



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2025-127891

In the matter between:-

OLEENA DAUCHAND

FIRST APPLICANT

TRESTINE TRADING CC

SECOND APPLICANT

and

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

FIRST RESPONDENT

M REDDY N.O.

SECOND RESPONDENT

**NATIONAL DIRECTOR OF
PUBLIC PROSECUTION**

THIRD RESPONDENT

**DIRECTOR OF PUBLIC PROSECUTIONS
RESPONDENT**

FOURTH

**THE PROSECUTOR,
W REGIONAL COURT DURBAN**

FIFTH RESPONDENT

JUDGMENT

ANNANDALE, AJ

[1] The applicants were originally charged together with several other persons alleged by the state to have been part of a syndicate acting with common purpose to defraud. Various members of the alleged syndicate were able to negotiate plea and sentence agreements in terms of s105A of the Criminal Procedure Act 51 of 1977

(the Criminal Procedure Act). The efforts of the applicants' previous legal representatives to secure similar agreements for their clients were unsuccessful. The applicants' trial was therefore separated from that of their erstwhile co-accused who pleaded guilty and received non-custodial sentences.

[2] The applicants faced 59 counts of fraud, 59 counts of corruption and 1 count of money laundering allegedly stemming from 59 transactions spanning a period of some two and half years from 8 January 2015 to 24 August 2017. The first applicant is the sole member of the second applicant and appeared as its representative in the sense in which that term is used in s332 of the Criminal Procedure Act.

[3] The charges relate to what the third to fifth respondents (the prosecutorial respondents) allege is a fraudulent scheme which operated as follows. Consulens (Pty) Ltd (Consulens) is a supplier of equipment to *inter alia* the Nkosi Albert Luthuli public hospital. Consulens' employees would manipulate the company's systems to create a fictional need for the supply of items in order to replenish stock. The second applicant would then issue invoices for such items to Consulens. Not only was there no actual need for these items, nothing was delivered. Through collusion with representatives of Consulens, the second applicant's invoices were nevertheless paid by Consulens. The unlawful proceeds were then shared between the applicants and Mr Rakesh Maharaj, a representative of Consulens and one of the applicants' former co-accused who pleaded guilty pursuant to a s105A plea agreement.

[4] On 1 April 2025 the applicants, represented by counsel and an attorney, tendered a fifteen page plea of guilty to all the charges in terms of section 112(2) of the Criminal Procedure Act in the Regional Court, Durban. The second respondent was the presiding officer (the Regional Magistrate) and the fifth respondent was the prosecutor. The Regional Magistrate duly convicted the applicants and then adjourned the matter at their instance for the compilation of pre-sentencing reports.

[5] A little under three months later, on 26 June 2025, the applicants - now represented by different counsel - moved an application in terms of s113(1) of the Criminal Procedure Act for pleas of not guilty be entered (the s113 application).

[6] The s113 application was brought on notice of motion supported by an affidavit. The applicants relied on various grounds including that they had been

incompetently represented, had not understood or appreciated the import of their guilty plea, had acted under coercion and duress and that the first applicant had not been in any emotional condition to tender a plea as her mother was on her deathbed at the time.

[7] The prosecution did not adduce evidence in response but addressed the Regional Magistrate on the merits of the application.¹ The fifth respondent submitted that the only reason for the applicants' about turn was that the pre-sentencing reports they had requested and which had become available in May 2025 recommended the imposition of custodial sentences.

[8] The Regional Magistrate refused the s113 application and has since set the matter down for sentence on 12 November 2025.

[9] Following the dismissal of the s113 application, the applicants launched a review in terms of s 22 of the Superior Courts Act 10 of 2013 (the Superior Courts Act) seeking to set aside both the s112 and s113 proceedings on a variety of grounds said to constitute gross irregularities. That review is still pending.

[10] In the urgent application before me, the applicants seek to interdict sentencing pending the finalisation of the review. The prosecutorial respondents opposed the application, whilst the first and second respondents took no part in the proceedings.

[11] The applicants seek to protect the right to obtain meaningful relief in the pending review. They argue that if the review were ultimately to succeed but they had nonetheless been sentenced in the meantime, the review would be essentially meaningless as the harm which they seek to prevent through the present proceedings would have eventuated, and their fair trial rights guaranteed by s35 of the Constitution would have been violated in the process.

[12] After full argument on 8 October 2025, the applicants and the prosecutorial respondents were ultimately agreed that the interdict should be granted and presented a consent order to this effect which they were content for the court to grant without reasons or a judgment. I declined that invitation as it is necessary for a

¹ Review application: prosecutor's address in s113 proceedings: Caselines 002-122 to 002-127.

written, reasoned judgment to accompanying the order I propose making. The order impacts on the functioning of the Regional Court. It would be improper to grant such an order merely because some of the parties to these proceedings had consented to it. The court would need to be satisfied that was appropriate. In addition, the order directly affects the Regional Magistrate who quite correctly played no part in the urgent application and did not consent to the proposed order. She is entitled to know why have I granted the order. So too is the first respondent.

The requirements for interim relief pending a review

[13] The traditional requirements for the grant of an interim interdict are well-established. An applicant needs to establish a *prima facie* right although open to some doubt, a reasonable apprehension of irreparable harm to the right they seek to protect, the absence of an alternative remedy and that the balance of convenience favours the grant of relief.²

[14] These traditional requirements do not operate in hermetically sealed compartments. The stronger the prospects of success, the less the need for the balance of convenience to favour the applicant. Concomitantly, the weaker the prospects of success, the greater the need for the balance of convenience to be in an applicant's favour.³ The reason for this long-established principle is manifest: if an applicant is likely to be proved right in the review, it is generally desirable that what is proceeding under the decision sought to be impugned is stopped sooner rather than later.⁴

[15] Where interim relief is sought pending a review, the prospects of success in the contemplated review proceedings represent the measure of the strength or otherwise of the alleged right.⁵

² *Setlogelo v Setlogelo* 1914 AD 221 at 227.

³ *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383 E – F.

⁴ *Camps Bay Residents and Ratepayers Association and others v Agoustides* 2009 (6) SA 190 (WCC) para 10, and the cases there cited.

⁵ *Ladychin Investments (Pty) Ltd v South African National Roads Agency Ltd and others* 2001 (3) SA 344 (N) at 353F-G.

[16] As the Constitutional Court explained in *EFF v Gordhan*,⁶ consideration of prospects of success in the review requires the court seized with the application for interim relief to ‘peek into the grounds of review raised in the main application and assess their strength.’⁷

Three matters affecting the assessment of prospects of success

[17] In the present context there appear to me to be three matters which affect that assessment:-

(a) whether the applicants need to meet an elevated threshold as articulated by the Constitutional Court in *OUTA*⁸ and *EFF v Gordhan* due to the effect the interim order;

(b) the principle articulated by the Appellate Division in *Walhaus* that a high court should only exercise its review jurisdiction in respect of criminal proceedings in the magistrate’s court which have not yet been concluded “in rare cases where grave injustice might otherwise result or where justice might not by other means be attained”⁹; and

(c) the fact that proceedings in terms of s22 of the Superior Courts Act remain reviews not appeals, coupled with the threshold for interference on review given the nature of the proceedings sought to be impugned.

The OUTA threshold and reviews under s22 of the Superior Courts Act

[18] In *OUTA*, the Constitutional Court held that where the effect of an interim interdict is to restrain the exercise of statutory or public power, relief should only be granted in the clearest of cases and where it would promote the object, spirit and purport of the Constitution.¹⁰ In *EFF v Gordhan*, the Constitutional Court explained that where relief is sought against state actors preventing them from exercising their

⁶ *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC).

⁷ *EFF v Gordhan* para 42

⁸ *National Treasury v Opposition to Urban Tolling Alliance* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) paras 45 to 47.

⁹ *Walhaus and Others v Additional Magistrate, Johannesburg and Another* 1959 (3) SA 113 (A) at 120A – C.

¹⁰ *OUTA* paras 45 and 46.

powers pending the finalisation of a review, application of the *OUTA* principle requires the court to be satisfied that the review has good prospects and is based on sound grounds which are likely to succeed.¹¹

[19] Although the *OUTA* principle is sometimes broadly stated as if it applies to all instances where an order would prevent a state actor from exercising a public or statutory power, it is informed by concerns about the impact such relief has on the separation of powers.¹² There is thus in my respectful view much force in the thinking that the elevated *OUTA* threshold does not apply to reviews seeking to set aside administrative action where there are no separation of powers implications.¹³ But we are not here concerned with administrative action.

[20] We are also not concerned with separation of powers harm in the usual sense. Here, the relief sought would not impede a different branch of government from performing their functions because it would operate between different tiers of the hierarchy within the same sphere of government. It does however appear to me that it is more than arguable that the underlying principle that courts should be slow to grant relief which impedes state parties from performing their statutory and/or public functions applies with equal force in the present circumstances. Application of the elevated *OUTA* threshold in this context also accords with the principle in *Walhaus*.

[21] It is ultimately unnecessary for me to determine whether a lesser threshold is appropriate by virtue of the view to which I come that - at least in one respect - the review is indeed based on sound grounds and enjoys good prospects of success and that the grant of relief will promote the object, spirit and purport of the Constitution.

The principle in Walhaus

[22] The standard rule that reviews of criminal proceedings occur only after conviction and sentence, seeks to prevent piecemeal adjudication and promote the

¹¹ *EFF v Gordhan* para 42.

¹² *OUTA* paras 44 and 47.

¹³ See for example the remarks of Olsen J in *Reaction Unit South Africa (Pty) Ltd v Private Security Industry Regulatory Authority* 2020 (1) SA 281 (KZD) paras 31 -33.

efficient administration of justice.¹⁴ The principle enunciated by the Appellate Division in *Walhaus* is thus informed by the effect review relief could have on the continuity of proceedings in the court below, and the fact that redress by means of review or appeal will ordinarily be available upon conclusion of the proceedings in that court.¹⁵ Importantly, the prejudice inherent in an accused person being obliged to proceed to trial, and possible conviction, before being accorded an opportunity of testing the correctness of a magistrate's decision overruling a preliminary and perhaps fundamental contention, does not necessarily justify the high court from granting relief before proceedings are finalised.¹⁶

Review, not appeal

[23] Proceedings under s22 of the Superior Courts Act are reviews not appeals. Evaluation of prospects thus entails considering whether the review grounds are complaints against the result of the proceedings in which event the appropriate remedy is an appeal, or whether they relate to material irregularities in the method of the proceedings which may appropriately be challenged on review under s22.

[24] In determining on which side of that line the grounds of complaint fall, it may in appropriate circumstances be useful to focus on the legal test applicable to the proceedings sought to be impugned. An incorrect application of the test would ordinarily need to be addressed by way of an appeal. On the other hand, a complete failure to apply the relevant test would constitute a reviewable irregularity if it demonstrated that the decision-maker had not properly exercised the powers entrusted to them and had misconceived the whole nature of the enquiry in a manner which prevented a fair trial on the issue.¹⁷

Prospects of success in the review against the s113 proceedings

[25] The applicants raise six grounds of review, targeting both the s112 and s113 proceedings. By virtue of the view to which I come regarding the allegations of

¹⁴ Steylter, *Constitutional Criminal Procedure*, p 396, fn 48.

¹⁵ *Wahlhaus* at p120B.

¹⁶ *Wahlhaus* at p120D - F.

¹⁷ *Primich v Additional Magistrate, Johannesburg* 1967 (3) SA661 T at 671F – 672B; *Rustenberg Platinum Mines Ltd (Rustenberg section) v Commission for Conciliation, Mediation and Arbitration* 2007 (1) SA 576 (SCA) para 31.

material irregularities in respect to the s113 proceedings, it is not necessary for me to express any view on the prospects of the grounds of challenge to the s112 proceedings.

When is a court obliged to enter a plea of not guilty duties under s113(1)?

[26] In the context of a review of the refusal of a s113(1) application, the assessment of prospects of success can usefully begin with consideration of the circumstances under which a court is obliged by the section to enter a plea of not guilty. As with all matters interpretative, while the process is unitary and considers, text, context and purpose, the inevitable starting point is the language of the provision because it has a gravitational pull that is important.¹⁸

[27] Previously s113(1) read as follows:-

‘s113(1) If the court at any stage of the proceedings under s112 and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty or is satisfied that the accused does not admit an allegation or that the accused has a valid defence to the charge, the court shall record a plea of not guilty and require the prosecutor to proceed with prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.’
(emphasis added).

[28] In *Botha*,¹⁹ the Appellate Division explained that this wording of s113(1) catered for four distinct situations in which a court was obliged to correct a plea of guilty under s112 and substitute one of not guilty: where the court is in doubt whether the accused is in law guilty of the offence to which they have pleaded guilty; where

¹⁸ *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) paras 25 and 51.

¹⁹ *Attorney-General, Transvaal v Botha* 1993 (2) SACR 587 (A); 1994 (1) SA 306 (A)

the court is satisfied that the accused does not admit an allegation in the charge; where the court is satisfied that the accused has incorrectly admitted any such allegation in the charge; and where the court is satisfied that the accused has a valid defence to the charge.²⁰

[29] Each of these situations is premised on there being a reasonable doubt in the mind of the court as to whether the accused was guilty of the offence to which they had pleaded guilty.²¹ Even then, an accused person bore no onus to prove that the plea should be changed.²² The requirement that the court needed to be satisfied that one of the four situations triggering the application of s113(1) existed did however require the accused person to tender a reasonable explanation as to why they sought to withdraw the admission or change their plea.²³

[30] Although the language of s113(1) changed in significant respects when the provision was amended by s5 of the Criminal Procedure Amendment Act 86 of 1996 with effect from 1 September 1997, the purpose of the provision and the general principles which guide its application did not. They remain relevant to the application of section 113(1) in its current form.

[31] *Botha* explained²⁴ that the intention of the legislature in enacting sections 112 and 113 was to afford an accused person greater protection than before against an incorrect conviction. Plea corrections should thus be approached *in favorem innocentia* and the provisions should not be interpreted in a manner which places undue obstacles in the way of an accused person who seeks to retract admissions or a plea or guilty.

[32] Following amendment in 1997, s113(1) reads:-

“If the court at any stage of the proceedings under section 112(1)(a) or (b) or 112(2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to

²⁰ *Botha* at 590h - 591a (SA at 326C -E).

²¹ *Botha* at 592g -j (SA at 328 F – I).

²² *Botha* at 591j - 592f (SA at 327F-328E).

²³ *Botha* at 593g- h (SA at 329G -H).

²⁴ *Botha* at 592a -b and 593 c-d (SA at 327G-H and 329B-D).

which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed to prosecution: Provided that any allegation, other than an allegations referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.'

(emphasis added)

[33] In *Mokonoto*,²⁵ a full bench of the Gauteng High Court explained that s113(1) in its current form provides for eight distinct situations in which a court is required to correct a plea of guilty and record one of not guilty, several of which do not require the court to be satisfied of or in doubt about anything.²⁶

[34] The eight situations are:-

- '[1] where the court is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty;
- [2] if it alleged to the court that the accused does not admit an allegation in the charge-sheet;
- [3] if it appears to the court that the accused does not admit an allegation in the charge-sheet;
- [4] if it is alleged to the court that the accused has incorrectly admitted any such allegation;
- [5] if it appears to the court that the accused has incorrect admitted an such allegation;
- [6] if it is alleged to the court that the accused has a valid defence to the charge;
- [7] if it appears to the court that the accused has a valid defence to the charge;

²⁵ *Mokonto and others v Reynolds N.O and another* 2009 (1) SACR 311(T).

²⁶ *Mokonoto* paras 19-20.

[8] if the court is of the opinion or any other reason that the accused's plea of guilty should not stand.'
(emphasis added)

[35] *Mokonoto* regarded the change in language as significant and having had the effect that the requirement of a reasonable doubt in the court's mind had been replaced with a lighter test. For situations (2), (4), and (6) above, there now need only be an allegation to the relevant effect.²⁷

[36] Importantly, the court need not believe the allegation.²⁸ The following paragraph from *Mokonoto* resonates in the present case:-

"[21] I share the view of the court below that the allegation that the applicants do not admit the relevant allegation, or that the allegation was incorrectly admitted by the applicants, is untrue and may be categorised as 'vals'. The circumstances of the case point clearly to this and the inference is unavoidable that the applicants decided to request the court to act in terms of s113 only when it became apparent that the consequences of their conviction would be more serious than a sentence of correctional supervision. But that is irrelevant in terms of the section as it now reads. The threshold for the section to come into operation is now less than a reasonable doubt. It merely requires an allegation."

[37] I am respectfully in agreement with this lucid and logical explanation. The approach in *Mokonoto* has also found favour with a review court in this division.²⁹

[38] The correctness of the approach in *Mokonoto* is further underscored by the nature of s112 proceedings, which endure until the final imposition of sentence and thus include s113.³⁰ *Botha* described these two provisions as procedural steps which follow a plea of guilty, which were not designed to be used as part of the normal

²⁷ *Mokonoto* para 20.

²⁸ This was also the case under the earlier formulation of s113(1): *Botha* at 593g-h (SA 329G-H).

²⁹ *Naidoo and Another v De Freitas* 2013(1) SACR 284 KZN, para 8.

³⁰ *Botha* at 589a (SA at 324D-E).

state case to prove an accused's guilt.³¹ Consequently, it is irrelevant that the reason given for the retraction of the admission may later prove false, because the court is still involved in what is effectively a pre-trial procedure.³² More recently, the Supreme Court of Appeal in *Shiburi*³³ has stressed that in s112 proceedings, the court's role is not to evaluate the plausibility of the answers or determine the truthfulness of an accused person's explanation which must be accepted as true at that stage.³⁴ A court may not embark on "a critical analysis of the probity" of the explanation proffered.³⁵

[39] None of the parties had considered or addressed the threshold for the application of s113(1) in their heads of argument. When I referred them to *Mokonoto*, they accepted that it correctly reflects the current state of our law.

The s113 application and the Regional Magistrate's approach to it

[40] The question whether the review bears prospects of success can therefore be resolved within a narrow compass by considering whether allegations were made in the s113 application which obliged the regional court magistrate to enter a plea of not guilty and how the Regional Magistrate approached the matter.³⁶

[41] The parties were agreed that in order for the court to undertake this exercise, it was necessary for me to have regard to the s113 application,³⁷ which forms part of the review record, which will ultimately serve before the review court.

[42] The founding affidavit deposed to by the first applicant in support of the s113 application includes the following allegations:

- (a) In relation to the offences, the first applicant did not act freely, voluntarily or with criminal intent but under economic pressure, undue influence and coercion. Her participation, to the extent that there was

³¹ *Botha* at 593c (SA at 329B- D).

³² *Botha* at 503g-h (SCA at 329G-H).

³³ *S v Shiburi* 2018 (2) SACR 458 (SCA)

³⁴ *Shiburi* para 19

³⁵ *Shiburi* para 21

³⁶ Review application: record of s 113 proceedings: part of OD4: Caselines 002-117 to 002-136.

³⁷ Review application: s113 application: Review: Caselines 002-292 to 002-298.

any, was motivated by fear of exclusion and financial harm, not by a desire to defraud, corrupt, or conceal unlawful activity.³⁸

- (b) Due to inadequate legal advice the first applicant lacked a proper understanding of the legal implications of the plea, particularly in respect of complex doctrines such as common purpose, representative liability of directors of companies under s332 of the Criminal Procedure Act and the constituent elements of the offences of fraud, corruption and money laundering;³⁹
- (c) The s112(2) plea was not made voluntarily, raised triable defences, was submitted under inadequate legal advice and does not reflect a true and unequivocal admission of guilt.⁴⁰
- (d) At the time of entering the guilty plea, the first applicant was experiencing severe emotional and psychological distress due as her mother was on her deathbed suffering from terminal cancer.⁴¹ The first applicant was therefore not in a proper mental state to comprehend the full consequences and legal implications of her plea as she was emotionally overwhelmed and her judgment was clouded. Her plea was consequently not a true, conscious and informed admission of guilt.⁴²

[43] It is apparent from the above that the s113 application did contain allegations which obliged the court to enter a plea of not guilty.

[44] It may well be that the s113 application was motivated solely by the fact that upon production of the presentence reports the shoe began to pinch rather uncomfortably, particularly as they record that the applicants maintained their pleas of guilty during interviews with the probation officer.⁴³ Whether that is so or not depends on the correctness of the allegations founding the s113 application, into

³⁸ Review record: s113 affidavit: para 5: Caselines 002-295.

³⁹ Review record: s113 affidavit: para 8: Caselines 002-296.

⁴⁰ Review record: s113 affidavit: para 9.2: Caselines 002-296.

⁴¹ The first applicant's mother passed away on 12 May 2025 a few weeks after the plea was tendered: Review record: s113 affidavit: para 9.1 Caselines 002-296

⁴² Review record: s113 affidavit: paras 10 and 12: Caselines: 002-297.

⁴³ Review record: Probation Services Report: Caselines 002-309, para 9.1.

which the Regional Magistrate was not legally permitted to conduct a critical analysis.

[45] The Regional Magistrate did not however approach the matter on that basis.⁴⁴ Instead, she dismissed the application because she remained in no doubt about the applicants' guilt, and the applicants had adduced no evidence to support what she described as their "nebulous allegations".⁴⁵

[46] That approach may aptly be characterised as embarking on a critical analysis of the applicants' allegations during plea proceedings which the Supreme Court of Appeal in *Shiburi* has indicated is impermissible and improper.

[47] I therefore conclude that, at least in relation to the attack on the s113 proceedings, the review would bear good prospects of success if it were brought after the finalisation of sentencing proceedings.

Impact of the Walhaus principle on prospects of success

[48] The question which remains is whether those prospects are adversely affected by the principle in *Walhaus* such that the review court would likely decline to grant relief until proceedings in the regional court had run their course.

[49] I was referred to the decision in *Nonzukiso*⁴⁶ where the court regarded a review against the refusal of a s113 application as premature, apparently on the basis that the accused persons could pursue their review in due course and after sentence. It is not apparent from the judgment whether the court in *Nonzukiso* was referred to either *Botha* or *Mokonoto*, and there is no discussion in the judgment regarding the prospects of success. The review court appears to have been somewhat swayed by the fact that, having obtained an interim interdict pending the finalisation of the review, the applicants did not pursue their chosen remedy for a period of seven years. Perhaps somewhat ironically, that had already caused

⁴⁴ Review application: court's ruling on s113 application: Caselines 002-131 – 132.

⁴⁵ Review application: court's ruling on s113 application: Caselines 002-132, lines 5 to 20.

⁴⁶ *Nonzukiso Security Services and Another v Regional Magistrate Cape Town and Another* (13158/18) [2025] ZAWCHC 185 (30 April 2025) paras 14 – 20.

significant disruption and dislocation, which the application of the *Walhaus* principle is intended to prevent.

[50] If one were however to assume that the applicants in *Nonzukiso* had demonstrated prospects of success in the review, the judgment demonstrates only that review courts may differ, as the court in *Mokonoto* however had no difficulty in upholding the review before sentence.⁴⁷

[51] It is therefore entirely possible that a review court would regard it as an exercise in harmful futility to compel the applicants to complete proceedings which fall to be set aside. The review court may well find that this is a rare case where grave injustice might result if the error is not corrected now and the applicants are instead compelled to be sentenced and potentially incarcerated pending the finalisation of a review which is almost certain to succeed. The review court may also take the view that correcting the error now would be in the interests of justice as it would expedite the ultimate finalisation of the criminal proceedings.

[52] In all of these circumstances, I am satisfied that this is a case where the review court may well consider it appropriate to look into the merits of the review and deal with the matter on substance despite the fact that the proceedings in the regional court are not yet complete.

[53] That is ultimately a matter for the review court. For present purposes, I am satisfied that in addition to demonstrating good prospects of success in the review application insofar as it pertains to the s113 proceedings, the applicants have established the remaining requirements for the grant for interim relief.

[54] The fact that without an interdict the matter will proceed to finality on 12 November 2025, coupled with the very real possibility of a custodial sentence being imposed, means that the applicants entertain a real apprehension of irreparable harm. A review after the completion of sentencing proceedings is not an adequate alternative remedy. The balance of convenience favours the grant of interim relief. The prospects in the review are strong and the prosecutorial respondents suffer no prejudice. It is in any event open to the parties to approach the senior civil judge for a

⁴⁷ *Mokonoto* para 13.

preferent hearing date of the review so as to expedite the conclusion of the prosecution. The grant of interim relief here also promotes the object, spirit and purport of the Constitution as it protects the applicants' fair trial and due process rights. If the result of the review is that pleas of not guilty are entered, the prosecutorial respondents simply proceed with the prosecution as they would have had to do if the pleas of guilty had not been tendered.

[55] The draft consent order included an order that that there be no order as to costs. In effect, that means that the parties agreed that they would each bear their own costs and I propose making an order to that effect, lest it be thought that the absence of a costs order is *per incuriam*.

[56] In the result I grant the following order:

1. Pending the final determination of the review application under case number 2025-126662, the second respondent is interdicted from proceeding further with the imposition of sentence in the criminal proceedings under Durban Regional Court case number 41/233/2025.
2. Each party is to pay their own costs.

ANNANDALE, AJ

JUDGMENT RESERVED:

8 October 2025

JUDGMENT HANDED DOWN:

15 October 2025

Appearances:

For applicants:

Adv R Kisten with Mr. E Pillay
(attorney)

Instructed by:

Pather and Pather Attorneys

For the third to fifth respondents:

RGB Choudree SC with Adv N
Govender

Instructed by:

The State Attorney