IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: AR313/24

In the matter between:

YVONNE REECE	**APPLICANT**

and

MS A HARIPERSAD	**FIRST RESPONDENT**
THE REGIONAL MAGISTRATE, MR CANNON	**SECOND RESPONDENT**
THE DIRECTOR OF PUBLIC PROSECUTIONS, KZN	**THIRD RESPONDENT**

ORDER

I make the following orders:

1. The application to review and set aside the ruling made by the second respondent in the Regional Court, Pietermaritzburg on 19 June 24 under case number RCC 1/2023 is dismissed.
2. The application for a permanent stay of the criminal proceedings in the Regional Court, Pietermaritzburg under case number RCC 1/2023, alternatively, that the charges in respect of those proceedings be quashed, is dismissed.

3. The applicant is directed to pay the costs of the application, on Scale C.

JUDGMENT

Delivered on: 24 October 2025

SHAPIRO AJ (MIZRACHI AJ concurring)

Introduction

[1] The applicant is the accused in a matter pending before the Regional Court, Pietermaritzburg in which she faces charges of fraud, theft and money laundering that originally were preferred against her in 2018.

[2] The applicant has launched what she describes as an "omnibus application" for orders reviewing and setting aside the decision of the second respondent ("the Learned Magistrate") in which he dismissed her objection to the charges contained in a seventh version of the charge sheet prepared by the State and which was provided to her and her legal representatives during May 2023. In addition to the review sought by the applicant, she also seeks orders directing a permanent stay of the prosecution alternatively quashing the charges against her.

[3] The application and the Record exceed 3000 pages and include almost all the iterations of the charge sheets, objections to those charges, related application papers and the transcript of the proceedings that served before the Learned Magistrate.

[4] Adding to the complexity of the application, the applicant also launched an application in this Court in 2019 seeking a permanent stay of the criminal proceedings against her. That application remains pending – a situation and a consequence to which I will revert below.

The 2019 Stay application

[5] In the 2019 Stay application, the applicant sought an order that "the criminal proceedings under Case No 41/136/2018 in the Specialised Commercial Crimes Court, Durban[1] be permanently stayed" and attached the then-current and second version of the charge sheet against her.

[6] The State alleged that the accused was the employee of Graemor (Pty) Ltd, which rendered accounting services to the complainant company, Bellwood Civils (Pty) Ltd. Alfred Joseph messenger was described as the sole shareholder of Bellwood and a director of the company.

[7] It was alleged that the complainant company mandated the accused to deal with tax submissions and payments to SARS in respect of the complainant itself, Mr Messenger two other individuals (Mr William Ernest Messenger trading as Bellwood Stud/Cottages and Mrs JBA Messenger) and a Trust (the Pinewood Family Trust).

[8] It was alleged that the complainant would transfer funds into Graemor's bank account but that the accused used such monies for own personal benefit, and was guilty of fraud in that she unlawfully and intentionally misrepresented to the complainant company and Mr Messenger (described as "Bellwood Civils Alfred Joseph messenger") that the monies deposited by complainant as per Column 5 of the schedule annexed to the charge sheet were for actual payments to SARS and therefore induced Bellwood and/or Mr Messenger to accept that the payments by the complainant and all persons mentioned in Column 6 were valid transactions for SARS when in truth, the monies deposited by the complainant where illegitimate transactions designed to defraud the complainant company and/or Mr Messenger as a lesser amount (set out in Column 7 of the schedule) was actually paid to SARS.

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[1] These proceedings are the same proceedings now pending before the Regional Court, Pietermaritzburg under case number RCC1/2023.

[9] The accused was charged alternatively with theft on the same factual basis.

[10] In the 2019 Stay application, the applicant put up the first formal charge sheet that had been replaced by the charge sheet referred to above.

[11] Although the allegations are marginally more terse, it was alleged that the complainant company was Bellwood, Mr Messenger was its director and the accused unlawfully and intentionally misrepresented the true state of affairs to the complainant and to Mr Messenger that the amounts deposited were for the payments to SARS when in truth lesser amounts were actually paid and the complainant company was therefore defrauded.

[12] The difference between the first and second versions of the charge sheet were that the second version included further complainants, and not just Bellwood.

[13] However, the grounds of the charges remained the same and, according to the State, sufficiently disclosed the charges faced by the applicant and the factual basis upon which those charges rested.

[14] The applicant and her legal team felt differently and delivered a lengthy request for further particulars to the charges.

[15] Being unsatisfied with the state of proceedings, the applicant then launched the 2019 Stay application on 5 June 2019 under case number 3881/19P.

[16] The first respondent, being the appointed prosecutor dealing with the prosecution against the applicant, deposed to the answering affidavit on behalf of the State -to which objection was raised by the applicant.

[17] The applicant not only delivered a replying affidavit but signalled her intention to apply for leave to cross-examine the first respondent.

[18] After various supplementary affidavits were delivered, the papers in the 2019 Stay application were complete by 8 October 2020.

[19] The applicant took no steps to set the application down, and it remains pending.

[20] It is unclear why the applicant sought leave to cross-examine the first respondent in circumstances where an application had been launched that the State was entitled to oppose. If there were disputes of fact, the applicant had the normal options available to an applicant in any application which included applying for the matter to be referred for the hearing of evidence on identified issues or to be referred for trial.

[21] The applicant did not follow any of these routes and instead allowed the application to lie fallow.

[22] For its part, the State also failed to take any steps to set the application down and to finalise those proceedings.

[23] This Court is therefore confronted with a pending application for a permanent stay of the prosecution in respect of the same charges, the same issue and between the same parties.[2]

[24] The applicant's complaints up to October 2020 form part of the 2019 Stay application.

[25] The question of whether the prosecution should be stayed based on those complaints is not before this Court and this Court cannot determine those complaints. It is for either the applicant or the State to set the 2019 Stay application down for hearing if they wish it to be determined, and if, even at this remove of time, it is some sort of bar to the prosecution of the applicant proceeding.

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[2] *Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC and Others* 2013 (6) SA 499 (SCA) paras 3 and 12.

The questions that this Court must answer

[26] There are therefore two fundamental questions that are before this court only:

(a) whether the Learned Magistrate's decision to dismiss the applicant's objection to the charges should be reviewed and set aside; and

(b) whether a case has been made out that the criminal proceedings against her be stayed alternatively that the charges be quashed based on grounds that postdate October 2020.

The review application

[27] Between 2018 and 2023, the State delivered a further five versions of the charge sheet against the applicant.

[28] Each version was met with lengthy request for further particulars by the applicant and related interlocutory applications.

[29] Before the objections to several of the versions of the charge sheets could be determined, the state delivered further versions of the charge sheet.

[30] The applicant argued, both in the courts below and in this court, that the later iterations of the charge sheet somehow supplemented the earlier ones and that the State could not serve further versions of the charge sheet until the objections to the previous versions had been determined.

[31] Whilst I accept that the responses to requests for further particulars to the charge sheet amend the charges,[3] I have difficulty with the notion that the State is not permitted to issue and serve further versions of the charge sheet if it requires to do so.

[32] It seems practical and pragmatic for the State to seek to remove any causes of complaint (whether they agree with them or not) in further versions of the charge sheet so that the prosecution can proceed towards either a conviction or an acquittal.

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[3] Section 87(2) of the Criminal Procedure Act 51 of 1977 makes this clear.

[33] In my view, a new charge sheet served by the State has the effect of replacing the previous charge sheet (even if the earlier version was amended by replies to requests for particulars).

[34] Firstly, and in their express terms, the later versions of the charge sheet commenced with a Preamble and then progress to the charges themselves. It seems clear that the intention of the State was for the later document to replace the earlier one.

[35] This makes sense. Sections 85(2)(a) and 86(1) of the Criminal Procedure Act allow for charges to be amended. Whilst that power to direct such amendments resides with the court, what is contemplated is the curing of a defective charge sheet by an amendment – either pursuant to an objection by the accused under section 85(1) or during the trial under section 86(1).

[36] Section 85(2)(a) permits a court to grant an amendment to the charge. In terms of section 86, and if the court determines that the charge be amended, the matter proceeds "at the appointed time upon the amended charge in the same manner and with the same consequences *as if it had been originally in its amended form*".[4]

[37] The amended charge is then what remains, not the previous, defective version.

[38] I cannot discern any logical basis for concluding that if a "defective" charge sheet is amended completely, by substituting a later version for an earlier one, that all versions of the document remain extant and must be considered collectively. This flies in the face of the effect contemplated in sections 85(2)(a) and 86(3).

[39] There is also no logical or policy basis that I can identify that requires the State to wait for a court to hear an objection under section 85(1) or for a trial to commence before the charge sheet can be amended – such that the State cannot pre-empt such an order by amending the charge sheet itself. This not only avoids delay and the clogging of

[4] See section 86(3) – emphasis added.

already clogged court rolls, but it seems to be salutary in obtaining a speedy trial for any accused person.

[40] The goal remains the same – a charge sheet sufficiently clear and compliant that permits an accused to know what the charges against him or her are, and why, and to be able to plead to them.

[41] Although the Learned Magistrate was called upon to determine whether objections to the seventh version of the charge sheet should be upheld, this Court was also provided with versions 4, 5 and 6 (which was issued in approximately September 2022).

[42] All the versions of the charge sheets commence with a "Preamble" along the lines quoted above in respect of the second version of the charge sheet.

[43] They all allege that the accused was mandated to deal with tax submissions and payments to SARS by the complainant company, and that the complainant mandated the accused to deal with the tax submissions and payments in respect of not only the company and Mr Messenger but also William Ernest Messenger trading as Bellwood Stud/Cottages, Mrs JBA Messenger and the Pinewood Family Trust.

[44] In all versions, it was alleged that the accused used the monies deposited into the account of Graemor Accounting Services for her own personal benefit, and was therefore guilty of fraud, alternatively theft in that she unlawfully and intentionally misrepresented to Bellwood Civils and Alfred Joseph Messenger that the monies deposited by the complainant were for actual payments to SARS, whereas in truth, the payments were not and a lesser amount was actually paid.

[45] Versions 5 and 6 tightened up some of the wording in both the Preamble and explanation of the charge, but the gravamen of the charges did not change.

[46] From version 5 onwards, an additional charge of money laundering was preferred against the accused on the same factual basis as the fraud and theft charges.

[47] Version 7 was served in May 2023 and is virtually identical to version 6 of the charge sheet.

[48] It commences with a Preamble that sets out the background facts and what allegedly occurred and then proceeds to charge the accused with fraud, alternatively theft and money-laundering on the same factual basis as the State had relied upon from 2018.

[49] The application to quash the charges contemplated in version 7 of the charge sheet was argued before the Learned Magistrate, at length and in detail by the applicant's senior counsel, Mr Scheltema SC and by the first respondent on behalf of the State.

[50] The Learned Magistrate delivered his ruling on 19 June 2024.

[51] The Learned Magistrate commenced his ruling by quoting section 85 of the Criminal Procedure Act 51 of 1977, which permits an accused to object to the charge on the ground that the charge does not comply with the provisions of the Act relating to the essentials of the charge, that the charge does not set out an essential element of the relevant offence, that the charge does not disclose an offence and that the charge does not contain sufficient particulars of any matter alleged in the charge.

[52] The Learned Magistrate correctly referred to the court's powers under section 85(2) if it decided that an objection under section 85(1) was well-founded.

[53] The Learned Magistrate understood the complaint by the applicant, being that the charges were framed poorly in law and that she would be unable to formulate a defence to them since the further particulars are provided by the state were inadequate, and the applicant therefore could not know precisely what the allegations were she had to plead to those charges.

[54] The Learned Magistrate then held that:

'the enquiry at this stage is whether the charge sheet, including the preamble along with the particulars provided enable the accused to know with certainty the case against her. This is not the time to interrogate the veracity of the averments of all the litigants or to overly test the probabilities. The State is not required to supply particulars that are not within their purview. Whether or not the State can prove the allegations in the charges beyond reasonable doubt is only to be decided at trial stage. At this time the decision remains within the purview of the prosecution. Obviously the prosecutor in this case must believe that there are reasonable prospects of success should the matter proceed to trial.

In respect of counts 1 to 39 the accused is charged with the common law offence of fraud, alternatively theft. In my view, all the elements of fraud have been averred in the preamble, as well as in the chargesheet. If read together, it clearly provides sufficient detail and particularity for the accused to plead. In respect of account 40 the State sets out how the accused committed the statutory offence of money laundering.

When one reads the charge as drafted together with the preamble to the charge sheet and bearing in mind counts 1 to 39 there are sufficient details present to allow the accused to plead to the charge.'

[55] The Learned Magistrate therefore refused the applicant's application.

[56] The grounds upon which the proceedings of a Magistrates' Court may be reviewed by this court are set out in section 22 of the Superior Courts Act 10 of 2013.

[57] The applicant has not alleged an absence of jurisdiction on the part of the court or an interest in the cause, bias, malice or corruption on the part of the Learned Magistrate.

[58] The applicant has not complained of the admission of inadmissible incompetent evidence or the rejection of admissible competent evidence and could not legitimately have done so as the argument proceeded on a point of law and the applicant's counsel did not seek a ruling from the Learned Magistrate in respect of documents that he wished to hand up and to which an objection was made. Counsel's attempt to hand up the documents was abandoned and the matter proceeded by way of argument.

[59] It is therefore necessary for the applicant to demonstrate a gross irregularity in the proceedings before the Learned Magistrate.

[60] The law in this regard is settled. A gross irregularity encompasses both procedural irregularities (overt conduct of violating fair trial principles) and more latent irregularities (errors in the application of the mind of the presiding officer, such as misconceiving the nature of the enquiry). A gross irregularity can occur even if the decision-maker makes a bona fide mistake if the mistake affects the fairness of the proceedings or prevents a party from having their case fully and properly heard. In *Herholdt*,[5] the Supreme Court of Appeal held that a gross irregularity can also occur if the decision-maker arrives an outcome so unreasonable that no reasonable decision-maker could reach it.

[61] Whilst the applicant has complained that the Learned Magistrate's ruling did not address her grounds of complaint and misconstrued the enquiry before him, none of these complaints have merit.

[62] There can be no suggestion that the Learned Magistrate misconceived the nature of the enquiry before him. He was aware that he was dealing with an objection to the charges and whether they complied with the provisions of section 85 of the Criminal Procedure Act.

[63] The applicant was given ample opportunity to make submissions through her senior counsel, as the record of proceedings demonstrates.

[64] I cannot fault the Learned Magistrate's reasoning, and I do not consider that the decision that he reached was unreasonable or so unreasonable that no other reasonable presiding magistrate would have reached it.

[65] It is clear to the objective reader that the applicant is being accused of misrepresenting the true facts to the complainant and to its director and sole shareholder

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[5] *Herholdt v Nedbank Ltd* 2013 (6) SA 224 (SCA).

which then induced them on their own behalves and on behalf of the other named parties to pay approximately R8.5 million to the applicant on the basis that these were for tax payments due to SARS when they were not, and that approximately R8 million was misappropriated by the applicant for her personal benefit.

[66] The schedule to the charge sheet sets out the dates of each of the counts, identifies the parties involved and the amounts at issue.

[67] Without considering whether the allegations are true, or whether the State will be able to prove them beyond reasonable doubt, I can see no area where the Learned Magistrate misdirected himself so materially or committed a reviewable irregularity in dismissing the applicant's application or in finding that the charge sheet that served before him contained sufficient particulars and was sufficiently clear to enable the accused to plead to the charges.

[68] Not only can I find no grounds of review, but I conclude that the Learned Magistrate was correct in his determination.

[69] For the avoidance of doubt, and in my view, the charge sheet that is currently extant (being version 7 of May 2023) does not offend against the provisions of section 85 of the Criminal Procedure Act and does contain sufficient particularity to enable the accused to plead to all the charges contained in it.

[70] It follows that the Learned Magistrate's decision is not reviewable and the application in this regard must fail.

The permanent stay/quashing of charges

[71] A permanent stay of prosecution is an exceptional remedy and may only be granted where the delay in the prosecution is egregious and has resulted in irreparable trial prejudice. The trial prejudice must be "demonstrably clear (definite not speculative)".[6]

[72] The applicant levels a series of complaints against the first respondent in her founding affidavit.

[73] The applicant alleges that she has been "merrily strung along by the first respondent" since June 2018 and that the only inference to be drawn from the "inability of the first respondent to have constructed a final charge sheet when I was first arraigned on 7 June 2018" is that the first respondent "was, at all relevant times, uncertain of the case against me, despite her repeated assurances to the Second Respondent... that the charges are straightforward and that the factual matrix upon which the charges are based has been known to her for years".

[74] I do not agree that the applicant has been "merrily strung along". If blame is to be cast, the applicant must look closer to home.

[75] Where the First Respondent can be faulted is in indulging the applicant's ongoing objections instead of seeking that they be finally determined. Instead, and in an attempt to expedite matters, the first respondent effected a number of amendments by delivering six further versions of the charge sheet.

[76] In my view, the first respondent was correct in stating that the charges were straightforward and that the factual matrix upon which they were based had been known to her for some time. The various versions of the charge sheets bear this out.

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[6] *Van Veen v Director of Public Prosecutions and Others* 2025 (2) SACR 115 (SCA) para 32. In *Van Veen*, a delay of 11 years was not found to constitute irreparable trial-related prejudice.

[77] It is not the first respondent that caused the delays in this regard. It is the applicant who did this[7] by insisting on seeking further particulars to charges that were not objectionable and then objecting to them, repeatedly.

[78] The charges are not "unduly complicated". They are simple and based on a defined set of facts. Either the State will discharge the onus of proof resting upon it, or it will not - that is a question of evidence, not of allegation.

[79] I do not agree that the first respondent is "seriously conflicted" or that this somehow gives rise to grounds upon which the prosecution can be stayed permanently or that the charges can be quashed.

[80] The first respondent, as the delegated and authorised representative of the State in the prosecution, was entitled to depose to affidavits in opposition to the 2019 Stay application or any further applications. Whether she did so on the merits, or by way of confirmatory affidavits, would have made no difference. The first respondent had the knowledge of the facts and was required to confirm them.

[81] Similarly, it was not the first respondent who opposed the relief sought by the applicant – it was the State that did so, even if represented by the first respondent. It was for a court to determine the propriety of that opposition.

[82] The applicant appears to have adopted the somewhat curious approach that the State was not permitted to oppose her applications and should be criticised for doing so. I can see no grounds for this argument and was not provided with any authority that would support it.

[83] Regarding the applicant's complaints that the first respondent prevented her from fully and adequately addressing the Learned Magistrate or placing evidence before him, this rather misses the point: the first respondent was representing a litigating party before

[7] See *Wild and Another v Hoffert NO and Others* 1998 (3) SA 695 (CC) para 8.

the Learned Magistrate and was entitled to make submissions and objections. The applicant was represented by senior counsel. It was for the Learned Magistrate to determine what to do and what orders to grant.

[84] If the applicant did not persist with various submissions before the Learned Magistrate arising out of the first respondent's objections, that was her election. If the complaint is that the Learned Magistrate made rulings adverse to the applicant, that is a separate issue and would go to whether the Learned Magistrate committed a reviewable irregularity in the proceedings.

[85] However, it cannot be that an objection by the first respondent that was upheld by the Learned Magistrate founds a reason to criticise the first respondent or to conclude that she is biased or conflicted. That the applicant's counsel did not persist in the face of those objections (insofar as they related to the attempt to place factual information before the Learned Magistrate) seems to confirm that the objection by the first respondent was well made.

[86] Not content with the complaints referred to above, the applicant also complains that the first respondent "opposed my request to be afforded a reasonable opportunity to file my founding affidavit in this application" and therefore concludes that the first respondent "clearly wanted to deny me my rights to bring this application because she remained conflicted".

[87] I do not understand this submission. There is nothing irregular or unfair in a litigating party insisting that applications are brought within the required time periods.

[88] If a litigating party cannot comply with those time periods, it is for that party to seek condonation from the court and not from their opponent.

[89] There is no application for the removal or recusal of the first respondent. The Learned Magistrate made the same point in the proceedings that were before him and

the applicant's counsel accepted that the Learned Magistrate did not have jurisdiction to make such an order.

[90] Ultimately then, the applicant's complaints about the first respondent are only relevant if they prejudice the ability of the applicant to receive a fair trial.

[91] Certainly, the first respondent has not conducted the prosecution in the way that the applicant wishes, and the applicant has formed the somewhat unfortunate view that the first respondent is "conflicted" in the proceedings, alleging that this has been pointed out to the first respondent repeatedly.

[92] This does not make the applicant's complaints valid - and I conclude that they are not valid. The first respondent has represented the interests of the State as zealously as the applicant's legal representatives have represented her interests.

[93] When all the atmosphere is stripped away,[8] the applicant's core complaint justifying a permanent stay of the prosecution or the quashing of the charges is the delay that has been caused in bringing the matter to trial.

[94] In this regard, and since October 2020, it is the applicant that has objected to the various versions of the charge sheet and who has caused the concomitant delay.

[95] Whilst objections to charge sheets are legitimate and an accused is entitled to vindicate the rights afforded to them under the Constitution and the Criminal Procedure Act, if an accused does so and delay is caused, this cannot in and of itself justify a prosecution being stayed permanently or charges being quashed.

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[8] It seems to me that an unnecessarily lengthy Record was placed before the Court that had the effect of obscuring rather than elucidating the core issues. It is difficult to escape the sense that the applicant wished to buttress her arguments by sheer volume. This was an unnecessary burden for the Court and was unhelpful.

[96] In this particular case, the applicant could and should have pleaded to the charges years ago. Her election not to do so was hers to make, but she cannot visit the consequences of her choice on the State, which was entitled to oppose her various applications.

[97] The State argued that the applicant had adopted this approach to avoid answering the charges, and in the hope that the prosecution would collapse. This argument has some force, but I do not make any findings in that regard for the reasons set out above.

[98] The applicant also argues that a key witness for the prosecution, Sarah Martens, emigrated to Australia some years ago and that her evidence is likely to cover material issues. According to the applicant, there is "no certainty at this stage as to whether she is still available to testify in South Africa" and that it "will not be in the interests of justice to allow this witness to testify in a virtual hearing".

[99] This argument is speculative. The applicant does not know whether the witness will be available to testify or not travel to the Republic to testify and no application for evidence to be led by way of a virtual hearing has even been mooted.

[100] This prejudice manifestly is not the demonstrable and clear prejudice that must be established in an application to stay the prosecution.

[101] The applicant has not made out a case justifying the permanent staying of the prosecution or the quashing of charges, and this application must likewise fail.

Costs

[102] The applicant argued the application herself, as her erstwhile legal representatives withdrew.

[103] However, she was represented by both an experienced attorney and senior counsel up until the hearing.

[104] Being a civil review and application in this court, the state was entitled to brief counsel to represent it.

[105] In doing so, the state incurred legal costs.

[106] The applicant sought costs against the State on the scale as between attorney and client, alternatively on Scale C and including the costs of the proceedings in the courts below, and the costs consequent upon the employment of Senior Counsel.

[107] The general rule in litigation is that costs follow the result, and I can see no reason why that rule should not be followed in this application.

[108] Given the findings made in this judgement, there is no reason why the applicant should not be directed to pay the costs of this application.

Conclusion

[109] I make the following orders:

1. The application to review and set aside the ruling made by the second respondent in the Regional Court, Pietermaritzburg on 19 June 24 under case number RCC 1/2023 is dismissed.
2. The application for a permanent stay of the criminal proceedings in the Regional Court, Pietermaritzburg under case number RCC 1/2023, alternatively, that the charges in respect of those proceedings be quashed, is dismissed.
3. The applicant is directed to pay the costs of the application, on Scale C.

[redacted]

Shapiro AJ

I agree.

[redacted]

Mizrachi AJ

Appearances

For the applicant:	In person
	yvidutoit@gmail.com
	081 788 3031
For the respondents	Ms P S Cele, instructed by the State Attorney
	1st and 3rd Respondents' attorneys
	6th Floor, Metlife Building
	391 Anton Lembede Street
	Durban
	031 365 2500
	Ref: 119/0031013/24/R/P15
	Email: RSchalkwyk@justice.gov.za
Date of hearing:	4 July 2025
Date of judgment:	24 October 2025