
**THE UNCONSTITUTIONAL PRACTICES OF THE JUDICIAL SERVICE
COMMISSION UNDER THE GUISE OF JUDICIAL TRANSFORMATION: CAPE
BAR COUNCIL V JUDICIAL SERVICE COMMISSION AND ANOTHER [2012]
2 ALL 143 (WCC)**

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SUMMARY

This contribution aims to point out valuable lessons from the shortcomings of the Judicial Service Commission as highlighted in the case of *The Cape Bar Council v The Judicial Service Commission*. The case involved the failure by the Judicial Service Commission to fill vacancies at the Western Cape High Court despite there being highly eligible candidates available for appointment. The judgment serves as a reminder to the Judicial Service Commission that as a public functionary it is subject to the rule of law and to the constitutional principles of accountability and transparency. Public functionaries are further reminded that they are subject to constitutional control. Such control is essential in ensuring that any abuse of power does not take place.

KEYWORDS: Judicial recommendations, rule of law, accountability, transparency, public functionaries, rationality, legality, just administrative action, arbitrariness

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