeal, which would have been a matter for the high court, and would probably have taken more than a year to conclude at great expense.

A complication:

Another factor – also not directly part of the disciplinary case but complicating the matter - was that Paul Ngobeni opted to discuss details of his own disciplinary case in the public media. He made strong attacks on UCT during and after the disciplinary case, as well as following the separation agreement – the latter being quite contrary to the terms of the agreement. My view has been that staff disciplinary cases are confidential because they are intended to deal with workplace issues that need resolution which, wherever possible, should not lead to termination, as the objective of staff discipline is corrective. Furthermore, it did not serve a fair process for either party to discuss allegations in public. UCT was committed to not refuting his allegations in public and we have remained silent for over a year on these matters despite the negative publicity. We were conscious that some may interpret our silence as embarrassment or unanswerable wrongdoing, but despite that we remained convinced that a public platform was not the way to resolve matters.

Another complication:

Yet another factor complicating matters was that the disciplinary case played out against a backdrop of Paul Ngobeni's public support for Judge Hlophe in the JSC OASIS matter, and more recently, his part in a public campaign for the appointment of Judge Hlophe as Chief Justice. A retired judge, a number of members of the bar and many UCT law professors took issue with the JSC decision regarding OASIS, and also argued that Judge Hlophe was not suitable for the Chief Justice position. Mr Ngobeni publicly linked his disciplinary process at UCT to what he claimed was a racist campaign by law professors to discredit Judge Hlophe.

It must be reiterated - the previous Vice-Chancellor has done so before - that the disciplinary case against Paul Ngobeni was not brought because of Paul Ngobeni's public support for Judge Hlophe. Paul Ngobeni was free to support whom he wanted and to express this to whomever he wanted.

Other UCT members who felt differently about the Judge President's fitness to be judge president were equally free to express their views. This is, after all, what a university should be good at: acknowledging and exploring opposing views. Everyone at UCT, whether administrative or academic staff, enjoys all the rights to freedom of speech that all citizens enjoy, as protected by the Constitution. The fact that they disagree vehemently with other members of UCT, or with their more senior colleagues, or with me, should in no way diminish or detract from their rights. I am committed to protecting this right for all members of the UCT community and I believe absolutely in the concept of an 'argumentative' university. It is our role – and indeed a primary responsibility – to actively participate and lead public debates.

The settlement

All the above influenced my decision to settle a separation agreement between Paul Ngobeni and UCT. I am convinced that this was in UCT's interest but also in the interest of those involved.

In order to reach a settlement agreement, I annulled the disciplinary case. This means that the charges and findings by the tribunal were nullified. It will therefore not appear on Paul Ngobeni's record. No party can claim 'victory' or assume to having been in the right, and no allegation was either proved or disproved. In a sense, the settlement boils down to the parties' agreeing to disagree about what had really occurred, and to put the matters behind us. Of course, an agreement – even including annulment - does not necessarily remove the psychological experience for those involved. I acknowledge that for both Hugh Amoore and Paul Ngobeni, and for the Law Faculty members involved, this experience has been difficult.

The process:

A last factor that bedevilled the case is probably summed up at best as an issue of "process". Simply put, we should have been able to find solutions to the issues more speedily and perhaps with more direct interventions. It was this process issue for which I apologised to Hugh Amoore and Paul Ngobeni. As a broader initiative we must interrogate our selection processes, our induction processes, support systems available during times of conflict and the disciplinary processes themselves.

I trust that the above has provided some perspective on this particular case. We have learnt lessons and the Council ad hoc committee will, no doubt, also guide us to make improvements in how we handle such situations.

The Wider Transformation Issues

In considering wider transformation issues I recognise that this case is seen by some as reflective of issues relating to race, institutional climate and transformation at UCT. I believe that our work experiences are profoundly affected by our sense of self, and with that, personal and social experiences of inequality and difference that have been deeply imprinted in this country's history. I think we should also accept that UCT has a long way to go fully to understand these issues and to begin to free ourselves from the baggage of this past. We need to acknowledge our history, without becoming its victims. I am struck by discussions with some black staff in particular, but also others, on the often negative experience of the work environment. Some report feeling unsupported, feeling a sense that they are regarded as 'not up to the job', sometimes not taken seriously, sometimes discriminated against. These are extremely serious matters. It is time we interrogated how widely felt this is and what we can do about it.

I therefore propose the following:

- a) *I am proposing a workshop for the senior leadership group where we will interrogate the information we have from the institutional culture survey and other sources and prepare our own framework for making a difference in each of our sections. In many cases I anticipate this will lead to workshops within departments to address this issue specifically. I am asking Prof Crain Soudien to lead this and to deliver a report that spells out the patterns of experiences of UCT employees and ways in which different organisational units are dealing with this.*
- b) *I will propose a plan to institutionalise a 360 degree feedback system for all senior managers and deans that annually tests, in a confidential way, how staff in their units are feeling about the inclusiveness and openness of the institutional culture in their units.*
- c) *I believe we share a common commitment to promoting open debate and that we all recognise that the space for genuine discussion is likely to be closed down if people fear being labelled racist for expressing certain views, just as the space also gets closed down by the fear that one may be labelled 'difficult' or a 'trouble maker' for raising concerns that challenge mainstream practice and culture. We all need to become more self aware of such debate-limiting behaviour, and we need the courage to highlight such behaviour in others in sensitive ways, usually by confidentially raising with the party concerned how their behaviour makes us feel. I am asking each individual member of UCT to help our community implement an acceptable code of behaviour particularly when we differ from one another. We all need to take responsibility for promoting a culture of debate that avoids insulting opponents and rather focuses on the substance of the argument. And when we do encounter incidents of real or perceived discrimination or racism that cannot be resolved directly with the person concerned, I would urge you to use the structures we have put in place specifically for this purpose, such as DISCHO (Discrimination and Harassment Office Francois.Botha@uct.ac.za 021 650 3530) or the formal grievance procedures.*
- d) *Are our HR processes robust enough to deal with complicated cases swiftly? Recognising that there will always be a need for the standard disciplinary procedures, I would like to put on the transformation agenda the exploration of alternative dispute resolution mechanisms that seek to restore relationships rather than having winners and losers. Such alternative processes could be strengthened by the introduction of an ombud, and could where appropriate be applied to student conflicts as well.*
- e) *We need to reiterate that the media policy at UCT does not restrict people from speaking to the media in their private or academic capacity and in fact it encourages them to do so, but it also notes the caution that readers often perceive a UCT staff member's statement as an official UCT statement and staff should therefore be careful to underscore in what capacity they are writing. However, I am mindful of the concern of the university community that a disciplinary case brought against a staff member who also speaks out in public runs the risk of infringing academic freedom, and will often be perceived to be an attack on academic freedom even when it is not, due to the confidentiality of the charges, evidence and findings. I propose, following a suggestion from the Academic Freedom Committee, that we review our disciplinary procedures to see whether we can increase transparency and management accountability by opening such cases to public scrutiny provided the defendant is agreeable to this?*
- f) *How do we deal with disciplinary cases where UCT feels bound by the confidentiality principle whilst a party involved decides to speak 'out' publicly, raising untested allegations that might be very damaging? Should we change our procedures to allow the university to address issues of substance related to a case where the defendant has already done so? I will ask the Executive Director HR to make a proposal around this in consultation with the staff unions.*

I invite your feedback (vc@uct.ac.za) and I encourage key committees and forums across campus to discuss these broader transformation issues so that we may build a more inclusive and open society.

Dr Max Price
Vice-Chancellor