

## **Busisiwe Mkhumbuzi**

### **Timeline of Disciplinary Matters**

#### **24 July 2015**

Busisiwe (“Busi”) Mkhumbuzi signs student declaration for an introductory Ethics course at the University of Cape Town. The declaration reads:

- I have read and am aware of the DP policy stated on the course outline.
- I understand that it is my duty to ensure that my presence at lectures and tutorials is recorded on the register and that my failure to record my name may result in the denial of DP, whether or not I have attended classes.
- I understand that I must attend the tutorial group to which I am assigned. (If, on an exceptional occasion, I attend another tutorial, I understand that it is my responsibility to ensure that my tutor is aware of this.)
- I understand that (significant or repeated) absences from class must be explained timeously – not weeks later or at the end of the semester.
- In the event that I do not meet the DP requirements, I undertake not to appeal my DPR status. (This does not preclude appealing a DPR that is honestly thought to be a mistake.)

(“DP” refers to a “Duly Performed” certificate, which students require in order to be permitted to sit the exam.)

#### **28 August 2015**

Busi Mkhumbuzi signs attendance register for Ethics lecture and then leaves the class before the lecture begins.

#### **7 September 2015**

Busi Mkhumbuzi meets with David Benatar at the latter’s request regarding her fraudulent signing of the lecture register. She admits to signing the register and then leaving. She claims that she did this because she was concerned that her lecture absences would compromise her DP. David Benatar explains that while full attendance is required, students are not refused DP for reasonable absences, especially if they excused themselves in good time.

#### **8 September 2015**

David Benatar lays a disciplinary complaint against Busi Mkhumbuzi for fraudulently representing her presence at a lecture.

#### **20 October 2015**

Duly Performed (DP) certificate lists are published. Busi Mkhumbuzi is on the refused (DPR) list on account of missing more than a third of lectures without excuse. (Half of those unexcused absences are *after* 7 September. There are a further three *excused* absences – 18, 23 and 25 September 2015.)

Busi Mkhumbuzi emails Philosophy administrators and requests an appointment with David Benatar because she believes relevant considerations have been overlooked.

A Philosophy Department administrator responds, indicating there has been no error.

**21 October 2015**

Busi Mkhumbuzi replies that she will not accept DPR, that she has a right to sit the exam and that she will contact the Dean if she is not given DP.

**9 November 2015**

Busi Mkhumbuzi's subsequent official application to the Philosophy Department appealing the DPR decision is considered by David Benatar. The records are checked and the DPR decision reaffirmed.

**12 November 2015**

Busi Mkhumbuzi appeals this decision to the Dean. After due consideration some days later, the DPR decision is upheld by Dean's nominee, the Deputy Dean for Undergraduate matters.

**? December 2015**

Busi Mkhumbuzi appeals the Dean's decision to the Vice-Chancellor. The appeal is considered by the Vice-Chancellor's nominee, Deputy Vice-Chancellor Francis Petersen. He upholds the earlier decisions to refuse DP.

Although this exhausts the appeal process, Busi Mkhumbuzi appeals to the Vice-Chancellor a second time. Professor Petersen considers the case a second time and again upholds the earlier decisions. This is conveyed to Busi Mkhumbuzi (via SMS and email on 11 January 2016 after Professor Petersen is unable to reach her telephonically).

**12 January 2016**

In contravention of the university rule barring DPR students from writing the exam, Busi Mkhumbuzi attends and writes the exam.

**18 January 2016**

Professor Petersen provides Busi Mkhumbuzi with a detailed explanation of his decision to uphold the DPR decision.

**19 January 2016**

Busi Mkhumbuzi begins a sit-in protest at the University of Cape Town's administrative building, blasting music. She begins defaming David Benatar on social media (Facebook and Twitter). She makes false claims about the number of absences and excused absences she had. She also inaccurately states her coursework results. She claims (falsely) that she has been refused DP on account of her "race".

**20 January 2016**

Francis Petersen contacts David Benatar, requesting an urgent meeting. At that meeting he asks David Benatar to meet with him, the Registrar and Busi Mkhumbuzi. David Benatar agrees to meet. This is conveyed to Busi Mkhumbuzi who responded that she would attend the meeting and that students and the media would be gathered outside "to see how the issue is resolved". Upon seeing that, David Benatar wrote to Francis Petersen, saying that this was an act of bad faith on her part and that he was not prepared to meet under these

circumstances. Busi Mkhumbuzi then tweeted that the “meeting was cancelled because Professor Benatar left”.

Various attempts were then made to set up another meeting. David Benatar laid down some conditions for such a meeting. These included the absence of media or other students. Busi Mkhumbuzi falsely reported this on Twitter: “Professor Benatar refuses to speak to me because I’ve told students about my DP story”.

### **21 January 2016**

A possible meeting at 14h00 was cancelled. In an email of 10h56, Glynis Jethro, Francis Petersen’s Personal Assistant wrote to David Benatar saying: “Due to unavailability of some of the participants for this meeting, it will no longer take place at the suggested time of 14h00.”

At approximately 13h15, Busi Mkhumbuzi arrived at the Philosophy Department reception asking about the meeting. She was advised that the meeting had been cancelled.

### **22 January 2016**

Busi Mkhumbuzi falsely tweets “Benatar lied yesterday and said the meeting was cancelled”.

The meeting takes place at 12h00. Busi Mkhumbuzi delivered a tirade and then stormed out of the room. As she was leaving, David Benatar noted that she had defamed him on social media. Her response was that he should sue her.

### **24 January 2016**

Busi Mkhumbuzi posts an essay on Facebook. It is headed “When Professor Benatar said that there is no hope for black students”. (Professor Benatar never said any such thing.) In the course of this post she misrepresents David Benatar’s views about affirmative action and “decolonization”, alleges that he is a racist and concludes that she was refused DP because of this. No reference is made to the fact that the DPR decision was upheld by the Dean’s nominee and twice by the Vice-Chancellor’s nominee.

### **26 January 2016**

In response to the resultant outpouring of condemnation of David Benatar, two of his colleagues in Philosophy, Elisa Galgut and Greg Fried make a public statement via the South African philosophical listserve, urging people not to rush to judgement when they are ignorant of all the relevant details.

### **31 January 2016**

David Benatar makes a statement correcting some of the falsehoods Busi Mkhumbuzi had expressed, and noting that his statement must be constrained by both civility and his duties not to disclose certain facts about her. As the charge of register fraud is still pending, he is unable to mention that at all.

#### **4 February 2016**

At 14h25 this statement is posted on the website of the course for which Busi Mkhumbuzi had been refused DP.

About thirty minutes later, Busi Mkhumbuzi storms into the Philosophy Department reception demanding to see David Benatar, who is not in at that time. She sits outside his locked door (which leads off from the reception area), refuses to speak other than to demand that she speak to David Benatar. She begins typing on her computer. Later she screams in the face of a department administrator, spittle flying. Her volatile behaviour instills fear and anxiety in the administrative staff who remained traumatized for weeks afterwards. Busi Mkhumbuzi refuses to leave the office even when it comes time for the administrators to leave. Campus Protection services had to be called. As they are unwilling to forcibly remove her, Deputy Vice-Chancellor Anwar Mall and the Director of Student Wellness are called to persuade her leave, which she eventually does.

Soon before or after arriving in the Philosophy Department reception, Busi Mkhumbuzi (falsely) tweets that “Benatar has taken all my personal information about my mental health and published it for all students to read”. This damaging falsehood gains traction and generates further hostility to David Benatar.

#### **8 February 2016**

Busi Mkhumbuzi makes further defamatory remarks about David Benatar on Twitter.

David Benatar lays further disciplinary complaints against Busi Mkhumbuzi. These pertain to her ongoing defamatory remarks, and her invasion of the Philosophy Department reception and her harassment of the staff there.

#### **15 February 2016**

Vice-Chancellor, Dr Max Price responds to Busi Mkhumbuzi's *third* appeal to the Vice-Chancellor. He notes that all the previous decisions were correct but on the basis of purportedly new information, grants Busi Mkhumbuzi her DP. He says: “I reject emphatically any suggestion that the original decision by Prof Benatar, or the subsequent appeal decisions, were in any way racist, as alleged by Ms Mkhumbuzi”. In a covering email to Busi Mkhumbuzi (on 16 February), Dr Price encourages Busi Mkhumbuzi to apologise to David Benatar for her allegation that his refusal of her DP was racist.

#### **10 March 2016**

Busi Mkhumbuzi announces on Facebook that Dr Price awarded her DP. She states “I refuse to retract the statements I have made about Prof Benatar”, and then proceeds to renew the defamatory comments. In the same post she seeks to mobilize students against David Benatar. She also writes to a list of people, both within and outside of the University of Cape Town, renewing and intensifying her defamatory activity.

#### **11 March 2016**

The *Daily Nous*, a philosophy blog based in the United States, publishes an item entitled “Student Faces Tribunal for Calling Professor ‘Racist’”, which repeated some of Busi

Mkhumbuzi's claims (but without endorsing them). This led to an extended "discussion" of the case by commentators unaware of the facts.

### **12 March 2016**

The Humanities Students Council writes to the Dean of Humanities and others, indicating their support for Busi Mkhumbuzi and their intention to rally support for her. (They do this without contacting David Benatar to hear the other side.)

### **13 March 2016**

David Benatar's response, again limited because the case was *sub judice*, was added to the *Daily Nous* blog.

### **14 March 2016**

The *Cape Times*, a local newspaper, publishes an article "UCT student in hot water of social media slurs". This article lifts comments uncritically from Busi Mkhumbuzi's Facebook post of 10 March 2016.

### **15 March 2016**

Responding to the *Cape Times* article, various people, including academics at the University of Cape Town, mocked David Benatar, including his refusal to discuss the matter in further detail (while the matter was *sub judice*).

David Benatar lodges a request with the UCT Student Disciplinary Tribunal that Busi Mkhumbuzi be instructed to cease and desist from making any further defamatory remarks about him and that she have no contact with those members of the Philosophy Department who want no contact with her. No such order is made.

Miranda Rasehala, an attorney acting for Busi Mkhumbuzi writes to David Benatar proposing "mediation" in order to avoid the disciplinary tribunal.

### **21 March 2016**

David Benatar responds to Ms Rasehala indicating that he does not wish to meet with Busi Mkhumbuzi. He offers to drop some of the complaints (but not the one for register fraud) in exchange for (a) "a complete public retraction of every negative claim she has made" about him, (b) "a full and unequivocal apology" both for her defamation of him and for her harassment of staff in the Philosophy Department, and (c) an agreement to desist from any further comment about this matter and any further harassment.

### **30 March 2016**

Miranda Rasehala conveys to David Benatar, Busi Mkhumbuzi's rejection of the offer made on 21 March 2016.

### **5 April 2016**

Busi Mkhumbuzi announces on Facebook that she was selected to represent South Africa in the 2016 South-Africa Washington International Programme (SAWIP). In this post she again discusses her allegations against David Benatar and suggests that her selection for SAWIP constitutes a kind of vindication.

**13 April 2016**

Busi Mkhumbuzi writes to David Benatar requesting that he drop the charges and implicitly threatens him that if the matter goes to the tribunal it will not be good for him. She claims that students and members of the Alumni Advisory Board are willing to testify in her favour and that the American Philosophical Association has offered her support.

**18 April 2016**

Busi Mkhumbuzi posts further defamatory remarks on Facebook and Twitter.

**1 August 2016**

After various attempts to set a hearing date, it is set for 2 August 2016. On 1 August Busi Mkhumbuzi advises the University Student Disciplinary Tribunal that she is taking a leave of absence from University and will be unavailable to attend the hearing.

**4 August 2016**

Busi Mkhumbuzi tweets more defamatory remarks.

**19 October 2016**

David Benatar is advised that Busi Mkhumbuzi had (voluntarily) de-registered as a student. (This is a further step beyond the leave of absence.) The University Student Disciplinary Tribunal retains jurisdiction over actions while she was a student.

**26 October 2016**

Busi Mkhumbuzi made more disparaging comments about David Benatar in a Facebook post.

**31 October 2016**

A hearing is set for this date. Busi Mkhumbuzi is advised of this via emails to both her UCT and personal addresses. She does not respond. On 27 October she is informed that if she does not "respond or attend the hearing without any reasonable grounds, the hearing would proceed and judgement would be taken in her absence". She does not respond and the hearing proceeds in her absence. She is found guilty on all counts.

**22 November 2016**

Busi Mkhumbuzi lodges an appeal against the judgement of the University Student Disciplinary Tribunal. (She writes from one of the same addresses to which the summons to appear before the Tribunal was sent.)

**c21 February 2017**

Busi Mkhumbuzi issues a post inviting those who think that David Benatar is racist to testify on her behalf on 23 February 2017. She repeats her accusations that he is racist in his "outlook and conduct".

**23 February 2017**

Appeal Tribunal meets. Busi Mkhumbuzi is represented by a lawyer, Ashraf Mahomed. It is proposed that she issue an apology in exchange for dropping the findings of guilt. David

Benatar rejects this because he fears that Busi Mkhumbuzi will later retract the apology and will have paid no cost for serious wrongdoing.

**6 March 2017**

Ashraf Mahomed, Busi Mkhumbuzi's lawyer, writes to Vice-Chancellor Max Price asking that all charges against his client be dropped.

**15 March 2017**

Vice-Chancellor Max Price responds to Mr Mahomed, saying that he does not believe it would be appropriate for him to intervene and that the appeal process should be completed.

**13 August 2017**

Appeal Tribunal issues its ruling. It notes that Busi Mkhumbuzi offered no explanation for a number of matters, including why she did not respond to the notifications of the hearing on 31 October 2016. Nevertheless, it ruled that the case must be heard *de novo*.

**16 August 2017**

David Benatar proposes hearing dates for August and September 2017.

**26 September 2017**

David Benatar proposes hearing dates for October 2017.

**2 October 2017**

University of Cape Town's Black Academic Caucus issues statement parroting some of Busi Mkhumbuzi's defamatory remarks.

**5 October 2017**

Busi Mkhumbuzi repeats some of her defamatory comments in a public post.

**2 November 2017**

David Benatar proposes hearing dates for November 2017.

**15 November 2017**

David Benatar proposes hearing dates for December 2017.

**8 December 2017**

David Benatar proposes hearing dates for January 2018.

**8 January 2018**

David Benatar proposes hearing dates for February 2018.

**13 February 2018**

Registrar Royston Pillay communicates telephonically with David Benatar, advising him that Ashraf Mahomed has proposed that UCT drop all charges in exchange for a full retraction and apology.

**25 February 2018**

David Benatar responds in writing to Royston Pillay, indicating that he does not support such a deal. He notes that he has “no guarantee that Ms Mkhumbuzi will not retract her retraction and apology once the charges have been dropped and she has completed her degree. She will then bear no consequences of her very harmful behaviour”. He implores the Registrar that the hearing be held soon. He says that “the longer the matter is left unresolved, the more scope there is for justice never to be done”.

**5 March 2018**

Professor Danwood Chirwa, Chief Proctor of the University Student Disciplinary Tribunal meets with David Benatar to convey a new proposal from Ashraf Mahomed on behalf of Busi Mkhumbuzi. The proposal is a plea bargain: Busi Mkhumbuzi will plead guilty to charges and offer a complete retraction and apology in exchange for a lesser sentence. David Benatar agrees to this on certain conditions, including that the apology be “proper and full”.

**26 March 2018**

David Benatar inquires whether there have been any developments with the plea bargain. Professor Chirwa says that there have been none.

**8 April 2018**

David Benatar writes to Royston Pillay asking whether there have been any developments with the plea bargain. No reply is received.

**24 April 2018**

David Benatar writes again to Royston Pillay with the same question. No reply is received.

**28 May 2018**

David Benatar writes to Royston Pillay requesting an update. Royston Pillay replies that a plea bargain is close to final.

**28 June 2018**

David Benatar writes to Royston Pillay requesting an update, and imposes a deadline of 29 July, in the absence of which he will withdraw his support of a plea bargain.

**17 July 2018**

Busi Mkhumbuzi is the Master of Ceremonies for the Nelson Mandela Memorial Lecture delivered by former President Barack Obama. In a subsequent radio interview, the interviewer mentions her difficulties with a “racist” professor at the University of Cape Town. Busi Mkhumbuzi does nothing to contradict this.

**23 July 2018**

Royston Pillay sends David Benatar Busi Mkhumbuzi’s proposed apology and retraction. David Benatar replies that the apology is grossly inadequate and indicates that he will draft a proper apology



**24 July 2018**

David Benatar sends Royston Pillay the proposed apology and imposes a deadline of 30 July. If it is not accepted by then, his support for a plea bargain will expire.

**30 July 2018**

David Benatar writes to Royston Pillay requesting an update.

**31 July 2018**

Royston Pillay replies to David Benatar indicating that the apology was rejected, and the case will proceed to trial.

David Benatar proposes hearing dates for August 2018.

**1 September 2018**

David Benatar proposes hearing dates for September 2018.

**3 October 2018**

David Benatar proposes hearing dates for October 2018.

**30 October 2018**

David Benatar proposes hearing dates for November 2018.

**26 November 2018**

Ashraf Mahomed, Busi Mkhumbuzi's lawyer, writes to new Vice-Chancellor Mamokgethi Phakeng, asking that all charges against his client be dropped.

**18 December 2018**

Danwood Chirwa, Chief Proctor, recommends that the charges be dropped, largely because the matter has dragged on so long with resultant purported unfairness to the student. David Benatar objects.

**20 December 2018**

David Benatar writes to Vice-Chancellor Mamokgethi Phakeng, arguing against dropping the charges and providing her with relevant documentation.

**11 January 2019**

Mamokgethi Phakeng meets with David Benatar at the former's request. They agree that dropping the charges would be inappropriate. David Benatar indicates his willingness to support a plea bargain – guilty plea and lesser sentence – in exchange for a proper and full apology.

**31 January 2019**

Vice-Chancellor Mamokgethi Phakeng writes to David Benatar, indicating that she will be dropping the charges in exchange for an apology (to her satisfaction rather than to his). David Benatar responds, expressing dismay that Professor Phakeng had reversed her position, agreed in their meeting, that she would not drop the charges (and would instead pursue a plea bargain). David Benatar asks Professor Phakeng to provide him with the final

apology and requests that the University issue a statement condemning Busi Mkhumbuzi's behaviour.

**7 February 2019**

The Vice-Chancellor's office sends David Benatar the final letter of apology but makes no mention of the requested University statement condemning the student's behaviour. David Benatar writes to the Vice-Chancellor requesting again that such a statement be issued.

**23 March 2019**

David Benatar writes to the Vice-Chancellor noting that she has twice ignored his request to issue a statement. He infers that the University has no intention of making such a statement.

**28 March 2019**

Vice-Chancellor Mamokgethi Phakeng responds to David Benatar, confirming that she was satisfied with Busi Mkhumbuzi's letter of apology and sees "no further point in making a public statement".