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**NATIONAL****Makgoba's logic legally blasted**

David Macfarlane

University of KwaZulu-Natal (UKZN) vice-chancellor Malegapuru Makgoba's reasons for barring renowned academic Ashwin Desai from seeking employment at the university are cast into serious doubt by a document in the *Mail & Guardian's* possession.

This is the 1998 settlement agreement between Desai and the former University of Durban-Westville (UDW), a copy of which Desai has given to the *M&G*. He has also provided his attorney Brett Purdon's written legal opinion on the current significance of the agreement.

Desai and Purdon argue that the agreement constitutes no legal bar to Desai's applying for employment at UKZN. Makgoba continues to insist that it does, and that only the UKZN council can revoke the bar.

The dispute began late last year when Desai, since March 2002 an honorary research fellow in UKZN's Centre for Civil Society (CCS), received a Human Sciences Research Council grant to research the history of black sport in South Africa. Told to resign his fellowship so that he could apply to conduct the research at UKZN, he did so in August.

Makgoba then told the selection committee not to consider Desai's application -- the only one submitted -- and denied the CCS's request that he be reinstated as honorary research fellow.

The 1998 agreement arose from staff and student protests at UDW against the university's management. The agreement says that Desai, a leading campus unionist, faced "allegations of misconduct" and disciplinary proceedings at the time.

Under the agreement, Desai resigned and was denied entry to the university "except with the prior written approval of the vice-chancellor".

In 2003, new vice-chancellor Saths Cooper revoked the ban. And in 2004, UDW and the University of Natal merged to form UKZN. In his written opinion, Purdon says "nowhere does the agreement bind Dr Desai never to seek

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University of KwaZulu-Natal vice-chancellor Malegapuru Makgoba and barred academic Ashwin Desai are still at loggerheads over an agreement reached in 1998 between Desai and the former University of Durban-Westville.  
(Photograph: Paul Botes)

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employment at the university again”, and that the clause barring him from the campus “anticipates the exercise of discretion on the part of the vice-chancellor ...”.

“As a matter of common sense and plain English, this discretion is clearly not intended to be exercised only with the council’s prior agreement. It is a day-to-day matter properly assigned to the vice-chancellor as manager of the institution ... [T]here is nothing in the agreement to prevent Dr Desai from being considered for any post for which he applies.”

Regarding the council, Purdon writes: “Since Dr Desai never agreed with council (or with anyone else) not to seek re-employment, and since the present vice-chancellor [Makgoba] is either bound by Dr Cooper’s decision to allow Dr Desai back on to campus or is content to do so himself, there is no role for council to play. They do not have to be asked to revoke a clause preventing Dr Desai’s candidature that does not exist ...”

Purdon concludes that the issue of Desai’s employment “is a managerial as opposed to a governance issue”.

“This is particularly borne out when one considers the function of council vis-à-vis that of management of the university. It is inconceivable that matters of hiring new fixed-term contract employees falls to be debated or decided with council.”

As a result, Purdon concludes, recourse to bodies other than the university’s management would be “unnecessary and, frankly, meaningless”.

## And Makgoba responds ...

University of KwaZulu-Natal vice-chancellor Malegapuru Makgoba replied as follows when asked how he understands the 1998 settlement agreement between Ashwin Desai and the former University of Durban-Westville:

“Firstly, legally ‘The University’ is council and not the vice-chancellor. The 1998 agreement was between the university and Dr Desai. Professor [Mapule] Ramashala [vice-chancellor of UDW at the time] was acting on behalf of council and its chair as a signatory and was delegated to do so. Her signature appears above ‘On behalf of the University’ on the agreement. She did this with the full knowledge, delegation and approval of council, its chair and the chair of council’s finance committee for reasons that are self-explanatory if you have the ‘Agreement’ as you claim. Having concluded the matter, it was reported [to the council by Ramashala] and ratified by the full council.

“The restriction to enter the property of the university is different from the agreement on termination of employment. While the VC has the power on the former -- i.e, merely to enter the university’s property -- and this is specified in the agreement, the decision to re-employ and review or rescind/revoke the agreement is council’s as the agreement was made in full and final settlement with council. Therefore, the only issue Dr [Saths] Cooper [UDW vice-chancellor in 2003] and I have is the power, as specified in the agreement to either allow or restrict Dr Desai from the university’s property. This has not been the issue in this debate although it has often been confused. I have never contested this clause and in fact Dr Desai has been free to be on campus. The university’s employment is a different matter altogether.

“Part of the reason I have been insistent on this matter going to council, in addition to the above, is that either myself or a small team from council, or the Exco [executive committee] of council or the full council may elect to delegate the powers on the way forward differently. There are other ramifications on this matter that can only be dealt with through [the] proper governance

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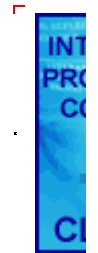
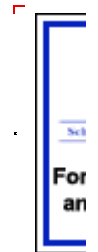
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structure, which is council. Furthermore, legal advice as way back as early 2004 has been consistent and unambiguous that this is the best route.

“Therefore my position, interpretation and approach to the agreement is correct and supported by sound legal advice on the matter of employment, which is the issue here.

“You [the M&G] have not ever showed me a university-approved document that shows that this decision has been revoked. Why has it been difficult for Dr Desai to reapply to his employer -- the same body with which he negotiated and agreed to leave the university in the University's interest' [as the agreement states]?” -- *David Macfarlane*

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