

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

NOT REPORTABLE
Case no: 1467 / 2023

In the matter between:

DAVID BERNARD MANDEL

Applicant

And

SOUTH AFRICAN CIVIL AVIATION AUTHORITY

First Respondent

NKOSIKHONA MDLALOSE N.O.

Second Respondent

POPPY KHOZA N.O.

Third Respondent

THE CHAIRPERSON OF THE APPEAL COMMITTEE N.O.

Fourth Respondent

JUDGMENT

Govindjee J

[1] The applicant is a passionate and experienced pilot, holding a private pilot's licence ('the licence') for approximately 40 years, with an unblemished flying record. He regularly receives invitations to fly in air shows and pilots his own planes between South African cities on a weekly basis for business purposes. On 25 September 2022, the applicant was flying the L39 Albatross jet trainer aircraft when he observed people

lying on a runway near Knysna. He undertook a pass at 1000 feet above ground level (AGL), subsequently also dipping his wings to encourage them to clear. When they failed to do so, he returned to Plettenberg Bay.

[2] The applicant's conduct was viewed by officials of the First Respondent ('the CAA') and escalated to its enforcement unit as a violation of Civil Aviation Regulations. Subsequently, his licence was suspended for a period of six months from 6 April 2023 until 5 October 2023.

[3] The applicant approaches the court on an urgent basis, seeking interim relief suspending the outcome of two administrative decisions, which have the effect of suspending his licence, pending review proceedings.¹ The application is opposed by the first to third respondents ('the respondents') for three reasons:

- a) lack of urgency;
- b) non-joinder of the Minister of Transport;
- c) failure to make out a prima facie case for success in the review application.

Urgency

[4] The applicant claims that he will be prejudiced given that he utilises his aircrafts for business and personal travel on a weekly basis. He also flies his aircrafts for practice and to maintain his skillset. In particular, his concern appears to stem from his commitment to participate in various air shows during 2023. Waiting for a further appeal would cause severe prejudice given that it is unlikely that the appeal will be

¹ In Part B, the applicant seeks the following relief: a) In terms of s 7(2)(c) of PAJA, the applicant is exempted, to the extent necessary, from the obligation to exhaust any internal remedies in terms of Civil Aviation Act, 2009, read with the Civil Aviation Regulations, 2011; b) The second respondent's decision suspending the applicant's private pilot's licence under licence number 0[...] for a period of six months is set aside in terms of s 8(1)(c) of PAJA; c) The third respondent's decision on appeal confirming the decision of the second respondent to suspend the applicant's private pilot's licence for a period of six months is set aside in terms of s 8(1)(c) of PAJA; d) The decisions of the second and third respondents are replaced in terms of s 8(1)(ii)(aa) of PAJA with the finding that the applicant has not contravened any provisions of the Civil Aviation Act, 2009, and / or the Civil Aviation Regulations, 2011; e) alternative relief, relating to the fourth respondent; and f) costs.

resolved within the period of suspension. This, it is alleged, will cause the applicant embarrassment in the flying community, who expect the applicant to perform at the upcoming air shows.

[5] A judge may, in cases of urgency, dispense with the forms and service provided for in the Uniform Rules and dispose of the matter at a time and place and in such manner and in accordance with such procedure as seems meet.² The degree of relaxation of the rules must be commensurate with the exigency of the case.³ The procedure adopted must comply with the standard rules as far as is practicable. The major considerations in deciding whether or not to exercise the court's power to abridge the times prescribed and to accelerate the hearing of a matter are the following:⁴

- The prejudice that the applicants might suffer by having to wait for a hearing in the ordinary course;
- The prejudice that other litigants might suffer if the applicant is given preference; and
- The prejudice that respondents might suffer by the abridgment of the prescribed times and an early hearing.

[6] The question as to the absence of 'substantial redress' in an application brought on usual timeframes lies at the heart of the question of urgency.⁵ The applicant has set forth the circumstances rendering the matter urgent. While it may be the case that the applicant could utilise other transportation options while his licence has been suspended, as the respondents' argued,⁶ the papers explain that the applicant is a

² Rule 6(12).

³ *Luna Meubel Vervaardigers (Edms) Bpk v Makin & another (t/a Makin Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137E-G.

⁴ *I L & B Marcow Caterers (Pty) Ltd v Gretermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another* 1981 (4) SA 108 (C) at 112H-113A.

⁵ See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196. This is something less than the irreparable harm that is required before the granting of interim relief, to be determined on a case-by-case basis: at para 7.

⁶ The respondents' further submission regarding urgency relates to the applicant being afforded a substantial hearing in due course. This aspect is considered, below.

frequent flyer and that flying is linked to business and personal dimensions of his life, including commitments to participate in forthcoming air shows. Given the nature of the relief sought, I am satisfied that he would not be afforded substantial redress if the matter were to follow its normal course. By then, the period of suspension would inevitably have expired so that the applicant would be deprived of substantial redress. The matter, in my view, passes the test for urgency and qualified to be enrolled on an urgent basis

The duty to exhaust internal remedies

[7] The respondents' submission as to the need to join the Minister of Transport ('the Minister') is linked to the applicant's duty to exhaust internal remedies.⁷ In terms of the Civil Aviation Act, 2009⁸ ('the Act'), a person aggrieved by a decision of a Director to suspend a licence in terms of the Act may file a written appeal with the appeal committee ('the committee') against such decision within 30 days after receipt of the reasons for the decision.⁹ Section 122 of the Act deals with the establishment of the committee by the Minister, who is expected to appoint suitably qualified members on a part-time basis after inviting interested persons to apply following notice in the Government Gazette and in the media.¹⁰ Members hold office for a period of three years.¹¹ While an appeal to the committee does not suspend any decision of the Director pending its outcome,¹² the Rules Regulating the Conduct of the Proceedings of the Appeal Committee ('the Rules'), issued by the Minister in terms of the Act,

⁷ S 7(2) of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) provides as follows:

- (a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.
- (b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.
- (c) A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

⁸ Act 13 of 2009.

⁹ S 120 of the Act.

¹⁰ S 122 of the Act.

¹¹ S 122(7) of the Act.

¹² S 126(6) of the Act.

makes provision for urgent appeals, dispensing with the forms and service provided for in the Rules where appropriate.¹³

[8] The applicant claims exemption from the duty in the circumstances of the matter. This is based on correspondence received from the Department of Transport ('the department') on 11 May 2023, in response to receipt of the applicant's appeal to the committee, which indicates as follows (sic):

'Kindly be advised that we currently do not have an Appeal Committee in place. However, we have started with the process of appointing the Committee, it is anticipated that the Committee will be operational by June 2023 should we not experience any challenges beyond our control. We will keep you updated in this regard.'

[9] In further correspondence, the secretariat acknowledged that the process of appointing the committee was beyond its control, adding that it anticipated an operational committee 'in June or July 2023'.

[10] The Constitutional Court has clarified the proper interpretation of s 7(2) of the Promotion of Administrative Justice Act, 2000 ('PAJA'), with reference to international law. Of relevance is the emphasis that has been placed on the availability of an internal remedy.¹⁴

'In a constitutional democracy like ours, where the substantive enjoyment of rights has a high premium, it is important that any existing administrative remedy be an effective one. A remedy will be effective if it is objectively implemented, taking into account the relevant principles and values of administrative justice present in the Constitution and our law. An internal remedy must also be readily available and it must be possible to pursue without any obstruction, whether systemic or arising from unwarranted administrative conduct. Factors such as these will be taken into account when a court

¹³ Rule 15. Rules 4, 7, 8, 9 and 10 provide for various time periods and processes, including discovery, subpoena and an appeal hearing, which would impact on the timeframe likely to be required to conclude an appeal.

¹⁴ *Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* 2010 (4) SA 327 (CC) (*Koyabe*) para 44 and following.

determines whether exceptional circumstances exist, making it in the interests of justice to intervene.’ (references omitted.)

[11] In particular, internal remedies must be available, effective and adequate to oust a court’s jurisdiction in a constitutionally acceptable manner.¹⁵ A court must exercise its judicial review powers either when all available internal administrative remedies are found to have been exhausted or when exceptional circumstances are found to exist.¹⁶ An exemption will be granted, on a case-by-case basis, if an aggrieved party makes a good faith attempt to exhaust internal remedies, but is frustrated in their efforts to do so.¹⁷ Circumstances are considered ‘exceptional’, for purposes of s 7(2)(c) of PAJA, when they are ‘such as to require the immediate intervention of the courts rather than resort to the applicable internal remedy’.¹⁸

[12] The importance of appeals to the committee cannot be gainsaid, given that the intention appears to be that they comprise fully fledged, formal hearings. Their outcomes and reasoning can only be of benefit to courts sitting on appeal or review. It is also accepted that the architecture of the Act is such that the committee serves an important function, and that the intention is to preserve decisions of enforcement specialists and the Director pending appeals, in advancement of the purpose and objectives of the Act and to promote and maintain safety and security in the aviation industry.

[13] In the present instance, however, it cannot be said that the applicant is able to pursue recourse to the committee without impediment.¹⁹ This is borne out by the respondents’ argument that the Minister ought to have been joined, in order to fast-track the establishment of the committee. Absent its operationalisation, it cannot be said that the internal appeal to the committee would be effective, as opposed to futile, thereby justifying this bypass.²⁰ This is because the committee is seemingly not functioning. The process of appointing its members seems to have been started, but

¹⁵ *Koyabe* above para 45.

¹⁶ *Koyabe* above para 46.

¹⁷ *Koyabe* above para 48.

¹⁸ *Nichol and Another v Registrar of Pension Funds and Others* 2008 (1) SA 383 (SCA) para 16.

¹⁹ See *Koyabe* above n para 42, with reference to *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) para 31.

²⁰ *Koyabe* above para 39.

there is no guarantee that it will be completed imminently, particularly considering the statutorily prescribed process for appointing members described above. The department concedes that it may not be established during the course of this month or next month, with vague reference to possible challenges beyond its control. These constitute exceptional circumstances, where there is a real risk that the suspension will lapse by time any appeal to the committee is heard and determined, rendering this avenue illusory. An exemption is, therefore, justified. It may be added, in support of this outcome, that cases have confirmed that courts should ‘incline to an interpretation of the facts and the law that promotes, rather than hampers, access to the courts’.²¹

[14] This finding disposes of the respondents’ argument that the applicant will be afforded a substantial hearing in due course, so that the application is premature. Given that there exist exceptional circumstances to exempt the applicant from the obligation to exhaust the appeal to the committee, which is a case made out on the papers, it would make little sense to compel the applicant to have joined the Minister. Whether this would result in progress in establishing the committee is speculation. The point is that it is not obligatory for the applicant to take steps to ensure the establishment of the committee in an instance where he seeks urgent relief relating to the suspension of his licence, and where an internal remedy is presently unavailable. Significantly, part of the main relief sought in part B of the application is for a declaration that the applicant is exempted, to the extent necessary, from the obligation to exhaust any internal remedies in terms of the Act. The remaining relief pertains to review of the second and third respondents’ decisions. Only in alternative relief was mention made of the fourth respondent and it may be accepted, for present purposes, that it is for the Minister and department to constitute this body.

[15] The remaining basis of opposition is that the applicant has not made out a *prima facie* case for success in the review application.

Applications for interim relief

²¹ *Earthlife Africa (Cape Town) v Director-General: Department of Environmental Affairs and Tourism* 2005 (3) SA 156 (C) para 44.

[16] Applicants seeking interim relief must establish:²²

- a) A clear right or, if not clear, that they have a *prima facie* right;
- b) That, if the right is only *prima facie* established, there is a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- c) That the balance of convenience favours the grant of an interim interdict; and
- d) That they have no other satisfactory remedy.

[17] In cases where a clear right is not established, a person seeking interim relief is required to establish at least a *prima facie* right to relief, even if open to some doubt. The applicant need not establish that right on a balance of probabilities. The oft-quoted passage from *Webster v Mitchell* explains the enquiry as follows:²³

‘In the grant of a temporary interdict, apart from prejudice involved, the first question for the Court...is whether, if interim protection is given, the applicant could ever obtain the rights he seeks to protect. *Prima facie* that has to be shown. The use of the phrase “*prima facie* established though open to some doubt” indicates...that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required. The proper manner of approach...is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief...The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief...But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal

²² *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v L F Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C) at 267B-E.

²³ 1948 (1) SA 1186 (W) at 1189-1190.

of interim relief...the position of the respondent is protected because...the test whether or not temporary relief is to be granted is the harm which will be done...'

[18] That enquiry has subsequently been refined, so that the test is now whether the applicant *should* (not could) obtain final relief on those facts.²⁴

[19] Irreparable harm is an element in cases where the right asserted by the applicants, though *prima facie* established, is open to some doubt. In such cases, the accepted test to be applied is whether the continuance of the thing against which an interdict is sought would cause irreparable injury to the applicant. If so, the better course is to grant the relief, but only if the discontinuance of the act complained of would not involve irreparable injury to the respondent.²⁵ As to the balance of convenience, *Webster v Mitchell* goes as far as to state that if there is greater possible prejudice to the respondent an interim interdict will be refused.²⁶

[20] In *Eriksen Ltd v Protea Motors and Another*,²⁷ Holmes JA stated as follows:

'The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. Where the right which it is sought to protect is not clear, the Court's approach in the matter of an interim interdict was lucidly laid down by Innes JA in *Setlogelo v Setlogelo*, 1914 AD 221 at p. 227. In general, the requisites are –

- a) A right which, "though *prima facie* established, is open to some doubt";
- b) A well-grounded apprehension of irreparable injury;
- c) The absence of ordinary remedy.

In exercising its discretion, the Court weighs, *inter alia*, the prejudice to the applicant if the interdict is withheld against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience. The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his

²⁴ *Gool v Minister of Justice and Another* [1955] 3 All SA 115 (C).

²⁵ *Setlogelo* above at 227.

²⁶ *Webster* above at 1192.

²⁷ 1973 (3) SA 685 (A) at 691C-G.

need to rely on prejudice to himself. Conversely, the more the element of 'some doubt', the greater the need for the other factors to favour him. The Court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities...Viewed in that light, the reference to a right which, "though *prima facie* established, is open to some doubt" is apt, flexible and practical, and needs no further elaboration.'

The applicant's facts

[21] The applicant's case is that he was flying at approximately 700 km/h, approximately 1000 feet AGL, and undertaking an initial runway inspection to ensure a safe operational environment for landing, when he noticed an obstruction on the runway. He undertook another pass at a higher altitude and established that there were people lying on the runway. He pulled the aircraft up before undertaking a slower pass at 1000 feet AGL, also dipping his wings to encourage the people to clear. When they failed to do so, he left the circuit and returned to Plettenberg Bay, considering the incident to be isolated and bizarre.

[22] The applicant made representations in response to a notice from the second respondent informing him of the intended licence suspension. Almost four months later, and without reference to the applicant's written representations, the second respondent confirmed that his licence had been suspended for six months, adding a new ground to the complaint. In addition, the applicant was subjected to successfully passing the Air Law Examination. He was informed of a right to appeal to the third respondent ('the director'), which he did on 6 April 2023. Through his representative, *Mr Friedman*, the applicant noted, inter alia, that he had not been provided with any documentary evidence in support of the allegations. He was informed a week later that his appeal had been unsuccessful. This was on the basis that the violation of the applicable provisions posed a serious threat to aviation safety and the public.

[23] The applicant's objection is that the complaint was only initiated three months after the incident and that his suspension followed seven months after the fact, circumstances clearly not warranting immediate suspension of licence. The suspension occurred in an arbitrary, unlawful and irregular manner, based on various

subparts of the Civil Aviation Regulations, 2011 ('the Regulations'). In particular, an enforcement officer was empowered to take administrative action leading to the imposition of a prescribed penalty where it was established, on a balance of probabilities, that the conduct of a person or entity constituted an offence and that such conduct was grossly negligent or wilful.²⁸ Notice of investigation should:²⁹

- specify the nature of the alleged offence committed;
- include evidence being relied upon pertaining to the alleged offence;
- invite the alleged offender to make representations either orally or in writing on the allegations within 30 days of the issue or service of the notice.

[24] The outcome was to be communicated by the enforcement officer 'following an investigation'. By contrast, the second respondent had formed the view that the alleged conduct was worthy of the sanction of suspension without investigation. The applicant had not received any of the evidence relied upon by the second respondent and was only afforded 14 days in which to respond. This amounted to procedural unfairness. In addition, lack of reference to any of the applicant's representations demonstrated failure to establish wilful or grossly negligent conduct on a balance of probabilities. It was therefore argued that the second respondent's decision was reviewable on a number of PAJA grounds.

[25] The applicant argued that the director confirmed the second respondent's decision without affording him a reasonable opportunity to make representations, present and dispute information and arguments or to appear in person. The director had the option, in terms of s 118(6) of the Act, to afford the applicant such opportunities which, it was submitted, would have been appropriate when considering the material irregularities regarding the second respondent's decision. The director's decision to perpetuate these irregularities therefore contravened PAJA and ought to be reviewed and set aside.

²⁸ Part 185.02.1 of the Regulations.

²⁹ Part 185.02.2 of the Regulations.

Respondents' facts

[26] The applicant acted in contravention of various parts of the Regulations which deal with safety operations of an aircraft and minimum heights over congested areas or over an obvious open-air assembly of persons. On more than one occasion he flew dangerously low over a runway on which a group of four people were lying, also 'wing dipping' to encourage the people to move. The group constituted an obvious open-air assembly of persons. His conduct was irresponsible, dangerous and grossly negligent. On 6 April 2023, the second respondent (an enforcement specialist) decided to suspend his licence due to the gravity of the transgressions.³⁰ This decision was confirmed by the director.

[27] In response to the allegations of procedural unfairness, the respondents rely on the Enforcement Manual of Procedures ('the Manual'), which guide enforcement specialists in the performance of their duties.³¹ The Manual makes reference to an evaluation of the violator's conduct, attitude and compliance history, including evaluation of a trend of noncompliance. The level of risk must also be analysed, including categorisation of the severity and likelihood of the 'hazard', that is, the dangerous condition created by the apparent violation(s).³² Severity and likelihood are to be determined separately, the former without consideration of the likelihood of that severity being realised. Importantly, 'likelihood' is to be considered and determined only after the determination of severity.³³ After consideration of the applicant's representations, the contravention of regulations 91.01.10, 91.06.32 and 94.05.01

³⁰ The respondents' primary reliance is on the following: Regulation 91.01.10 provides that 'No person shall through any act or omission endanger the safety of an aircraft or person therein or cause or permit an aircraft to endanger the safety of any person or property; Regulation 91.06.32 provides in part that: (1) Except when necessary for taking off, or landing, or except with prior written approval of the Director, no aircraft shall be flown over congested areas or over an obvious open-air assembly of persons at a height less than 1000 feet above the highest obstacle, within a radius of 2000 feet from the aircraft.' Regulation 94.05.1 provides: (1) Unless granted permission by the Director or the organisation designated for the purpose in terms of Part 149, as the case may be, on a case-by-case basis, a non-type certificated aircraft may not be flown (e) unless unavoidable, over built-up areas and open-air assemblies of persons except for the purpose of take-off, transit and landing.'

³¹ Clause 12 deals with managing and conducting investigations and clause 13 with determination of a course of action.

³² Clause 13.9.4 of the Manual.

³³ Clause 13.9.5 of the Manual.

were adjudged 'severe and catastrophic'. On the respondents' approach, the next step was to determine the incident level before considering the appropriate sanction. No mention is made of a proper determination of 'likelihood', as explained by the Manual, including consideration of whether the worst type of injury or damage was 'frequently', 'occasionally' or 'remotely' likely to occur. Importantly, the risk assessment and enforcement action matrix reflects that even an assessment of catastrophic severity might only result in a warning letter in the event that likelihood was determined as 'remote'.

[28] In casu, the severity of the contravention resulted in a 'Level 1 finding' necessitating the exercise of immediate discretionary enforcement powers.³⁴ The second respondent determined that it was necessary to suspend the applicant's licence, and to do so for a period of six months.

Analysis

[29] Taking the facts set out by the applicant together with the facts set out by the respondent which the applicant cannot dispute, I am satisfied that the applicant has demonstrated a *prima facie* right and should, on the facts provided, obtain the principle final relief he seeks on those facts. The main basis for this is the apparent failure, on the respondents' own version, to comply with the prescribed process by considering the issue of 'likelihood' in determining the appropriate sanction to be imposed on the applicant. Lawfulness is a well-established component of the constitutional right to just administrative action and, in terms of PAJA, it is accepted that all relevant considerations must be taken into account by an administrator.³⁵ To this may be added the procedural anomalies raised by the applicant in respect of the notice of intended suspension. These matters were not addressed on appeal to the director.

[30] The additional facts set up in contradiction by the respondents do not cast serious doubt on the applicant's case, which is premised on the constitutional right to just administrative action.

³⁴ This is in terms of the Flight Operations Procedure document.

³⁵ S 6(2)(e)(iii) of PAJA.

[31] The applicant has also established a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted. Objectively assessed, the applicant is right to be concerned that the period of suspension of his licence will lapse, in the absence of any further available internal remedy, before the part B review is heard and finalised. This will impact on the applicant's rights to just administrative action and dignity, in that the applicant will be deprived of utilising his aircraft for business and personal reasons, and for participation in air shows to which he has committed himself.

[32] The court must also weigh the prejudice to the applicant if the interdict is refused against the prejudice to the respondents if it is granted. The respondents argue that the CAA will be prejudiced in the event that the applicant does not serve the entire six-month suspension period, also for purposes of deterring any future transgressions of the same nature, which outweighs any inconvenience to the applicant. Granting the interim relief would, it is suggested, constitute a bad precedent. This is balanced by the prejudice to the applicant in the form of being deprived of the licence, and the ability to fly for personal and business reasons, as previously discussed. As *Mr Beyleveld* pointed out, the absence of prejudice to the CAA is demonstrated by the reality that the applicant continued to fly for some months after the incident. Granting the interim relief on the facts of this matter will not create any undesirable precedent binding on other courts and the CAA's objectives relating to civil aviation safety and security may receive expression subsequent to the review. Considering these factors, together with the absence of an alternative remedy, in the appropriate, inter-related manner required, results in the conclusion that this part of the application must succeed.

[33] The following order will issue:

1. The implementation of the First Respondent's decision of 6 April 2023, suspending the applicant's private pilot's licence for a period of six months, and confirmed by the second respondent's decision of 13 April 2023, is suspended pending the determination of part B of the application.

2. The hearing of Part B of the application is postponed *sine die*, to be enrolled in terms of the rules of court.

3. Costs are reserved.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 6 June 2023

Delivered: 6 June 2023

Appearances:

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