

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 2023-117011

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

25 March 2025

Judge Dippenaar

In the matter between:

**ASSOCIATION FOR THE ADVANCEMENT
OF BLACK ACCOUNTANTS OF SOUTH
AFRICA NPC**

APPLICANT

And

MZUKISI LUYANDA GIDINI

FIRST RESPONDENT

SPOKAZI JOJO MAQOMA

SECOND RESPONDENT

BANELE BEDNOCK MKWANAZI

THIRD RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 25th of MARCH 2025.

DIPPENAAR J:

[1] This is an opposed application concerning the board of directors and the management of the applicant. The applicant is the Association for the Advancement of Black Accountants of Southern Africa NPC ('ABASA'), a non-profit company, duly incorporated and registered as such. The applicant was established in 1985 to promote the professional interests of black persons engaged in the accounting profession. In terms of its memorandum of incorporation ('MOI') it was incorporated with effect from 18 August 2016 as a non-profit company.

[2] The first, second and third respondents, Mr Gidini, Ms Jojo and Mr Mkwanaazi are individuals who are members and office bearers of the applicant. The nub of the dispute relates to their suspension and the termination of their membership and directorship of the applicant at the behest of the applicant's National Council. The chairperson of the National Council, Mr Phillip Rakgwale, is the deponent to the applicant's affidavits.

[3] The background facts are shortly the following. An elective annual general meeting of the applicant was held on 2 December 2021 in terms of its MOI, at which various individuals were appointed as directors of the applicant: Ms Maqomo as president; Mr Gidini, the first respondent, as vice-president, Ms Jojo, the second respondent, as treasurer general and Mr Abbey as secretary general. Pursuant to the resignation of Mr

Abby on 23 May 2023, a purported board meeting was held between Mr Gidini and Ms Jojo in the absence of Ms Maqomo, at which it was resolved to nominate Mr Mkwanazi, the third respondent, as director and secretary general.

[4] The applicant's case in sum is that from July 2022, the respondents embarked on a stratagem to unlawfully seize control of the applicant and performed a series of unlawful acts. Pursuant to a preliminary investigation, that resulted in the suspension of their membership on 31 August 2023 by way of a letter dated 1 August 2023. The respondents did not appeal their suspension in terms of the applicant's code of conduct but adopted the stance that their suspension was unlawful. They continued with their unlawful actions, including attempting to unlawfully remove Ms Maqoma as president and seize control of the board. The respondents further effected changes to the registered directors of the applicant by removing Ms Maqoma as director on the applicant's CIPC profile without authority and gained control of the applicant's bank account at Standard Bank.

[5] That resulted in their membership being terminated by way of notice on 3 November 2023 at the instance of the president of the applicant's National Council, following alleged violation of the conditions of their suspension. The National Council had invoked clause 5.10(3)(b)¹ of the MOI and further relied on a resolution of a Special General Meeting resolution of 28 August 2023 to take over the control of the applicant on an interim basis. According to the applicant it has an undeniable clear right to have its affairs properly controlled in accordance with its MOI and Companies Act free of unlawful interference. It was contended that the respondents' membership had been lawfully terminated and they have no right to retain office bearer functions, as they forfeited the functions and benefits of their membership by their conduct which warranted the termination of their membership. The respondents did not cease their unlawful activities and continued to conduct themselves as directors of the applicant.

¹ Authorising it to 'temporarily assume the powers and functions of the Board if most of the Board Members resign or are removed and are not replaced in accordance with the provisions of the Memorandum of Incorporation until such time as a new Board can be appointed.'

[6] The respondent's primary defence was to challenge the lawfulness of their suspension and removal as members and directors of the applicant, contending that the provisions of the Companies Act 2008 pertaining to the removal of directors were not complied with. They further challenged the authority of the National Council, contending that the applicant relied on an incorrect interpretation of the MOI. They contended that as appointed directors, they bear a fiduciary duty to the applicant and the proper utilisation of its assets including monies held in its bank account, until they are lawfully removed from office. The respondents further challenged the authority of Mr Rakgwale, the deponent to represent the applicant and disputed the applicant's response to its r 7 notice.

[7] Two opposed applications were launched under the above case number. The first, an urgent application dated 9 November 2023, launched by the applicant seeking interdictory and related relief against the respondents ('the interdict proceedings'). No order was granted and the matter was removed from the roll on 21 November 2023. The second, a separate application dated 14 June 2024 launched by the respondents.

[8] The applicants sought interdictory relief: (a) restraining the respondents from disrupting the smooth running and general proper administration of the applicant; (b) holding themselves out to be office bearers of the applicant or acting in any manner that represented to third parties that they have authority to represent to applicant or communicate in public about internal and administrative matters relating to the applicant; (c) unlawfully using the name, corporeal and incorporeal assets of the applicant including the applicant's Glue up platform to send communication to the applicant's members and stakeholders; and (d) interfering with the financial administration of the applicant or purporting to act on behalf of the applicant to the applicant's bank or otherwise to financial institutions. In addition, orders were sought (e) directing the respondents to forthwith restore to their previous state, the applicant's Standard Bank banking platform and its Companies and Intellectual Property Commission (CIPC) profile in relation to the members of the applicant; and (f) authorising the Sheriff and, if necessary the South African Police Service to take all reasonable steps to enforce and execute the orders granted in the event of the respondents failing to comply therewith, together with ancillary

relief. In addition, the applicant sought declaratory relief that the applicant's termination of the respondent's membership to it in terms of the notices of immediate termination of membership was valid. At the hearing, the applicants sought final interdicts as the interim relief sought had become academic due to the effluxion of time.

[9] The respondents in turn sought declaratory orders: *(1) that all decisions and actions taken by Mr Rakgwale and/or Ms Maqoma and/or interim board and/or any member of the applicant's National Council since on/or about 1 August 2023, in respect of the Applicant and its members, stakeholders and/or third parties, is declared null and void ab initio and is set aside. (2) Any contracts and/or binding agreements entered into in the period in paragraph 1 above shall be subject to review and/or ratification by the board of directors of the Applicant'*, together with ancillary relief.

[10] At the hearing, this court, with reference to *Morudi*² raised the issue of non-joinder of the various parties who have a direct and substantial interest in the relief sought by the respondents. It was self-evident that there were numerous parties who would be affected by the relief sought, as conceded by the respondents.

[11] In addition, the applicants' newly appointed attorney of record was not aware that the respondents' application had been opposed and had not had sight of all the application papers. The opposing papers had also not been uploaded onto the electronic platform and had not been brought to the court's attention.

[12] After discussion between the parties, they agreed to postpone the respondents' application *sine die*, with costs reserved. It was submitted that the respondents' application was self-standing and should be dealt with in due course. On that basis the respondents' application was postponed. The parties did not however agree to a

² *Morudi and Others v NP Housing Services and Development Co Ltd and Others* [2018] ZACC 32; 2019 (2) BCLR 261(CC) (25 September 2018) paras 29-31.

postponement of the applicant's application, but insisted that it be dealt with. The present proceedings thus concern the relief sought by the applicant in the interdict proceedings.

[13] Prior to the hearing, this court had further invited the parties to make supplementary submissions on the issue whether any of the issues raised in the applications had become of academic interest only or, put differently, had become moot. The applicant delivered submissions. whilst the respondents elected not to. None of the parties took the court into their confidence by seeking to deliver supplementary affidavits regarding what had transpired since the last supplementary affidavits were delivered by the respective parties during January and March 2024.

[14] In its supplementary heads of argument, the applicant submitted that the crux of the interdict sought had become moot through the effluxion of time as the term of office of the respondents had come to an end on 3 December 2024. It submitted that the court's intervention was still required to restore control over the applicant's bank account to 'duly appointed office bearers', as it remained under the control of the respondents. The respondents on the other hand contended that the issues had not become moot.

[15] The issue of mootness can arise at any time. It is apposite to refer to *Akani Retirement Fund*, wherein the Supreme Court of Appeal held:³

'[30]...This Court did not say that mootness should always be raised formally in the affidavits, as the full court seemed to suggest. Indeed, it may not always be possible to raise the question on affidavit, particularly where the issues raised for consideration have been overtaken by subsequent events that either arise after the filing of, or are not foreshadowed in, the earlier affidavits. There can be no absolute procedural bar (as the full court seemed to perceive) to mootness being raised for the first time in the heads of argument filed on appeal. If anything, it has come, not infrequently to be raised mero motu by courts.'

[31] Here the facts were undisputed. The fact of Akani's removal and its replacement with Momentum as CINPF's provider of administration services, and the death of Messrs Dangazele and Sema, are common cause. Insistence on affidavits, not only placed form above substance, but also put the parties, the full court and in turn this Court to the

³ *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others* (1125/2022 and 1129/2022) [2025] ZASCA 13 (21 February 2025) paras 30-31.

unnecessary trouble and expense of having to consider issues that on any reckoning are academic...'

[16] Similar considerations arise in the present instance. The relevant facts were similarly undisputed. The fact of the respondents' suspension and removal as members is common cause. Whether their removal as directors was valid is an issue that has become of academic interest only for purposes of the interdictory relief, given that their term of office came to an end on 3 December 2024. The applicant's contention that the respondents' term of office expired on 3 December 2024, was not disputed, and was conceded by the respondents in argument.

[17] There is thus no live controversy at present as to whether the respondents are directors of the applicant and no cause of action to consider at the time the court was asked to make a pronouncement on the issue. Factually, the respondents are no longer directors of the applicant as their term of office has come to an end. Consequently, they do not have any entitlement to perform the management functions of the applicant's affairs, including exercising control over its bank account and must relinquish such control. They should have done so when their term of office came to an end.

[18] The applicant's MOI⁴ clearly specifies the steps which must be taken to appoint directors and to replace the directors' whose terms of office have expired. It is regrettable that none of the parties considered it prudent to provide the court with supplementary affidavits providing updated information regarding the current state of affairs and what steps have been taken. The submissions made in argument amount to presenting evidence from the bar and cannot be accepted. A court cannot be left to speculate as to the current state of affairs of the applicant.

[19] Having had the benefit of considering a full set of the papers in the respondents' application after the hearing, it appears clear that both applications are intertwined. The

⁴ In clauses 4 and 5.

respondents' counter application is centrally predicated on the making of certain factual findings in the applicant's interdict application. As such the agreement between the parties to the postponement of only the respondents' application and to have the two applications dealt with in separate hearings was ill-conceived.

[20] The applicant at the hearing properly conceded that the interdictory relief sought was no longer a live controversy. Ultimately, the issues pertaining to the respondents' suspension and the termination of their membership of the applicant remain relevant only insofar as the respondents' counter application is concerned. Although cast as a self-standing application, the respondents' application is in essence a counter application. To avoid a piecemeal hearing, it would be apposite to consider the declaratory relief sought by the applicant that the termination of the respondents' membership of the applicant was valid, together with the respondents' application, if the applicant elects to persist with such relief.

[21] As the interdictory relief sought by the applicant is no longer a live controversy, no order will be made in relation thereto. Had that been the only relief sought, the application would have been struck from the roll.⁵ The declaratory relief sought by the applicant is to be postponed *sine die*. Given the relevant facts, it would be just that the respective parties be held liable for their own costs.

[22] In the result, the following order is granted:

[1] The application for declaratory relief is postponed sine die, to be enrolled for hearing on the same date before the same judge as the application launched by the respondents under case number 2023-117011;

⁵ *MEC for Health, Gauteng v Dr Regan Solomons* (1089/2023) [2024] ZASCA 184 (30 December 2024) para 36.

[2] The applicant and the respondents are liable for their own costs.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

DATE OF HEARING : 04 FEBRUARY 2025

DATE OF JUDGMENT : 25 MARCH 2025

APPLICANT'S COUNSEL : Ms DM Mangadi (attorney)

APPLICANT'S ATTORNEYS : Mangadi Masego Attorneys

RESPONDENT'S COUNSEL : Adv. L. Peter

RESPONDENT'S ATTORNEYS : Lowndes Dlamini Attorneys