

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 6153/2018P

In the matter between:

TUPAC BUSINESS ENTERPRISES CC Applicant

and

**THE CHAIRPERSON KWAZULU-NATAL
GAMING AND BETTING BOARD** First Respondent

**THE CHAIRPERSON KWAZULU-NATAL
GAMING AND BETTING BOARD APPEAL
COMMITTEE** Second Respondent

**THE CHAIRPERSON BID ADJUDICATION
COMMITTEE KWAZULU-NATAL GAMING
AND BETTING BOARD** Third Respondent

**THE KWAZULU-NATAL GAMING
AND BETTING BOARD** Fourth Respondent

KIBE PROPERTY (PTY) LTD Fifth Respondent

JUDGMENT

Vahed J:

[1] The fourth respondent required office space to conduct its activities and, in Pietermaritzburg, resolved to procure suitable office space through the Department of Public Works. That process became delayed and was ultimately terminated. During March 2016 the fourth respondent embarked upon a tender process calling for prospective lessors to put in bids for premises potentially suitable for the fourth respondent's activities in Pietermaritzburg. Ultimately that process too did not result in the fourth

respondent acquiring premises. None of that is relevant for present purposes, but that brief background picture suggests why the fourth respondent embarked upon the process dealt with below.

[2] During July 2017 the fourth respondent identified two properties in Pietermaritzburg which appeared to be potentially suitable for its purposes and invited the fifth respondent and the applicant to put up bids for the leasing of those premises. Insofar as the applicant was concerned the invitation concerned premises at 165 Pietermaritz Street, Pietermaritzburg and it appears that those premises were identified consequent upon the earlier advice given to the fourth respondent by the applicant, through its manager, one Ashraf Dawood Mohammed, that the premises were available should the fourth respondent be interested.

[3] The fact that the fourth respondent did not embark upon an open tender process but instead opted to invite just two respondents in a closed bidding session is what this case is concerned with. It was referred to as the deviated tender process.

[4] Ultimately the applicant's bid was rejected, the fifth respondent's bid was accepted, and it appears that the fourth respondent has entered into a leasing arrangement with the fifth respondent.

[5] The applicant commenced these review proceedings initially contending that the rejection of its bid was unlawful and also taking issue with the deviated tender process and other aspects concerning the award of the leasing contract to the fifth respondent.

[6] Ultimately, when the matter came to be argued before me, the applicant no longer challenged the rejection of its bid and no longer sought to review its rejection.

[7] It was common cause that the invitation to bid contained the following special requirement:-

“5.1 Bidders must own the property which they intend refurbishing or have a valid mandate from the owner. **Proof of such must be submitted with the bid.** (*Emphasis in the original*) Where an agent intends to submit a bid on behalf of the legal owner of a property, such agent must attach a certified copy of the mandate given by the legal owner of such property to the agent. The agent must ensure that all information required to be provided in terms of the bid documents relates to the legal owner of the property and not the agent (i.e. tax clearance certificates, B-BBEE certificates, company docs etc. to be those of the owner and not the agent). If the property offered is a pending purchase and sale or an intended purchase and sale, confirmation of this must be furnished the build will not be considered if the purchase and sale of the property is still required to be subject to a financial agreement, re-zoning and/or incorrect title deed. Landlords must indicate to their shareholding and should attach shareholding certificate copies as well as copies of the title deed of the premises which is being offered in this bid at the time of the closing of the bid.”

[8] The requirements set out in paragraph 5.1 of the invitation (as quoted above) are abundantly clear and they require no discussion as to what was required of a person responding to the bid invitation.

[9] It is common cause that the applicant was not the owner of the property in respect of the bid it put up and that it did not comply with the other

requirements of special requirement 5.1 in circumstances where the bid was being put up by someone who was not the owner of the property.

[10] It was consequently abundantly clear as to why, when the matter came to be argued before me, the applicant sought no longer to challenge the fact that its bid had been disqualified. Instead the review was centred around other aspects of the process, particularly the fact that the fourth respondent embarked upon the deviated tender process instead of putting the bid out to full open tender.

[11] In its replying affidavit the applicant made its position abundantly clear. In paragraph 40 of the replying affidavit it said that its case stood or fell on the assertion that it was a bidder in its own name with the consent of the owner of the property (the Ashwood Trust); and that it was not its case that the bid was submitted as agent for that trust.

[12] Because the applicant no longer attacks the rejection of its own bid the respondents now challenge the applicants standing in the review.

[13] The parties were accordingly agreed that I should deal with this issue first.

[14] The respondents challenge the applicant's *locus standi* because they say that the applicant's interest in the outcome of the review is purely academic because it no longer retains an interest in the bid itself. It rendered

a non-responsive bid. It was common cause that on its bid the applicant could not have been awarded the leasing contract and that the setting aside of the bid process would not result in the applicant's bid being accepted or in the applicant's bid being one that could be considered in any subsequent process. For a subsequent process to be beneficial to the applicant it would have to submit a bid that differed materially from the current bid because it would have to cure that very fundamental objection i.e. its compliance with the special requirement 5.1.

[15] In *Giant Concerts CC v Ronaldo Investments (Pty) Ltd* 2013 (3) BCLR 251 (CC), Cameron J, speaking for the court, said the following (footnotes omitted):-

“[30] The Supreme Court of Appeal has rightly suggested that “adversely affects” in the definition of administrative action was probably intended to convey that administrative action is action that has the capacity to affect legal rights, and that impacts directly and immediately on individuals. The effect of this is that Giant, as an own-interest litigant, had to show that the decisions it seeks to attack had the capacity to affect its own legal rights or its interests.

[31] In seeking to assert this right, Giant has never claimed to be acting on behalf of someone else who was incapacitated, or as a member of, or in the interest of, a group or class of persons, or in the public interest, or in the interest of the members of an association. The sole interest it claims to assert is its own, which during argument its Counsel correctly described as commercial. It is that interest we must examine to see whether it affords Giant title to challenge the transaction.

[32] And in determining Giant's standing, we must assume that its complaints about the lawfulness of the transaction are correct. This is because in determining a litigant's standing, a court must, as a matter of

logic, assume that the challenge the litigant seeks to bring is justified. As Hoexter explains:

“The issue of standing is divorced from the substance of the case. It is therefore a question to be decided *in limine* [at the outset], before the merits are considered.”

[33] The separation of the merits from the question of standing has two implications for the own-interest litigant. First, it signals that the nature of the interest that confers standing on the own-interest litigant is insulated from the merits of the challenge he or she seeks to bring. An own-interest litigant does not acquire standing from the invalidity of the challenged decision or law, but from the effect it will have on his or her interests or potential interests. He or she has standing to bring the challenge even if the decision or law is in fact valid. But the interests that confer standing to bring the challenge, and the impact the decision or law has on them, must be demonstrated.

[34] Second, it means that an own-interest litigant may be denied standing even though the result could be that an unlawful decision stands. This is not illogical. As the Supreme Court of Appeal pointed out, standing determines solely whether *this* particular litigant is entitled to mount the challenge: a successful challenge to a public decision can be brought only if “the right remedy is sought by the right person in the right proceedings”. To this observation one must add that the interests of justice under the Constitution may require courts to be hesitant to dispose of cases on standing alone where broader concerns of accountability and responsiveness may require investigation and determination of the merits. By corollary, there may be cases where the interests of justice or the public interest might compel a court to scrutinise action even if the applicant’s standing is questionable. When the public interest cries out for relief, an applicant should not fail merely for acting in his or her own interest.

[35] Hence, where a litigant acts solely in his or her own interest, there is no broad or unqualified capacity to litigate against illegalities. Something more must be shown.

[36] How much more was the issue in *Ferreira*. There this Court considered own-interest constitutional standing under the interim

Constitution, whose provision here was materially similar to section 38 of the Constitution. The applicants were obliged to answer questions at an inquiry under a statute providing that their answers, even if incriminating, could later be used in evidence against them. They sought to challenge the constitutional validity of the provision. But they had not yet been charged, nor was there an actual prosecution, or even one threatened, where their answers would be used against them. This Court split on whether this gave them standing to challenge the provision on fair-trial grounds. A majority found that it did. Chaskalson P held that, even where own-interest standing is at issue, this Court should adopt a “broad approach”:

“This would be consistent with the mandate given to this Court to uphold the Constitution and would serve to ensure that constitutional rights enjoy the full measure of protection to which they are entitled.”

[37] The object of the standing requirement, the Court held, was that courts “should not be required to deal with abstract or hypothetical issues, and should devote its scarce resources to issues that are properly before it”. The Court held that own-interest standing does not require that a litigant must be the person whose constitutional right has been infringed or threatened: “What the section requires is that the person concerned should make the challenge in his or her own interest.” That was plainly the case with the applicants. The core of their complaint was that they were required to answer questions that might incriminate them, and which might later be used in evidence against them. This meant that the provision directly affected their interests. Even though the “direct” interest lay in the potential impact of the challenged provision on their interests – since no prosecution was impending or threatened – their wish to secure a ruling on the provision was not hypothetical or academic, but raised a real and substantial issue. They therefore had sufficient interest in having it resolved.

[38] Similarly, in *Eisenberg*, the question was whether the Minister could issue regulations without following a statutory consultative process involving a public notice and comment procedure. This Court held that a law firm practising mainly in immigration law had own-interest standing to challenge regulations that the Minister issued without following that process. The Court pointed out that the law firm would have had a right to

comment on the draft regulations, had the process been applicable to them. The law firm therefore “had an interest as a member of the public in asserting the right that it claimed to have and had standing to raise that issue in its own interests.”

[39] And in *Kruger v President of Republic of South Africa and others* an attorney was held to have personal standing to challenge presidential proclamations that were of “direct and central importance” to the field in which he practised. The attorney had established that significant legal uncertainty existed about the proclamations, with adverse effects on the administration of justice. This had negatively affected his ability to understand and engage with the legislative scheme on which his clients’ affairs. This Court held that even though the Bill of Rights standing provision was not directly applicable, since the proclamations were challenged on rationality and rule of law grounds, a generous approach to standing was nonetheless necessary. This was to “facilitate the protection of the Constitution” because:

“constitutional litigation is of particular importance in our country where we have a large number of people who have had scant educational opportunities and who may not be aware of their rights”

[40] The Court nevertheless cautioned that legal practitioners asserting personal standing to challenge legislative acts have to show that bringing the challenge is in the interest of the administration of justice (for instance, a “need for legal certainty”). Relying “purely on financial self-interest” is not enough.

[41] These cases make it plain that constitutional own-interest standing is broader than the traditional common law standing, but that a litigant must nevertheless show that his or her rights or interests are directly affected by the challenged law or conduct. The authorities show:

- (a) To establish own-interest standing under the Constitution a litigant need not show the same “sufficient, personal and direct interest” that the common law requires, but must still show that a contested law or decision directly affects his or her rights or interests, or potential rights or interests.

- (b) This requirement must be generously and broadly interpreted to accord with constitutional goals.
- (c) The interest must, however, be real and not hypothetical or academic.
- (d) Even under the requirements for common law standing, the interest need not be capable of monetary valuation, but in a challenge to legislation purely financial self-interest may not be enough – the interests of justice must also favour affording standing.
- (e) Standing is not a technical or strictly-defined concept. And there is no magical formula for conferring it. It is a tool a court employs to determine whether a litigant is entitled to claim its time, and to put the opposing litigant to trouble.
- (f) Each case depends on its own facts. There can be no general rule covering all cases. In each case, an applicant must show that he or she has the necessary interest in an infringement or a threatened infringement. And here a measure of pragmatism is needed.

[42] The impact of the Constitution on own-interest standing is evident in *Ferreira, Eisenberg* and *Kruger*. However, it is in my view necessary to emphasise that in each of those cases the own-interest litigant showed that his or her interests or potential interests were “directly affected” by the action sought to be challenged. It should be noted that the own-interest provision in section 38(a) is not isolated – it stands alongside section 38(b)–(e). These provisions create scope for public interest, surrogate, representative and associational challenges to illegality. The risk that an unlawful decision could stand because an own-interest litigant cannot establish standing is diminished by the fact that broad categories of other litigants, not acting in their own interest, are entitled to bring a challenge.

[43] The own-interest litigant must, therefore, demonstrate that his or her interests or potential interests are directly affected by the unlawfulness sought to be impugned.”

[16] The applicant in this case is undoubtedly an own interest litigant. Indeed, during argument, *Mr Rall* SC who appeared for the applicant did not dispute this. He however contended that the mere fact that the applicant submitted a bid and, the mere fact that it was entitled to submit a bid, was sufficient to give the applicant standing in the matter and, for that proposition, relied upon *Mogale City v Fidelity Security Services* 2015 (5) SA 590 (SCA) where, at paragraph 17, Wallis JA said in that case that “[t]he adjudication of the tender was therefore in breach of Fidelity's right to fair administrative action...”

[17] In addition *Mr Rall* contended that it was sufficient merely to have participated in the tender process to have given the applicant standing to challenge the tender on the basis of what was said by Schutz JA in *Transnet Limited v Goodman Brothers (Pty) Ltd* 2001 (1) SA 853 (SCA):-

“[9] It was presumably for reasons like these that counsel for Transnet conceded that some of its actions amount to acts of administration. But a distinction was sought to be drawn between different kinds of action. In this connection reliance was placed on the judgment of the Constitutional Court in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) (1999 (10) BCLR 1059) at paras [140] - [141]. There it was stated that in determining whether an act is an administrative act the emphasis should be on the function rather than the functionary, not on the arm of government to which the actor belongs but on the nature of the power exercised. From this it followed that the exercise of some of the powers of a member of the Executive (the President in that case) amounted to administrative action whereas exercises of other powers did not. This reasoning was sought to be extrapolated to the procurement activities of Transnet. Some of its actions are administrative. Others are not. Thus, so proceeded the argument, when Transnet invites tenders for the supply of locomotives, it

acts administratively. But when it invites tenders for toilet paper or, as in this case, gold watches, it does not. I fail to see how such a distinction is to be drawn, particularly where, as in this case, the purchase of watches is clearly incidental to the exercise of Transnet's general powers. The gold watches are bought so that they may be used to secure the loyalty of employees, much as salaries are paid to secure their services. For the reasons given I am of the view that the actions of Transnet in calling for and adjudicating tenders constituted administrative action, whatever contractual arrangements may have been attendant upon it.

[10] Turning to the second question, the 'right' or 'interest', Transnet relied on the unreported judgment of Heher J in *SA Metal Machinery Co Ltd v Transnet Ltd* (WLD, 9 March 1998), in which the learned Judge held that a person in a position such as Goodman was, was 'effectively a stranger to the tender process' (the passage is more fully quoted at 996H - 997A of Blieden J's judgment) and therefore had no protectable right or interest entitling him to just administrative action. If that were correct, every applicant for a permit would likewise have no right or interest. By contrast with the decision of Heher J in *Aquafund Pty Ltd v Premier of the Province of the Western Cape* 1997 (7) BCLR 907 (C) Traverso J identified the right (at 913I) as the right to obtain the information which the tenderer reasonably required in order to enable him to determine whether his right to lawful administrative action provided for in the interim Constitution had been violated. For instance, reasons given may tell a tenderer that his goods did not comply with the specification. He, knowing that they did comply, would then be able to take the matter further. Without reasons he might be without remedy."

[18] I do not agree. It seems to me that what was said in *Giant Concerts* (quoted above) is a complete answer to the applicant's question of standing. It is inconceivable that the applicant can be allowed to put in a completely non-responsive tender, accept that such tender has been rightly rejected and then thereafter be heard to complain about the process and a right to have the process set aside so as to enable a fair tender process to thereafter unfold to

give it a second bite at the cherry. The special condition made it abundantly clear that all those “blocks” had to be “ticked” before the tender could be considered. A tenderer not meeting those requirements has no interest in the outcome of the tender because it would never be entitled to be awarded the tender in the first place.

[19] Mr *Rall* sought further, on the facts, to distinguish the present case from *Giant Concerts*, contending that while one is here concerned with a competitive bid process the “objector” in *Giant Concerts* was from outside the process. Admittedly the facts in *Giant Concerts* differ from the facts of this case but, in my view, the principles are the same. In *Giant Concerts* the importance of the interest required was stated thus:

“[56] Giant’s mere participation in the notice and comment process by lodging an objection did not confer standing on it to challenge the transaction. The very point of that process is to identify objections, to afford them expression, and then to evaluate and consider them. It is not logical to assert that an own-interest standing qualification arises from participation in a process if the objection remains hypothetical and academic.”

[20] On the approach I take to this case it seems to me that some direction can also be drawn from what was said in paragraphs 40 and 41 of *Areva NP v Eskom Holdings SOC Ltd* 2017 (6) BCLR 675 (CC):-

[40] It was said in *Giant Concerts* that the issue of *locus standi* is separate from the merits and will usually be dispositive of an own interest litigant's claim. This Court went on to say that:

"an own-interest litigant may be denied standing even though the result could be that an unlawful decision stands. This is not illogical. As the Supreme Court of Appeal pointed out, standing determines solely whether *this* particular litigant is entitled to mount the challenge: a successful challenge to a public decision can be brought only if 'the right remedy is sought by the right person in the right proceedings'."

However, this Court immediately qualified the general principle that an own-interest litigant's challenge of a public decision may be dismissed solely on the basis that the litigant lacks *locus standi*. It said:

"To this observation one must add that the interests of justice under the Constitution may require Courts to be hesitant to dispose of cases on standing alone where broader concerns of accountability and responsiveness may require investigation and determination of the merits. By corollary, there may be cases where the interests of justice or the public interest might compel a Court to scrutinise action even if the applicant's standing is questionable. When the public interest cries out for relief, an applicant should not fail merely for acting in his or her own interest."

[41] It seems to me that, part of what this Court held in *Giant Concerts* was that, where a litigant has failed to show that it has standing, the Court should, as a general rule, dispose of the matter without entering the merits and that it should only enter the merits in exceptional cases or where the public interest really cries out for that. It does not appear to me that this is a case which cries out for that. In saying this, I am not suggesting that on the merits the challenge is necessarily without merit but I do so because: (a) the two bidders appear to have been neck and neck in the competition for the tender; (b) both bidders were accepted as technically capable of doing the job properly; and (c) time is of the essence in regard to the installation and replacement of the steam generators and, if the steam generators are not installed and replaced on time, there may be severe consequences for the country in regard to nuclear energy. Furthermore, Areva has been working on the project for the past two years and there is not much left before the time by when the installation and replacement of the generators is required to have been completed.

[21] The applicant must demonstrate that it has a direct and substantial interest in the outcome of the litigation. That direct and substantial interest means that its existing bid must qualify to be entitled to be considered in a subsequent bidding process, fairly conducted, and that its consideration has fair prospects of success. On the facts of the present case the present bid put up by the applicant does not meet the requirements. That much is common cause. Therefore on the bid document as it currently stands the applicant cannot establish that it has a direct and substantial interest in the outcome of this litigation. As was said in *Giant Concerts* it does not mean that an unlawful decision remains an illogical consequence. If the right person in the right proceedings seeks the right remedy the decision may well be subject to review and setting aside. The applicant is not the right person and these are not the right proceedings and it does not, in these proceedings, seek the right remedy.

[22] These aspects as to standing were also considered in *Mostert and Others v Nash and Another* 2018 (5) SA 409 (SCA) where, at paragraphs 20 *et seq* Wallis JA said the following:-

“[20] Under s 38 of the Constitution the grounds of standing in our law have been considerably expanded and a broad approach is to be taken to 'own interest' standing under s 38(a). In approaching that question Mr Nash's contention that the fee agreement is unlawful must be assumed to be correct. If it is correct, then some amounts that have been paid to Mr Mostert as curator may have to be disgorged and repaid to the Sable Fund. Any resulting surplus accruing in the Sable Fund will fall to be distributed in accordance with a scheme of apportionment of surplus under s 15B of the PFA. As Mr Nash claims to have been a member of the Sable Fund before the impugned transactions were undertaken and

Midmacor was the principal employer, they would potentially at least be entitled to benefit from such an apportionment. That seems to me to be more than sufficient to give them own-interest standing to pursue these proceedings.

[21] Mr Mostert in his capacity as curator attacks the standing of Mr Nash and Midmacor on the footing that the former's membership of the Sable Fund and the latter's position as principal employer were part of the scheme to 'unlock' the surplus in the fund. He then characterises their respective positions as a charade. That overlooks two things. First, it ignores the requirement that the allegations by the parties claiming standing must be accepted as correct, as standing is an issue to be determined in limine before the merits are addressed. Second, it requires us to enter upon and determine the merits of Mr Mostert's contentions about the nature of the arrangements and determine whether they were unlawful, criminal or a charade. As noted in [6], it is inappropriate for us to do so. That is not the question before us; it is before another court and it is impossible to resolve the factual disputes on these papers.

[22] An approach that asked whether Mr Nash and Midmacor had a direct and substantial interest in the outcome of the litigation arrives at the same result. The issue is the validity of the fee agreement between the curator and the FSB. There are no trustees to protect the interests of persons such as pensioners, former members or a former principal employer. The invalidity of the fee agreement is directed at recovering funds for the Sable Fund that would in turn form part of a surplus in the fund available for distribution in accordance with a surplus-apportionment exercise. That provides a sufficiently direct and substantial interest in the outcome of the litigation to confer standing on Mr Nash and Midmacor.

[23] At the risk of piling Pelion upon Ossa, there is a further ground for recognising standing on the part of Mr Nash and Midmacor. It lies in s 5(8) of the FI Act, which provides:

'Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the registrar with regard to any matter arising out of, or in connection with,

the control and management of the business of an institution which has been placed under curatorship.'

This section is clearly addressed to the question of standing and not necessarily a possible review regime distinct from PAJA, an issue debated in argument that we do not need to decide. It is couched in wide language ('any person') and requires only that good cause be shown for challenging a decision or action by either the curator or the Registrar. The conclusion of the fee agreement is an action by the curator and the FSB in connection with the control and management of the Sable Fund. While the section might not permit of a challenge by someone with no connection whatsoever to a fund, that can hardly be said of Mr Nash and Midmacor. The claim that they lacked locus standi to bring these proceedings must be rejected."

[23] As long ago as in *Dalrymple v Colonial Treasurer* 1910 TS 372 it was observed that:-

"The general rule of our law is that no man can sue in respect of a wrongful act unless it constitutes the breach of a duty owed to him by the wrongdoer or unless it cause him some damage in law... . And the rule applies to wrongful acts which affect the public as well as to torts committed against private individuals."

See also generally in this regard the chapter: *Standing*, in Hoexter, *Administrative Law in South Africa*, Second Ed, Juta, 2012.

[24] Finally, Mr *Potgieter* SC, who appeared for the fifth respondent, has referred me to a passage in de Ville, *Judicial Review of Administrative Action in South Africa*, Revised First Edition, Lexis Nexis, 2005 where, at page 399, the learned author says:-

“One of the preconditions to seeking review has traditionally been that the party or parties approaching the court for relief must have *locus standi in iudicio*. It concerns the question whether the specific litigant who is before the court is the person who should be allowed to challenge the validity of the action in question. There are various reasons for imposing restrictions on the specific litigant who may approach a court for relief. Firstly, the concern for scarce state resources (spent on adjudicating and defending such actions) requires the exclusion of mere busybodies from challenging every conceivable action of the state. Secondly, because of the doctrine of *stare decisis*, it is important that the courts be presented with the most capable arguments on the specific legal issues at stake; not everyone will be capable of doing so. Thirdly, the court has a specific role to play in the *trias politica* model. Should there be no or few restrictions on standing, it would have an effect on the role of the court *vis-a-vie* the other branches of government. One approach to these difficulties would be to impose stringent requirements in relation to standing, allowing only those who are personally and directly affected to challenge the validity of administrative action. The consequence of such an approach, which casts the court in the role of settler of private disputes in the public law field (the same as in private law) is of course that many serious legal breaches by state authorities will go by without any person being able to challenge their validity.”

[25] Mr *Rall* has also suggested that its own bid aside, the applicant nevertheless still retains the right to challenge the decision by the fourth respondent to employ the deviated tender process. In my view that decision had no direct negative effect *vis-a-vis* the applicant. Mr *Rall* also suggests that the extremely short time period within which the applicant was given to respond (a period of some four days was suggested) was also something worthy of review because had a more generous open tender process been followed the registered owner of the property (and here I assume he refers to the Trust) could have entered the process and put in a properly responsive

bid. In my view neither of these submissions have merit. What is of importance here is the existence of the applicant's direct substantial interest (or more importantly the lack thereof) in the rejection of its bid.

[26] For those reasons I find that the applicant lacks standing to challenge both the process and the award to the fifth respondent and as a consequence the application falls to be dismissed with costs, such costs to include those reserved on previous occasions.

Vahed J

Case information

Date of hearing	:	2 November 2018
Date of Judgment	:	9 November 2018
Counsel for the Applicant	:	A J Rall SC
Instructed by	:	Redfern & Findlay Attorneys Tel: 033 347 0039 Ref: ACF/MAT3399
Counsel for the 1 st & 4 th Respondent	:	D P Crampton
Instructed by	:	PKX Attorneys Tel: 033 347 5354 Ref: M Govender
Counsel for the 5 th Respondent	:	A E Potgieter SC
Instructed by	:	Mason Incorporated Tel: 033 345 4230 Ref: PK Coetzee/nb/15/S053/010