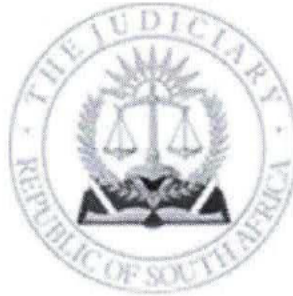


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

CASE NO: 026651/2024

DOH: 10 APRIL 2024

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
..... SIGNATURE 16/4/2024 DATE	

NATIONAL PROFESSIONAL BOXING

PROMOTER'S ASSOCIATION

APPLICANT

and

MINISTER OF SPORTS, ARTS & CULTURE

FIRST RESPONDENT

MINISTER OF FINANCE

SECOND RESPONDENT

BOXING SOUTH AFRICA

THIRD RESPONDENT

MANDLA NTLANGANISO

FOURTH RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives' by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 16 April 2024.

JUDGMENT

MALI J.

1. The applicant brought an application on urgent basis seeking a declaratory order against the first respondent. The court is asked to declare that the appointment of the fourth respondent as an accounting authority is irregular and invalid, to the extent that it carries and/or confers in any way, shape or form, upon the fourth respondent the powers to sanction boxing fights or tournaments; that any sanctioning of any boxing fight/s tournament/s by the third respondent from 13th December 2023 and in future, outside the provisions of section 7 (1) (v) (ii) read with section 9 (2) of the South African Boxing Act No. 11 of 2001, is unlawful and invalid *ab initio*.
2. The applicant also seeks an order interdicting and restraining the third respondent from further exercising any power to sanction any boxing fight/ tournament during the interdict of tis Board under Case NO: 2023/ 130465. The applicant is an association as envisaged in Section 28 (1)(a)(iv) of the South African Boxing Act, No. 11 of 2001 (hereinafter referred to as the "Boxing Act"). The Boxing Act provides, *inter alia*, that every boxer manager,

trainer, promoter and official has a right to participate in forming a promoter's association.

3. The first respondent is the Minister of Sport, Arts and Culture and the Executive Authority responsible for the National Department of Sports, Arts and Culture of the Republic of South Africa responsible for, *inter alia*, the administration of the Boxing Act (Sports Minister).
4. The second respondent is the Minister of Finance and the Executive Authority responsible for the National Treasury Department of South Africa and managing South Africa's national government's finances (Finance Minister).
5. The third respondent is Boxing South Africa ("Boxing SA"), a public entity capable of suing and being sued in its own name, established in terms of Section 4 of the Boxing Act.
6. The fourth respondent is Mr. Mandla Ntlanganiso (Mr. Ntlanganiso), an employee of the third respondent.
7. On 13 December 2023 applicant under case number 130465/ 2023 obtained orders from this Court against the Sports' Minister, Boxing SA and seven others. The Sports' Minister was ordered to withdraw and revoke his appointment of some of the respondents as members of the Board for Boxing SA. An interim order pending hearing and finalization of Part B of that application which is the review of the Sports' Minister's decision to appoint the members of the Board of Boxing SA was also issued. During February 2024 the Sports' Minister withdrew his opposition of the review.

8. On 24 February 2024, the Sports' Minister issued a media statement announcing the appointment of Mr Ntlanganiso as the Accounting Authority for Boxing SA, with effect from 24 February 2024 (statement). The statement conveyed that the appointment has been made in concurrence with National Treasury, in terms of section 49 (2) of the Public Finance Management Act (PFMA). It further stated that *"Minister Kodwa says, "The appointment of Mr Mandla Ntlanganiso as Boxing South Africa's accounting authority provides clarity to all stakeholder and assurance to all promoters and boxers that all sanctioned boxing fights will go ahead as planned."*

9. Consequent to the above, the applicant addressed separate letters to the Sports' Minister and Finance Minister seeking clarity on the appointment of Mr Ntlanganiso. Having not received response from both Ministers, the applicant, on 5 March 2024, launched this application.

10. It is clear from the answering affidavit of the Sports' Minister, Mr Ntlanganiso was appointed at the behest of Minister of Sport by the Minister of Finance, in terms of section 49 (3) of the PFMA. The second last sentence of the appointment letter written on behalf of Finance Minister addressed to Sports Minister *reads:*

"It is important to note that this approval only pertains to the functions of an accounting authority in terms of the PFMA and does not include functions of the Board of Boxing South Africa in terms of the South African Boxing Act, 2001."

11. The crux of applicant's complaint is that the Sports' Minister does not have authority and mandate to authorize Boxing SA and or Mr Ntlanganiso to sanction boxing fights and tournaments without the Board of Boxing SA. The applicant relies on the doctrine of Legality in support of the urgency of the application.

12. The application is brought to vindicate the Rule of Law¹, to ensure that the power is exercised by the correct repository of power. Both Ministers opposed the application on the grounds that the matter was not sufficiently urgent. Boxing SA and Mr Ntlanganiso also attack the urgency of this application.

13. The question whether a matter should be enrolled and heard as an urgent application is governed by the provision of 6 (12) of the Uniform Rules of the Court. Sub rule 12 allows the court in urgent applications to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such matter and in accordance with such procedure as to it seems meet. It further provides that in the affidavit in support of an urgent application the applicant "*..... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.*"

¹ The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(c) Supremacy of the Constitution and the rule of law.

14. In *East Rock Trading 7 (PTY) LTD and another v Eagle Valley Granite (PTY) LTD and others*² the court held:

“The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at the hearing in due course then the matter qualifies to be enrolled and heard as an urgent application.”

15. There is no serious dispute pertaining to the delay by the applicant in bringing the matter before court. The issue is whether, based on the attack founded on legality, the matter must be considered as urgent. In *Apleni v The President of the Republic of South Africa and another*³ it is held:

“... Where allegations are made relating to abuse of power by a Minister or other public officials, which may impact upon the Rule of Law, and may have a detrimental impact upon the public purse, the relevant relief sought ought normally to be urgently considered.”

16. The applicant submits that its members cannot participate in activities that are not lawfully sanctioned. Accordingly, because its members are unable to participate in boxing activities, they are enduring economic loss. The

² Case Number 11/33767 South Gauteng High Court Johannesburg para 9

³ 65757/2017 [2017] ZAGPPHC 656; [2018] 1 All SA 728 (GP) para 10

perpetuation of unlawfulness by irregular sanctioning of fights and tournaments aggravates the situation for all concerned.

17. The applicant further submits that boxing tournaments continue to be sanctioned by an entity lacking powers to do so, contrary to the provisions of the Boxing Act. To aggravate matters, against Finance Minister's clear letter, the Sports Minister simply added functions arising from the Boxing Act whereas the letter from National Treasury is aimed only at aspects of the PFMA. It is not in dispute that at 5 PM on 24 February 2024, a boxing tournament took place in Kimberley. This is the same day the announcement of the appointment of Mr Ntlanganiso was made.
18. From the facts, serious allegations are made pertaining to the exercise of power by the Executive Authority of the Arm of State. If the matter were to be enrolled to be heard in the normal course, members of the applicant would not be afforded substantial redress due to, amongst others, the difficulties in quantifying their losses. In the circumstances I am satisfied that the matter is sufficiently urgent.

LOCUS STANDI

19. In Amlers Precedents of Pleadings LexisNexis LTC Harms et al 2018 on page 248 the following is said:

“The question of locus standi is in a sense procedural, but it is also a matter of substance. It concerns the sufficiency and directness of a person’s interest in the litigation to be accepted as a litigating party. It is also related to the capacity of a person to conclude a jural act. Sufficiency of interest depends on the facts of each case and there are no fixed rules.”

20. *“In the COPE matter the court of appeal found that the filing of a power of attorney in compliance with Rule 7(2) and 7(4) of the Uniform Rules of Court is peremptory, and where the requirements have not been met, the appeal has not been properly enrolled. The Court referred to Aymac CC & Another v Widgerow 2009 (6) SA 433 (W). Due to the failure to apply for condonation in terms of Rule 49(6)(a) (amongst other reasons) the appeal was found moot and consequently dismissed.*

In my view, the COPE matter aptly illustrates the importance to comply with the formalistic rules laid down for the implementation of justice. It simultaneously underscores the value of substantive compliance to ensure fairness. These rules are important to grant structure to the legal field and uniform application, subject of course to the individual circumstances of each case, ensures fairness to both parties in litigation.”⁴

⁴ Joubert and others v Louw [2023] ZANWHC 102 (22 June 2023) para 25

21. Boxing SA submits that the applicant lacks authority to bring this application due to the applicant non-compliance with section 28 (3) and (4) of the Boxing Act. Section 28 (3) provides:

"Only one of each of the associations contemplated in subsection (1) may be recognized by Boxing SA subject to the association submitting its constitution to Boxing SA for approval in writing"

Section 28 (1) provides:

that every boxer, manager, trainer, promoter and official has the right to participate in forming a (i) boxer's association, (ii) managers association; (iii) trainers association; (iv) promoter's association; (v) official's association or (vi) federation of such associations; ...

'Section 28 (4) provides:

*"All recognized associations or federation of associations **must** submit their annual reports on their activities to Boxing SA once a year. (own emphasis).*

22. According to Boxing SA the applicant did not submit annual reports for 2022/23 and 2023/24 financial years to Boxing SA, as required in section 28(4). In replying to this the applicant submits that there is no basis for non-recognition of the applicant; because Boxing SA sent the applicant a congratulatory letter following the applicant's Inaugural Elective Conference held during October 2022. The applicant locates its legal standing in the Boxing Act. It follows that to prove its existence it must comply with the provisions of the Boxing Act.

23. Boxing SA's conduct in sending the applicant a congratulatory letter, does not equate to submission of financial statements, a peremptory requirement. With this shortcoming alone the applicant lacks legal standing. In the result the point in limine must succeed.

24. I do not need to deal with the other point law raised by Boxing SA, that of non-joinder. The issue of legal standing is dispositive of this application. In the result I grant the following order:

ORDER:

1. The Application is dismissed, due to the Applicant's lack of *locus standi*;
2. The Applicant is ordered to pay the Respondents' costs on party and party scale, including the costs of two counsel, including Senior Counsel




N.P. MALI
JUDGE OF THE HIGH COURT

APPEARANCES:

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