



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

Case Number: 2024/021979

(1)	REPORTABLE:	NO
(2)	OF INTEREST TO OTHER JUDGES:	NO
(3)	REVISED	NO
DATE		SIGNATURE

24/10/2025

In the matter between:

THOMAS SARE LESSING

Applicant

And

INDEPENDENT REGULATORY BOARD OF AUDITORS

1st Respondent

BARTHOLOMEW GORMLEY

2nd Respondent

JUDGMENT

MOTHA J

- 1) Pursuant to his ten complaints lodged with the Independent Regulatory Board of Auditors (IRBA) against the conduct of Bartholomew Gormley, in his capacity as auditor of Serengeti Estates Property Owners Association ("SEPOA"), and following IRBA's decision to find Mr. Gormley guilty of one charge, cautioning and fining him R40,000.00—of which R20,000.00 was suspended for three

years on the condition that he is not found guilty of any improper conduct during the suspension period—the applicant, an aggrieved member and resident of SEPOA, seeks an order reviewing that decision under the Promotion of Administrative Justice Act (PAJA).

The parties

- 2) The applicant is Thomas Sarel Lessing, an adult male and a member of the Serengeti Estates Property Owners Association NPC (SEPOA).
- 3) The first respondent is the Independent Regulatory Board of Auditors, (IRBA) a regulatory board established in terms of section 3 of the Auditing Professions Act, 26 of 2005 (APA), whose responsibilities include, *inter alia*, taking steps to promote the integrity of the auditing profession, investigating alleged improper conduct, conducting disciplinary hearings and imposing sanctions.
- 4) The second respondent is Bartholomew Gormley, an adult male Chartered Accountant (SA) (RA), who is a member of the First Respondent (IRBA) under registration number 506856.

The locus standi and background

- 5) In brief, the applicant seeks an order in the following terms:
 1. Setting aside the decisions of the First Respondent's Investigative Committee taken under case number 4080 on 16 March 2023 as unlawful and unconstitutional,
 2. Setting aside the decisions of the First Respondent's Enforcement Committee taken, and the sanction imposed on the Second Respondent under case number 4080 on 16 May 2023, as unlawful and unconstitutional.
 3. Referring the matter back to the First Respondent with several directions:

- 6) The first respondent objected to the *applicant's locus standi* to bring such an application. To correctly identify their objection, the factual matrix must be explored.
- 7) As already hinted, the matter has its provenance in the complaint about the conduct of the second Respondent launched by the applicant to the first respondent on 15 December 2020. Initially, the applicant listed five grounds of improper conduct by Mr. Gormley in his capacity as the auditor of SEPOA, specifically regarding audits of SEPOA conducted by him during 2019 and 2020, namely:

“1. The second respondent is not an honest auditor, because he has been offering secretarial services as well as being the auditor. The June 2020 AFS mentioned that the respondent assisted with certain secretarial functions.

2. Concealing non-compliance with the law, failing to report director's changes. The second respondent failed to address a non-compliance with laws and regulations (known as a "NOCLAR") when director changes were made in February 2020. Documents were not filed by SEPOA with the CIPC within 10 days as required by the Companies Act but only five months later.

3. Disclosure for prescribed officer's remuneration in terms of the Companies Act and IFRS for SMEs were not disclosed in June 2019 AFS.

4. The second respondent failed to address NOCLAR relating to the appointment of directors and their remuneration which were not done in terms of schedule 1 paragraph five of the Companies Act.

5. The respondent failed to address a NOCLAR relating to the board doing maintenance on developer properties, which contravenes the rules of articles of association clauses for the June 2020 AFS.”

- 8) On 2 November 2021, the first respondent contacted the second respondent, Mr. Gormley, providing him with a copy of the complaint and notifying him that, if the allegations in the complaint were accurate, he would be guilty of improper conduct under the RRIC.
- 9) Also on 2 November 2021, the first respondent wrote to the applicant, Mr. Lessing, informing him that his complaint had been perused by the IRBA's investigation professional manager (Mr. Theodore Smith) and had been raised with the auditor.
- 10) The second respondent responded to the complaint on 1 December 2021.
- 11) On 21 December 2021, the applicant supplemented his complaint with the following email:
- "I want to bring a turn of events in the above-mentioned complaint (K1/2/4080) to your attention. You will find below a letter from the SEPOA which is formally known as the "Serengeti Estates Property Owners Association" in which it claims Mr Gormley invoiced the association another R80k for "audit work for queries". The obvious goal is to punish the whistle blower and admits to the auditor accepting illegal gratification. You may recall that I persisted with calling one of the previous auditors DWS out for providing AKH (the developer) with illegal loans. My persistence paid off ..."
- 12) In a letter dated 9 February 2022, the first respondent indicated that its attention had been drawn to additional allegations and told the applicant that:
- "By its very nature, an investigation must take time if it is to be performed thoroughly and correctly. Further, be advised that the powers of the IRBA are purely disciplinary in nature and it is not in a position to either compel or interdict conduct on the part of the SEPOA or the Respondent."

13) On 14 February 2022, the applicant filed a further affidavit highlighting the issue of gratification and supplemented the original complaints with the following:

1. The respondent charged SEPOA for responding to the IRBA investigation letter. And the members of SEPOA had to pay a special levy to fund the invoice.
2. The Second Respondent revealed my identity to the SEPOA board as the whistle-blower prior to sending out the 22 Dec 2021 letter.
3. The Second Respondent continued secretarial services for SEPOA for the June 2021 audit.
4. The Second Respondent invoiced the SEPOA more than what was agreed at the Annual General Meeting.

5

4 The Second Respondent signed the 30 Jun 2021 AFS before the board of directors.

14) On 2 August 2022, the first respondent wrote to the second respondent requesting additional information, advising him of the second affidavit from the applicant and inviting his response.

15) The second respondent furnished his response to the second affidavit on 2 September 2022.

16) To investigate the matter, Ms. Khakhu Muthaphuli was appointed as the IRBA investigator. After the investigation, she prepared a summary of the case and an evidence pack, along with a draft schedule of charges, which were served before the Investigating Committee (INVESCO).

17) The INVESCO considered the matter at meetings held on 27 October 2022 and 16 March 2023 and resolved to recommend to the Enforcement Committee (ENCOM) that Mr Gormley be charged with improper conduct for charging

SEPOA a fee for responding to a complaint lodged with the IRBA. It was decided that the remaining complaints be dismissed.

18) On 17 March 2023, IRBA wrote to Mr Gormley to inform him of INVESCO's decision. He was asked to indicate whether he would accept the draft schedule of charges.

19) On 18 April 2023, Mr Gormley notified IRBA that he confirmed and accepted the findings.

20) On 16 May 2023, ENCOM considered the matter and decided to accept INVESCO's recommendations, including the sanction issued to Mr. Gormley, if he pleaded guilty to the charge.

21) On 2 June 2023, Mr. Gormley pleaded guilty to the charge.

22) At this juncture, it is apposite to pause and mention that the roles played by INVESCO and ENCOM are the *raison d'être* for the PAJA review. As will become clearer later in this judgment, the specific roles assigned by APA to these bodies are at the front and center of the debate.

Submissions on Locus standi

23) Returning to the issue of locus standi, it hardly needs to be said that if the applicant is determined to lack standing, it is *cadit quaestio*.

24) In its answering affidavit, the first respondent prominently raised the issue that the applicant lacked *locus standi* and argued:

"The impugned decisions and the Disciplinary Rules are administrative actions and must be reviewed in terms of the PAJA. I deny that there is any basis to seek direct constitutional review of the impugned decisions and, as a consequence, for the declarations that they are "unlawful and unconstitutional..."

The right of the applicant to just administrative action is given effect to by the PAJA, which establishes a right of judicial review of administrative action but requires applicants to establish that they have standing to seek such review."¹

- 25) Having asserted that the applicant lacked *locus standi* to seek a review of the impugned decisions, the first respondent submitted that the applicant stated: he acts in his own interest, has no "financial gain" in the matter and identifies his interest as being to "seek to advance what is right".
- 26) It was the first respondent's argument that the applicant does not specify the "material interest" and that no injury has occurred to the applicant. The first respondent also stated that the applicant's rights are not affected and that the matter has no financial impact on him. Therefore, it denied that the applicant has a material interest in the relief sought or an interest sufficient to establish his standing to pursue the relief.
- 27) It is noteworthy that the first respondent acknowledged that a member of the public has the right to file a complaint with the IRBA regarding improper conduct by a registered auditor. However, such a complaint does not vindicate any rights of a complainant or resolve a dispute between a complainant and the auditor, the argument went.
- 28) Their purpose was to maintain the integrity of the auditing profession, the argument continued. To emphasise this point, the first respondent said:
- "Accordingly, beyond requirements to provide information to the complainant on the progress of the complaint and its outcome, neither the APA nor the Disciplinary Rules require the involvement of the complainant in the investigation and disciplinary process. A complainant thus has no right to nor any legitimate expectation of a particular outcome of the complaint and consequently, no standing to review the IRBA's decision if the complainant's desired outcome does not ensue."²

¹ Answering affidavit paras 47 and 48

² Supra para 54.

- 29) Ergo, beyond the requirement to provide the complainant with information on the progress and outcome of the complaint, neither the APA nor the Disciplinary Rules required their involvement.
- 30) During the discussion with the court regarding the failure to involve the applicant in the proceedings, counsel for the first respondent strongly asserted that IRBA could not deviate from the empowering provision. His exact words were: "We are dealing with a statutory regulation with its own empowering provisions. Obviously, it must stay within the confines of its empowering provisions."
- 31) He continued that: "It is to the empowering provisions that we must look to see what the scope of the power is... The empowering provisions, the APA, the rules of conduct, the code, etc, those are the empowering provisions. The system they set up is an investigatory process."
- 32) He agreed that, under the APA, nothing forbids engaging the complainant. However, despite the applicant's request, IRBA believed it was unnecessary to entertain him because it had sufficient information. He maintained that IRBA was not legally required to engage the complainant.
- 33) Upon further interaction with the court, counsel for the first respondent submitted that: "the public interest or the protection of the public was given effect to, in terms of this act, by the empowering provisions, by the IRBA investigating and considering whether there has been a breach of its rules of conduct, the code, etc."
- 34) In the supplementary founding affidavit (paragraph 193), the applicant states that:
- "I have a material interest in the matter, but it poses no financial gain to me. The application is brought due to my article of faith that justice must be done and an industry entrusted with promoting transparency and accountability must uphold the same values they purport to defend".

35) The applicant stated in his reply that he has a material and direct interest in the matter, even though he does not stand to gain financially or economically from the review. Rejecting the idea that he acted solely in his own interest, he argued that he also acted in the public interest by seeking to hold the auditing profession and its statutory regulator accountable. Furthermore, he asserted that SEPOA, and, by extension, its members, were directly affected by the subject matter and the outcome of the IRBA investigation.

Analysis and case law

36) To me, it seems completely contrary to the interests of justice for a member of the public or a whistleblower to be allowed to bring a complaint of improper conduct by a registered auditor to the IRBA, only to be denied standing to challenge a questionable outcome. While I accept that complainants do not have a right to, or any legitimate expectation of a specific result, I disagree that they cannot review what they consider to be a patently unjust outcome. Moreover, as a member of SEPOA, he has an interest in the outcome of the matter.

37) I do not believe it was without reason that APA requires informing the complainant about the progress and result of the complaint. It must be remembered that standing is not a purely technical or strictly defined concept. Essentially, it is a mechanism the court uses to determine whether a litigant is entitled to a claim and to challenge the opposing party.

38) Standing under the constitutional era has metamorphosed the common law position on standing to align with the dictates of the Constitution. The court in *Trustees for the time being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Another*³ elucidated the position as follows:

“At common law, a person who approached a court for relief was required to have an interest in the sense of being personally adversely affected by the wrong alleged. In *Jacobs v Waks* this Court set out the following requirements to determine whether an applicant has the necessary locus standi to challenge

³ (304/2020) [2021] ZASCA 157; [2022] 1 All SA 138 (SCA); 2022 (1) SA 424 (SCA) (5 November 2021)

an impugned decision: (a) the applicant for relief must have an adequate interest in the subject-matter of the litigation, in other words, a direct interest in the relief sought; (b) such interest must (i) not be too far removed; (ii) be actual, not abstract or academic; (iii) be current, and not a hypothetical one. The Court further pointed out that issues of locus standi should be dealt with in a flexible and pragmatic manner, rather than a formalistic or technical one.

It brooks no debate that Bae Estates has a substantial and direct interest in the decision of the trustees, the subject-matter of this litigation, and that such interest is real and current. Bae Estates, accordingly, fulfils all of the above requirements. It was sufficiently and directly affected in its rights and legal interests by the trustees' decision. Also, since the advent of the constitutional order, the issue of locus standi is regulated by s 38 of the Constitution, in terms of which the class of persons who may approach a court includes 'anyone acting in their own interest.' Thus, at both common law and in terms of the Constitution, Bae Estates has thus established the required locus standi to challenge the validity of the decision. A contrary conclusion would be tantamount to the adoption of a 'formalistic or technical' approach cautioned against in *Jacobs* and, contrary to s 38 of the Constitution. It follows that the trustees' contention that Bae Estates lacks locus standi, does not withstand scrutiny. Bae Estates has established an enforceable right against the trustees, and thus, the necessary standing to review the trustees' decision at common law."⁴

39) With that background in mind, it is common cause that the applicant stated he was acting in his own interest, although he also stressed that he was further acting in the public interest. Addressing the concept of standing, the court in *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* said:

"These cases make it plain that constitutional own-interest standing is broader than the traditional common law standing, but that a litigant must nevertheless

⁴ Supra para 38

show that his or her rights or interests are directly affected by the challenged law or conduct. The authorities show:

“To establish own interest standing under the Constitution a litigant need not show the same “sufficient, personal and direct interest” that the common law requires, but must still show that a contested law or decision directly affects his or her rights or interests, or potential rights or interests.

This requirement must be generously and broadly interpreted to accord with constitutional goals.

The interest must, however, be real and not hypothetical or academic. Even under the requirements for common law standing, the interest need not be capable of monetary valuation, but in a challenge to legislation purely financial self-interest may not be enough – the interests of justice must also favour affording standing.

Standing is not a technical or strictly-defined concept. And there is no magical formula for conferring it. It is a tool a court employs to determine whether a litigant is entitled to claim its time, and to put the opposing litigant to trouble.

Each case depends on its own facts. There can be no general rule covering all cases. In each case, an applicant must show that he or she has the necessary interest in an infringement or a threatened infringement. And here a measure of pragmatism is needed.”

40) Explaining that the broad approach to standing as outlined in section 38 of the Constitution extends to PAJA review, the court in *Mkhize NO v Premier of the Province of KwaZulu-Natal and Others*⁵ held:

“A review under PAJA determines, finally, whether an administrative action is lawful or not. It is an objective exercise, the outcome of which binds not only the litigating parties, but everyone else. The review of administrative action

⁵ (CCT285/17) [2018] ZACC 50; 2019 (3) BCLR 360 (CC) (6 December 2018)

attaches therefore not to the party bringing the review, but to the exercise of public power itself. It stands to reason then, that Ms Mkhize had standing both to bring and be substituted in the review application by virtue of her position as executrix of the estate and status as the legal guardian of her minor son, Phathokuhle. This is not only because she has a direct and substantial interest in the matter, but also because she was entitled to review the Premier's administrative action under section 6(1) of PAJA. The Supreme Court of Appeal did not have explicit regard to the nature of a PAJA review, but the outcome it reached is compatible with previous decisions of this Court. Additionally, the Constitution provides broad scope for legal standing in section 38 and this has been applied to grant standing in a number of cases. As Chaskalson P held in *Ferreira*:

"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.

Given that this Court has held that the review of public power is a constitutional matter, it follows that a broad approach to standing must be taken in such reviews. That PAJA was enacted to give effect to the constitutional right to just administrative action in section 33 of the Constitution, and so reviews under PAJA are a way of enforcing the right in section 33, also implies that the broad standing requirements in section 38 should apply to the review of administrative action."⁶

41) I am of the view that the objection to the applicant's standing is unmeritorious. Along with protecting the integrity of the profession, the public interest is of utmost importance in APA. Indeed, it may be that the APA and related rules do not allow for input from the applicant, which is unfortunate because the opening stanza of the Act emphasizes the Batho Pele principle (putting people first), as

⁶ Supra paras 69 to 70.

outlined in sections 2(a) and 4 of the Auditing Profession Act No 26 of 2005 (APA), which read:

“2. Objects of Act - The objects of this Act are-

(a) to protect the public in the Republic by regulating audits performed by registered auditors;...

3. General functions.- (1) The Regulatory Board must, in addition to its other functions provided for in this Act

(a) take steps to promote the integrity of the auditing profession, including-
(i)...

(b) take steps it considers necessary to protect the public in their dealings with registered auditors”

42)Accordingly, the principle of Batho Pele (putting the members of the public first), as argued by counsel for the applicant, is embraced by ss 2 and 4 of APLA. Like Ubuntu, this African principle is yet to be fully developed in our law. However, it is part of our law, as reflected in the Constitution's preamble.

43)It is worth noting that standing is always fact-focused, and each case must be evaluated on its individual merits. Standing under PAJA incorporates Section 38 of the Constitution, which states:

“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 interests;

- (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) anyone acting in the interest of its members.”

44) The applicant claimed reliance on (a) and (d) of the Constitution. When asserting a right under PAJA, standing under s 38 is much broader than under the common law. At all times, it must be borne in mind that: “...in a constitutional democracy such as ours. O’ Loughlin points out that public interest litigation can be regarded as a ‘mechanism for cultivating both “transformative” and “decolonising” jurisprudence⁷’. As a member of SEPOA, the person who initiated and supplemented the complaint, the interests of justice favour affording him standing in this case.

45) Having established that the applicant has standing, it is worth noting that it is common cause between the parties that IRBA’s decision is administrative in nature and, therefore, subject to review under PAJA. Examining the gateway to PAJA review, the court in *Minister of Defence and Military Veterans v Motau and Others*⁸ held:

“there must be: (a) a decision of an administrative nature; (b) by an organ of state or a natural or juristic person; (c) exercising a public power or performing a public function; (d) in terms of any legislation or an empowering provision; (e) that adversely affects rights; (f) that has a direct, external legal effect; and (g) that does not fall under any of the listed exclusions.”⁹

The issues

46) The applicant challenged the rationality of the decision to prefer a single charge against the second respondent. Second, he took issue with the role played by

⁷ Administrative Law in South Africa Cora Hoexter 3rd edition page 663.

⁸ CCT 133/13) [2014] ZACC 18; 2014 (8) BCLR 930 (CC); 2014 (5) SA 69 (CC) (10 June 2014)

⁹ Supra para 33

the INVESCO and ENCOM. He contended that INVESCO acted outside its authority in writing to Mr. Gomley, furnishing him with the draft charge sheet and sanction. He concluded that that amounted to usurping ENCOM's role and violating s 49 (2) of APA, which reads: "The enforcement committee must furnish a charge sheet to the registered auditor concerned by electronic means or registered mail."

The process per the empowering provisions

47) APA envisages the establishment of various committees. For our purposes, the Investigating Committee (INVESCO), the Enforcement Committee (ENCOM), and the Disciplinary Committee command our attention. The INVESCO, as envisioned in sections 20(2)(e) and 24 of APA, investigates all complaints and makes recommendations to the ENCOM. The ENCOM is established in terms of s 24B and functions independently of INVESCO and the Disciplinary Committee.

48) The Disciplinary Committee is established under sections 20(2)(f) and 24A of APA. It reports to the Board and consists solely of Board members. The Disciplinary Committee (section 24A) is an ad hoc committee convened to hear and decide matters where an auditor has pleaded not guilty or where the alleged misconduct warrants the most severe sanctions referred to in section 51B(3)(a)(iv) and (v), such as suspension from practice, cancellation of the auditor's registration, or disqualification from practice either temporarily or permanently. This committee did not play a role in this case because it was determined that the matter did not require a severe sanction. Instead, the case proceeded through an admission-of-guilt process as outlined in section 51.

49) Section 48 of APA states that:

"Investigation of charge of improper conduct - (1) The Regulatory Board must refer a matter brought against a registered auditor to the investigating committee appointed under section 20 if the Regulatory Board-

(a) on reasonable grounds suspects that a registered auditor has committed an act which may render him or her guilty of improper conduct; or

(b) is of the opinion that a complaint or allegation of improper conduct, whether prescribed or not, which has been made against a registered auditor by any person appears to be justified...

(3) At the request of the Regulatory Board, the investigating committee must-

(a) investigate the matter; and

(b) obtain evidence to determine whether or not in its opinion the registered auditor concerned should be charged and, if so, recommend to the enforcement committee the charge or charges that may be preferred against that registered auditor...

49. Process following investigation (1) After the conclusion of the processes contemplated in section 48, the enforcement committee contemplated in section 24B must, if sufficient grounds exist for a charge of improper conduct to be preferred against a registered auditor-

(a) follow an admission of guilt process if the enforcement committee believes that the improper conduct of the registered auditor does not warrant a sanction contemplated in section 51B (3) (a) (iv) or (v); or

(b) refer the matter to the disciplinary committee for a disciplinary hearing."

50) In essence, an investigation leads to bifurcation of the process. The blueprint for the disciplinary process is outlined in the IRBA Disciplinary Rules Issued in Terms of Section 10(1) of the Auditing Profession Act 26 of 2005, as amended.

51) The Board resolved under section 10(1) of APA, as amended by Act 2 of 2015 and Act 5 of 2021, read with section 4(1)(a)(i), (ii) and (iii) of the Act to repeal the Disciplinary Rules adopted on 7 June 2007; and prescribe new Disciplinary Rules, with effect from 01 April 2022.

52) Fundamentally, the disciplinary process involves the following:

“if a complaint or allegation of improper conduct against a registered auditor comes to the attention of the Director: Investigations or the CEO,... Upon establishing, in terms of Rule 2(1), that there are grounds for referral of a complaint or allegation to the Investigating Committee, the Director: Investigations or the CEO must:

- (a) cause an investigation to be conducted in terms of section 48;
- (b) notify the respondent in writing of the nature of the complaint and call upon that respondent to furnish a written explanation in answer to the complaint no later than 30 days from the date of service of such notice; and
- (c) (c) correspond with any other party, in respect of the matter, as he/she may consider appropriate...

On the conclusion of the process of investigating the complaint or allegation of improper conduct, the Director: Investigations or the CEO must table the matter before the Investigating Committee for consideration.

Prior to making a recommendation to the Enforcement Committee, and in circumstances where the Investigating Committee intends to recommend that the Respondent be charged with improper conduct, the Investigating Committee will engage in the process of preparing a draft charge sheet and offer the Respondent an opportunity to make submissions on factual inaccuracies in the draft charge sheet, if any...

On receipt of submissions made in terms of sub-rule (2), the Investigating Committee shall consider the submissions and determine, in its sole discretion, whether changes to the draft charge sheet should be effected.

Thereafter, the Investigating Committee shall report and recommend to the Enforcement Committee whether the Respondent should be charged with improper conduct. If the Investigating Committee recommends to the Enforcement Committee that the respondent should be charged with improper conduct, it must make a recommendation on:

- (a) the charges which should be preferred against the respondent;
- (b) whether the matter should follow an admission of guilt process in terms of sections 49(1)(a) and 51; or
- (c) whether the matter should be referred to the Disciplinary Committee for determination in terms of sections 50 and 51B...

If the Enforcement Committee having considered the recommendation of the Investigating Committee under Rule 4(4) read together with Rule 4(6) decides to charge the respondent with improper conduct, the Enforcement Committee shall cause the Director: Investigations or the CEO to, within 7 days from the date of the decision:

- (a) send the respondent a notification of the decision to charge the respondent; and
- (b) serve the charge sheet on the respondent together with a request for a plea in terms of Section 49(3).

On receipt of the charge sheet and a request for a plea, the respondent shall prepare a plea to all the charges contained in the charge sheet, which plea must

(a) Deny any or all of the charges; or

(b) Admit any or all of the charges;...

If the respondent admits guilt to any or all of the charges, the respondent is considered to have been found guilty as charged,

Where the respondent pleads guilty to all the charges, the respondent must submit, together with the plea, a signed copy of the charge sheet, as well as factors in mitigation of a sanction...

The Director: Investigations or the CEO shall, on receipt of the plea together with any written explanation and/or mitigating factors or on entry of the period within which the plea was due to be filed, table the matter together with all documents received before the Enforcement Committee for consideration.

Having considered the matter, together with the recommendation from the Investigating Committee, any plea, written explanation and/or mitigating factors tabled before it, the Enforcement Committee shall:

(a) If the respondent pleaded guilty to all the charges preferred, decide whether to follow an admission of guilt process as set out in sections 49(1)(a) and 51, and if it decides to follow an admission of guilt process:

(i) determine the appropriate sanction to be imposed in terms of section 51; and

(ii) cause the Director: Investigations or the CEO to effect the decision and send written notification of the decision to the respondent and the complainant, if applicable.

(b) Decide to refer the matter to the Disciplinary Committee for a disciplinary hearing in terms of sections 50 and/or 51B, read together with Rules 19 and/or 20,...

Notwithstanding anything to the contrary contained in the Rule, where the Enforcement Committee disagrees with the recommendation of the Investigating Committee, it shall refer the matter back to the Investigating Committee, together with its reasons, for reconsideration and/or further investigation."

Submissions

Applicant

53) The applicant submitted that the first additional ground of review was a "plea bargain" which was ultra vires and an unfair procedure. The contention is that the Investigative Committee acted outside its empowering provisions when it decided to recommend a sanction not only to the ENCOM but also to the second respondent himself.

54) On 17 March 2023, the Director of Investigations, Ms Bailey, addressed a letter to the auditor, the second respondent, attaching a draft charge sheet, the applicant recounted. The contents of the letter read:

"Should you be prepared to concede to the draft schedule of charges, the Investigating Committee intend to recommend to the ENCOM that the following sanction be imposed on you in terms of section 51 of the Act:

3.1. A fine of R40 000, of which R20 000 would be suspended for three years on condition that you are not found guilty of any improper conduct during the period of suspension;

3.2. You are cautioned to ensure that you do not repeat such a transgression in the future, and you are requested to regularise your affairs with the client;

3.3. There will be no order as to costs; and

3.4. Publication by the IRBA will be in general terms only.

4. The Investigating Committee does not intend to make this recommendation unless it has an indication of whether you are prepared to concede to the draft charges."

55) Counsel for the applicant submitted that there was no empowering provision allowing the Investigating Committee to recommend a sanction to a respondent auditor subject to a disciplinary process. Reiterating this point, the applicant asserted that the APA has never sanctioned this procedure of "suggesting" a sanction to the auditor concerned and is, for several reasons, improper.

56) The administrators were not authorised to follow this procedure by an empowering provision, argued the applicant and referred to section 6(2)(a)(i) of PAJA.

57) Further, the applicant submitted that the mandatory and material procedures prescribed by the APA and the Disciplinary Rules promulgated in terms of the APA have not been complied with, as envisaged in section 6(2)(b) of PAJA.

58) The administrative action, added the applicant, was materially influenced by an error of law, as envisaged under section 6(2)(d) of PAJA.

First respondent

59) In summary, the first respondent's counsel's submission, on this question, was that INVESCO's decision was not final but merely a suggestion to ENCOM. When the court enquired if INVESCO was permitted not only to suggest a sanction but also to bring it to the auditor's attention, his answer was in the affirmative. Upon further probing by the court about where this was reflected in the Act, he said it was not prohibited.

60) Responding to the court's inquiry into whether INVESCO's conduct conflicted with the empowering provisions, he stated that it did not, especially in light of

the audi alteram partem requirement. His argument was: "At some point in this process, you got to say to the auditor two things:

Here is what we think is the right charge.

What do you say to that?

Here is what we think is likely, or here is what we are going to recommend to the ENCOM.

What do you say to that?

Do you want to put up any evidence in mitigation?

And do you want to say anything in response to that?"

61) Referring the court to the ground of review that in essence INVESCO exercised the powers reserved for the ENCOM and without specific statutory authorisation for it to do so: INVESCO "went on a frolic of its own by purportedly investigating the complaint, drafting the charge sheet, 'approving' same, furnishing it to the auditor and deciding on the sanction to be imposed, counsel submitted that this was not factually correct and rested on a misinterpretation of the APA.

62) He contended that this failed to appreciate that, under the APA scheme, the two committees could address the same considerations in admission-of-guilt cases.

Analysis

63) Little wonder that the first respondent marshalled most of its resources to the *locus standi* battle. By all accounts, the procedure followed by INVESCO was antithetical to APA. It was no less a person than counsel for the first respondent who propounded strict adherence to the empowering provisions when the discussion was about consulting the applicant. Now the boot is on the other foot. To quote his *ipsissima verba*: "It is to the empowering provisions that we must look to see what the scope of the power is... The empowering provisions, the APA, the rules of conduct, the code, etc, those are the empowering provisions."

64) By suggesting a sanction if the auditor pleaded guilty, INVESCO acted beyond the scope of the empowering provisions. I'm totally bemused by the procedure

of proposing a charge and sanction without being afforded an opportunity to plead to the charge, not to mention mitigating factors, before the sanction. A sanction comes at the tail end of the process, following the weighing up of mitigating and aggravating factors. Thus, this was a patent breach of the APA, which sets out the process in s 49.

65) It is not an exaggeration that the auditor was browbeaten and given Hobson's choice when INVESCO wrote: "We must advise that the Investigating Committee does not normally revise its recommendations unless new facts or evidence is drawn to its attention."

66) As outlined *supra* [para 52], the blueprint for the disciplinary process is: "If the Enforcement Committee having considered the recommendation of the Investigating Committee under Rule 4(4) read together with Rule 4(6) decides to charge the respondent with improper conduct, the Enforcement Committee shall cause the Director: Investigations or the CEO to, within 7 days from the date of the decision:

(a) send the respondent a notification of the decision to charge the respondent; and

(b) serve the charge sheet on the respondent together with a request for a plea in terms of Section 49(3)..."

67) There was a flagrant disregard of the empowering provisions. When the matter reached ENCOM, it was a *fait accompli*. The failure to follow APA coloured the entire process with arbitrariness. I cannot conceive of a plausible argument against the submission that the charge and sanction imposed were irrational, capricious, and unlawful. I find that an error of law materially influenced the decisions of INVESCO and ENCOM. As a result, the decisions of INVESCO and ENCOM are to be set aside, as ss 6(2)(c), 6(2)(d) and 6(2)(f) of PAJA apply.

68) It is beyond the purview of this court to decide whether the complaints were valid or invalid, and even less to decide on the charges to be preferred. That

responsibility lies with IRBA. In view of the flagrant failure to comply with APA, and given the dictates of s 8(1)(c)(i) of PAJA, it is sound to remit the matter to IRBA with instructions to reconsider all the complaints, IRBA views to be meritorious, *de novo*. IRBA must comply with APA's terms and conditions to the letter.

69) Counsel for the second respondent submitted that they opposed the application because of the first notice of motion, which sought the sanction to be replaced by an order removing the Second Respondent from office as registered auditor and member of the First Respondent, or, in the alternative, imposing a fine of no less than R200,000.00, payable without suspension. Further, he opposed the application due to the applicant's several assertions that he was lying, which he found defamatory. Given the amendment to the notice of motion, he said that the second respondent would abide by the court's decision on the merits in respect of the review.

70) Counsel confined his address to the following:

Factual background.

Non-joinder.

Directions sought by the applicant.

And costs.

71) The non-joinder point became inconsequential, and the issue of directions occupied the centre stage of the second's respondent's submissions.

72) Having reminded the court that it is common cause that this is not the appropriate case for the court to substitute the decision of the decision maker, he submitted that by appending directions to the order, the applicant was attempting to achieve substitution.

73) Following a painstaking process of going through all the suggested directions in the notice of motion, I am in agreement with counsel for the second respondent that a court should be slow to venture into a sphere that is governed

by a statute. APA entrusts IRBA with regulatory powers, and in dealing with directives, the court should *festina lente*.

Costs

74) It is trite that costs are within the court's discretion and usually follow the result.

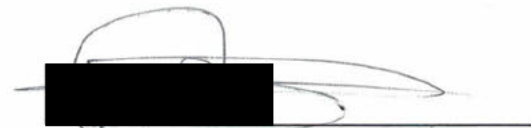
The second respondent opposed the application because of the first notice of motion. After its amendment the second respondent did not oppose the merits of the review, save to challenge the directions. In view of his success in challenging some of the directions, I am of the opinion that the first and the second respondents should not be saddled with the costs.

Order

1. The applicant has the *locus standi in judicio* in this matter.
2. The decision of the First Respondent's Investigating Committee (INVESCO) taken under case number 4080 on 16 March 2023 is declared unlawful and set aside.
3. The decision of the First Respondent's Enforcement Committee (ENCOM), and the sanction imposed on the Second Respondent under case number 4080 on 16 May 2023 is declared unlawful and set aside.
4. The matter is remitted to the First Respondent (IRBA) for determination of the merits, with the following instructions:
 - 4.1 The First Respondent is to properly investigate all complaints brought by the Applicant, which it views as meritorious when exercising its statutory powers, and use, where necessary, all mechanisms available to it in terms of the Auditing Professions Act 26 of 2005 to obtain evidence.

4.2 The First Respondent is to permit the Applicant an opportunity to meaningfully participate in any Disciplinary Hearing in accordance with the terms of APA.

5. The First respondent is liable for the costs on a party and party scale C.

A handwritten signature in blue ink, which appears to be 'MP Motha', is written over a solid black rectangular redaction box.

**MP MOTH
JUDGE OF THE COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

APPEARANCES:

Date of Hearing:	4 August 2025
Date of Judgment:	24 October 2025

For Applicant:	Adv H. Scholtz
Instructed by	JJR Botha Attorneys

For 1 st to 4 th Respondents:	Adv I. Currie
Instructed by:	Mathopo Moshimane Mulangaphuma Inc.

For 1 st to 4 th Respondents:	Adv C. Rip
Instructed by:	AJ Stone Attorneys