



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE: 30 January 2026

SIGNATURE: [REDACTED]

Case No. 098869/2023

In the matter between:

DIALSTAT TRADING 115 (PTY) LTD

APPLICANT

And

SAVE THE MAIZE BELT SOCIETY

FIRST RESPONDENT

OMAR, ZEHIR

SECOND RESPONDENT

OMAR, YASMIN

THIRD RESPONDENT

OMAR, ABU BAKR

FOURTH RESPONDENT

OMAR, EBRAHIM	FIFTH RESPONDENT
OMAR, SULAIMAN	SIXTH RESPONDENT
MAHLANGU, MOHAMED	SEVENTH RESPONDENT
MAHLANGU, WILLIAM	EIGHTH RESPONDENT
MLOMBO, CONSTANCE	NINTH RESPONDENT
MAHOLWANA, FLORENCE	TENTH RESPONDENT
VAN DER SCHYFF, SORAYA	ELEVENTH RESPONDENT
PREUSS, CLIVE	TWELFTH RESPONDENT

Coram: Millar J

Heard on: 14 October & 5 November 2025

Delivered: 30 January 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 30 January 2026.

Summary: *Universitas personarum* — Juristic personality — Requirements for *universitas personarum* — Perpetual succession — Capacity to own property— *Locus standi* — The constitution reflects a *universitas personarum* — Subsequent conduct does not reflect intention to form

a *universitas personarum* — The Society does not hold any property in its own name — Members repudiated proposal that they contribute to the Society - Cost orders unsatisfied — Society is nothing more than a vehicle to litigate without consequence — The Society is not a *universitas personarum*.

ORDER

It is Ordered:

- [1] It is declared that the first respondent, the “Save the Maize Belt Society” is not a *universitas personarum*.
- [2] It is declared the first respondent, the “Save the Maize Belt Society” may not litigate in its own name.
- [3] The second, seventh, eighth, ninth and tenth respondents are jointly and severally, the one paying the others to be absolved, ordered to pay the costs of the applicant for the postponement on 14 October 2025, on the scale as between party and party together with the costs of counsel on scale C.
- [4] The second to eleventh respondents, jointly and severally, the one paying the others to be absolved, are ordered to pay the applicant’s costs of the application on the scale as between party and party which costs include the costs of counsel on scale C.

JUDGMENT

MILLAR J

- [1] The applicant (Dialstat) seeks an order declaring that the first respondent (the Society) is not a *universitas personarum* in the true sense, and in consequence thereof has *no locus standi* to pursue or take part in further disputes or litigation against it.
- [2] The issue for determination is primarily a legal one. Dialstat does not take issue with any of the individual members of the Society, the second to twelfth respondents, or for that matter anyone else, save for the Society, litigating against it. The reasons for this will become apparent.
- [3] The respondents for their part oppose the application on two broad fronts. The first is that Dialstat has failed to establish that the Society is not a true *universitas personarum*. The second, are a number of other procedural defences.

BACKGROUND – THE LITIGATION HISTORY

- [4] Dialstat applied in terms of the Mineral and Petroleum Resources Development Act¹ to obtain the right to mine for coal on various properties in the district of Delmas in the province of Mpumalanga. The application was granted.
- [5] One of the properties adjacent to the proposed mining area is portion 43 of the Farm Dwarsfontein. This farm, besides being owned by the Omar family, is also the residence and place from which they (who are the second to the sixth respondents) conduct business. After the granting of the application and in 2013, the Society was formed and an appeal submitted by it against the decision.

¹ Section 22 of Act 28 of 2002.

Dialstat has since then and for some fourteen years, been engaged in litigation against the Society regarding the proposed mining operation.

- [6] It is not in issue that the Society has, since its formation, litigated exclusively regarding the proposed mining operation against Dialstat and others.
- [7] The Society has litigated some 8 applications together with counter applications which have been opposed by Dialstat. The Society has opposed five applications instituted by Dialstat, and two of those five have already been decided. Dialstat was successful in those two cases and the Society was ordered to pay costs.
- [8] Dialstat is also owed costs for two other occasions: one resulting from a postponement in 2018 relating to an Environmental Authorization review, and one relating to an unsuccessful application for leave to appeal. The amount due and outstanding in respect of the four costs orders is R359 703.34. These remain unsatisfied.
- [9] Insofar as the Society is concerned, it obtained a costs order which was duly paid by Dialstat. Payment was made when it was due into the trust account of the Society's attorneys.

THE CASE FOR DIALSTAT

- [10] Dialstat has unsatisfied costs orders in its favour and is unable to execute on them, because the Society has no discernable property against which this execution may be effected. The Society does not take any contributions from its members, nor does it apparently hold any funds of its own. The Society's ability to litigate is owed solely to contributions to its costs made by private and undisclosed sources.

- [11] In essence, the argument is that the Society, is not a properly constituted or true *universitas personarum*. It is being used solely and impermissibly as a vehicle by means of which the members of the Omar family and associated persons can litigate against Dialstat. This litigation is without any of the risks ordinary litigants bear of having to pay adverse costs orders.
- [12] Dialstat does not seek to fetter any genuine opposition to its application for the mining right but also does not want to be in the position that it currently is where it bears all the risk and costs, even where it is successful. The existence or otherwise of the Society as a juristic entity is a matter for the court to decide² and until this issue is decided, Dialstat is compelled to litigate against the Society.
- [13] Besides seeking an order that the Society is declared as not possessing *universitas personarum* and able to litigate in its own name, Dialstat also seeks an order that the second to eleventh Respondents be ordered to pay the costs of this application.

THE RESPONDENTS' OPPOSITION

- [14] The respondents' opposition to this application is on two broad fronts. The first is that Dialstat has failed to establish that the Society is not a true *universitas personarum*. The second, encompasses several defences. These are:

² *Airports Company of South Africa v Big Five Duty-Free (Pty) Ltd and Others* 2019 (5) SA 1 (CC) at para [2].

- [14.1] That this Court lacks jurisdiction/ The application is brought for improper motives.
 - [14.2] *Res judicata*.
 - [14.3] Non-joinder.
 - [14.4] Disputes of fact.
- [15] Central to and perhaps determinative of this dispute, is whether the Society is a true *universitas personarum*. For this reason, I will deal with this issue first and thereafter with the further defenses raised by the respondents.

WHAT ARE THE REQUIREMENTS FOR A *UNIVERSITAS PERSONARUM*?

- [16] In *Ex Parte Johannesburg Congregation of the Apostolic Church*,³ the Court held that an association does not need to be created by statute or registered under any piece of legislation for it to qualify as a juristic person. It need not even have a written constitution but may arise from the agreement of the founding members alone.⁴ It can acquire juristic personality from the common law alone.
- [17] The test for juristic personality is determined by examining the constitution or rules of the juristic entity at hand. The key characteristics are two-fold: firstly, perpetual succession – that is, that the association continues to exist despite the individual members or governing body changing over time and secondly, the capacity to own property separately from its members, the constitution must provide for (either expressly or by necessary inference) that the association itself can hold property – not merely its members.

³ 1968 (3) SA 377 (W).

⁴ *Ex-TRTC United Workers Front and Others v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at paras [18] – [19]. See also *Commissioner for Inland Revenue v Witwatersrand Association of Racing Clubs* 1960 (3) SA 291 (A) at 304 – 305.

- [18] In *Interim Ward S19 Council v Premier, Western Cape Province, and Others*,⁵ the Court in this matter held that a voluntary association only has *locus standi* if it qualifies as a *universitas personarum* and re-iterated the two requirements set out in *Ex Parte Johannesburg Congregation of the Apostolic Church*⁶.
- [19] In *Molotlegi and Another v President of Bophuthatswana and Others*,⁷ the issue of *universitas personarum* is addressed by the Court in the context of the *locus standi* of a women's club, an unincorporated voluntary association and registered welfare organisation.
- [20] The Court applied the traditional, common-law test for a voluntary association to sue in its own name and held that the club did qualify as a *universitas personarum*. The constitution of the association as well as the subsequent conduct of the members, in relation to both membership and management were considered. While the association's constitution was, however, silent on the right to sue, the court found this power was implied from the association's activities, objectives and aims as well as the express powers granted to its office-bearers.
- [21] On the issue of authorisation to sue, a resolution by the executive committee of the association was challenged for a lack of quorum. Yet the Court held that unanimous assent of those present eliminated the need for quorum protection. The authority to institute proceedings was incidental to the necessary and proper management of the association and therefore implied, even without express provisions.
- [22] Additionally, because the association itself had a real, direct and substantial interest in the subject matter and outcome of the application this in itself constituted an independent ground for its *locus standi*. This case effectively

⁵ 1998 (3) SA 1056 (C).

⁶ *Ibid* n 2.

⁷ 1989 (3) SA 119 (BG).

allowed for a degree of flexibility in implying powers (such as to sue) from the constitution's overall scheme, aims, and practical necessities.

- [23] In *Ahmadiyya Anjuman Ishaati-Islam Lahore (South Africa) and Another v Muslim Judicial Council (Cape) and Others*⁸, a case decided on exception, it was held that:

"If the constitution of an association makes it clear that such an association has the characteristics of a universitas, then that would be decisive of the issue. It would only be in those instances where the constitution is not clear that one could have regard to the activities of an association in order to determine whether those activities are such to constitute the association as a universitas."

- [24] In the case of *Rail Commuter Action Group and Others v Transnet Ltd t/a Metrorail and Others (No 1)*.⁹ In this case the Court held *"that a voluntary association formed to protect the rights of a vulnerable constituency should not be subjected to unnecessary restrictions before being heard by the Court."*

- [25] In *Ex-TRTC United Workers Front and others v Premier, Eastern Cape Province*¹⁰ it was held that—

"What the intention of the founding members was, is a factual question and, where the constitution is equivocal, or there is no written constitution, it may be determined with reference to other considerations, such as the nature of the association, its objects and its activities."

- [26] Supplementary considerations as set out in *Ex-TRTC United Workers Front and Others* can only be assessed after the establishment of the association. The subsequent conduct of the association should reflect the nature of the association, its objects and activities as set out in the constitution.

⁸ 1983 (4) SA 855 (C).

⁹ 2003 (5) SA 518 (C).

¹⁰ 2010 (2) SA 114 (ECB) at para [19].

- [27] It is upon this basis having regard to the requirements considered holistically that the assessment of whether or not the voluntary association is a true *universitas personarum* is made.

THE CONSTITUTION OF THE SOCIETY

- [28] The Society was constituted by way of a written Constitution in April 2013. This Constitution provides *inter alia* specifically for the following:
- [28.1] That the purpose of the Society is to “*protect and maintain the environmental integrity of the Maize Belt Mpumalanga and its environs for current and future generations*” and to “*prevent mining prospecting and Associated activities in the region of the Mpumalanga Maize Belt.*”
- [28.2] That it may “*take necessary action, legal or demonstrative or such measures as its members may from time to time deem fit, with the aim of protecting the Maize Belt. The Society may take all or any legal steps including mediation, arbitration, litigation, appeals, reviews, settlement discussions or other such legal steps as the executive may deem appropriate.*”
- [28.3] That the “*Association shall be capable in its own name of suing and being sued and of purchasing or otherwise acquiring, holding or alienating property, whether moveable or immovable, and/or any interest therein and open a banking account in its own name. If and where necessary it may appoint one or more of its members to hold any property in trust for it or to act for it in any matter including legal proceedings.*”

- [28.4] That the *financial year of the Society* "shall terminate on 31 March of every year" and further that *"the annual general meeting of the Association shall take place annually at 10h00 within a period of two months after the financial year end. "*
- [28.5] In regard to the finances of the Society, its constitution provides that:
- [28.5.1] *"All the income of the association shall be deposited into an account at a bank and/or another approved financial institution."*
- [28.5.2] *"Proper account (s)(sic) shall be kept of all finances of the Association as set out in the regulations published in terms of the Fund-Raising Act 1978."*
- [28.5.3] *"A financial report shall be produced by the treasure (r)(sic) at the annual general meeting or upon request from the committee."*
- [28.5.4] *"Financial contributions will be collected from all persons and/or organisations world-wide who support the object of the Association."*
- [28.5.5] *"Funds available for investment may be registered only with financial institutions."*
- [28.5.6] *"All property shall be registered in the name of the Association."*

[28.5.7] *"On dissolution, the Assets of the Association shall be realized by a liquidator appointed by the general meeting or the Court, as the case may be, and the proceeds shall be distributed equally amongst such Associations which is (sic) registered in terms of the Fund-Raising Act, 1978 with similar objects as may be nominated by the last committee of the Association."*

[29] The Constitution of the Society also contains an indemnity provision in favour of the members which provides that:

"Every member of the committee or sub-committee, officer, member, agent or servant of the Association shall be indemnified out of its funds against all costs, charges, expenses, losses and liabilities incurred by him in the conduct of the Association's business or in the discharge of his duties and no such person shall be liable for the acts or omissions of any other such person by reason of his having joined in any receipt of money not received by him personally, or any loss on account of defect in title to any property acquired by the Association, or on account of the insufficiency of any security in or upon which any monies of the Association shall be invested, or for any loss incurred upon any ground whatever, fraudulent activities excluded."

IS THE SOCIETY A UNIVERSITAS PERSONARUM?

[30] It is readily apparent from the Society's Constitution that the common law requirements of perpetual succession and ability to own property in its own name are present in the Constitution.

[31] Regarding the requirement for perpetual succession, the provision as set out in the Constitution and quoted in paragraph [28.1] above where it refers specifically to *"current and future generations"*. This is clearly a reference to the future and if not explicit, certainly implies perpetual succession.

- [32] Regarding the second requirement of being able to own property separately from its members, paragraph [28.3] quoted above explicitly provides for this.
- [33] Both Dialstat and the respondents agree with regards to these two requirements. It is at this juncture that they part ways. It is the case for Dialstat that while the two requirements may well have been met, these two requirements are neither the beginning nor the end of the enquiry. The present case is distinguishable from all the authorities referred to above because it does not deal with a situation where there was an *ab initio* direct challenge or exception taken to the *locus standi* as has now been brought.
- [34] The present case requires consideration of not only the two requirements which must be present on day one when the Society is constituted and it enters the fray for the first time, without the benefit of the passage of time through which intention can be measured against conduct. It also requires a consideration of the other provisions in the Constitution and whether these have also been complied with.¹¹ This is the case for Dialstat.
- [35] The respondents for their part would have it that mere fulfilment of the two requirements and a disregard of the conduct of the Society and it of its members over the last thirteen years are the lens through which this matter is to be viewed.
- [36] The Constitution of the Society provides that any person who "*subscribes to the objects of the Association*" may be a member. However, this membership is not open to anyone who may do so. The Constitution provides that besides subscribing to the objects of the Association, any member must be "*approved by the committee.*"

¹¹ *De Lange v Presiding Bishop, Methodist Church of Southern Africa and Another* 2015 (1) SA 106 (SCA) at para [52].

- [37] It is not in issue that the only identified members of the Society are the second to twelfth respondents. Almost all of these are members of the Omar family or are connected to them either through employment relationships or reside on the farm.
- [38] The membership of the committee of the Society has rotated over the last thirteen years in various iterations between the family members and connected respondents. Dialstat has on several prior occasions requested the names of the members of the Society. In 2013, the Society claimed to have twenty-nine members. Of the twenty-nine members, five were not members and two were businesses. Of the remaining twenty-two, nineteen were members of the Omar family or connected to them.
- [39] In 2021, a list was again requested by Dialstat, and it was again furnished with the 2013 list. Dialstat was thereafter in May 2022, furnished with a list of forty-seven persons who were alleged to have joined the Society *"during early April 2022"*. Somewhat confusingly, the names on the 2022 list do not list any of the members who were on the 2013 list.
- [40] The membership of the Society is something that is peculiarly within the knowledge of the Society. While Dialstat requested an updated list of all the members of the Society, this was never furnished. The current respondents are all persons who attended the 2023 AGM of the Society and are the only persons that Dialstat has been able to identify as members of the Society.
- [41] It is not in issue that the Society has not held annual general meetings every year notwithstanding the specific requirement in the Constitution that this takes place. Furthermore, no bank account was ever opened for the Society in the period 2013 until the AGM held on 20 May 2023. At that AGM, it was held that *"members unanimously agreed that a bank account be opened for Society."* Additionally, notwithstanding the requirement in the Constitution for the provision of annual

financial statements and the deposit of all income into a bank account opened in the name of the Society, none have ever been produced.

- [42] Although the Society is entitled to own property in its own name and to hold assets, it has not done so. Until May 2023, it had no bank account. It is not in dispute that there are no financial statements for the Society despite its Constitution specifically providing for these annually. Tellingly and regarding the finances of the Society, it was recorded in the minutes of the 2023 AGM that:

“Contributions – Abu proposed that each member pay a yearly contribution of R100. Yasmin and Ebrahim objected to this, Resolved 11-1 majority that members will not be required to pay contributions. It is not obligatory. If members wish to continue that may do so – its voluntary.” (My underlining)

- [43] Despite some thirteen years of litigious engagement with Dialstat and various costs orders having been won but also lost,¹² the Society failed, at least until 2023, to open a bank account to receive payment of the costs order in its favour or any contribution for that matter which would be utilized for the business and obligations for the Society. The attitude of the members of the Society at its AGM, to its funding, within the context of ongoing litigation is clear and unequivocal.
- [44] When the Society was constituted, it was specifically provided as set out in paragraph [27.5] above that the provisions of the Fund-Raising Act ¹³would be of application. The Constitution refers to the regulations but there are no relevant regulations with regards to finances. However, s 12 of that Act provides that financial statements are to be audited by an accountant or auditor¹⁴ and that

¹² There have been 12 cases between the parties since the inception of the Society.

¹³ 107 of 1978.

¹⁴ Section 12(2).

reports, returns, and financial statements should lie for inspection by the public¹⁵.
In the present circumstances, there are simply no audited financial statements.

- [45] What is readily apparent from consideration of whether there was compliance with the Constitution of the Society, is that compliance with the Constitution and the breathing of life into the Society whether by initiating or defending legal proceedings occurred on as and when this was required.
- [46] The Society only has life when it is needed for purposes of litigation against Dialstat. While this in and of itself is no objectionable, what is objectionable, at least from a perspective of Dialstat, is that the consequences of litigation are a one-way street into which it must drive facing the oncoming traffic.
- [47] In *Motaung v Mukubela and Another NNO*¹⁶, the court held that—

"In considering whether there has been a material breach of the constitutional provisions of a voluntary association, a court of law should not, however, view the matter as if under a strong magnifying glass and should not carpingly ferret out and unduly enlarge every minor deviation from the strict letter of the constitutional provision being examined. Much rather should it adopt a practical, commonsense approach to the matter, constantly bearing in mind that the persons called upon to administer such a constitution are usually laymen who are unversed in the ways of the law"

- [48] It is on this basis that together with the failure by the Society or its members to comply with its Constitution, that it is argued that the ineluctable inference that is to be drawn is that the Society was established for no other purpose than to stymie and otherwise harry Dialstat in the litigation with it. The fact that the Society, although having the ability to own property in its own name has failed to

¹⁵ Section 12(3).

¹⁶ 1975 (1) SA 610 (O) at 626H – 627A.

acquire any such property or even a bank account (for ten years until 2023) is corroborative of the argument that the Society is not a true *universitas personarum*.

- [49] Mere lip service to the requirements set out in the authorities is insufficient on its own for the Society to be a *universitas personarum*. The Constitution of the Society and the way in which its affairs are and continue to be conducted must as a matter of necessity be considered in deciding whether it is or is not a *universitas personarum*. The effluxion of 12 years and the conduct of the Society during that time provides a definitive insight into the parties true intention and suggests otherwise.
- [50] While the establishment of a *universitas personarum* is a permissible way in which groups of people may come together in order to address a matter of common concern such as mining in the present case or transportation as in the case of *Rail Commuter Action Group and Others v Transnet Ltd t/a Metrorail and Others (No.1)*, it does not confer upon the persons establishing the universitas an unqualified right to litigate against whom so ever they wish without legal consequence.
- [51] For the reasons set out above, I am compelled to the conclusion that the Society was established for no other purpose than to litigate against Dialstat without fear of legal consequence. This is an abuse of the separate juristic personality conferred by a *universitas personarum* and it is for this reason that I intend to make the order that I do.

RESPONDENTS FURTHER DEFENCES

JURISDICTIONAL ISSUE / IMPROPER MOTIVE

- [52] None of the respondents, save for the twelfth respondent have their addresses situated within the jurisdiction of this court. The property on which Dialstat wishes to mine, the farm Dwarsfontein and all the respondents, save for the twelfth respondent, are situated within the jurisdiction of the Mpumalanga High Court.
- [53] The first, third, fifth and sixth Respondents respectively argue that (in addition to not submitting to the jurisdiction of this Court themselves) because no relief is sought against the twelfth Respondent, that this Respondent is irrelevant and is thus not to be considered in the determination of jurisdiction.
- [54] The second, seventh, eighth, ninth, tenth and, twelfth Respondents argue that there must be a sufficient nexus between the suit and the area of jurisdiction of the Court in question for the disposal of the matter by the Court to be both convenient and appropriate.
- [55] It is well established that jurisdiction is determined at the time at which the proceedings are instituted – the party initiating the litigation chooses a court of competent jurisdiction. The Supreme Court of Appeal in *Standard Bank of South Africa and Others v Mpongo and Others*, held that:
- “Litigation begins by the Plaintiff initiating a claim. Axiomatically, it must be the Plaintiff who chooses a court of competent jurisdiction in just the same way that a game of cricket must begin by a ball being bowled.”¹⁷*
- [56] Dialstat chose to institute proceedings in this court. When it did so, it sought an order *inter alia* against the twelfth respondent. The fact that it subsequently and

¹⁷ *Standard Bank of South Africa Ltd and Others v Mpongo and Others* 2021 (6) SA 403 (SCA) at para 25.

during the proceedings elected not to pursue an order against him does not divest the court of the jurisdiction it had when the proceedings were instituted.

- [57] There is no suggestion that the present application has been brought in the way that it has or in this Court for some ulterior purpose other than the explicitly stated orders sought.¹⁸ Since this Court had jurisdiction when the proceedings were instituted it has jurisdiction to hear and decide the matter. There is for this reason, in my view, no merit in this point.

RES JUDICATA

- [58] It was argued by the respondents that in March of 2015, in a judgment of the High Court, a finding was made about its status as a *universitas personarum*. This finding put the issue of its locus standi to rest and it was for that reason not open to Dialstat to raise it again.¹⁹ In other litigation between the parties, the Society raised this defence and in a judgment of the Mpumalanga High Court handed down on 10 March 2023²⁰, it was pertinently held that:

“[31] Furthermore, the Court in July 2013 had awarded costs against Dialstat in proceedings where Dialstat had contested the existence and locus standi of the Society. In 2015, the Court reasoned that the costs order award against Dialstat was sufficient demonstration that the Society was a *universitas personarum*. The decision of the Court in 2015 was reached without any evidence that the RMDEC or the Court in 2013 had assessed evidence of the status of the Society.”

¹⁸ *Nedbank Limited v Gqirana* NO 2019 JDR 1379 (ECG) at para 35.

¹⁹ *Ascendis Animal Health (Pty) Ltd v Merck Sharp Dohme Corporation and Others* 2020 (1) SA 327 (CC) at para [111].

²⁰ *Save the Maize Belt Society v MEC for Agriculture, Rural Development, Land and Environmental Affairs, Mpumalanga Province and Others* 2023 JDR 1756 (MM).

- [59] The High Court in Mpumalanga in relying on *Democratic Alliance v Brummer*,²¹ found on the facts before it, which are also the facts before this Court, that the issue of whether the Society was a *universitas personarum* had not finally been decided by the Court in 2015 and for that reason, the defence of *res judicata* did not find application.
- [60] On the facts before me, I find the reasoning of the High Court in Mpumalanga unimpeachable and so for the same reasons also find that the defence of *res judicata* finds no application in the present case.²²

NON-JOINDER

- [61] It is simply not open to the Society to raise non-joinder of parties who are its members, in circumstances where it has failed, even after having been requested to do so, as it was in this case, to provide a list of all the members of the Society. Nothing more need be said on this aspect.
- [62] Regarding the claim that certain State Parties were not joined, Dialstat contends, and it must be accepted that in respect of those parties, they are *functus officio*. It is well established that the party alleging joinder of a party must lay a basis for this.²³ The respondents in this case have failed to do so. The claim of non-joinder was a "shotgun"²⁴ claim in which the net was cast so wide that hopefully one of the parties referred to would require joinder.

²¹ 2021 (6) SA 144 (WCC) at paras [84]-[85].

²² *Hyprop Investments Ltd and Others v NSC Carriers and Forwarding CC and Others* 2014 (5) SA 406 (SCA) at [23].

²³ *Gordon v Department of Health* 2008 (6) SA 522 (SCA) at paras [9] – [10].

²⁴ The respondents claimed, besides the unnamed members of the Society that some 8 State entities ought to have been joined – The Minister of Minerals and Energy, The Department of Minerals and Energy (DMRE), The Regional Manager, Mpumalanga of the DMRE, The MEC for Agriculture, Rural Development, Land and Environment Affairs in Mpumalanga, The Chief Director: Integrated

DISPUTES OF FACT

- [63] There are no disputes of fact. This application was decided on the common cause series of events over the last thirteen years between Dialstat and the Society together with the Constitution of the Society and the documents disclosed by it evidencing the manner or otherwise in which it has conducted its affairs over that period.

COSTS

- [64] This application was set down for hearing on 14 October 2025. On that date, Dialstat applied for and was granted a postponement together with leave to file further heads of argument regarding the question of jurisdiction. The costs were reserved on that occasion.
- [65] The postponement was brought about by the fact that some three court days before the hearing, on 8 October 2025, six of the respondents appointed a different attorney to represent them from the one who had represented the Society and themselves all along and filed heads of argument in which the point of jurisdiction was taken. Since jurisdiction alone may have been dispositive of the application if the point had been upheld, it was appropriate that Dialstat be given an opportunity to file further heads dealing with this issue.
- [66] This occurred in circumstances where the main heads of argument of all parties had already been filed some ten months before.

- [67] The postponement was directly occasioned by the eleventh-hour appointment of a new attorney and filing of heads in which a new point was raised and for that reason, the respondents concerned should bear the costs.
- [68] The parties all filed comprehensive heads of argument which were helpful, particularly on behalf of Dialstat and it is for this reason that I intend to order that the costs include the costs of preparation of such heads of argument.
- [69] Since Dialstat has been successful in the proceedings, the costs will follow the result. Given the importance, nature and complexity of the matter, it is appropriate that the costs of counsel be taxed on scale C.

ORDER

- [70] In the circumstances, it is ordered:
- [70.1] It is declared that the first respondent, the "Save the Maize Belt Society" is not a *universitas personarum*.
- [70.2] It is declared the first respondent, the "Save the Maize Belt Society" may not litigate in its own name.
- [70.3] The second, seventh, eighth, ninth and tenth respondents are jointly and severally, the one paying the others to be absolved, ordered to pay the costs of the applicant for the postponement on 14 October 2025, on the scale as between party and party together with the costs of counsel on scale C.

- [70.4] The second to eleventh respondents, jointly and severally, the one paying the others to be absolved, are ordered to pay the applicant's costs of the application on the scale as between party and party which costs include the costs of counsel on scale C.


 A MILLAR
 JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

HEARD ON: 14 OCTOBER & 5 NOVEMBER 2025
 JUDGMENT DELIVERED ON: 30 JANUARY 2026
 COUNSEL FOR THE APPLICANT: ADV. M WESLEY SC
 INSTRUCTED BY: NORTON ROSE FULBRIGHT SA INC.
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