

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES:
NO
(3) REVISED: **YES**

Date: 17 June 2025

Signature: _

CASE NO: 2022-034768

In the application for leave to intervene:

#UNITEBEHIND

Intervening Party

and

SFISO BUTHELEZI

1st Respondent

DR BRIDGETTE GASA

2nd Respondent

NKOSINATHI KHENA

3rd Respondent

MATEBOGO NKOENYANE

4th Respondent

LUCKY MONTANA

5th Respondent

**JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE ("THE COMMISSION")**

6th Respondent

**PASSENGER RAIL ASSOCIATION OF SOUTH AFRICA
("PRASA")**

7th Respondent

In Re:

SFISO BUTHELEZI

1st Applicant

DR BRIDGETTE GASA

2nd Applicant

NKOSINATHI KHENA

3rd Applicant

MATEBOGO NKOENYANE

4th Applicant

LUCKY MONTANA

5th Applicant

and

**JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE ("THE COMMISSION")**

1st Respondent

PASSENGER RAIL AGENCY OF SOUTH AFRICA

2nd Respondent

DATE OF JUDGMENT: This judgment was authored and issued by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines.

The date for hand-down is deemed to be 17 June 2025.

JUDGMENT

X STYLIANOU, AJ

Introduction

1. This is an interlocutory application in which the applicant, #UniteBehind seeks leave to be joined as a respondent in a review application.
2. The first to fifth respondents seek an order that certain portions, findings and recommendations of the report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including

Organs of State (*"the Commission"*), which relate to the Passenger Rail Agency of South Africa (*"PRASA"*), be declared unlawful, irrational, and unconstitutional, and that they be reviewed and set aside (*"the review application"*).

3. The first to fifth respondents are the first to fifth applicants in the review application. Even though there are other respondents cited in this interlocutory application, it is only the first to fifth respondents that oppose the application, hence I shall simply refer to these five respondents hereinafter as *"the respondents"*.
4. As for the other respondents, the Commission is cited as sixth respondent and it consents to the intervention of #UniteBehind.
5. PRASA, which is cited as seventh respondent, does not oppose the intervention by #UniteBehind.
6. The portions of the Commission's report that the respondents seek to set aside relate to findings and recommendations made against them by the Commission.

The Parties

7. The applicant is #UniteBehind, a non-profit company. It explains that it was established to safeguard and work against the misappropriation of funds, maladministration, misgovernance, corruption and capture of public entities in South Africa and to hold public entities such as PRASA accountable to their constitutional and legislative mandates.

8. The first respondent is Sfiso Norbert Buthelezi, a former board member and former chairperson of PRASA.
9. The second respondent is Dr Zanele Bridgette Nompumemelo Gasa, a former board member of PRASA.
10. The third respondent is Nkosinathi Allen Khena, a former board member and former chairperson of PRASA.
11. The fourth respondent is Matebogo Nkoenyane, a former board member and former chairperson of PRASA.
12. The fifth respondent is Tshepo Lucky Montana, a former board member and former Group Chief Executive Officer of PRASA.
13. The sixth respondent is the Commission. It is the first respondent in the review application.
14. The seventh respondent is PRASA. It is the second respondent in the review application.

The Basis of the Application for Intervention

15. Mr Abdurrazack “Zackie” Achmat, a well-known South African political activist, deposed to the affidavits filed by #UniteBehind. He explains that its intervention is sought on two bases i.e.: that #UniteBehind has a direct and substantial interest in the review application and secondly, that it is in the public interest and in the interests of justice that #UniteBehind be joined to the review application as a respondent.

16. #UniteBehind does not seek to be joined as *amicus curiae* as one often sees in reviews of this nature, but instead it seeks to be joined as a respondent in the proper sense. This would allow it to present evidence to the review court. During argument, counsel for the respondents submitted that #UniteBehind would have easily succeeded in intervening as *amicus curiae*. As such, it seems uncontentious that #UniteBehind is at least able to advance new and relevant contentions to the review court.

17. However, whether #UniteBehind is entitled to intervene as a respondent is certainly not conceded by the respondents. The respondents deny that it has a direct and substantial interest in the review application and argue that it has not made out a case for intervention.

18. #UniteBehind’s stated intention, if it is granted leave to intervene as a respondent, is to demonstrate to the review court that the relief sought in the review application is neither just nor equitable, that certain factual allegations made by the

respondents in the review application are incorrect and that the findings of the Commission's report are correct and should withstand review.

19. #UniteBehind explains that its members use and rely upon trains as a form of transport and that it has a direct interest in the effective and efficient management of PRASA and commuter rail. #Unitebehind cites a long-running track record in campaigns against PRASA in support of its case that it has a direct and substantial interest in the review. #UniteBehind says that it *inter alia* initiated a campaign to end corruption, maladministration, and malfeasance at PRASA under the name of #FixOurTrains and it also assisted the Commission by providing it with evidence and with an affidavit by Mr Achmat which dealt with mismanagement and corruption at PRASA.

20. The respondents contend that the test for intervention is whether #UniteBehind has a direct and substantial interest in the review application. The respondents submit that no such direct and substantial interest is present because #UniteBehind cannot show that the relief sought in the review application cannot be implemented without either it, or its members, suffering prejudice.

The parties' contentions

21. The Constitutional Court in ***SA Riding for the Disabled Association v Regional Land Claims Commissioner***¹ ("***SA Riding***"), dealing with intervention said:

"[9] It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and

¹ 2017 (5) SA 1 (CC)

substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court. This means that the applicant must show that it has a right adversely affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief.

[10] If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a predecision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation.

[11] Once the applicant for intervention shows a direct and substantial interest in the subject-matter of the case, the court ought to grant leave to intervene. In Greyvenouw CC this principle was formulated in these terms:

'In addition, when, as in this matter, the applicants base their claim to intervene on a direct and substantial interest in the subject-matter of the dispute, the Court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognised interests.'

22. The respondents argue that on this test, #UniteBehind's application must fail as it cannot show that it, or its members, would suffer prejudice if the relief sought in the review application is granted.

23. However, in matters which implicate constitutional values, it is evident that the Courts have adopted a more generous approach to intervention in light of the provisions of section 38 of the Constitution of the Republic of South Africa, 1996 which provides as follows:

"38 Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

(a) anyone acting in their own interest;

- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.”

24. In **Ferreira v Levin NO**² the Constitutional Court was called upon to consider the constitutionality of s417(2)(b) of the Companies Act, 1973. Chaskalson P said at [164] – [165]:

“[164] The objection to constitutional challenges brought by persons who have only a hypothetical or academic interest in the outcome of the litigation is referred to in Zantsi v Council of State, Ciskei, and Others. The principal reasons for this objection are that in an adversarial system decisions are best made when there is a genuine dispute in which each party has an interest to protect. There is moreover the need to conserve scarce judicial resources and to apply them to real and not hypothetical disputes. The United States Courts also have regard to 'the proper role of the Courts in a democratic society' which is to settle concrete disputes, and to the need to prevent Courts from being drawn into unnecessary conflict with co-ordinate branches of government. These objections do not apply to the present case. The applicants have a real and not a hypothetical interest in the decision. The decision will not be academic; on the contrary it is a decision which will have an effect on all s 417 enquiries and there is a pressing public interest that the decision be given as soon as possible. All the requirements ordinarily set by a Court for the exercise of its jurisdiction to issue a declaration of rights are therefore present. The question is whether different considerations apply in constitutional cases.

[165] Whilst it is important that this Court should not be required to deal with abstract or hypothetical issues, and should devote its scarce resources to issues that are properly before it, I can see no good reason for adopting a narrow approach to the issue of standing in constitutional cases. On the contrary, it is my view that we should rather adopt a broad approach to standing. 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 the protection to which they are entitled. Such an approach would also be consistent in my view

²

Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others 1996 (1) SA 984 (CC)

with the provisions of s 7(4) of the Constitution³ on which counsel for the respondents based his argument...”

(Emphasis provided)

25. O'Regan J in **Ferreira** amplified these sentiments and said:

[226] Ackermann J (at para [38]) finds that persons acting in their own interest (as contemplated by s 7(4)(b)(i)) may only seek relief from the Court where their rights, and not the rights of others, are infringed. I respectfully disagree with this approach. It seems clear to me from the text of s 7(4) that a person may have an interest in the infringement or threatened infringement of the right of another which would afford such a person the standing to seek constitutional relief. In addition, such an interpretation fits best contextually with the overall approach adopted in s 7(4).”

(Emphasis Provided)

26. O'Regan then went on at [229] as follows:

“[229] There can be little doubt that s 7(4) provides for a generous and expanded approach to standing in the constitutional context. The categories of persons who are granted standing to seek relief are far broader than our common law has ever permitted. (See, for a discussion, Erasmus Superior Court Practice (1994) A2-17-A2-33.) In this respect, I agree with Chaskalson P (at paras [165]-[166]). This expanded approach to standing is quite appropriate for constitutional litigation. Existing common-law rules of standing have often developed in the context of private litigation. As a general rule, private litigation is concerned with the determination of a dispute between two individuals, in which relief will be specific and, often, retrospective, in that it applies to a set of past events. Such litigation will generally not directly affect people who are not parties to the litigation. In such cases, the plaintiff is both the victim of the harm and the beneficiary of the relief. In litigation of a public character, however, that nexus is rarely so intimate. The relief sought is generally forward-looking and general in its application, so that it may directly affect a wide range of people. In addition, the harm alleged may often be quite diffuse or amorphous. Of course, these categories are ideal types: no bright line can be drawn between private litigation and litigation of a public or constitutional nature. Not all non-constitutional litigation is private in nature. Nor can it be said that all constitutional challenges involve litigation of a purely public character: a

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Section 7(4) referred to in the above passage is to s7(4) of the Constitution of the Republic of South Africa 200 of 1993 which allowed for a person “acting in his or her own interest” and “in the public interest” to apply to a competent court of law for relief where an infringement of or threat to any Chapter 3 rights was in issue.

challenge to a particular administrative act or decision may be of a private rather than a public character. But it is clear that in litigation of a public character, different considerations may be appropriate to determine who should have standing to launch litigation. In recognition of this, s 7(4) casts a wider net for standing than has traditionally been cast by the common law.

(Emphasis Provided)

27. It is quite evident that a review application of the Commission's report dealing with corruption and maladministration at PRASA is of a substantially significant constitutional and public character. As such, the application of the "expanded approach to standing" would obviously be appropriate.

28. In the matter of ***Sustaining the Wild Coast***⁴ a number of persons and organisations had approached the High Court for an interim interdict prohibiting a company from conducting seismic surveys in the ocean off the Wild Coast. In dealing with Part B of that application, the Court was seized with the question of whether a final interdict should be granted and whether to review the decision granting the exploration rights awarded to the company. One of the preliminary questions which arose was whether two organisations, Natural Justice and the Greenpeace Environmental Organisation, could intervene in the application.

29. Mbenenge JP, with whom Nhlangulela DJP and Norman J concurred, reaffirmed that the standard test is as set out in the ***SA Riding*** case but then went on to say⁵:

"[44] Where a party has shown a direct and substantial interest in the subject-matter of a case, the court has no discretion to exercise. It must grant the intervention.

⁴ ***Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy & Others*** 2022 (6) SA 589 (ECMk)

⁵ At page 607

[45] The generous approach to standing adopted under s 38 of the Constitution is the overriding factor. That section grants locus standi to any party alleging the infringement of a right in the Bill of Rights acting in its own interest, on behalf of another person who cannot act in their own interest, in the interest of a group or class of persons, in the interest of the public or as an association acting in the interest of its members."

[46] Section 32(1) of NEMA makes provision for an even broader legal standing to enforce environmental laws in respect of any breach or threatened breach of NEMA. It accords standing to any person or group of persons referred to in s 38 of the Constitution, but, most importantly, adds 'in the interests of protecting the environment' as another relevant factor.

[47] In *Ferreira v Levin NO and Others*; *Vryenhoek and Others v Powell NO and Others* O'Regan J advocated for a more generous approach regarding standing in the constitutional dispensation than at common law. All courts required to adjudicate constitutional claims are required to invoke the generous approach.

[48] In this matter, regard should be had to the fact that the litigation is of a public or constitutional character; it involves an infringement of the Bill of Rights and a breach or threatened breach of NEMA. Therefore, the range of interests upon which an intervening party might rely in contending for a direct and substantial interest ought to be broadly construed.

[49] In the view of this court, the objectives of the intervening parties, and the entities or persons in whose interests the litigation is brought, establish the entitlement to seek the substantive relief prayed for in the intervening parties' notice of motion in their own right, independently of the first to seventh applicants."

(Emphasis provided)

30. The Court was of the view that the generous approach to standing under s38 of the Constitution, 1996 was the overriding consideration for intervention which grants *locus standi* to any party alleging the infringement of a right in the Bill of Rights acting in the interest of the public or to an association acting in the interest of its members.

31. Counsel for the respondents argued that ***Sustaining the Wild Coast*** is distinguishable from the present application since it was conceded in that case that the two intervening parties had standing to seek substantive relief in their own right – the ground of opposition being that their joinder would be redundant because the other parties already represented the public interest and there was an overlap in the factual allegations and review grounds.

32. However, the Court in ***Sustaining the Wild Coast*** did make the point that in any event, “...*the interests of justice dictate that they be allowed to intervene in these proceedings. It is also of importance that, in this instance, the intervening parties seek to join these proceedings acting in the public interest and under the broader standing provisions set out in NEMA.*”⁶

33. Counsel for #UniteBehind relied upon the full court decision of ***Hlope v Freedom Under Law, and other matters***⁷ (“Hlope”) which he submitted is determinative of this application and which he submits sets out the test for intervention in matters such as the present one.

34. In this matter, the Judicial Services Commission (the JSC) found Hlope JP guilty of misconduct in that he had sought to suborn two justices of the Constitutional Court to pervert their judgment to favour then President Jacob Zuma.

⁶ At paragraph [51]

⁷ 2022 (2) SA 523 (GJ)

35. An application was brought by Hlope JP to set aside a decision of the JSC which found him guilty of gross misconduct and then referred that finding to Parliament for impeachment proceedings against him.⁸

36. Freedom Under Law (“FUL”) was successful in its application to be joined to the review application as a respondent.

37. The Full Court in **Hlope**, (per Sutherland DJP, Ledwaba DJP and Victor J), says in paragraph [47] as follows:

“[47] FUL has demonstrated its credentials as a bona fide public interest organisation, acknowledged to be so by our courts, whose objectives are the upholding of constitutional norms through participation in litigation of constitutional significance. The issue in the review is a question of profound constitutional importance. FUL has been engaged in this case at earlier stages of its evolution. The merits or demerits of its stance on the controversy are irrelevant to the joinder question. On grounds of its own legal interest evidenced by its prior involvement in the series of cases and as an agent of the public interest, FUL has shown proper grounds to be joined.”

38. Four criteria emerge from this passage which a public interest organisation should satisfy in order to successfully apply to intervene in a matter involving a constitutional question i.e.:

38.1. the applicant for intervention must be a *bona fide* public interest organisation;

38.2. the objectives of the public interest organisation should be the upholding of constitutional norms;

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At page 526E

38.3. the issue in the review is a question of profound constitutional importance;

38.4. there must have been some prior engagement or involvement by the public interest organisation in the dispute.

39. Does #UniteBehind meet these criteria?

The Facts

40. Firstly, has #UniteBehind demonstrated that it is a *bona fide* public interest organisation?

41. Counsel for the respondents conceded that #UniteBehind is a public interest organisation but could not comment on its *bona fides*.

42. #UniteBehind explains that its work in fighting against state capture, maladministration, corruption and the destruction of commuter rail services stretches over six years.

43. It has been involved in numerous actions which involve highlighting and exposing corruption at PRASA. It was allowed to intervene as *amicus curiae* in the ***Siyangena Technologies (Pty) Ltd v PRASA*** matter involving the awarding of

the Siyangena contract for access systems at train stations.⁹ #UniteBehind also successfully reviewed and set aside a decision by the Minister of Transport in appointing an administrator of PRASA.¹⁰

44. It is evident that #UniteBehind is *bona fide* in its stated objectives of holding PRASA accountable to its constitutional and legislative mandates.

45. The first leg of the test is therefore satisfied.

46. The second consideration is whether #UniteBehind's objectives are the upholding of constitutional norms.

47. The interests of #UniteBehind are to fight corruption and misappropriation of funds and to hold public entities accountable.

48. More importantly, for present purposes, its interest in accountability and fighting corruption is specifically focused on rail commuters and PRASA through campaigns such as #FixOurTrains.

49. #UniteBehind published "PRASALeaks" which sought to highlight findings from two reports (one by Treasury and another by Werksmans) which #UniteBehind says showed widespread corruption at PRASA.

⁹ ***Siyangena Technologies (Pty) Ltd v Passenger Rail Agency of South Africa and Others*** 2023 (2) SA 51 (SCA)

¹⁰ ***#UniteBehind v Minister of Transport & Others*** [2020] 4 All SA 593 (WCC)

50. #UniteBehind says that its intervention is sought in order to “*protect the Constitutional rights held by working class commuters to life, dignity, safety, education, employment, and reliable, safe, and affordable commuter rail.*”

51. These objectives clearly seek the upholding of constitutional norms.

52. I do not understand the Court in **Hlope** to require the upholding of constitutional norms to occur only through participation in litigation of constitutional significance, however it is clear to me that #UniteBehind in fact does meet this criterion too. Mr Achmat explains in his affidavit submitted to the Commission, which is annexed to the founding affidavit, that litigation is a key component of #UniteBehind’s activism – this is evidenced by the many legal matters of constitutional significance in which it is involved.

53. The second leg of the test is therefore also satisfied.

54. Thirdly, it need hardly be stated that the review of the Commission’s report on the aspects relating to PRASA and the respondents, is constitutionally important. #UniteBehind maintains that corruption, state capture and the misappropriation of public funds at PRASA, materially hampers the ability of the public from using PRASA’s trains.

55. This is obviously of constitutional significance.

56. Furthermore, and significantly, the review is sought against the Commission which was tasked with the serious business of enquiring into corruption, fraud and state capture.

57. Any attack on the process of the Commission is clearly of constitutional importance.

58. Finally, does #UniteBehind have a track record of prior involvement in this dispute or similar disputes?

59. The respondents argue that previous involvement in the matter, or public interest standing would not entitle a party to intervene in a review application. The respondents rely on the decisions of ***Giant Concerts CC v Rinaldo Investments (Pty) Ltd***¹¹ and ***Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd***¹² in support of this submission. However, unlike in the present matter, in these two decisions, the applicant for intervention was found to have been acting out of own-interest and not public interest and therefore they are distinguishable.

60. #UniteBehind points to numerous examples of prior involvement. It assisted the Commission by consulting with it and furnishing it with an affidavit about the affairs of PRASA and its office bearers.

61. #UniteBehind lodged complaints against the first respondent in parliament. It successfully intervened in PRASA's review of the Siyangena contract award. It

¹¹ 2013 (3) BCLR 251 (CC)

¹² 2020 JDR 1608 (KZP)

also initiating litigation against PRASA based upon what it says is its long-term poor performance due to maladministration, corruption, mismanagement, and state capture.

62. #UniteBehind says that it is striving at its own cost to ensure that the findings and recommendations of the Commission are implemented without further delay.

63. It is evident therefore that #UniteBehind has a formidable track record of prior involvement in matters relating to corruption and maladministration at PRASA in general and in particular, in respect of the dispute before the review court.

64. In my view, all legs of the test set out in *Hlope* have been satisfied.

65. #UniteBehind has therefore made out a case for intervention on the basis of its own direct and substantial interest arising from its prior involvement in the matter and from its stated objectives as a public interest organisation and also on the basis that it would be in the public interest.

66. Finally, I wish to deal with some of the arguments raised by the respondents against the intervention of #UniteBehind.

67. The respondents argue that the only standing or interest that #UniteBehind could enjoy would be one where it challenged the decision of the Commission. The respondents argue that a party can only seek to intervene in a review application

as an applicant and not as a respondent, the Court in ***Hlope*** dismissed a similar argument by pointing out that such a distinction has no useful function.¹³

68. Allied with this argument is the point that #UniteBehind should not be allowed to answer or defend the decision of the Commission – something which it says will be a natural consequence of it being joined as a co-respondent. The respondents argue that #UniteBehind is not the decision maker and therefore is not entitled to intervene. A similar argument was raised in ***Hlope*** and was dismissed. The Court said at paragraph [46.4]:

“...the notion that only the JSC has standing to defend its decisions, flies in the face of what was said in Ferreira v Levin supra [36] and in the face of common sense. The widespread practice of admitting public interest organisations with expertise in various fields or aspects of constitutional law (for example, the Centre for Child Law, Lawyers for Human Rights, the Legal Resources Centre, Section 27, Action Treatment Campaign, the Socio-economic Rights Institute (SERI) and several others) demonstrates the value of supposed busybodies contributing to the jurisprudence of our constitutional democracy, and whose intervention has been welcomed by our courts. Moreover, the JSC does not object to the joinder of FUL to bolster its case.”

69. I respectfully agree with these sentiments.

70. Regarding the evidence that #UniteBehind intends adducing, the respondents argue:

¹³ At paragraph [46.3] of the judgment

70.1. that Mr Achmat was not called as a witness before the Commission and argue that #UniteBehind seeks to bring to the attention of the review Court allegations which were not led at the Commission or considered by it;

70.2. that the evidence that #UniteBehind seeks to bring before the review Court had been disavowed by those who initially gave it at the Commission; and

70.3. that the respondents have, in their founding affidavit to the review application, already dealt with the allegations that #UniteBehind seeks to bring to the attention of the review Court and that there is no indication that the Commission is unable or disqualified from responding thereto.

71. These are all considerations which do not impact upon the question of whether or not #UniteBehind has made out a case for intervention.

72. Once #UniteBehind succeeds in establishing that it has a direct and substantial interest in the review application, or that it is in the public interest and the interests of justice that it be allowed to intervene, it is entitled to be joined and it is not for this Court to consider the admissibility, veracity or weight of the allegations and evidence which is likely to be adduced. That is something for the review court.

73. For present purposes, it is sufficient for #UniteBehind to make allegations which, if proved, would entitle it to relief¹⁴ - something which in my view they have done.

74. The respondents further argue that #UniteBehind should not be permitted to intervene in a review application in respect of individuals instead of institutions. The respondents argue that since the Commission recommended that separate enquiries be established on PRASA alone, that #UniteBehind's interest will be in that process, and not in the review brought by the five individual respondents. Whether or not there are separate enquiries into PRASA alone does not mean that #UniteBehind could not have a direct and substantial interest in the respondent's review of the Commission's report into their activities at PRASA. #UniteBehind obviously has a direct and substantial interest in the respondents' review in the same way that FUL had in Hlope JP's review of the JSC.

75. The respondents also contends that #UniteBehind failed to make out a case against all the respondents and pointed to the fact that one of the grounds of review by the second respondent (Dr Gasa) was that she was never informed that she was an implicated person and #UniteBehind has not put up any evidence in its affidavit to refute that particular review ground in respect of the second respondent.

76. In my view, it is not necessary for an applicant seeking to intervene in a review application to make out a defence for each of the grounds of review for every single respondent.

¹⁴ **SA Riding**, paragraph [9]

77. #UniteBehind submitted that it would be sufficient for it to show that it has a defence to the grounds of review for some of the respondents. This is a sound argument as it is unlikely that the grounds of review for all of the respondents would be the same and the evidence in respect of each respondent's review application will obviously be different. In some cases, there may be no evidence that can be adduced against one or other of the respondents, but that should not disqualify a party from intervening in order to advance an interest and lead evidence against the other respondents. In my view therefore, it is sufficient if #UniteBehind shows that can contribute to the defence of the Commission's report in respect of even one of the respondents.

Conclusion

78. In conclusion then, #UniteBehind has demonstrated a direct and substantial interest in the review application of the respondents and, given the importance of the subject matter of the review application, it would be in the public interest and the interests of justice that #UniteBehind be granted leave to intervene as a respondent.

79. I am advised that the Chairperson of the Commission was recently joined as the third respondent to the review application and hence, #UniteBehind seeks to be joined as the fourth respondent.

80. In the circumstances, I order as follows:

80.1. The intervening party (#UniteBehind) is joined as the fourth respondent in the review application.

80.2. The costs of the intervening party shall be borne by the first to fifth respondents, jointly and severally, the one paying the other to be absolved, which costs shall include the costs of two counsel where employed.



X STYLIANOU, AJ

Acting Judge of the Hight Court

Heard: 13 March 2025

Judgment delivered: 17 June 2025

Appearances:

For Applicant: Adv. M. Bishop

Instructed by: Lopes Attorneys Inc.

For 1st to 5th Respondents: Adv. S. Manganye

Instructed by: Ramushu Mashile Twala Inc.