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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2024-135318

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES

DATE: 2 December 2025

SIGNATURE OF JUDGE:

In the matter between:

NEILOPAHR CASSIM

Applicant

and

**GAUTENG PROVINCIAL LEGAL PRACTICE COUNCIL
(PROVINCIAL LPC)**

1st Respondent

CHAIRMAN OF APPEALS TRIBUNAL (LPC)

2nd Respondent

**CHAIRPERSON OF PROVINCIAL LPC INVESTIGATING
COMMITTEE, DR B BEKINK**

3rd Respondent

ADVOCATE M PHUKUBJE – MEMBER OF

JUDGMENT

D van den Bogert AJ

- [1] Although it is, as a general proposition not fatal to an applicant's cause of action if it fails to identify with precision the provisions of the Promotion of Administrative Act 3 of 2000 (herein "*PAJA*") relied upon, applicants in a review must clearly identify both the facts upon which their cause of action is based as well as the legal foundation for such cause of action. This case turns mainly on the question whether the applicant did this, and what the consequences would be if she failed to do so.
- [2] This is a review application against a decision of the investigating committee of the Legal Practice Council (herein "*the LPC*"). The decision of the investigating committee is made in terms of section 37(3)(b) of the Legal Practice Act, 28 of 2014 (herein "*the LPA*"). In essence the investigating committee decided that the applicant's complaint against a legal practitioner, the fifth respondent, John Frederick Schickerling, does not warrant misconduct proceedings and dismissed the complaint.
- [3] The applicant is a senior advocate who practices as such at the Pretoria Society of Advocates. She is the complainant before the LPC. The first respondent is the Gauteng Provincial Legal Practice Council. The second respondent is described as the chairperson of the Appeals Tribunal of the second respondent. I presume that that was meant to be a reference to the chairperson of the Appeals Tribunal of the first respondent. The third respondent is the chairperson of the investigating committee of the LPC. He is

also described as the chairperson of the investigating committee of the second respondent. It is presumably also a reference to the first respondent. The fourth respondent is a certain advocate Phukubje, being a member of the investigating committee of the LPC.

- [4] The fifth respondent is an attorney of this court, JF Schickerling, against whom the applicant had laid misconduct complaints with the LPC.
- [5] The review application is opposed by the first to fourth respondents. The fifth respondent did not oppose, but someone was in court holding a watching brief on his behalf. The applicant appeared in person, although the applicant is represented by Mbazima Dickson Incorporated Attorneys.
- [6] The applicant, both in her review application as well as her argument in court, did not want to commit herself as to what the true nature of her review may be. She strongly opposed the notion that it is a PAJA review. I probed her to tell me whether the review is a common law review, a legality review and/or a review in terms of PAJA. The applicant insisted that it was a review in terms of rule 53 of the Uniform Rules of Court and that it is neither any of the reviews mentioned. Notwithstanding this insistence, the applicant argued that I should grant her remedies as envisaged in section 8 of the PAJA.
- [7] In my view, this I can only do if it is indeed a review in terms of PAJA.
- [8] As shall appear from my analysis hereunder, the review brought is one in terms of PAJA, and the applicant's refusal to accept that it is a PAJA review does not assist her. It merely adds fuel to the fact that her case is not properly pleaded. I shall revert to this. Also relevant for purposes hereof is that the applicant elected, having received the record, not to file an amended notice of motion or a supplementary affidavit. She waived her right to do so. She is therefore bound by that what is set out in her founding papers.
- [9] Bearing this in mind, I mention that in her notice of motion the applicant sought an array of declaratory relief, which reads as follows:

- "1 Declaring that the failure of the first and/or third and fourth respondents to investigate the applicant's complaint under reference number S.Mundau 4012/2023 and reference number 3449/2023 is unlawful and invalid.*
- 2 Declaring that the findings and decision of the first respondent and/or third or fourth respondents to dismiss the applicant's complaint under reference number 3449/2023 on the 30 November 2023 as embodied in annexure "Y1", is unlawful and invalid and of no force and effect.*
- 3 Declaring that the findings and decisions of the first respondent and/or third or fourth respondents to dismiss the applicant's complaint under reference number 3449/2023 on the 30 November 2023 as embodied in annexure "Y1" is reviewed and set aside.*
- 4 Declaring that the findings and decision of the second respondent (Appeals Tribunal) on the 25 June 2024 that the applicant failed to lodge the appeal within 30 days from 13 December 2023 of being informed of the decision of the investigating committee is unlawful and invalid and of no force and effect.*
- 5 Declaring that the findings and decision of the second respondent (Appeals Tribunal) of 25 June 2024, that the applicant failed to lodge the appeal within 30 days from 13 December 2023 of being informed of the decision of the investigating committee resulted in the dismissal of the appeal, is hereby reviewed and set aside.*
- 6 Declaring that the prima facie evidence furnished by the applicant in her complaint under reference number S Mundau 4012/2023 and reference number 3449/2023 constitutes prima facie evidence which may lead to a finding of professional misconduct on the part of the fifth respondent and consequently this matter is referred to the disciplinary committee of the first respondent for determination."*

[10] Annexure “Y” is a letter dated 12 December 2023, whereby the applicant is informed by the senior legal officer of the Regulatory Department of the Gauteng Provincial Office of the LPC as follows:

“We confirm that your complaint was considered by an Investigating Committee on 23 November 2023, who recommended that it be dismissed, as per the reasons attached.

You are however entitled to lodge an appeal against this recommendation in terms of the provisions of Section 41 of the Legal Practice Act.

We attach for this purpose a Notice to Appeal form.”

[11] The reasons given for the decision of the Investigating Committee is attached to the founding affidavit as annexure “Y2” and I shall revert to such reasons hereinafter.

[12] Section 41(1)(b) of the LPA stipulates and I quote:

“(b) A complainant who is aggrieved by the manner in which an investigating committee conducted its investigation or the outcome of the investigating committee, as referred to in section 37(3)(b) may, as determined in the rules and within 30 days of being informed of the decision by the investigating committee, as the case may be, lodge an appeal with an appeal tribunal established in terms of subsection (2) against any conduct or finding of the investigating committee...”

[13] The LPA does not bestow upon its appeal tribunal any condonation powers. The applicant eventually lodged an appeal on 15 March 2024, which is beyond the indicated 30-day period as envisaged in section 41 of the LPA. She, however, in her appeal also sought condonation for the late filing of the appeal. She provides in the appeal document grounds for condonation for the late bringing of the appeal.

[14] On 23 August 2024, the legal official of the disciplinary department of the Gauteng Provincial Office of the LPC informed the applicant that her appeal was dismissed on the ground that:

“You failed to lodge the appeal within 30 days of being informed of the decision of the investigating/disciplinary committee in terms of section 44(1)(a) of the Act.”

- [15] Considering the appeal tribunal's agenda or file, the matter was dismissed based on the appeal tribunal having no jurisdiction to hear an application for condonation.
- [16] With reference to paragraphs 16 to 18 of the case of *Dr JS Moroka Municipality v Betram (Pty) Ltd (2014) 1 All SA 545 (SCA)*, the decision of the appeal tribunal that it has no jurisdiction to hear an application for condonation seems to be correct. I make no finding in that respect, because the true gist of the review of the applicant lies against the decision of the investigating committee. The appeal tribunal did not consider the merits of the appeal. As such, a setting aside of the decision of the appeal tribunal will provide no remedy and will cause unnecessary delays. In any event, given my finding on the way in which the case was presented, this issue becomes immaterial.
- [17] The applicant seeks to review the investigating committee's finding. The latter decided that the *prima facie* evidence does not support that the fifth respondent has committed misconduct and that therefore the matter does not warrant misconduct proceedings. The appeal tribunal did not take that issue any further and the real question before this court is therefore whether a review against the decision of the investigating committee is proper.
- [18] It is therefore relevant to quote parts of the decision of the investigating committee verbatim:

“2 *THE NATURE, ESSENCE AND MERITS OF THE COMPLAINT:*

The complainant in this matter is senior advocate from the Pretoria Bar. The documentary evidence indicates that the complainant has been in various long and protracted legal disputes with one of her former tenants of a property she owned. The complainant had, some years ago, applied for the eviction of the tenant from her property, and although successful, the tenant has also claimed a lien over the property for certain brickworks that were done on the property. As security for the lien, the complainant has obtained a bank guarantee and it is alleging that she provided the original guarantee document

to the attorney of the tenant company, Kwik Prop Holdings. After some time, the tenant – KPH went into business rescue, and the respondent was then officially appointed as the Business Rescue Practitioner (BRP) in the matter. It is against the BRP that the complainant is now complaining regarding various issues. In essence, the complainant is alleging that the respondent, in his capacity as the BRP, demanded unlawful/unauthorised payments from the company under business rescue, that the respondent thus acted fraudulently; that the respondent submitted a false business plan, which did not include certain cost amounts, which should have been included; that the business rescue proceedings and management by the respondent is a farce and that the BRP failed to execute his duties and responsibilities under law. The complainant also demands that the BRP provide her with certain feedback and information regarding his official management of the BR proceedings. It is clear from the documents that the parties, including the BRP, have been embroiled in long historical and complicated legal disputes. The correspondence is very voluminous and extensive.

3 **REPLY AND SUBSTANTIATION BY THE MEMBER/RESPONDENT:**

The respondent in reply confirms that he was appointed as the BRP in the business rescue proceedings of Kwik Prop Holdings. The respondent then underscores that the complainant is not a creditor of the company under business rescue but indeed a debtor. Since the company has also obtained a legal judgment and cost order in its favour against the complainant, the respondent and the attorney of the company took various steps to obtain payment of the judgment debts from the complainant. The respondent specifically confirms, which submissions are supported by the attorneys of Kwik Prop Holdings, that he always acted in his official capacity as lawfully appointed BRP of the company, that he acted as per the provisions of the Companies Act and also in accordance with the instructions of the appointed attorney of the company. The complainant is however not satisfied with these submissions, and she demands that the LPC should investigate the matter and oversee the work and conduct of the BRP/respondent (see p374 of the bundle).

4 **DECISION BY THE INVESTIGATING COMMITTEE (IC):**

After considering all submissions and supporting information the IC concluded as follows:

- 4.1. That based on the prima facie evidence, there is no support that the respondent has committed misconduct and the matter does not warrant further misconduct proceedings. There is no support from either the attorney that acted for Kwik Prop Holdings nor any other third parties and that the respondent has unduly performed his duties and responsibilities as the appointed BRP in the circumstances.*
- 4.2 The IC also confirmed that it is not the role and function for the LPC to get embroiled in pending and continuous legal matters between the parties. Both sides have various other legal remedies to guard and protect their rights in such circumstances.*
- 4.3 Based on the documents provided and the evidence submitted, the complaint is therefore unwarranted and is accordingly dismissed.”*

[19] I pause to mention that the applicant does not set out in her founding affidavit the historical facts that led to her complaint directed to the LPC in any sensible manner. This court is required to trawl through several documents attached to the founding papers, to appreciate the gist of her complaint. The essence of the complaint, however, seems to be that Mr Schickerling in his capacity as business rescue practitioner (herein BRP) has made himself guilty of all sorts of misconduct, whereof the most pertinent and repeated complaint is, although a hotly disputed issue, that he failed to collect money allegedly available to the company in business rescue, recoverable in terms of a bank guarantee.

[20] This complaint is premised thereon that he wrote a letter, as BRP, on 16 February 2022, wherein he demanded payment of a judgment debt due by the applicant to the company in business rescue. The relevant part reads as follows:

“I demand that your client make payment in the amount of R1,115,692.16 to my trust account (the particulars to which are attached), on or before close of business on 18 February 2022. (I will also share my banking particulars on

WhatsApp for you to compare in case of email interception). The amount of R1,115,692.16 is calculated as follows:

<i>1. Judgment</i>	<i>R875,410.60</i>
<i>2. Cost order against Cassim</i>	<i>R373,884.37</i>
<i>3. Cost order against Kwik Prop</i>	<i>-R110,207.27</i>
<i>4. Cost order against Kwik Prop</i>	<i>-R23,395.54</i>

[21] The first complaint is that he ought to have collected the money available in terms of an existing guarantee in favour of the company in business rescue. It is further alleged that in terms of a letter of guarantee issued by Nedbank in favour of the company in business rescue, the company must receive the money and not the fifth respondent personally. As such, it is alleged that the demand was an attempt to defraud the applicant, because the business rescue practitioner claimed payment to his attorney trust account (and not for the company).

[22] The subject of the letter of demand of the fifth respondent was “*Re: Neilophar Cassim // Kwik Property Holding (Pty) Ltd (In Business Rescue)*”. The practitioner specifically prefaced the demand by dealing with issues relating to the business rescue. Although this is a review, and not an appeal, in my view there seems to be prima facie no credible evidence of the fifth respondent claiming money for himself.

[23] The remaining complaints are listed in the applicant’s written submission for the hearing of 24 November 2025. These complaints she says are gross incompetence in keeping the company in business rescue for a period of six years; failing to open a bank account for the company in business rescue so that the applicant could deposit the debt due to the company therein; the failure to report in the plan the fact that the applicant had obtained an eviction order against the company in 2015 already, and the failure to indicate that two costs order were due to the applicant.

[24] Against this backdrop the investigating committee decided that there is no support that the respondent has committed misconduct and the matter does not warrant further misconduct proceedings. According to the committee, there is no prima facie evidence from either the attorney that acted for Kwik Prop Holdings nor any other third parties that the respondent has unduly performed his duties and responsibilities as the appointed BRP in the circumstances, and that it is not the role and function for the LPC to get embroiled in pending and continuous legal matters between the parties. Both sides, the committee decided, have various other legal remedies to guard and protect their rights in such circumstances.

[25] How this court can interfere with that decision is not explained in the review.

[26] There are serious difficulties with the way the applicant presented her case. This is so, because it is almost impossible to discern what her cause of review is, and what the factual basis therefore would be. In paragraph 18 of the founding affidavit, she tells the court that a 116-page complaint, directed to SARIPA against the fifth respondent is attached as annexure “Y2” to her affidavit. She confirms that the LPC accepted the referral of the complaint from SARIPA and allocated it with reference number S Mundau 4012/2023/TK.

[27] Annexure “Y2”, however, constitutes the decision of the investigating committee and its reasons. The SARIPA complaint, being the complaint referred to the LPC is not attached to the founding papers. In their answering affidavit, the first to fourth respondents point out this defect. The applicant concedes this omission in the replying affidavit and the document is then simply placed on the electronic court file without the opposing respondents having had the opportunity to deal with it. The whole of that complaint deals with conduct of the business rescue practitioner in his capacity as business rescue practitioner.

[28] This is, however, a review. It is not an appeal, and on review a court is not required to determine whether the investigating committee, applying the law to the facts, came to the right decision. In this respect, the opposing respondents reminded me what the Supreme Court of Appeal said in the case of *Rustenburg Platinum Mines Ltd v CCMA 2007 (1) SA 576 (SCA)* at par 31:

“31 *In a review, the question is not whether the decision is capable of being justified but whether the decision-maker properly exercised the powers entrusted to him or her. The focus is on the process, and on the way in which the decision-maker came to the challenged conclusion.*”

[29] The applicant approached this case in the following fashion in her founding affidavit. She would refer to her complaint lodged with SARIPA, which was not attached to the papers, and then with reference to Schickerling’s response to the SARIPA complaint, which is attached to the founding affidavit as “Y3”, she would answer that response in her founding affidavit as if she was dealing with an answering affidavit.

[30] For example, paragraph 23 of the founding affidavit is divided into a list of subparagraphs and subparagraph 23.1, for example, commences with “AD PARAGRAPH 123” thereof. This is a reference to paragraph 123 of the response of the fifth respondent to her complaint to the LPC. From this the court is seemingly expected to first read the response of the fifth respondent sent to the LPC and then read her answer to that response (which constitutes a large part of the founding affidavit). She thereby responds to answers of Schickerling as if she was busy with an answering affidavit. That this is unacceptable goes without saying.

[31] This court is therefore required to trawl through numerous pages attached to her founding affidavit, to begin to appreciate what the basis for her complaint might be. This includes references to an annexure, which was only filed on the electronic court file together with the replying affidavit. With reference to that document, being a complaint of 116 pages, this court must identify what exactly the applicant’s issue with the fifth respondent is or was.

[32] Bearing in mind that the applicant is not a lay person, she knows that in any affidavit the facts must be set out simply, clearly and in a chronological sequence, without argumentative matter. It must, in an easily ascertainable fashion, identify the cause of action on which the applicant relies and the evidence in support of that cause of action.

- [33] In this respect, I refer to the case of *Reynolds N.O v Macklenberg (Pty) Ltd* 1996 (1) SA 75 (W) where the court deprecated the disorderly presentation of facts in lengthy affidavits, which contained argumentative matter. It resulted therein that the court was “*given no clear context of facts which are common cause, and no clear guidance as to the dispute of facts which must be evaluated against the background of such context.*” (p 83A – C of the judgment).
- [34] In presenting her case, the applicant failed to comply with the duties of an applicant when presenting evidence to court. In a review application, the duty to set out fact that support a cause of action, in an orderly fashion, goes further. In the case of *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) the Constitutional Court held at paragraph 27 holds that the failure to identify with any precision the provision of PAJA relied upon is not fatal, but it is desirable for litigants who seek to review administrative action to identify clearly both the facts upon which they base their cause of action, and the legal basis of their cause of action.
- [35] The applicant in this case failed to do so. In *Erlich v Minister of Correctional Services and Another* 2009 (2) SA 373 (E) the court held in paragraph 36 that while the legal basis upon which the legal relief is sought should ordinarily be identified by the applicant, this rule cannot be applied rigidly and certainly not when a litigant represents himself or herself. That does not help the applicant who testifies that she is a senior advocate who has been practising for some 41 years when deposing to the founding affidavit in October 2024.
- [36] In *Medihelp Medical Scheme v Minister of Finance* 2005 JDR 1391 (SCA) the SCA held in paragraph 28 that “*The further problem is that the appellants have not indicated on these papers on which review ground they would rely. These are listed in s 6(2). A litigant is obliged to name the grounds unless it appears clearly from the papers.*”
- [37] Premised on these failures already, the review ought to fail already.
- [38] Bearing this in mind, I deal with the applicant’s grounds of review. These are:

- 38.1. that the third and fourth respondents acted with biasness towards the applicant and were not impartial or independent.
- 38.2. that the third and fourth respondents acted with gross negligence in failing to apply their minds to two complaints lodged against Schickerling. This is so, since they referred in their decision to one complaint only.
- 38.3. that the third and fourth respondents have acted with gross negligence in their failure to consider the letter of guarantee of 26 March 2014 and their failure to consider the gross misconduct on the part of Schickerling in condoning his attorney's letter of 31 May 2023 directed to Nedbank demanding payment of money to be paid to the account of Lacante Henn Inc, in conflict of the terms of the letter of guarantee.
- 38.4. that the third and fourth respondents acted with gross negligence in failing to apply their minds to the complaints.
- 38.5. that the third and fourth respondents failed to identify the steps taken by both Schickerling and his attorney to obtain payment of a judgment debt in terms of the letter of guarantee and had they applied their minds, they would have identified gross misconduct.
- 38.6. that the respondents have acted with gross negligence in finding that it is not the role or function of the LPC to get embroiled in pending legal matters between the parties.
- 38.7. that the third and fourth respondents acted with gross negligence in failing to identify *prima facie* evidence upon which they relied to arrive at their irrational conclusion not to find that misconduct was committed that warranted misconduct proceedings.

[39] With reference to the ground in 38.3 above, I deem it prudent to repeat what the applicant said in her written submissions "*at the hearing on 24 November 2025*", with reference to a similar review application where judgment is pending.

That application pertains to a complaint laid against the attorney that acted for the BRP, being Lacante Henn Attorneys:

“10. The other matter relates primarily to the professional misconduct of the attorney who in a letter dated 31 May 2023 to Nedbank and acted for a client who was in business rescue and in spite thereof the attorney relied on an affidavit of the incapacitated director of the company in business rescue in order to obtain the release of funds in terms of a letter of guarantee demanding the money to be paid into the bank account of the firm of attorneys in conflict with paragraph 5 of the terms of the guarantee which categorically record that the guarantee is personal to the company and not transferable.

11. The business rescue practitioner, the fifth respondent in this application, was not a party to the letter dated 31 May 2023 to Nedbank...”

[40] How the ground in paragraph 38.3 can therefore be persisted with, in the circumstances, is not explained.

[41] Given the fact that this is a PAJA review, as I find hereunder, the above listed complaints must somehow resort under section 6 of PAJA. In this respect I reiterate that the applicant neglected to set out on which grounds of PAJA she relies. Yet, in argument, at the hearing of this application, she sought far reaching relief in terms of section 8 of PAJA.

[42] Gross negligence is not a ground of review and since the court is, due to the failure of the applicant to properly plead her case, tasked to narrow the review down to fit somewhere into the categories of subsection 6(2) of PAJA, the review, in my view, is limited to section 6(2)(a)(iii) and section 6(2)(e)(iii) of PAJA.

[43] This means that considering the generalised grounds of review, the first complaint is that the administrator who took the administrative action, was biased or could reasonably be suspected of biasness. The second complaint is that the functionaries took irrelevant considerations into account and relevant considerations were not considered. The latter is borne out by the complaint that committee failed to identify evidence and steps taken and/or failed to

consider certain documents. There might also be the hint of irrationality, namely that the action is not connected to the purpose of the empowering provision.

[44] Prior to getting to the other grounds for review, I deal in short with the nature of the review before me. In this respect and in paragraph 29.2 of the replying affidavit, the applicant states:

“It is categorically clear from my Notice of Motion dated 28 October 2024 that this is a review in terms of Rule 53 of the Uniform Rules of Court. It is not a review under the Promotion of Administrative Justice Act, (PAJA) which specifically governs the review of administrative action.”

[45] The applicant should know that Rule 53 is merely a vehicle or procedure whereby a review is brought. It cannot determine the nature of the review.

[46] Opposed to the applicant’s view, there is no doubt in my mind that a decision of the investigating committee of the LPC constitutes administrative action. It was also dealt with as such in the case of *Ground Up News NPC and Others v South African Legal Practice Council and Others* 2023 (4) SA 617 (GJ). In addition, the respondents correctly argue that the default pathway to judicial review today is PAJA. In *Bato Star* supra at par 25, the Constitutional Court says:

“The cause of action for the judicial review of administrative action now ordinarily arises from PAJA, not from the common law as in the past.”

[47] In *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC), at par 95, the Constitutional Court decided that PAJA cannot be sidestepped where it is applicable and that the principle of legality, which provides a general justification for review of the exercise of public power merely acts as a safety net.

[48] In this respect, I agree further with the summary contained in the case of *Manley Inc v Legal Practice Council and Others* 2023 JDR 4097 (GP) at par 15, which I quote:

“None of the parties contested that the impugned decision constitutes administrative action that is reviewable in terms of PAJA. This is because the Legal Practice Council in terms of s 4, is a ‘body corporate with full capacity’. It exercises jurisdiction over all legal practitioners and candidate legal practitioners as an organ of state and a creature of statute established in terms of s 4 of the LPA. Furthermore, focusing on the function of the LPC rather than on the institution itself, the LPC performs a public function by implementing legislation. As a creature of statute, it derives its powers from the LPA, which is the body tasked with regulating the legal profession in the public interest.”

[49] As such, this is a PAJA review, and I must decide whether the applicant made out a case for the review in terms of PAJA.

[50] I proceed to deal with the section 6(2)(a)(iii) ground, namely that the investigating committee of the LPC was biased or could reasonably have been suspected of biasness. The whole basis upon which the claim of biasness is premised, is the following and I quote from the founding affidavit:

“They tried to create an atmosphere of disrespect towards me in my personal capacity. The complaint was brought in the name of Neilophar Cassim in her personal capacity as registered owner of a commercial property situate at 3[...] C [...] Street, Pretoria West, Pretoria and not in my professional capacity as ADV N Cassim SC.”

[51] That does not constitute a factual basis for the claim of biasness. It is pure speculation about what the functionaries had in mind. A court cannot even make the inference of biasness.

[52] As correctly pointed out by counsel for the respondents, the Constitutional Court warns against such speculative allegations of biasness. In this respect I quote from *Turnbull-Jackson v Hibiscus Coast Municipality and others* 2014 (6) SA 592 (CC):

“[34] These are the main bases of complaint. The applicant raises a number of others. They are so baseless as to warrant rejection out of hand and need not unduly burden this judgment.

[35] Before I conclude, I am moved to caution against wanton, gratuitous allegations of bias – actual or perceived – against public officials. Allegations of bias, the antithesis of fairness, are serious. If made with a

sufficient degree of regularity, they have the potential to be deleterious to the confidence reposed by the public in administrators. The reactive-bias claim stems from unsubstantiated allegations of corruption and incompetence. These are serious allegations, especially the one of corruption. Yes, if public officials are corrupt, they must be exposed for what they are: an unwelcome, cancerous scourge in the public administration. But accusations of corruption against the innocent may visit them with the most debilitating public opprobrium. Gratuitous claims of bias like the present are deserving of the strongest possible censure.”

- [53] The allegation of bias, founded on the averment of “a creation of an atmosphere of disrespect towards the applicant”, has no foundation in fact. It similarly has the potential of creating the impression that the functionaries at the LPC do not take their job seriously and act on mere suspicions and feelings. It is inappropriate.
- [54] As such, this ground for review is also, as in the words of the Constitutional Court “rejected out of hand”.
- [55] The second basis is that the functionaries at the LPC took in account irrelevant considerations whilst not considering relevant considerations. This is to be deduced from the repeated references that the functionaries “failed to consider” certain documents and were as a result negligent.
- [56] I quoted hereinabove the reasons for the decision of the investigating committee. It is apparent from their decision, which was supported by reasons, that they considered correspondence, which was voluminous and extensive. They made specific reference to, for example p 374 of the bundle, where they say that the complainant demanded that the LPC should investigate the matter and oversee the work and conduct of the business rescue practitioner.
- [57] It seems to be apparent that the investigating committee did carefully consider the complaint/s of the applicant as well as the answer/s thereto provided by the fifth respondent. As indicated hereinbefore, it is not the job of a court in a review to judge whether the functionary came to the correct decision on the

facts, but rather whether the decision maker properly exercised the powers entrusted to him or her.

[58] As such, the second ground for review must also fail.

[59] On the same basis, on the rationality principle, the review cannot succeed. The investigating committee considered all the prima facie evidence before it. This included the letter of guarantee of 26 March 2014, and the applicant's claims in respect of that letter. All the submissions and documents received were considered. The committee then only reached the conclusion that the applicant has other legal remedies, and that this is not a matter that involves professional misconduct.

[60] Rationality, as envisaged in PAJA envisages that the decisions must be objectively capable of furthering the purpose for which the power was given, and must be supported by the evidence before the administrator. It has not much to do with the decision itself (i.e., whether a court prefers another decision).

[61] It follows that the review cannot succeed on this basis as well.

[62] In any event, absent an identification of the review grounds in terms of section 6 of PAJA, it is not only difficult, for a court to consider the review properly, but almost impossible.

[63] Therefore, the applicant cannot succeed with her review.

[64] Bearing in mind my decision already made, not much turns on the following. I am required, however, to pronounce upon the issues ventilated before me. The opposing respondents, as preliminary issues argued that the applicant had failed to exhaust her available internal remedies on the one hand and on the other that her review was time barred. This argument is premised on the following facts:

64.1. the applicant did not within 30 days as envisaged in section 41 of the LPA bring her internal appeal and in not doing so, she did not exhaust her internal remedies prior to approaching this court on review.

64.2. she is time barred in that she did not bring the review within the required 180 days after the decision in December 2023, but at at worst after the 30-day period had expired after the December 2023 decision.

[65] I accept the references to the caselaw that an applicant prior to a review has a duty to exhaust internal remedies (*Koyabe v Minister for Home Affairs* 2010 (4) SA 327 (CC)) I also accept that if the review is brought outside the 180-day period, it is regarded as unreasonable *per se* (*Opposition to Urban Tolling Alliance and Others v The South African Road Agency Ltd and Others* 2013 (4) All SA 639 (SCA)). I further accept that once an applicant is time barred, an exemption is necessary in accordance with section 9 of the PAJA, failing which this court has no jurisdiction to entertain the review.

[66] I, however, differ on the facts. It is true that the internal remedy was not proceeded with within the required 30-day period. The applicant, however, attempted to belatedly bring an appeal and thereby exhaust her internal remedy. Her condonation was refused premised on the fact that the LPC has no jurisdiction to grant condonation and that decision was communicated to her on 23 August 2024, although the appeal was already considered on 25 June 2025. The review application was instituted on 21 November 2024, which is well within the period of the required 180-days after the applicant was informed of the decision.

[67] The opposing respondents with reference to the case of *Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd* (2010) 3 All SA 577 (SCA), argued that the 180-day period commenced to run either on 12 December 2023 or 30 days thereafter when the period within which the applicant had to lodge her internal appeal, had lapsed.

[68] That case, however, is overturned on appeal by the Constitutional Court. In *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2011 (4) SA 113 (CC) the Constitutional Court says the following:

“59 Section 7(1)(a) of the Promotion of Administrative Justice Act (PAJA) provides that judicial review proceedings must be instituted without unreasonable delay and not later than 180-days after the date on which

internal remedies “have been concluded” (emphasis added). In my view the clear import of the Department’s letter of 14 June 2007 was that the internal appeal had been “concluded” in the sense required by the section.”

[69] It is apparent that the applicant sought to exhaust her internal remedy by bringing an appeal with a condonation application, and it does not matter whether the appeal is bad or good in law. She did what was required from her in terms of PAJA. She did not come to court without first attempting to exhaust her internal remedies. After she received the decision in August 2024, which concluded the process of the internal remedy she had followed, the review was lodged within 2 months thereafter. There was no unreasonable delay and the 2 points *in limine* cannot succeed.

[70] The applicant attempted to argue that I must accept that she brings the application also in terms of section 44() of the LPA which holds:

“Nothing contained in this Act precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner, candidate legal practitioner or juristic entity or in connection with any decision of a disciplinary body, the Ombud or the Council in connection with such complaint or charge.”

[71] The applicant brings a review application. At best her review falls within the ambit of “appropriate relief” as envisaged in section 44, and as indicated her review fails.

[72] If the applicant has anything, but a review in mind, she does not bring an application, seeking other relief, premised on section 44. If it was her intention to bring an application for different relief in terms of the said section, this should have been specifically pleaded in the founding papers. That would alerted the respondents that something else was sought premised on section 44 and might have moved the fifth respondent to oppose the application. To simply argue reliance on that section is, without allowing the parties to properly engage with such approach, improper.

[73] In respect of costs the following. The first to fourth respondents are successful in opposing the review application and the normal rule that cost should be awarded in favour of the successful party, must be followed. The opposing respondents however sought to convince me to grant a cost order on a punitive scale. This was motivated by references to the applicant's conduct during the proceedings. It was argued that the applicant made all sorts of scurrilous averments about the role players in this litigation, including judicial officers.

[74] In my view, one must consider that the applicant, save for being an advocate of this court, also acts in her personal capacity and that the litigation between her and the fifth respondent, as business rescue practitioner, and related parties, has been carrying on for many years preceding this review application. It must have taken an emotional toll. It is therefore that it is undesirable that a legal practitioner acts in his or her own case. The applicant is however not prohibited from doing so.

[75] Acting for oneself is stressful and may sometimes lead to more emotive remarks. I am however tasked to mainly judge the case and not the applicant's conduct. There is no basis to claim that the instituting of this review process was vexatious or mala fide per se. The applicant has a procedural right to lay complaints with the LPC. She also has a procedural right to review an adverse decision made by the LPC.

[76] In the circumstances, in my view, there is no basis to grant a punitive costs order, and I refuse to do so.

[77] Considering the above, I issue the following order:

1. The applicant's application is refused.
2. The applicant shall pay the first to fourth respondents' costs, such cost to include the cost of counsel on scale C.

D VAN DEN BOGERT

**ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 2 December 2025.

Appearances

Counsel for the Applicant: In person

Instructed by: Mbazima Dickson Attorneys
Ref.: Mr Dickson

Counsel for respondent: NC Maritz

Instructed by: FourieFismer Incorporated
Ref: CP Fourie/vm/MAT8896

Date of Hearing: 24 November 2025

Date of Judgment: 2 December 2025