



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
20 November 2025	
DATE	SIGNATURE

Date: 20 November 2025

Case number: 061967-2025

In the matter between:

C J MOLATOLI

APPLICANT

And

ADV TECH GROUP

FIRST RESPONDENT

PINNALE COLLEGE COPPERLEAF

SECOND RESPONDENT

DEBBIE PRINSLOO

THIRD RESPONDENT

MARTIN DE LA REY

FOURTH RESPONDENT

JUDGMENT

MINNAAR AJ.

Introduction:

[1] The applicant brought an urgent application, which was set down for 20 May 2025. The second respondent opposed the application. In the application, the applicant sought the following relief:

- a. That the application be treated as urgent in terms of the provisions of Rule 6(12(b)).
- b. That, in terms of the provisions of the Promotion of Administrative Justice Act, 3 of 2000 ('PAJA'), the second to fourth respondents' decision, made on 24 April 2025, be reviewed and set aside as unlawful, irrational and unfair.
- c. That the second to fourth respondents be ordered to allow the applicant's minor child to write the mathematics cycle test before the end of May 2025.
- d. The respondents be ordered to pay the costs of the application on the attorney and client scale.

[2] On 12 May 2025, the applicant launched an application to amend prayer 2 of his notice of motion. The application for amendment was set down for 20 May 2025. In terms of the purported amendment, the applicant changed his tack: the decision taken was no longer attacked under the auspices of PAJA. The attack on the decision was now premised on the common law.

[3] The second respondent objected to this application to amend. The second respondent further delivered a Rule 30 notice regarding the

application to amend, on the ground that it does not comply with the provisions of Rule 28. The applicant filed a replying affidavit in the application to amend.

[4] On 21 May 2025, the review application was struck from the roll for lack of urgency, and the applicant was ordered to pay the costs of the urgent application.

[5] The applicant then proceeded to enrol the review application on the opposed roll, and the application was heard on 20 October 2025.

[6] The mathematics cycle test was meant to be written by the applicant's minor son on 22 April 2025. The minor could not write the cycle test as the family were away on holiday.

[7] Despite an explanatory affidavit from the applicant's wife and engagements between the applicant and his wife with the school, the school did not permit the minor child to take the cycle test. According to the applicant, this decision is irrational, unlawful and unfair, and it has a negative bearing on the minor's academic record.

The application to amend:

[8] Rule 28 of the Uniform Rules of Court deals with the amendment of pleadings. It is trite that any amendment to a notice of motion is also subject to the provisions of Rule 28. Failure to comply with the provisions

of Rule 28 would render the amendment an irregular step that stands to be set aside.

[9] It is the second respondent's case that the purported amendment is an irregular step. The applicant contends that the second respondent, when it delivered its answering affidavit in response to the application to amend, took a further step (as envisaged in Rule 30(2)). As such, the second respondent is barred from relying on the application for amendment as an irregular step.

[10] The applicant's approach is flawed. The delivery of an answering affidavit in an interlocutory application (which the application to amend is) can never be regarded as a 'further step in the cause'.

[11] The applicant further relied on Rule 6(12) and argued that the amendment should be effected in light of the urgent nature of the application and the provision in Rule 6(12) that non-compliance with the Rules may be condoned.

[12] The applicant clearly lost sight of the fact that the application was struck from the roll due to lack of urgency, and any entitlement to rely on the provisions of Rule 6(12) disappeared.

[13] In the absence of Rule 6(12), the applicant should have pursued his amendment in accordance with Rule 28; however, he failed to do so.

[14] In light of all of the above, the amendment sought was not effected, and the applicant is bound by his election to place reliance on PAJA.

Point *in limine*: incompetent relief claimed:

[15] In the answering affidavit, the second respondent raised a point *in limine* that the relief claimed is not competent, as the decision not to allow the minor child to take the cycle test was not an administrative action as defined in PAJA. The decision was not an exercise in public power, nor was it the performance of a public function. Instead, the decision stems from the school's academic policy, which forms part of the agreement under which the minor child was enrolled for the 2025 academic year. As such, the implementation and enforcement of the policy were contractual rights and did not constitute an administrative action.

[16] In reply, the applicant pinned his flag to the intended amendment.

[17] Since the amendment was not effected, the applicant has no defence to this point *in limine*; it follows that this point *in limine* must be upheld and the application dismissed.

Point *in limine*: material misjoinder:

[18] The second respondent raises the material non-joinder of the minor child's mother (the applicant's spouse) and the minor child.

[19] The minor child is 14 years old. He is represented by the applicant, who is his biological father. The applicant is acting in the best interest of the minor child. As such, there was no need to join the minor child to these proceedings.

[20] The minor child's mother was involved throughout in engaging with the school, and she deposed to a confirmatory affidavit in the application. She has a direct and substantial interest herein, but it cannot be fathomed that any of her rights might be affected prejudicially by the order of this court.¹

[21] In the premises, the points *in limine* on the non-joinder of the minor child and his mother are dismissed with costs to be costs in the application.

Merits:

[22] Since the point *in limine* on incompetent relief sought in terms of PAJA is upheld, there is no need to address the merits of the application. As the applicant places reliance on *Moko v Acting Principal, Malusi*

¹ *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) at para 12

Secondary School and Others 2021 (3) SA 323 (CC), I deem it appropriate to make some remarks on the merits of the application.

[23] Independent schools are bound to provide basic education and to act in the best interest of the minor child.²

[24] In *Moko*, the Constitutional Court addressed a case involving a Grade 12 pupil who was barred from writing the National Senior Certificate. In paragraph 35 of *Moko*, the Constitutional Court stated:

*“Access to a school is a ‘necessary condition for the achievement of the right to education’. **Access to an examination, especially one that is integral to completing one’s schooling, is another important component for the achievement of this right. The first respondent had both a positive and negative obligation under s 29(1)(a) to allow the applicant to write the examination, unless there was an acceptable basis for not doing so. Refusing the applicant entry into the school, without adequate justification, and preventing him from writing the Business Studies Paper 2 examination, especially when his lateness to the examination was caused by the first respondent, undeniably breaches the right to basic education in s 29(1)(a) of the Constitution.** None of the respondents sought to provide any acceptable basis for the first respondent’s conduct in refusing the applicant entry to the examination, or the earlier conduct of sending the*

² *AB and Another v Pridwin Preparatory School and Others* 2020 (5) SA 327 (CC).

applicant home from school on the morning of an examination, which resulted in him missing the examination.” (my emphasis).

[25] The facts *in casu* are distinguishable from those in *Moko*. In this case, the minor child was barred from taking a cycle test because the applicant and his wife, despite ample notice, chose to go away on holiday, leaving the minor child absent when the cycle test was administered.

[26] In my view, the cycle test can never be regarded as integral to complete the minor child’s academic year. The cycle test represents only 5.6% of the total year-end mark. To not allow the minor child to write the cycle test can in no way infringe on the minor child’s right to basic education.

[27] Under clause 19.1 of the Assessment Policy, if a formal assessment, such as a cycle test, is missed, the student must produce a medical certificate; in extenuating circumstances, the principal may grant a principal waiver.

[28] The applicant’s understanding that the mere production of an affidavit would be sufficient to allow the minor child to write the cycle test is flawed. Being away on holiday, whilst having been fully made aware of the academic roster and school policies, can never be regarded as an extenuating circumstance, capable of being explained in an affidavit to

warrant a principal's waiver. To permit such an understanding would open the floodgates and create a risky precedent.

[29] 'Extenuating circumstances', by logic, would include circumstances such as death in the family, a house that burned down on the day before the cycle test, or a mechanical breakdown whilst being transported to school. A legion of worthy examples can be given. But being away on holiday would not be one of those worthy examples.

Costs:

[30] The applicant is a legally qualified individual. He pursued this application, which would have impacted 5.6% of the minor child's ultimate year mark. The cycle test is but a fraction of the minor child's academic record, who, from the papers, excels academically.

[31] When the application was struck for lack of urgency, the applicant should have reconsidered his approach. In essence, the relief sought became moot. The applicant failed to pursue the amendment, and the PAJA approach bound him. From the outset, the applicant sought costs against the respondents, including attorney and client costs. The second respondent was compelled to incur legal costs to protect its interests and prevent the creation of an untenable precedent.

[32] Under the circumstances, there is no basis why the second respondent should be left out of pocket. It follows that attorney and client scale costs are justified.

Consequently, I make the following order:

1. The application is dismissed.
2. The applicant is to pay the costs of the application on the scale as between attorney and client.



Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on	: 20 October 2025
For the applicant	: In person
Instructed by	: In person
For the respondent	: Adv R Kriek
Instructed by	: C R Bothma & Jooste Attorneys
Date of judgment	: 20 November 2025