



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
14/2/2025	
DATE	SIGNATURE

Case No: 028984/2023

In the application between:

DSR BELEGGINGS (PTY) LTD

Applicant

and

MINISTER OF LABOUR

First Respondent

**DIRECTOR-GENERAL: DEPARTMENT OF
LABOUR**

Second Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date for the handing down of the judgment shall be deemed to be 14 February 2025.

JUDGMENT

LG KILMARTIN, AJ:

A. INTRODUCTION

[1] This is an application seeking the review and setting aside of a decision by the Department of Labour (“the Department”) dated 3 October 2022 (“the impugned decision”), in which the Chief Director: Employment Services refused to issue the applicant, DSR Beleggings (Pty) Ltd, with a certificate or letter of recommendation (known in immigration parlance as “the letter of recommendation”) in respect of a corporate visa application.

[2] At the outset it is important to point out that applications for corporate visas are governed by section 21 of the Immigration Act, 13 of 2002 (“the Immigration Act”), read with regulation 20 of the regulations published thereunder (“the regulations”).¹

[3] The applicant alleges that the impugned decision is irregular and reviewable on several grounds under the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”). For reasons explained below, the main application was not argued and, instead, the Court dealt with a point in *limine* pertaining to jurisdiction which was only raised with the applicant the afternoon before the hearing.

B. RELEVANT BACKGROUND FACTS

[4] The applicant is a logistics company specialising in cross-border road freight and transportation of hazardous goods (in particular, fuel) to various

¹ Immigration Regulations published on 22 May 2014 (GN No. R413, Government Gazette No. 37679) as amended on 29 November 2018 by GN No. R1328 in Government Gazette No. 42071.

countries, including countries in the Southern African Development Community (“SADC”) region.

[5] The first respondent is the Minister of Labour (“the Minister”), who is cited in his official capacity, having overall control, authority and responsibility for the Department in terms of section 92(1) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

[6] The second respondent is the Director-General of the Department, appointed in terms of section 7(3) of the Public Service Act, 103 of 1994, read with column 2 of Schedule 1 (“the Director-General” or “the second respondent”).

[7] In the founding affidavit it was explained that the first and second respondents had been cited as parties as it is not clear from the wording of the regulations which of the respondents is required to provide the letter of recommendation as reference is only made to “*the Department of Labour*”. The application was opposed by the second respondent and the deponent to the answering affidavit, Esther Tloane (“Ms Tloane), Chief Director: Employer Services at the Department of Labour appears to be the person who issued the impugned decision.

[8] Significantly, Ms Tloane confirms that the second respondent is required to facilitate and verify “*if there was a search on the part of the applicant in terms of the Immigration Act and Regulations*”.

[9] On 19 June 2022, the applicant placed advertisements in the City Press and Rapport newspapers, seeking 73 cross-border truck drivers for the route between South Africa and the Democratic Republic of Congo ("the DRC"). The advertisement stipulated that the closing date was 15 July 2022 and one of the requirements was that the drivers should have five years' experience and knowledge in cross-border trucking.

[10] According to the applicant, it failed to secure South African nationals who could, and were willing, to drive its trucks on the said route. This prompted the applicant to apply for a corporate visa which would allow it to employ foreign nationals for the task.

[11] As will be explained with reference to the regulations quoted below, in terms of regulation 20(1), an application for a corporate visa must be accompanied by, *inter alia*, a letter of recommendation issued to the applicant by the Department confirming that, despite a diligent search, an applicant is unable to find suitable citizens or permanent residents to occupy the position that the corporate entity seeks to fill.

[12] On 4 August 2022, the applicant applied to the Department for a letter of recommendation in terms of regulation 20(1)(b) promulgated under the Immigration Act.

[13] The Department acknowledged receipt of the application on 11 August 2022 and advised that it would make a decision within 30 days. The Department

further outlined the process it would adopt to check the availability of the skills required and stated, *inter alia*:

“However, as part of our diligent process the Department of Labour in the province will register the opportunity on Employment Services of South Africa (ESSA) database, consult the Private Employment Agencies and any work seeker database in the country to check the availability of the skills required.” (sic)

[14] On 11 August 2022, the Department registered the opportunity on ESSA.

[15] On 6 September 2022, the Department contacted an agency called Resolution Placement Agency (“Resolution Placement”) to inform it about the applicant’s requirements.

[16] On 7 September 2022, Resolution Placement responded to the Department indicating that contact was made with their tanker drivers *“but they no longer desire to travel into the DR”*, i.e. the DRC.

[17] On 8 September 2022, the Department contacted T & T Academy, a private employment agency, to enquire whether it had 73 truck drivers available as sought by the applicant.

[18] On 15 September 2022, T & T Academy responded to the Department, indicating that it had 40 candidates.

[19] On 15 September 2022, the Department sent an email to the applicant stating, with reference to the 40 candidates offered by T & T Academy, that “*PEA confirms availability of the skill required*”.

[20] On 16 September 2022, the Department’s Adjudication Committee took the decision not to grant the applicant’s application for a letter of recommendation.

[21] On 3 October 2022, the Department took the impugned decision. The wording of the impugned decision is as follows:

“Dear Client employer!

*This letter serves to inform you that after careful consideration of your application for a Working Conditions and Salary Benchmarking Certificate **in respect of your Corporate Work Visa** (DHA-1743) application, the Department of Employment and Labour made a negative recommendation thereon based on the following factor:*

- *The skill is available in the country.*

Your attention is further drawn to the fact that our recommendation is not subject to any appeal processes. However, should you be dissatisfied with the outcome of your application, you may lodge an appeal with the Department of Home Affairs in terms of Section 8(1) of the Immigration Act.” (Emphasis added)

[22] On 12 October 2022, T & T Academy sent 40 *curricula vitae* to the applicant.

[23] On 24 October 2022, T & T Academy sent 30 further *curricula vitae* to the applicant.

[24] On 23 October 2022 the applicant requested T & T Academy to arrange interviews with candidates for 30 November 2022.

[25] On 30 November 2022, only three candidates attended the interview.

[26] On 6 February 2023 the Department of Home Affairs advised the applicant's attorneys that the Minister could not review a decision made by another department and that an appeal to Home Affairs, under section 8(1) of the Immigration Act, was misplaced.

[27] In the circumstances, on 28 March 2023, the review application was launched.

C. LATE RAISING OF THE POINT IN LIMINE: LACK OF JURISDICTION

[28] Papers were exchanged and the replying affidavit was filed on 24 January 2024. There was no challenge to this Court's jurisdiction in the papers.

[29] The applicant's heads of argument were filed in mid-May 2024 and the respondents' heads of argument appear to have been filed in early June 2024. There was also no mention of any jurisdictional challenge in the heads of argument filed on behalf of the second respondent. At that stage, second

respondents' counsel was Mr M Mavhungu ("Mr Mavhungu"). The applicant's counsel throughout has been Mr RA Foden ("Mr Foden").

[30] The joint practice note which refers to a pre-hearing conference which was held on 5 November 2024 via MS Teams was attended by the respondents' junior counsel, Mr T Phefadu ("Mr Phefadu") who was also present at the hearing on 27 November 2024.

[31] Under paragraph 3 of the "**JOINT PRACTICE NOTE / MINUTE OF PRE-HEARING CONFERENCE**" the following was stated:

"3

Issues requiring determination.

3.1 *Whether a case is made out for a review of the Department of Labour's decision to refuse a 'letter of recommendation' / certificate as contemplated in Regulation 20 of the Immigration Regulations.*

3.1.1 *Such a certificate would confirm that despite a diligent search the applicant is unable to find suitable South African Citizens or permanent residents to occupy the position sought to be filled.*

3.1.2 *The applicant sought (and still seeks) to employ 73 cross-border truck drivers.*

3.2 *Costs.*

3.3 *Applicant seeks an order in terms of **prayers 1, 3 and 4** of the Notice of motion.*

3.3.1 *(Applicant does not persist with prayer 2, the substitution order.)*

3.4 *Respondent seeks that the application be dismissed with costs.”*

[32] This court accordingly prepared on the basis that the main application would proceed on the hearing date. The matter was allocated for hearing at 14h00 on Wednesday, 27 November 2024. It appears from CaseLines that at 11h03, on the day of the hearing, supplementary heads of argument by the second respondent were uploaded onto CaseLines. This was done despite the Court’s directive indicating that no further papers could be uploaded after Monday, 18 November 2024.

[33] The second respondent was represented at the hearing by Mr T Ncongwane SC (“Mr Ncongwane”) and Mr Phefadu (who had also attended the pre-hearing conference). Mr Ncongwane explained that counsel had unfortunately been briefed at a late stage after the passing of Mr Mavhungu.

[34] In this regard, the following is stated in paragraphs 2.6 and 2.7 of the second respondents’ supplementary heads of argument:

“2.6 *The court’s attention is drawn to the fact that the previous Counsel who dealt with the matter has unfortunately passed away and as a result of that a new legal team has been solicited to deal with the matter.*

2.7 *The current legal team was officially briefed at a very late stage in the matter and has subsequently identified a shortcoming not raised in the respondent's case and the respondent not being aware of it. The issue related to the lack of jurisdiction of this Court to adjudicate on the matter as the matter falls within the exclusive jurisdiction of the Labour Court."*

[35] Mr Foden confirmed that he had also prepared supplementary heads of argument and requested permission to upload them onto CaseLines at the hearing, which was duly given. Mr Foden explained that he had only been advised by the second respondent's counsel at 15h50 the day before the hearing of the respondents' intention to raise the point in *limine*. The Court was only aware of the point in *limine* being raised on the day of the hearing and after the heads of argument were uploaded.

[36] The applicant objected to the point in *limine* being raised on the basis that:

[36.1] if it is a legal point, it had not been foreshadowed by notice that it would be argued or covered in any heads of argument. Mr Foden pointed out that Rule 6(5)(d)(ii) states that if a respondent intends to raise any question of law only, it should deliver a notice of intention to do so within the time stated for filing an answering affidavit; and

[36.2] if it is a factual point, it has not been covered in any of the affidavits.

[37] The second respondent's argument is that this court lacks jurisdiction to preside over the matter as it is one which falls within the exclusive jurisdiction of the Labour Court.

D. RELEVANT LEGAL PROVISIONS

[38] For the purposes of considering the question of jurisdiction, it is necessary to have regard to the relevant legal provisions of the Immigration Act (together with the regulations promulgated thereunder) and the Employment Services Act, 4 of 2014 ("the Employment Services Act").

The Immigration Act and the regulations

[39] Section 21 of the Immigration Act provides as follows:

"21 Corporate visa

(1) Subject to subsection (1A), a corporate visa may be issued by the Director-General to a corporate applicant, to employ foreigners who may conduct work for such corporate applicant in the Republic.

(1A) No corporate visa may be issued or renewed in respect of any business undertaking which is listed as undesirable by the Minister from time to time in the Gazette, after consultation with the Minister responsible for trade and industry.

(2) The Director-General shall determine, in consultation with the prescribed departments, the maximum number of foreigners

to be employed in terms of a corporate visa by a corporate applicant, after having considered-

- (a) the undertaking by the corporate applicant that it will-*
 - (i) take prescribed measures to ensure that any foreigner employed in terms of the corporate visa will at all times comply with the provisions of this Act and the corporate visa; and*
 - (ii) immediately notify the Director-General if it has reason to believe that such foreigner is no longer in compliance with subparagraph (i);*
 - (b) the financial guarantees posted in the prescribed amount and form by the corporate applicant to defray deportation and other costs should the corporate visa be withdrawn, or certain foreigners fail to leave the Republic when no longer subject to the corporate visa; and*
 - (c) corroborated representations made by the corporate applicant in respect of the need to employ foreigners, their job descriptions, the number of citizens or permanent residents employed and their positions, and other prescribed matters.*
- (3) The Director-General may withdraw or amend a corporate visa for good and reasonable cause.*
- (4) The Minister may, after consultation with the Minister of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, and the Minister of Labour, designate certain*

industries, or segments thereof, in respect of which the Government may-

- (a) reduce or waive the requirements of subsection (2) (c);*
 - (b) enter into agreements with one or more foreign states and set as a condition of a corporate visa that its holder-*
 - (i) employs foreigners partially, mainly or wholly from such foreign countries; and*
 - (ii) remits a portion of the salaries of such foreigners to such foreign countries;*
 - (c) apply this subsection in respect of foreigners required for seasonal or temporary peak period employment; or*
 - (d) waive or reduce the requirement of subsection (2) (b) under special terms and conditions.*
- (5) ...*
- (6) A foreigner employed in terms of a corporate visa shall work for the holder of that corporate visa.” (Emphasis added)*

[40] “*Minister*” is defined in section 1 of the Immigration Act as “*the Minister of Home Affairs*”.

[41] The preamble of regulation 20 promulgated under the Immigration Act reads as follows:

*“The **Minister of Home Affairs** has, in terms of section 7 of the **Immigration Act, 2002 (Act No. 13 of 2002)**, after consultation with the Immigration Advisory Board, made the regulations in the schedule.”*

[42] Regulation 20(1) reads as follows:

“1. An application for a corporate visa shall be made on Form 13 illustrated in Annexure “A” and accompanied by –

(a) proof of the need to employ the requested number of foreigners;

(b) a letter issued to the corporate applicant by the Department of Labour to the effect that a certificate has been issued to the Department confirming that a certificate has been issued to the Department confirming –

(i) that despite diligent search, the corporate applicant was unable to find suitable citizens or permanent residents to occupy the position available in the corporate entity;

(ii) the job description and proposed remuneration in respect of each foreigner;

(iii) that the salary and benefits of any foreigner employed by the corporate applicant shall not be inferior to the average salary and benefits of citizens or permanent residents occupying similar positions in the Republic;...”
(Emphasis added)

[43] Section 7(1)(e) of the Immigration Act reads as follows:

“7 Regulations

(1) *The Minister may, after consultation with the Board, make regulations relating to-*

...

(e) *a port of entry visa, **visas**, permanent residence permits and the certificates which may be issued under this Act, **the requirements for the issuing of** a port of entry visa, **visas**, permanent residence permits and certificates and terms and conditions to which such port of entry visa, visas, permanent residence permits or certificates may be subjected, and the circumstances under which such a port of entry visa, visas, permanent residence permits or certificates may be cancelled or withdrawn;...* (Emphasis added)

The Employment Services Act

[44] The preamble to the Employment Services Act confirms that its aim is to

*“To provide for public employment services; to provide for the establishment of schemes to promote the employment of young work seekers and other vulnerable persons; to provide for schemes to assist employees in distressed companies to retain employment; **to facilitate the employment of foreign nationals in a manner that is consistent with the objects of this Act and the Immigration Act, 2002**; to provide for the registration and regulation of private employment agencies; to provide for the*

establishment of the Employment Services Board; to provide for the establishment of Productivity South Africa; to provide for the establishment of Supported Employment Enterprises; to provide for transitional provisions; and to provide for matters connected therewith.” (Emphasis added)

[45] The purpose of the Employment Services Act, 4 of 2014 (“Employment Services Act”) is described in section 2 thereof which reads as follows:

“2 Purpose of Act

(1) The purpose of this Act is to-

- (a) promote employment;*
- (b) improve access to the labour market for work seekers;*
- (c) provide opportunities for new entrants to the labour market to gain work experience;*
- (d) improve the employment prospects of work seekers, in particular vulnerable work seekers;*
- (e) improve the employment and re-employment prospects of employees facing retrenchments;*
- (f) facilitate access to education and training for work seekers, in particular vulnerable work seekers;*
- (g) promote employment, growth and workplace productivity; and*

(h) facilitate the employment of foreign nationals in the South African economy, where their contribution is needed in a manner-

(i) that gives effect to the right to fair labour practices contemplated in section 23 of the Constitution;

(ii) that does not impact adversely on existing labour standards or the rights and expectations of South African workers; and

(iii) that promotes the training of South African citizens and permanent residents.

(2) The purpose is to be achieved by-

(a) providing comprehensive and integrated free public employment services;

(b) coordinating the activities of public sector agencies whose activities impact on the provision of employment services;

(c) encouraging partnerships, including in the provision of employment services, to promote employment;

(d) establishing schemes and other measures to promote employment; and

(e) providing a regulatory framework for the operation of private employment agencies." (Emphasis added)

[46] Sections 5(1)(a), (b), (i) and (j) of the Employment Services Act read as follows:

“5 Public employment services

(1) The Department must provide the following public employment services free of charge to members of the public in a manner that is open and accessible:

(a) *matching work seekers with available work opportunities;*

(b) *registering work seekers;*

....

(i) ***facilitating the employment of foreign nationals in a manner that is consistent with the object of this Act and the Immigration Act; and***

(j) *generally, performing any other function in terms of employment law or prescribed in terms of this Act.”*

(Emphasis added)

[47] The Employment Services Act defines “*foreign national*” as “*an individual who is not a South African citizen or does not have a permanent residence permit issued in terms of the Immigration Act*”.

[48] Section 8 of the Employment Services Act reads as follows:

“8 Employment of foreign nationals

- (1) *An employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act.***
- (2) *The Minister may, after consulting the Board, make regulations to facilitate the employment of foreign nationals, which regulations may include the following measures:*

 - (a) *The employers must satisfy themselves that there are no other persons in the Republic with suitable skills to fill a vacancy, before recruiting a foreign national;*
 - (b) *the employers may make use of public employment services or private employment agencies to assist the employers to recruit a suitable employee who is a South African citizen or permanent resident; and*
 - (c) *preparation of a skills transfer plan by employers in respect of any position in which a foreign national is employed.*
- (3) *A regulation made in terms of this section may-*

 - (a) *include any other requirement necessary to implement the provisions of this section which are consistent with the Immigration Act; and*
 - (b) *differentiate between different categories of visas issued in terms of the Immigration Act and different categories of work.*

- (4) *An employee who is employed without a valid work permit is entitled to enforce any claim that the employee may have in terms of any statute or employment relationship against his or her employer or any person who is liable in terms of the law."*

[49] "Minister" is defined in section 1 of the Employment Services Act as "*the Minister of Labour*".

[50] Section 48 of the Employment Services Act provides as follows:

"48 Jurisdiction of Labour Court

- (1) *Except as otherwise provided in this Act and subject to the jurisdiction of the Labour Appeal Court, the Labour Court has exclusive jurisdiction in respect of all matters, excluding the prosecution of criminal offences, arising from this Act.*
- (2) *The Labour Court may review any administrative action in terms of this Act on any grounds permissible in law.*
- (3) *If proceedings concerning any matter arising from this Act are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour Court."*

[51] Section 52 of the Employment Services Act lists the types of regulations that may be made by the Minister of Labour under that Act which reads as follows:

"52 Regulations

(1) *The Minister may, after consultation with the Board, make regulations relating to-*

(a) *the categories of employment in respect of which vacancies and new positions must be reported, including-*

(i) *job descriptions;*

(ii) *qualifications;*

(iii) *remuneration levels; and*

(iv) *the format and manner in which vacancies and filling of positions must be reported;*

(b) *the recording of the names and prescribed details of work seekers on a register and their removal from the register;*

(c) *a procedure and forms in terms of which private employment agencies may apply for registration;*

(d) *a procedure for lodging and considering complaints concerning the operation of private employment agencies;*

(e) *a procedure for considering the cancellation of the registration of a private employment agency;*

(f) *regulating the provision of employment services by persons outside of the public administration; or*

(g) any other matter relating to the provision of public employment services or the regulation of private employment agencies.

(2) The Minister may, after consulting the Board of Productivity South Africa, make regulations regarding any improvements in workplace productivity and competitiveness which are necessary or expedient to enable the Board to perform its functions under this Act.”

E. DISCUSSION OF THE ARGUMENTS ADVANCED

[52] The second respondent’s counsel pointed out that a jurisdictional challenge may be raised after *litis contestatio* where the party raising it provides compelling reasons for not doing so earlier.²

[53] As explained above, counsel for the second respondent who appeared at the hearing were only briefed at a late stage (although it is unclear precisely when they were briefed) and this point was raised by them. Having said that, it would appear that junior counsel for the second respondent had been briefed prior to the pre-hearing meeting held on 5 November 2024 as he attended it on behalf of the second respondent. It is unclear when the point in *limine* was identified.

[54] The second respondents’ counsel further referred to *Competition Commission of South Africa v Standard Bank of South Africa Limited*³ (“Standard

² *Mxolisi Tsika v Buffalo City Municipality* (151/07) [2008] ZAECHC 199 (3 December 2008) at para [11].

³ *Competition Commission of South Africa v Standard Bank of South Africa Limited* [2020] ZACC 2, para [200].

Bank”) where the following was stated regarding the requisite jurisdiction of the Court to entertain a review application:

“Where the jurisdiction of the court before which a review application is brought is contested, a ruling on this issue must proceed all other orders. This is because a court must be competent to make whatever orders it issues. If a court lacks authority to make an order it grants, that order constitutes a nullity.”

[55] As the challenge to jurisdiction was brought at the 11th hour and without the Court having an opportunity to peruse counsels’ heads of argument before the hearing due to a prior matter being heard earlier on 27 November 2024 and due to the *Standard Bank* matter, it was necessary to reserve judgment on the point *in limine*.

[56] The second respondent referred in argument to the definition of “*foreign national*”, sections 2, 5, 8 and 48 of the Employment Services Act and contended that the Labour Court has exclusive jurisdiction to hear matters in terms of the Employment Services Act. It was also stated that it appears the counsel involved had “*missed the crucial point*” and that the Court could also *mero motu* have raised this issue.

[57] The second respondent submitted that the Court should refer the matter to the Labour Court in terms of section 48(3) of the Employment Services Act.

[58] What the second respondent did not do was refer to the relevant legal provisions of the Immigration Act and the regulations thereto.

[59] Counsel for the applicant submitted that the review does not “*arise from*” the Employment Services Act and argued that the second respondent has failed to indicate how the application in terms of section 21 of the Immigration Act, read with regulation 20 promulgated thereunder, arises from the Employment Services Act.

[60] With reference to the preamble to regulation 20, It was pointed out by the applicant’s counsel that reference is made to the “*Minister of Home Affairs*” having made the regulation in terms of section 7 of the Immigration Act. It appears to me from a reading of the relevant provisions of the Immigration Act that the Minister of Home Affairs is in a position to make regulations pertaining to visas, which would include corporate visas.

[61] The applicant also referred to the list of the types of regulations which could be made by the Minister of Labour as set out in section 52 of the Employment Services Act and stated that Immigration regulation 20 would not fall under any of the listed categories.

[62] The applicant submitted that, at best for the second respondent, one could consider section 8(2) of the Employment Services Act which refers to “*the Minister*”, i.e. the Minister of Labour, **being able** to make regulations to facilitate the employment off foreign nationals.

[63] Counsel for the applicant also pointed out that the High Court has dealt with matters before concerning both the Employment Services Act and the Immigration Act. In this regard I was referred to the matter of *Rafoneke and*

Another v Minister of Justice and Correctional Services and Others (Makombe as intervening party, Scalabrini Centre of Cape Town and Others as amici curiae) and a related matter.

[64] It is, in my view, clear that the impugned decision relates to an application for a letter of recommendation under regulation 20 promulgated under the Immigration Act.

[65] It therefore, in my view, does not relate to matters arising from the Employment Services Act. Indeed, even in paragraph 37 of the answering affidavit, Ms Tloane confirmed that the “*the second respondent is required to facilitate and verify if there was a diligent search on the part of the applicant in terms of the Immigration Act and Regulations*”.

[66] Section 8 of the Employment Services Act merely provides that employers intending to employ foreign nationals need to satisfy certain requirements. That does not, in any way, bring the application for a letter of recommendation in terms of regulation 20 promulgated by the Minister of Home Affairs under the Immigration Act and the impugned decision, within the purview of the Employment Services Act.

[67] In the circumstances, I am satisfied that the Court does have jurisdiction to hear this application.

[68] Insofar as costs are concerned, I am of the view that raising the point in *limine* the afternoon before the hearing caused severe prejudice to the applicant

as: (i) pleadings had closed early in 2024 and the point was not raised in the papers or in heads of argument; (ii) the main application was effectively derailed and all preparation in respect thereof will have to be redone prior to the future hearing; and (ii) there was no reason why this point could not have been raised at the pre-hearing meeting held on 5 November 2024 or sooner than the day before the hearing.

[69] Insofar as I was requested to award costs in favour of the applicant on a punitive scale, it does happen from time to time that a new team of counsel with a different view on the matter are briefed at a late stage. I do not think the point was raised frivolously or *mala fide*. In the circumstances, I am not inclined to grant punitive costs.

[70] As far as the scale of costs is concerned, the matter is of importance to the parties and the second respondent saw fit to employ two counsel. I am of the view that the matter is sufficiently complex to warrant costs on scale C.

ORDER

In the circumstances, I make the following order:

1. The point *in limine* regarding this Court's jurisdiction is dismissed;
2. The second respondent is ordered to pay the applicant's costs, including the wasted costs pertaining to the hearing on 27 November 2024, on scale C.



LG KILMARTIN
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Dates of hearing:	27 November 2024
Date of judgment:	14 February 2025
Counsel for the Applicant:	RA Foden
Instructed by:	MVB Attorneys Inc.
For the Respondents:	T Ncongwane SC and TN Phefadu
Instructed by:	The State Attorney, Pretoria