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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

NOT REPORTABLE

Case No.: 440/2025

In the matter between:

R[...] M[...] M[...]

Applicant

and

MASTER OF THE HIGH COURT, GQEBERHA

First Respondent

B[...] M[...] M[...]

Second

Respondent

In her capacity as Trustee of the

M[...] Family Trust, IT No. 6[...]

MONICA SAAYMAN

Third Respondent

In her capacity as Trustee of the

M[...] Family Trust IT No. 6[...]

JUDGMENT

EKSTEEN J:

[1] This is an application (the review) to review and set aside the report of the first respondent, the Master of the High Court, Gqeberha (the Master), filed in proceedings before the Western Cape Division of the High Court (the high court).

Background

[2] The events giving rise to the review are as follows. Mr M[...], the applicant, and Mrs M[...], the second respondent, have at all material times been married to one another, but are currently embroiled in divorce proceedings. They were also trustees in the M[...] Family Trust, together with the third respondent. After the commencement of the divorce proceedings relations between them soured, and the animosity spilled over to the administration of the trust. When Mrs M[...] complained to the Master, they called upon Mr M[...], as the accounting officer, to account to them in terms of s 16(1) of the Trust Property Control Act, 37 of 1988, for certain income due to the trust. Mr M[...] did not, at first, comply with the request. This did not assist to resolve the impasse between Mr and Mrs M[...] and she, together with other parties, approached the high court seeking the removal of the applicant as a trustee in terms of s 20 of the Trust Property Control Act. At the initial hearing of the removal application, a rule nisi was issued that called upon Mr M[...] to show cause why the Master should not be ordered to remove him as a trustee.

[3] Although the Master was cited as a respondent in the removal application, they did not enter an appearance and they did not participate in the litigation. However, the high court did direct that they file their report, presumably in terms of rule 6(9) (read with rule 6(10)) of the rules of court on a stipulated date. This the Master did, and on the

return day the matter was fully argued and the high court ordered that Mr M[...] be removed as a trustee.

[4] Mr M[...] was not content with the outcome of the litigation and he filed an application in the high court for leave to appeal against the removal order, which is currently pending. He also instituted the review in this court to review and set aside the report delivered by the Master to the high court in the removal application. He contended that the Master had been biased and had intentionally presented a misleading report to the high court in which they had failed to disclose material information known to them concerning the allegations that had been made to them in respect of the dispute, and had ignored material information.

[5] The Master entered an appearance to defend the review, but they chose not to file opposing affidavits. Instead, they delivered a notice in terms of rule 6(5)(d)(iii) of the rules, declaring that they intend to raise only questions of law. Two questions were raised in the notice, however, the first was abandoned and it is not necessary to deal with it. The second issue raised by the Master was that the report produced was not reviewable as it was not a decision, but merely provided information for the benefit of the court.

[6] I turn to the review. Neither the notice of motion nor the founding affidavit makes mention of the Promotion of Administrative Act, 3 of 2000 (PAJA), but it is common cause that a review of administrative action may only be brought in terms of PAJA.¹ The concept of administrative action is defined in s 1 of PAJA and a material portion thereof records:

“administrative action” means any decision taken, or any failure to take a decision, by-

¹ *Pharmaceutical Manufacturers Association of South Africa and Another: In re: Ex Parte The President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) at 692; *Manong & Associates v Director General: Department of Public Works and Others* [2004] 1 All SA 673 (C) at 681; and *Transnet Limited and Others v Chirwa* 2007 (2) SA 198 (SCA) at 207.

- (a) an organ of state, when-
 - (i) exercising a power in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; ...

which adversely affects the rights of any person and which has a direct, external legal effect’

[7] A ‘decision’ in turn, is defined in PAJA to mean ‘any decision of an administrative nature made, proposed to be made, or required to be made as the case may be, under an empowering provision, including a decision relating to-

- (a) making, suspending, revoking or refusing to make an order, award or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, refusing to deliver up, an article; or
- (g) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly.

[8] Thus, at the core of the definition of administrative action is the idea of a decision of an ‘administrative nature’ taken by a public body or functionary.²

² *Grey's Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* 2005 (6) SA 313 (SCA) at para 22.

[9] Accordingly, for conduct to be reviewable in terms of PAJA it must constitute a 'decision' which must be of an administrative nature affecting the rights of a person and having an external legal effect.

[10] Mr *Mphahlwa*, on behalf of Mr M[...] has referred to authority that a decision taken by the Master of the High Court is reviewable. The statement is not contentious, but it must be a decision. Numerous statutes, including the Trust Property Control Act, confer powers on the Master that he is entitled to exercise³. On each occasion that the Master decides to invoke his powers under a statutory provision it involves a decision, usually of an administrative nature, in terms of the empowering provisions. Mr *Mphahlwa* contended that the Master had taken a decision to submit the report to the high court in the exercise of powers conferred on him in terms of the Trust Property Control Act. The Trust Property Control Act contains no such provision.

[11] In the present matter the Master has taken no decision. He was called upon to report to the high court in respect of information which may assist the court in resolving the dispute before it. It is not an unusual request and it seems to me, as I have said, that it flows from the rules of court. The Master does not purport to have taken any decision at all and the report is not of an administrative nature. It is neutral in its terms and it disclosed Mr M[...]’s responses to various administrative enquiries posed to him. The report contains no recommendations which may be harmful to Mr M[...]. Even if it had contained such a recommendation it would not constitute administrative action. The dispute was pending before the high court and the high court was called upon to decide the issue. Mr M[...] had every procedural opportunity to put forward his case in the high court so that the report of the Master had no external legal effect.⁴

³ The Trust Property Control Act authorises the Master:

(1) in terms of s 7 to appoint trustees;

(2) in terms of s 16 to call upon trustees to account to him in accordance with his requirements;

(3) in terms of s 20 to remove a trustee in certain circumstances.

⁴ *Corpco 2290 (CC) t/a U-Care and Another v Registrar of Banks* [2013] 1 All SA 127 (SCA) at para 26; and *Greyvenstein and 2 Others v The South African Legal Practice Council and Another* (unreported judgment of Eastern Cape Division, Makhanda, case number 1193/2023 dated 22 April 2025 at para 31).

[12] Accordingly, I consider the report submitted by the Master to the high court did not constitute a decision nor was it an act of an administrative nature. The Master did not act in terms of an empowering provision in the Trust Property Control Act, but submitted the report at the direction of the high court in terms of the rules of court. Moreover, the report did not adversely affect Mr M[...]’s rights nor did it have a direct external effect as the decision was pending before the high court and Mr M[...] had every opportunity to place his case before the high court. Thus, the ‘report’ is not reviewable and it is not necessary to consider the further arguments raised.

Costs

[13] Ms *Morris*, for the Master, urged me to make a costs order against Mr M[...], because, so it is argued, the review was ill-conceived. Mr *Mphahlwa* argued that in the event that I find against the applicant the principle laid down in *Biowatch*⁵ should find application to the matter and that I should make no order for costs. In *Biowatch* the Constitutional Court substantially adapted the established approach to cost orders for constitutional litigation. It held that the general rule should be not to award costs against an unsuccessful litigant when litigating against state parties in matters of genuine constitutional import. In the present matter, while the application was ill-conceived, the applicant sought to vindicate his perceived right to fair administrative action as set out in the Constitution. I have found that the application was bad in law, but I cannot find that it was mala fide or that the manner in which it was pursued was an abuse of the process. Accordingly, I intend to make no order as to costs.

[14] In the result, the application is dismissed.

J W EKSTEEN
JUDGE OF THE HIGH COURT

⁵ *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC).

Appearances:

For Applicant: Mr Y Mphahlwa
Instructed by: Mphahlwa and Co Inc
c/o Rwexana Attorneys
GQEBERHA

For 1st Respondent: Adv K M Morris
Instructed by: State Attorney
GQEBERHA

Date Heard: 21 August 2025
Date Delivered: 26 August 2025