



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2025-040663

In the matter between:

SWIMMING SOUTH AFRICA

Applicant

And

SOUTH AFRICAN WATER POLO NPC
(Registration number 2025/152675/08)

First Respondent

ZAIDA ADAMS

Second Respondent

MATTHEW KEMP

Third Respondent

ROBERT WAGNER

Fourth Respondent

ROBBIE TAYLOR

Fifth Respondent

DUNCAN WOODS

Sixth Respondent

SIEG LOKOTSCH

Seventh Respondent

TONY FERGUSON

Eighth Respondent

JARED WINGATE-PEARSE

Ninth Respondent

RICHARD IRVINE

Tenth Respondent

DEAINE MENTOOR

Eleventh Respondent

STEFFANIE WERRET

Twelfth Respondent

KEVIN ADRIAAN

Thirteenth Respondent

**SOUTH AFRICAN SPORTS CONFEDERATION
AND OLYMPIC COMMITTEE**

Fourteenth Respondent

Court: Justice J Cloete

Heard: 14 May 2025

Delivered electronically : 18 June 2025

JUDGMENT

CLOETE, J

Introduction

[1] The applicant is the national federation for purposes of the National Sport and Recreation Act¹ (the “NSRA”) in respect of the aquatic disciplines of diving, open water swimming, swimming, synchronized swimming and water polo. It is also a member of the South African Sport Confederation and Olympic Committee (“SASCOC”) and is currently the only national federation in South Africa that is recognized as the responsible body for, inter alia, the sport of water polo by World Aquatics, the international federation responsible for all aquatic sports.

¹ No 110 of 1998

[2] The first respondent is an emergent organisation, formed with the support of hundreds of water polo players, officials and administrators across South Africa, with the broad goal of developing and advancing the sport of water polo. The second to fourth respondents are directors of the first respondent. The fifth respondent is its interim chief executive officer, and the sixth to thirteenth respondents are members of its interim executive committee. The fourteenth respondent, SASCO, is cited “only for the interest it has in these proceedings as the national sports federation under the NSRA”. Accordingly, no relief is sought against the fourteenth respondent, and in argument the applicant abandoned reliance on an affidavit which that respondent filed at the eleventh hour. For convenience, and unless otherwise indicated, I will thus refer to the first to thirteenth respondents collectively as “the respondents” and at times to the first respondent as “SAWP”.

[3] On 28 March 2025 the applicant launched this application as one of urgency on 4 court days’ notice to the respondents for hearing on 2 April 2025. In the notice of motion, the respondents were given less than 24 hours to file a notice of intention to oppose, and a further 24 hours thereafter to deliver answering affidavits. On 2 April 2025, the application was postponed by agreement (with a timetable for the filing of further papers) to 14 May 2025, when the matter came before me.

[4] The applicant seeks wide-ranging final interdictory relief against the respondents. Initially, this relief included an order to prevent the respondents from passing off the first respondent “as if it had the authority to govern or administer the sport of water polo in South Africa”. The passing-off relief was abandoned during argument once it was conceded that there was no cogent evidence to suggest the respondents were in fact doing so. The remaining relief with which the applicant persists is a final interdict against the respondents preventing them from: (a) purporting to carry out the administration or governance of the sport of water polo in South Africa; and (b) interfering with the affairs of the applicant, and in particular from: (i) directing or encouraging any person or entity to boycott or avoid participating in events held under the auspices of the applicant; (ii) dissuading or discouraging persons from participating in local or international water polo events where the applicant is organising, or has organized, a team to participate in “that international event”; (iii) interfering with communications by the applicant to its water

polo membership, by “redirecting or encouraging any person or entity to interfere with the communications of the applicant by ignoring communications sent by the applicant to its water polo membership, or failing or refusing to pass on those communications to the persons or entities to whom those communications are intended to be forwarded”; and (iv) securing sponsorships or raising funds from the public ostensibly to fund the administration of water polo in this country, and of teams to be organized by the respondents to represent South Africa abroad. Punitive costs are sought against any respondent opposing the application, alternatively on the highest party and party scale.

[5] Given that the applicant asks for final interdictory relief, it must demonstrate: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of another satisfactory remedy.² The respondents deny that the applicant has established any such right, or that they are engaging in the conduct complained of, and as such they contend the applicant is not entitled to an order in the terms it seeks, or any other order.

Statutory and administrative framework

[6] The preamble to the NSRA sets out its purpose as follows :

“To provide for the promotion and development of sport and recreation and the co -ordination of the relationships between Sport and Recreation South Africa [ie. The National Department for Sport and Recreation], the Sports Confederation [ie. SASCOC], national federations and other agencies; to provide for measures aimed at correcting imbalances in sport and recreation; to provide for dispute resolution mechanisms in sport and recreation; to empower the Minister to make regulations and to provide for matters connected therewith.”

[7] A “national federation” is defined in the NSRA as meaning:

² Setlogelo v Setlogelo 1914 AD 221

“... a national governing body of a code of sport or recreational activity in the Republic recognized by the relevant international controlling body as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic.”

(my emphasis)

[8] A “code of sport” is not defined in the NSRA, and nor is a “relative code of sport”. Their ordinary meanings include “a specific type or variety of sport” and “a specific sport or distinct version of a sport”. Water polo would thus be a specific sport falling within the umbrella category of aquatic disciplines for purposes of the NSRA. Sections 2 and 6 of the NSRA deal with national federations. Both set out the statutory obligations of such an entity but do not contain any rights additional to the one contained in the definition of a national federation in the NSRA. These obligations are that it must: (a) develop the discipline concerned at club level in accordance with certain administrative instruments; (b) assume full responsibility for safety issues within the particular discipline; (c) actively participate in and support programs and services of the Department and SASCOG insofar as high performance sport is concerned; and (d) fulfil recruitment criteria for foreign players. Accordingly, the only statutory right which the applicant enjoys (the applicant asserts no other type of right – this was clarified in argument) is that it is currently the only body recognized by World Aquatics as having authority for the control and administration of, inter alia, water polo in South Africa.

[9] The World Aquatics constitution³ defines a “member”, a “national body” and a “national federation” separately for its own purposes. A member is “a National Body recognized by World Aquatics to be a member of World Aquatics”. A national body is “a body which is established to represent the development and organisation of Aquatics in a particular country”. A national federation is “a National Body of Aquatics recognized by World Aquatics and, as such, being a (World Aquatics) Member”. In turn “Aquatics” is defined as meaning “all sport disciplines governed by World Aquatics including Swimming, Open Water Swimming, Diving, High Diving, Water Polo, Artistic Swimming, Masters, and any other discipline that may be

³ Approved by its Congress in Melbourne, Australia, on 12 December 2022, in force as from 1 January 2023.

governed by World Aquatics from time to time “. As will appear a bit later, it seems that notwithstanding the definition of “Aquatics” in its constitution, World Aquatics itself appears to recognise that not only so-called umbrella bodies covering all sports within one discipline are eligible for membership.

[10] Membership is dealt with in article 5 of the World Aquatics constitution. It reads in relevant part as follows:

“5.1 Any National Body governing [the relevant discipline(s)] ... shall be eligible to be a member of World Aquatics, in accordance with this Constitution and the World Aquatics rules.

5.2 Only one National Body shall be recognized as a Member in each Country.....

5.4 The Bureau⁴ shall decide, in its absolute discretion, whether to admit an applicant for membership. In particular, in its decision, the Bureau is not bound by any decision of national or international political or sport organisations. If membership is not granted by the Bureau, the applicant may appeal such decision to the next Congress. The decision of the Congress shall be final but may be appealed within 21 days from the date of notification of the decision of the Congress to the Court of Arbitration for Sport.

5.5 In relation to those countries where two or more national bodies separately govern various disciplines of Aquatics, the Bureau shall take all appropriate measures to ensure that the interests of all Athletes and Aquatics institutions are properly promoted and the participation of all Athletes in World Aquatics competitions and events is encouraged. The Bureau shall determine on a case- by- case basis, the rights and obligations that any such National Body that is not a member of World Aquatics shall have and which benefits such National Body may receive, taking into due consideration the

⁴ The “Bureau” is defined in its constitution as the “World Aquatics Bureau “. In terms of article 17, the Bureau has the right to interpret, implement and enforce the constitution and the World Aquatics rules.

specificities of the relevant Country and the needs of the athletes of that Country...”

(my emphasis)

[11] Also relevant are certain of the NSRA regulations⁵. Regulation 3 provides that for a sport or recreation body to be recognized for purposes of the NSRA, it must: (a) be properly constituted and operate on democratic principles; (b) have a formal written constitution and an acceptable democratically elected committee which operates in a transparent, accountable and responsible manner; (c) demonstrate an agreed level of management and financial accountability and stability; (d) have affiliates or members within five provinces functioning within the principles of good governance; (e) provide a development program and an equity plan; and (f) be recognized by a relevant international controlling body.

[12] Regulation 4(1) deals with what is required in an application for recognition. These are essentially administrative requirements which must be submitted to the Chief Director of Client Support Services of the Department of Sport and Recreation South Africa. In terms of regulation 4(2) the Chief Director must consider the application and if satisfied that the applicant complies with the criteria for recognition, enter its name in a register, whereafter the Chief Director must issue a certificate of recognition.

[13] Accordingly, as I understand it, the legislative and administrative framework of the NSRA contemplates a scheme in terms of which it is open to a group of individuals to: (a) form a national body in respect of any sport (or recreational activity), whether it be in respect of a range of sports all falling under one discipline or a particular sport falling within that overall discipline; (b) apply to the relevant international controlling body to be admitted as a member; (c) if successful, apply to the Chief Director for recognition, and (d) ultimately seek to become a national federation, or one of the national federations, recognised for purposes of the NSRA. Put differently, the scheme does not contemplate recognition by the Minister of Sport and Recreation or the Chief Director as the precursor to eligibility for

⁵ Recognition of Sport and Recreation Bodies Regulations, 2011 published in terms of Government Notice no R 641 dated 8 August 2011.

membership by the relevant international controlling body, but rather that it is the latter (in the present case, World Aquatics) which determines, in its sole and absolute discretion, whether to admit an applicant for membership, in which event that applicant, if successful, becomes eligible to be recognized as a national governing body in South Africa.

[14] Furthermore, the World Aquatics constitution itself makes provision for two or more national bodies to separately govern different disciplines of aquatic sports in a particular country, significantly because – in terms of article 5.5 - the Bureau has the obligation to take all appropriate measures to ensure that the interests of all athletes and aquatics institutions are properly promoted, and participation in events encouraged, with due consideration to the specificities of the relevant country and the needs of the athletes of that country. Moreover, the definition of “national federation” in the NSRA makes no mention of only one national governing body being permitted to qualify as such in South Africa. Although the definition refers to “a national governing body” it does not necessarily follow that therefore there can be only one such body for all aquatic disciplines in this country. Were that the case, given the provisions of the World Aquatics constitution to which I have referred, South Africa would not likely have recognized World Aquatics as “the relevant international controlling body”. Indeed, the World Aquatics constitution even appears to contemplate the situation where a national body which has unsuccessfully sought membership can nonetheless have rights conferred and obligations imposed upon it by World Aquatics.

[15] But it does not end there, since the World Aquatics constitution makes provision for an appeal process, first to its Congress and if unsuccessful, to the Court of Arbitration for Sport. Article 36 of the World Aquatics constitution provides that it shall be governed by and interpreted in terms of Swiss law; and article 31.1 stipulates that the Court of Arbitration for Sport (“CAS”), with its seat in Lausanne, Switzerland, has exclusive jurisdiction to resolve any kind of disputes between, inter alia, World Aquatics, its members and “National Aquatics bodies”, and that the CAS shall resolve any dispute in accordance with the Code of Sports-Related Arbitration (“CAS Code”), the World Aquatics constitution, the applicable World Aquatics rules and, subsidiarily, Swiss law.

[16] I find support for my understanding of the NSRA scheme in the following. International sporting federations typically structure their constitutions to assert their independence and autonomy from interference by external bodies, in particular, national governments.⁶ Having regard to what I have set out above it is fair to accept that World Aquatics is no different. The CAS has acknowledged the importance and legitimacy of the principle that international federations are designed to be independent and autonomous.⁷ Any application for membership shall accordingly be determined by World Aquatics, and that international federation alone, and any dispute in relation thereto would be referred to the Congress and thereafter arbitration before the CAS.

[17] In **Indian Hockey Federation (IHF) v International Hockey Federation (FHI) and Hockey India**⁸ the CAS laid down and /or reiterated the following legal principles. First, the content of the Swiss constitutional right to associate is designed to protect an Association - within certain boundaries - from all kinds of state interference (including interference by state courts). Second, Swiss law gives the members of an Association very broad autonomy, including choosing who else to admit to membership, and the right of a Swiss Association to regulate and determine its affairs is considered essential. Third, one of the expressions of private autonomy of Associations is the competence to issue rules relating to their own governance, their membership and their own competitions. Fourth, (and at the risk of repetition) the “starting point” is that an Association has autonomy to accept or refuse applications for membership.

[18] Expanding on this, it is also settled that an international federation alone has the right to decide who to admit as a member from a particular country, and not the government or national olympic committee of the country or territory in question (such as SASCOC), although it is open to an international federation to take those views into account, and in some instances, international federations do make recognition by a country’s national olympic committee a condition of membership.

⁶ Lewis and Taylor: Sport Law and Practice, 4 ed (2021) Bloomsbury Professional Chapter A 1 pp 4-5 at para A1.2 and A1. 4.

⁷ Kuwait Sporting Club et al v FIFA and Kuwait Football Association CAS 2015 / N4241, para 8.60.

⁸ CAS 2014 / A / 3828

However this is not the case in World Aquatics as is evident from the articles of its constitution to which I have referred. The “default position” was set out in **Russian Badminton Federation v International Badminton Federation**⁹, where the latter sought to justify its decision to recognize one Russian national body instead of another on the basis that the Russian Olympic Committee had recommended that action. The CAS panel rejected this argument¹⁰ stating that:

“The ROC [ie. the Russian Olympic Committee] has no right to ‘pick and choose’ the national associations which ... compose its membership. The recognition of the national federation lies exclusively within the jurisdiction of the international federation. This principle conforms with and remains consistent with Rule 26 of the Olympic Charter which states that each international federation ‘maintains its independence and autonomy in the administration of its sport’.¹¹

[19] This was reaffirmed in **Indian Hockey Federation**¹² where the CAS stated it would be contrary to the principle of autonomy of an Association to oblige an international federation to wait, in deciding on an application for membership, on the government of the relevant country to choose, between two or more entities, which it will designate as a specific candidate member. Thus, in order to be admitted to membership of an international federation, a national body (ie, a sport body) must only satisfy the criteria for admission to membership contained in the international federation’s constitution (and continue to do so subsequently). Obviously, these criteria would vary from sport to sport.

[20] Lastly, the applicant cannot seriously suggest that the respondents do not have the constitutionally entrenched right to freedom of association contained in s 18 of the Bill of Rights, and that the same applies to any individual water polo player wishing to join the respondents. The Constitutional Court has made clear that freedom of association is a fundamental right which protects against coercion, enables individuals to organise around particular areas of concern, and to hold both

⁹ CAS 2005 / A / 971

¹⁰ At para 7.2.6

¹¹ See also *Croatian Golf Federation v European Golf Association* CAS 2010 / A / 2275 at para 27.

¹² At para 159

public and private bodies to account. The right has dual content in that it allows for a person to freely associate (the positive element) as well as to decide not to associate at all (the negative element). In addition s 16 of the Bill of Rights entrenches the right to freedom of expression subject to certain exclusions, none of which are applicable in the present matter.

The creation of SAWP

[21] SAWP is a non-profit company duly incorporated under the laws of South Africa and registered on 20 February 2025. The respondents state it was set up for the following purposes. First, to address what they describe as the failure of the applicant to take water polo seriously and which, according to them, has resulted in “the parlous, shambolic and neglected state in which water polo currently finds itself in South Africa, with a lack of meaningful transformation, poor administration, a dearth of fundraising initiatives, and a non-existent high performance program”. Second, to deal exclusively with the sport of water polo since, according to the respondents, the applicant’s focus is almost exclusively on swimming and is heavily skewed in favour of swimmers as opposed to water polo players. Third, to address the alleged failure of the applicant to meaningfully engage in good faith with water polo stakeholders and role players by forming a collective body who, de facto, represent the overwhelming majority of the water polo playing community throughout the country and have its best interests at heart for the promotion and development of water polo in South Africa. Fourth, to acknowledge and address the distinct needs of, and developmental pathways for, water polo and a desire for more focused governance tailored to the specific requirements of the sport. Fifth, to address the need for an entity that has autonomy in its decision – making processes, resource allocation and the formulation of strategic plans specifically designed to advance water polo, and which can engage with and serve the effectively voiceless and isolated majority of water polo players and potential water polo players in South Africa. Although the applicant has acknowledged in a media statement to which I refer below that it has “ongoing governance and operational deficiencies” it disputes the respondents’ allegations on this score. However, this is not an issue before me and it is thus not a dispute I am required to determine.

[22] The respondents state further that, although as a first step in having SAWP registered, it has been formed without members, the intention is to seek approval from the water polo playing community itself by encouraging as many as possible to associate voluntarily with it. Thereafter, and should it garner sufficient interest, the intention is to ultimately “socialise”, vote on, and register a bespoke memorandum of incorporation that provides for those persons to become members and elect, where applicable, its leaders. SAWP currently has the support of the following bodies and individuals: (a) Gauteng Water Polo, Cape Town Metro Water Polo, Winelands Water Polo, Nelson Mandela Bay Water Polo and SA Masters Water Polo; (b) the Chair of Schools Water Polo South Africa and the Chair of Eastern Gauteng Water Polo; (c) administrators and coaches, including the former SA Women’s Water Polo head coach and the first female head coach in the history of the Olympic Games ; and (d) approximately 750 water polo players, officials and “administrators”. According to the respondents this stands in contrast with a statement made by the applicant’s president to the Portfolio Committee on Sports, Art and Culture in Parliament on 1 April 2025 wherein he recorded that “we have never had more than 130 ... water polo players registered.”

[23] As pointed out by the respondents, SAWP is not a member of the applicant, the latter being a voluntary association; it is currently not a “national federation” as defined in the NSRA; and it is currently not a “national federation” recognized by World Aquatics. SAWP also makes clear that with the weight and backing of a sufficiently representative support base it intends to invite the applicant to enter into meaningful engagement with it. The desired outcome of such engagement, on the respondents’ version, would be for the applicant to acknowledge that “it has failed in its administration of the sport and to allow for the peaceful transfer of authority” to SAWP to run water polo in South Africa.

[24] The respondents say that SAWP intends to pursue its goals in the following manner. In the short term, by implementing inter alia a new registration system to organize and unite clubs, players, coaches and referees and to develop high performance programs for its members. In the longer term, by: (a) applying for membership with World Aquatics in order to ensure that South African water polo teams can compete at the highest international levels through proper preparation,

increased funding and strategic partnerships; and (b) consequent thereto and to the extent necessary, working with the Minister and the Department together with SASCOC and the applicant to become the new national governing body for the sport of water polo.

Whether requirements for final interdictory relief met

[25] The applicant's case is that it has a clear statutory right worthy of protection because in South Africa there are currently no separate bodies governing various disciplines of aquatic sports. In its words, the South African regulation of sports exists within an international framework and not within a vacuum. To my mind the applicant has misconceived the nature of its right. It is correct that at present it is the only national federation for aquatic disciplines recognized by World Aquatics. However SAWP is not purporting to hold itself out as a national federation. That is the only right which the applicant has which is worthy of protection. I agree with the respondents that the applicant does not have an exclusive right in perpetuity to govern or administer the sport of water polo in South Africa. Accordingly, it has no right to prevent the respondents from taking steps to legally acquire that right in due course (including by establishing its legitimacy in the wider stakeholder community by creating the appropriate organisational structures in the interim). This may ultimately result in the applicant having the authority to govern or administer water polo in South Africa in future, but this is nothing more than an incidence of our constitutionally entrenched democracy. It does not confer with it a legal right of the applicant worthy of interdictory protection.

[26] SAWP is also not purporting to carry out the administration or governance of the sport of water polo in South Africa. The grounds advanced by the applicant in its founding papers to support this allegation were as follows. First, by registering as "South African Water Polo NPC", SAWP was "implying" that it is the entity responsible for the administration of water polo in this country. This ground was effectively abandoned once the applicant conceded during argument that SAWP is not passing itself off as the applicant. Second, the applicant placed reliance on an open letter sent out on behalf of SAWP on 11 March 2025 in which it was stated inter alia that SAWP was following the example of other South African sporting

federations; would be led by an interim leadership group and an executive committee “to do what is necessary and appropriate in order to restore the integrity and reputation of water polo in South Africa”; and would follow certain steps to achieve its goals. The applicant’s complaint was that these steps relate to the administration and governance of the sport of water polo “which falls entirely under the authority” of the applicant and no other entity, and that the applicant has been carrying out these functions since its inception in 1992.

[27] However what the allegedly offending letter of 11 March 2025 also contained was SAWP’s explicit acknowledgement that it is not a “breakaway” from the applicant, and in regard to international competition, it would be desirable for SAWP, in consultation with the applicant, to obtain the required recognition, including all necessary delegated levels of authority, to run the sport of water polo in this country. The letter continued that “[f]ailing this ... [SAWP] ... will engage with World Aquatics to recognize it separately from ... [the applicant] ... as the body representing the vast majority of players in the country – as provided for in the World Aquatics constitution”. The annexure to that letter was to similar effect. Perhaps the applicant’s fundamental misconception is best demonstrated by the allegation in its founding affidavit that SAWP “cannot be recognised by World Aquatics”. As I have tried to illustrate earlier in this judgment, the applicant conflates its current status with excluding the possibility of any other national governing body replacing it in the sole and absolute discretion of the relevant international controlling body, i.e. World Aquatics. I accept that the offending letter and annexure thereto contained proactive steps which SAWP intends to take, or is taking, with that ultimate goal in mind, but this does not mean that therefore SAWP has taken over the administration or governance of water polo in South Africa, or even that it has purported to do so. Third, the applicant relied on certain press reports about SAWP’s alleged activities. These do not assist the applicant since they do not constitute evidence. Fourth, in its own press release of 13 March 2025, in which reliance was placed on the role that SASCOC plays in regard to international recognition, the applicant stated that SASCOC’s constitution “explicitly supports the principle of recognizing only one national federation per sport”. Whether or not this is SASCOC’s position is immaterial to recognition by the relevant international controlling body (World Aquatics) of another national body (SAWP) in light of the CAS authorities to which I have referred.

[28] This leaves the allegations of interference in the applicant's affairs which, as stated at the beginning of this judgment, boil down to enticing membership and sponsorship away from the applicant; encouraging boycotting of the applicant's teams and events; and hindering its communications with the applicant's membership. The applicant maintains that SAWP has called upon the "persons and entities" that have chosen to associate with it to boycott the applicant's events and to ignore any communications from it. The applicant placed reliance on a statement issued under the hand of the fifth respondent (SAWP's interim CEO) in which, so the applicant asserts, he "dissuades athletes and families of athletes from participating in the Africa Aquatics Tournament" which was held in April 2025. However a plain reading of that statement does not support the applicant's assertion. The author wrote that SAWP had been inundated with inquiries regarding the event in question and that it deeply empathized with the players and parents grappling with the complexities of the selection process and the overall administration of these types of tours. The statement continued in relevant part as follows:

"Our newly established organisation is built on key principles, one of which is to always act in the best interests of our players. We want to make it clear that we hold no prejudice against any players or parents who choose to participate in these ... events. Every South African athlete has worked tirelessly and deserves recognition for their dedication and achievements.

However, for too long, the sport has suffered from a lack of structure, leadership, and continued mismanagement at multiple levels. It is our sincere hope that players and parents are not being pressured by ... [the applicant] ... Into making decisions without careful consideration. We encourage everyone to ask clear and logical questions before committing to these tours.

Some key questions to consider: ... [these pertained to the selection process and timing thereof, cost and preparedness] ...

Ultimately, this is a personal decision for each family. However, we must recognize that passively accepting these circumstances will only allow similar

practices to continue. We encourage open dialogue and informed decision – making to ensure that athletes receive the best opportunities and fair treatment in the sport.”

[29] The applicant explained that it does not communicate selection to athletes directly, but instead does so via its provincial affiliates, their districts, and their clubs. According to the applicant, SAWP also directly interfered with these communications and prevented it from notifying athletes of their selection for the April 2025 tournament. However a very different picture emerged in the answering and confirmatory affidavits filed by the respondents, who produced evidence that not only were the applicant’s team selection communications in regard to the tournament dutifully passed on, but in many cases the second, eighth and tenth respondents went out of their way to actively assist the applicant’s managers with the provision of direct contact details for the parents of the selected athletes. Indeed some of the applicant’s team managers expressed gratitude for this assistance.

[30] The applicant alleged in the founding affidavit that it has no suitable alternative remedy since the respondents “have refused to engage with the applicant and have instead allowed this fight to spill into the media, with the intent of embarrassing ... [the applicant] ... and seeking to promote their own interests.” However the evidence to which I have already referred demonstrates that from the outset the respondents have expressed the clear intention to engage with the applicant. Furthermore, the respondents set out a number of factual examples of prior attempts by various stakeholders and role players in water polo to engage with the applicant, all apparently to no avail. But in any event the applicant has a suitable alternative remedy. All it has to do is inform the South African water polo community at large that, for so long as it remains the national federation under the NSRA, national and international competitions fall under its auspices.

[31] I am accordingly persuaded that the applicant has failed to demonstrate any of the requirements for final interdictory relief. Although the failure to demonstrate one of them is sufficient for refusing the relief sought, the Constitutional Court has confirmed it is desirable, where possible, for a lower court to decide all such issues in a matter before it.

Costs

[32] Both the applicant and the respondents appointed senior and junior counsel to represent them. There is no reason why costs should not follow the result. Given the nature of the matter counsel were agreed that the appropriate party and party scale should be scale C.

[33] **The following order is made:**

- 1. The application is dismissed.**
- 2. The applicant shall pay the respondents' party and party costs on scale C, including the costs of both senior and junior counsel and any reserved costs orders.**

J I Cloete
Judge of the High Court

For Applicant	Adv N C Arendse SC Adv O Ben-Zeev
Instructed by	Dev Maharaj & Associates (JHB)
For 1 st –13 th Respondents	Adv J Muller SC Adv G Solik
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