

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-061977

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

.....**22/08/2025**.....
DATE

..........
SIGNATURE

In the matter between:

TRYPHINAH DIPHOKO

Applicant

and

**THE APPEAL BOARD FOR THE SOUTH AFRICAN
COUNCIL OF PLANNERS**

First Respondent

**DEPUTY CHAIRPERSON OF THE APPEAL BOARD
FOR THE SOUTH AFRICAN COUNCIL OF
PLANNERS**

Second Respondent

SOUTH AFRICAN COUNCIL FOR PLANNERS

Third Respondent

M E DUVENHAGE

Fourth Respondent

W G DAVEL

Fifth Respondent

D A LINDEQUE

Sixth Respondent

B J VAN DERSCHYFF

Seventh Respondent

RIAN BEUKES

Eighth Respondent

JUDGMENT

ILES AJ:

INTRODUCTION

1. The applicant is a town planner and a registered person under the Planning Profession Act 36 of 2002. She had a complaint of professional conduct lodged against her with the third respondent, the South African Council for Planners, by the fifth to seventh respondents. The third respondent is a statutory council established in terms of section 3 of the Act.
2. One of the duties conferred on the third respondent by the Act is, in terms of section 7(c), to institute and enforce disciplinary action against registered persons contravening the provisions of the Act.
3. Section 19 of the Act provides as follows:

*‘(1) The Council must appoint one or more investigating officers as it deems fit to investigate any charge of improper conduct.
(2) When-
(a) a complaint, charge or allegation of improper conduct has been brought against a registered person; or
(b) the Council has reasonable grounds to suspect that a registered person is guilty of improper conduct,*

the Council must, as soon as is reasonably possible, refer the matter for investigation.

(3) At the request of the Council, the investigating officer must-

(a) investigate the matter; and

(b) obtain evidence to determine whether or not in its opinion the person concerned should be charged or not, and if so, recommend to the Council what the contents of the charge in question should be.

...'

4. Section 20(1) provides that the third respondent must, after considering the investigation report contemplated by section 19, charge the registered person with improper conduct if convinced that sufficient ground exists for such a charge to be made against a registered person. Section 21 provides for the appointment of a disciplinary tribunal and section 22 regulates the conduct of the disciplinary hearing.
5. The complaint resulted in an investigation in terms of section 19. The investigation was carried out by the eighth respondent who issued a report.
6. The applicant was then charged by the third respondent with improper conduct and a disciplinary hearing was held. The disciplinary tribunal was chaired by the fourth respondent. The tribunal found, in a decision dated 26 July 2018, that the applicant had contravened section 18(3)(b) of the Act. In a subsequent, undated, decision, the tribunal sanctioned the applicant in the form of a caution and a reprimand. On 5 June 2019 the tribunal gave a third decision in the matter, this time pertaining to costs. The applicant had sought, in terms of section 23(3)(c) of the Act an order that the third respondent pay her legal

costs.

7. The tribunal considered the matter and on 5 June 2019 decided not to award costs against the third respondent. In consequence, each party carried their own costs.
8. The applicant then appealed the disciplinary finding, the sanction and the costs award in terms of section 27 of the Act. After some delays and postponements, the appeal hearing concluded on 19 September 2023 and written submissions were subsequently submitted to the appeal board by the applicant.
9. On 26 October 2023 the appeal board gave the following order:

*'1. the appeal is upheld in toto, and the decision of the Disciplinary Tribunal dated 26 July 2018 is set aside; and
2. there is no order as to costs.'*
10. It is the applicant's contention that the appeal board's order, properly interpreted, upheld her appeal against the disciplinary tribunal's finding on the merits and the costs order, but the appeal board failed, in awarding her costs, to determine the scale of costs to which she is entitled.
11. The applicant further contends that the appeal board *'failed to provide clear and cogent reasons why it made no order of costs in the appeal.'*
12. The applicant now seeks, in this application, to review the decision of the appeal board on the following grounds:

- 12.1. First, it is contended that the appeal board inexplicably

failed to indicate the scale of costs which it was awarding in the applicant's favour.

12.2. Second, it is contended that the appeal board failed to judicially exercise its discretion in respect of the costs of the appeal.

13. The application was opposed by the first to fourth respondents. The remaining respondents did not participate in the application.

THE PROCEDURAL ROUTE TO REVIEW

14. Section 28 of the Act provides for an appeal against a decision of the appeal board to the High Court. However, it affords that right of appeal to the third respondent (where an appeal is upheld) or to an appellant whose appeal is dismissed. As the applicant's appeal was, on her construction of the order, successful, she took the view that section 28 did not provide her with a right of appeal and thus brought the present application by way of review and, more particularly, as a common law review.

15. Ordinarily, anyone who wishes to review any administrative action must base the cause of action on the Promotion of Administrative Justice Act 3 of 2000 because the cause of action arises from PAJA, not from the common law, as in the past.¹ No reliance was placed in

¹ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) at para 22

the applicant's pleadings on PAJA and, when this issue was debated with counsel for the applicant, it was submitted that PAJA was not applicable because the decision being reviewed was quasi-judicial rather than administrative in nature.

16. Administrative action is defined in PAJA as, in relevant part, a decision taken by 'an organ of state'² when 'exercising a public power or performing a public function in terms of any legislation. The decision of the Appeal Board, notwithstanding that it was quasi-judicial, falls within this definition. In *Mapholisa NO v Phetoe NO and Others* 2023 (3) SA 149 (SCA) at paragraph 14, the Supreme Court of Appeal held, in the context of a professional conduct committee of the Health Professions Council of South Africa established in terms of the Health Professions Act 56 of 1974, that '*generally speaking, the decision-making of a statutory disciplinary body ... would constitute administrative action as defined in s 1 of the PAJA*'. That dictum echoed the decision made 20 years earlier in *South African Veterinary Council and Another v Veterinary Defence Association* 2003 (4) SA 546 (SCA) where the Supreme Court of Appeal held, at paragraph 34, that a disciplinary decision taken by a statutory council regarding the conduct of a vet, constituted administrative action. The application before me seems no different.

17. If the claim is one which ought to have been brought in terms of PAJA,

² As defined in section 239 of the Constitution

it has the consequence that the applicant would have to identify grounds of review which fall within section 6(2) of the Act and would have to demonstrate that there has been compliance with section 7(1). As the applicant disavowed reliance on PAJA, I was not addressed by the applicant on whether the review was brought within the 180 days permitted by PAJA, nor did the applicant identify any part of section 6(2) as being applicable to her case.

18. As I take the view that the application ought to have been brought in terms of PAJA, and as it was not, the application falls to be dismissed.

THE REVIEW GROUNDS

19. Even if it were not for this procedural difficulty, I would nevertheless have dismissed the application for review.
20. As indicated above, the first ground of review is that the appeal board failed to indicate the scale of costs which it was awarding in the applicant's favour. That ground of review assumes that what the appeal board did was to uphold the applicant's appeal against costs. The third respondent denies that this is what the appeal board did. The third respondent contends that, properly interpreted, what the appeal board did was only to uphold the appeal against the merits finding of 26 July 2018, and not its subsequent costs decision of 5 June 2019.
21. It is thus necessary to give a proper interpretation to the appeal board's decision. In that regard, the appeal board's intention is to be

ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents; and the judgment or order and the reasons for it must be read as a whole.³

22. The appeal board set out the reasons for its order. It recorded that the conduct of the disciplinary hearing and the appeal was marred with procedural failings and, for this reason, it seriously deliberated '*the granting of costs in favour of the appellant*'. The remainder of the reasoning pertained to the procedural failings which had occurred in the disciplinary hearing.
23. In a letter dated 6 November 2023 the applicant conveyed to the appeal board her interpretation of the board's order (namely that it had awarded costs in her favour for the disciplinary hearing but had failed to stipulate the costs scale) and asked the appeal board to clarify the costs scale. She also asked '*to be furnished with written reasons for the refusal to award costs of the appeal to the appellant...*'
24. In response, on 5 December 2023, the appeal board indicated that costs orders were discretionary matters. It listed factors which had informed its decision, including that the decision to uphold the appeal did not turn on the merits or demerits of the charges, but rested solely on procedural irregularities '*perpetrated by the Tribunal, a non-party to*

³ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* 2013 (2) SA 204 (SCA) at para 13

the appeal.’ It then concluded that ‘*an award of costs was not justified in the circumstances.*’

25. The order granted states that ‘*The appeal is upheld in toto, and the decision of the Disciplinary Tribunal dated 28 July 2018 is set aside.*’

The notice of appeal stated that the appeal was against all three decisions (merits, sanction and costs) and it sought a setting aside of the merits decision of 28 July 2018 and the costs decision of 5 June 2019. If the appeal against both merits and costs was upheld, one would have expected the appeal board to set aside both the 28 July 2018 decision and the 5 June 2019 decision. The failure to expressly state that the 5 June 2019 decision was set aside supports the respondents’ interpretation of the order.

26. The disciplinary tribunal had found the applicant guilty of five separate contraventions of section 18(3) of the Act. Numerous independent grounds of appeal were advanced by the applicant. The phrase ‘*in toto*’ was thus likely used, in context, not to indicate that the appeal against costs and merits was being upheld, but rather to indicate either that all of the guilty findings of 28 July 2018 were being reversed, or all the grounds of appeal on the merits were being upheld, or both such things.

27. That the appeal was upheld in regard to merits only is also consistent with the manner in which the appeal board approached the question of costs. The appeal board explained that it had a discretion in so far

as costs was concerned. It recorded that the general rule is that costs follow the result, but that this general rule may be departed from. It then recorded that it was informed, in not granting costs, *'by factors including the nature of the proceedings, the nature of the impugned decision, the basis upon which the appeal has been upheld etc. In the latter regard the Appeal Board's decision to uphold the appeal did not turn on the merits or demerits of the charges proffered against the Appellant, however, the Appeal was decided strictly on procedural irregularities perpetrated by the Tribunal, a non-party to the appeal.'* It then concluded that an award of costs against the third respondent was not justified in the circumstances.

28. Paraphrased, taking into account the nature of the proceedings and that the appeal did not make a finding on the facts of the complaint and that the irregularities were committed by the tribunal and not the third respondent (whom the appeal board considered to be separate entities), no costs were awarded in favour of the applicant.
29. Had the appeal board upheld the appeal against the costs order, it would on this logic also have granted costs on appeal. Having refused costs on appeal, for the reasons stated, there was no reason to award the costs of the disciplinary proceedings.
30. Although the appeal board was specifically asked by the applicant after the appeal order was handed down, to state the scale of costs which applied to the costs award thought to have been made, the

appeal board did not indicate any scale of costs in its response. The applicant contends that the appeal board did not answer this question because it could not do so. She also argues that had her interpretation of the appeal order been incorrect, namely that the appeal had not been upheld in regard to costs, the appeal board would have said so in response to her enquiry. Its silence in this regard is thus a contextual factor which, so argues the applicant, favours her interpretation of the appeal order. I am not prepared to draw that conclusion. To do so would be conjecture, not inference.⁴ The appeal board could equally have overlooked this part of the applicant's request, or chosen not to respond to it. More importantly, the applicant's contention depends for its validity on the correctness of the applicant's interpretation of the appeal order.

31. Once one arrives at the interpretation of the order which I prefer, namely that the appeal board did not uphold the appeal on costs, it follows that there is no lacuna in so far as the scale of costs is concerned. The failure to indicate a costs scale was deliberate, there being no order as to costs.
32. The first ground of review must therefore fail.
33. The second ground of review was that the appeal board failed to judicially exercise its discretion in respect of the costs of the appeal.

⁴ *Bates & Lloyd Aviation (Pty) Ltd and Another v Aviation Insurance Co; Bates & Lloyd Aviation (Pty) Ltd v Aviation Insurance Co* 1985 (3) SA 916 (A) at 939F – 940A

This was because, so it was pleaded, the appeal board's judgment recorded that it had seriously considered costs but did not express the end result of that consideration and, had it properly considered the matter then, given the flawed nature of the proceedings the applicant was subjected to, it would have found that the applicant was entitled to costs. It was also pleaded that the appeal board '*appeared to have been confused and/or had been capricious or vacillated in its findings and decision pertaining to the issue of costs*'. As I understand the pleadings this was for two alleged reasons. First, '*because ... it had expressed the sentiment that there was blameworthy conduct on the part of the third respondent and that it had considered awarding me costs*' and, second, because although it stated in its reasons that the appeal did not succeed on the merits but only on procedural grounds, in fact the appeal had succeeded on the merits, there having been no evidence which warranted the applicant having been charged.

34. In supplementary heads of argument filed the day before the hearing, the applicant advanced the following further contentions:

34.1. The appeal board found blameworthy conduct on the part of the third respondent and, having done so, ought to have followed the general principle that the blameworthy party pays the cost of the proceedings or explained why it was departing from that principle.

34.2. The appeal board failed to provide clear and coherent

reasons as to why it made no order as to costs.

35. While it is correct that the appeal board found blameworthy conduct, it is not correct that it considered the blameworthiness to have arisen on the part of the third respondent. That is made clear by the reasons given by the appeal board in December 2023 for its costs award. There it stated that the irregularities were perpetrated by the disciplinary tribunal and, as the tribunal had not been a party to the appeal, it declined to award costs.
36. It was argued before me that the council and the disciplinary tribunal ought to be considered and treated as the same entity. That is not a question I need decide. Whether the appeal board were correct or incorrect in drawing a distinction between the council and the tribunal is not relevant to my decision, that not being a ground of review.⁵ The point rather is that they did draw such a distinction and that they did so is the reason why what is described by the applicant as the ordinary principle was not followed.⁶
37. In so far as the failure to provide adequate reasons is concerned, the applicant argued that inadequate reasons were provided by the appeal

⁵ *Sea Front For All v MEC, Environmental Planning* 2011 (3) SA 55 (WCC) at para 29

⁶ Incidentally, the authorities relied upon by the applicant for the existence of this general principle (namely *Sublime Technologies (Pty) Ltd v Jonker & Another* [2010] 2 All SA 267 (SCA) at para 3, *Burger v Kotze* 1970 (4) SA 302 (W) at 304A-G and *Naude and Another v South African Legal Practice Council* [2025] ZAGPPHC 774 at para 67 – 71) do not appear to me to be support for the proposition that the general rule is that a party who is at fault or blameworthy is liable to pay the resultant costs. *Sublime Technologies* and *Burger* deal with the costs of a postponement, rather than costs orders following a determination of merits. In *Naude* the respondent had sought and obtained the urgent suspension from practice of an attorney in circumstances which the court found to be unjustified. It ordered the statutory body to pay costs. It did not, however, lay down any general principle.

board for its costs order and that this failure entitled me to review and set aside that order. Reliance was placed in this regard on *Road Accident Fund v Marunga* [2003] 2 All SA 148 (SCA) and the recent decision of *Vodacom (Pty) Ltd v Makate & Another* [2025] ZACC 13. The submission made by the applicant assumes that the duties which courts have to explain the reasons for their decisions are directly applicable to administrative tribunals exercising quasi-judicial functions. Whether that assumption is correct or incorrect is an interesting question which I fortunately do not have to resolve.

38. That is because once one concludes that the appeal was only upheld on the costs aspect, the reasons given for the costs award ceases to be woefully inadequate (the test set in *Vodacom*), assuming they were so on the alternative interpretation of the award. Counsel for the applicant, as I understood it, conceded as much in argument.
39. The appeal board explained that it had a discretion in so far as costs was concerned and it appreciated that section 27(3) of the Act entitled it to make costs awards. It recorded that the general rule is that costs follow the result, but that this general rule may be departed from. It then recorded why it had not granted costs: namely that the appeal was being upheld based on procedural irregularities for which it was unwilling to blame the third respondent.
40. The basis on which the decision was arrived at is thus discernible from the reasoning.

41. It was also advanced by the applicant that the reasons are inadequate because they do not show engagement with the submissions advanced by the applicant with regard to costs. In the absence of any specific argument on costs being identified as being of such materiality that it was necessary for the appeal board to have dealt with it in express terms, I am not persuaded that the appeal board's ruling is susceptible to review on this basis.
42. The contention that a finding had been made on the merits (whereas the appeal board thought it had not), even if correct, is an attack on the correctness of the appeal board's reasoning, not on the adequacy of its reasoning and is thus not a valid ground of review. Similarly the argument that because the applicant was successful on appeal the costs ought to have followed the result is one which articulates a ground of appeal, rather than a review ground.
43. The second ground of review must therefore fail.

CONCLUSION

44. Although costs ordinarily follow the result, and the respondents have been successful in their defence of the applicant's application, each party is to bear their own costs in this application.
45. The applicant incurred legal costs in defending disciplinary proceedings which appear to have been ill-advised and poorly conducted. The appeal board's order was not a model of clarity and

the interpretation which the applicant contended for was, while unsuccessful, not unreasonable. Further, when an opportunity was presented to the appeal board to correct the applicant's mistaken interpretation, that opportunity was not taken up.

46. In the result, I make the following order:

46.1. The applicant's application is dismissed.

46.2. Each party is to bear its own costs in respect of this application.



K D ILES
Acting Judge of the High Court, Johannesburg

Appearances:

On behalf of the applicant:
Instructed by:

G Shakoane SC
Phaleng Podile Attorneys

On behalf of the 1st – 4th respondents:
Instructed by:

A Nell
Raymond Francois Hauptfleisch
Attorneys Inc

Date of hearing:

20 August 2025

Date of judgment:

22 August 2025