

REPUBLIC OF SOUTH AFRICA



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

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

26 January 2026
DATE


SIGNATURE

CASE NO: 2024/098840

In the matter between:

ACCELERATED CHRISTIAN EDUCATION OF SOUTH AFRICA

1st Applicant

VICKI FOURIE

2nd Applicant

and

UNIVERSITY OF PRETORIA

Respondent

IN RE

ACCELERATED CHRISTIAN EDUCATION OF SOUTH AFRICA

1st Applicant

VICKI FOURIE

2nd Applicant

and

UNIVERSITY OF PRETORIA	1 st Respondent
COMMITTEE OF PRINCIPALS OF THE JOINT	
MATRICULATION BOARD OF SOUTH AFRICA	2 nd Respondent
JOINT MATRICULATION BOARD OF SOUTH AFRICA	3 rd Respondent
UNIVERSITIES SOUTH AFRICA	4 th Respondent
MINISTER OF HIGHER EDUCATION, SCIENCE AND	
INNOVATION	5 th Respondent
SOUTH AFRICAN QUALIFICATIONS AUTHORITY	6 th Respondent
UMALUSI COUNCIL FOR QUALITY ASSURANCE IN	
GENERAL; AND FURTHER EDUCATION TRAINING	7 th Respondent

JUDGMENT: INTERLOCUTORY APPLICATION

(The matter was heard in open court and uploaded onto the electronic case file of the matter of CaseLines. The date of the order is deemed to be the date of the uploading of the judgment onto the electronic file of the matter on CaseLines.)

BEFORE: HOLLAND-MUTER J:

[1] The Applicants lodged an interlocutory application against the first respondent (University of Pretoria referred to as "UP") in terms of Rule 30(1) of the Uniform Rules of Court to set aside the Respondent's Notice in terms of Rule 6(5)(d)(iii) as an irregular step and/or improper procedure in terms of Rule 30(1). The Applicants aver that the Respondents' Notice is premature because the

Applicants have not been privy to UP's record in terms of Rule 53(1)(b). The interlocutory relief is sought against UP alone.

[2] The First Applicant, Accelerated Christian Education of South Africa ("ACE"), is a private education company which facilitates its education programmes via its member Schools of Tomorrow ("SoT") to provide private high-quality independent secondary education to its learners. The aim of the education is to empower its learners to pursue, amongst other careers, a tertiary education within the Republic. This education is provided by South African Universities and in the past ACE's learners who obtained a SoT College Entrance Certificate after completing the education provided for by SoT, where granted admission to a South African University.

[3] The Second Applicant obtained such qualification during 2007 but was refused admission by UP during June 2023 when she applied for admission at UP for 2024 to further her desire for tertiary education. No relief is sought against her and the present dispute is between ACE and UP.

[4] The First Applicant, after unsuccessful out-of-court interaction by its legal representatives with UP, issued application to review the decision by UP taken during 2023 to refuse the Second Applicant admission to tertiary education.

[5] The review application was issued and delivered to UP on 2 September 2024. UP filed its Notice of Intention to Oppose on 29 November 2024. The review application calls for the delivery of the record of the impugnable decision in terms of Rule 53(1)(b) before 8 January 2025.

[6] UP did not deliver the requested record but delivered its Rule 6(5)(d)(iii) Notice raising a point of law that the court lacks jurisdiction to adjudicate the review due to it being brought out of time. The thrust of UP's Notice is that the Applicants failed in the founding papers to make the necessary allegations to

prove that this Court has the requisite jurisdiction to entertain the review application. UP admits that it must deliver such record should the court have the necessary jurisdiction to hear the review.

[7] ACE delivered its Rule 30(2)(b) claiming that the Rule 6(5)(d)(iii) Notice by UP amounts to an irregular step or improper procedure in terms of Rule 30(1). ACE further moves for relief that the court to prohibit UP from taking any further procedural steps in the main review application before first taking the steps envisaged in Rule 53(1)(b) by delivering to the Registrar of this Court the record of all documents and electronic records relating to the decision sought to be set aside, together with reasons by UP as required by law, within 15 days from this order being granted.

[8] The crisp issue for this court to decide in the interlocutory application in terms of Rule 30 is whether the Rule 6(5)(d)(iii) Notice by UP is irregular or improper, and if so, that UP comply with Rule 53 to deliver the necessary required record of its decision. If not, UP need not deliver the record.

[9] UP contends that the court has to determine the issue of jurisdiction before tending to the merits of the review application. It contends that because the review application was brought way out of the 180 days as set out in **section 7 of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA)**, and unless the 180 day time period has been extended by agreement between the parties, or if no agreement was reached, by the court on application (**section 9 of PAJA**), it does not have to deliver the record. The court may grant such application in the interests of justice on application after hearing an application for extension of the 180-day period.

[10] Rule 53 provides that where such application is delivered, the party whose decision is the subject of the application, will, within 15 days from receiving the application, despatch the record of the impugned decision to the registrar of the court. ACE is of the view that the mere delivery of the Rule 53 Notice entitles it

to receive the record. ACE further argues that nowhere in **sections 7 or 9 of PAJA** the word “*jurisdiction*” appears and that this court has the inherent competence to hear the review even where no application for condonation is part of the application. This according to ACE, would be contrary the entire purpose of these sections in PAJA and to any other interpretation thereof would result in an absurdity.

[11] UP contends that the principle that in every review proceeding contemplated in Rule 53 that the interpretation by ACE that an applicant, as of right, is entitled to the record of the decision to be reviewed, is not an unqualified application. The parties therefore differ on the aspect of whether an applicant has an unqualified right to the record or that such right can be restricted when non-compliance of the provisions of the rule may exclude a court’s jurisdiction to hear the matter. Put differently, does the non-compliance with the 180 days period in **section 7** without any formal application in terms of section 9 of PAJA disqualify the hearing of the application for lack of jurisdiction.

[12] It is a given that ACE did not formally apply for extension of the 180 days period (no condonation sought) but that ACE avers that such relief sought is only at stake when the main review application is heard. Its contention is therefore that the Rule 6(5)(d)(iii) Notice is premature and that issue is for the court hearing the main review application to resolve. UP however contends that the absence of a condonation application to extend the 180 days is fatal for ACE’s application.

[13] The Constitutional Court (ConCourt) decided in **Commissioner, South Africa Revenue Service and Another v Richards Bay Cola Terminal (Pty) Ltd CCT104/23 [2025] ZACC 3, par 150-155** that the question whether the Competition Appeal Court could decide on the merits of an issue where non-compliance with the prescribed regulations occurred. In this matter the issue was whether the Competition Appeal Court could order the production of the Rule 53 record when its jurisdiction to adjudicate the review was in dispute. The ConCourt held

that the Competition Appeal Court could not do so, because to order production of the record without determining its jurisdiction would lead to an order that would become a nullity if the Competition Appeal Court found that it had no jurisdiction. The ConCourt then held that it is trite that once a party successfully establishes the jurisdiction of a court on its founding papers, a party is entitled to a Rule 53 record.

[14] In par [144-(a)] in the **Richards Bay case (supra)** it was held that the court first need to be persuaded to exercise its review jurisdiction and if it decides to do so, then the record must be made available. In the present matter before this court it is the dispute whether this court has the jurisdiction to hear the matter.

[15] The review application is way out of time and therefore section 9 of **PAJA** requires either agreed extension of the 180 day period between the parties or a court order to extend the 180 days. There is no agreement nor any application at present before this court to grant such extension. See par [88] in **Richards Bay (supra)** where it was clearly held that a court may defer to exercise its jurisdiction until certain conditions are met, such as that the review is brought within a particular time. Should the parties fail to comply with these conditions, they will ordinarily not be entitled to pursue their review. **PAJA** regulates a party's right to judicial review. The right of review itself may be subject to conditions before it can be considered by a court. This is the crux issue before the court to be decided.

[16] A similar approach was held in **Buffalo City Metropolitan Municipality v ASLA Construction (Pty) Ltd 2019 (4) SA 331 (CC) par [51]** resulting in that in a case of a **PAJA** review where an explicit condition is not met that a court will not have the jurisdiction to consider the review if it was launched outside the 180 days period and not accompanied by an explicit condonation application.

[17] In **Competition Commission of South Africa v Standard Bank of South Africa 2020 CCT 159/18 [2020] 2** at [118] it was held that the production of the

record in terms of Rule 53 could not have been ordered before deciding whether the Competition Appeal Court has decided on the issue of jurisdiction to hear the review. This must be decided before any other issue is decided. The result is that In the matter before the court the issue of jurisdiction must first be decided and if no jurisdiction exists, the record need not be provided.

[18] The matter in **Murray and Others NNO v Ntombela 2024(4) SA 95 SCA** can be distinguished from the present matter in view thereof that in the **Murray case** the issues raised was directly a merit issue and not a prerequisite regarding non-compliance with requirements to determine jurisdiction. The Rule 30(2) Notice is not directed to compel UP to deliver the record but to set aside the Rule 6(5)(d)(iii) Notice as irregular. Should the court find that the Rule 6(5)(d)(iii) Notice is not irregular, the court will dismiss the Rule 30(2) application. This application does not raise the issue of UP's duty to provide the record.

[19] After considering all arguments and pleadings the court is satisfied that the Rule 6(5)(d)(iii) Notice is not irregular and that the Rule 30(2) application be dismissed.

COSTS:

[20] There is no reason to grant any punitive cost order against the ACE. The application was not frivolous or an abuse of process. Costs normally follow success and in this instance be on a party-and-party scale on Scale C within the discretion of the Taxing Master.

ORDER:

The Application is dismissed with costs, including the cost of counsel taxable on Scale C. (Draft Order marked "XYZ" attached).



HOLAND-MUTER J
26/1/2026
Judge of the Pretoria High Court

26 January 2026 (Uploaded onto CaseLines)

Day in Court: 6 November 2025

Judgement delivered onto CaseLines: 26 January 2026

Appearances:

Obo Applicant: Adv A Thompson

Adv P Eilers

Obo Respondent: Adv JP Vorster SC

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2024-098840

HEARD IN COURT _____ ON 6 NOVEMBER 2025:

BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE HOLLAND-MÜTER:

In the interlocutory application between:

ACCELERATED CHRISTIAN EDUCATION OF
SOUTH AFRICA

First Applicant

FOURIE, VICKI

Second Applicant

And

UNIVERSITY OF PRETORIA

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IN RE:

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FOURIE, VICKI

Second Applicant

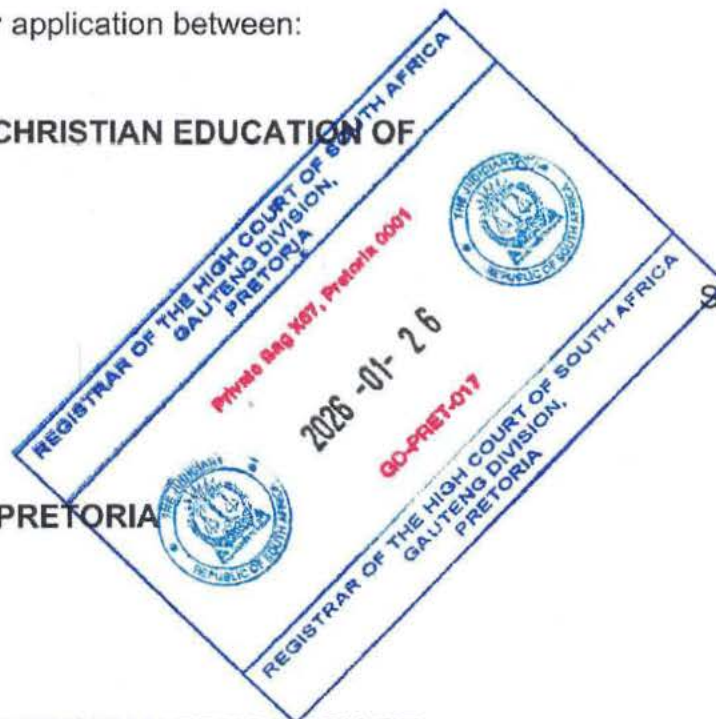
and

UNIVERSITY OF PRETORIA

First Respondent

COMMITTEE OF PRINCIPALS OF THE JOINT
MATRICULATION BOARD OF SOUTH AFRICA

Second Respondent



ML
26/01/26

JOINT MATRICULATION BOARD OF SOUTH AFRICA

Third Respondent

UNIVERSITIES SOUTH AFRICA

Fourth Respondent

MINISTER OF HIGHER EDUCATION, SCIENCE AND INNOVATION

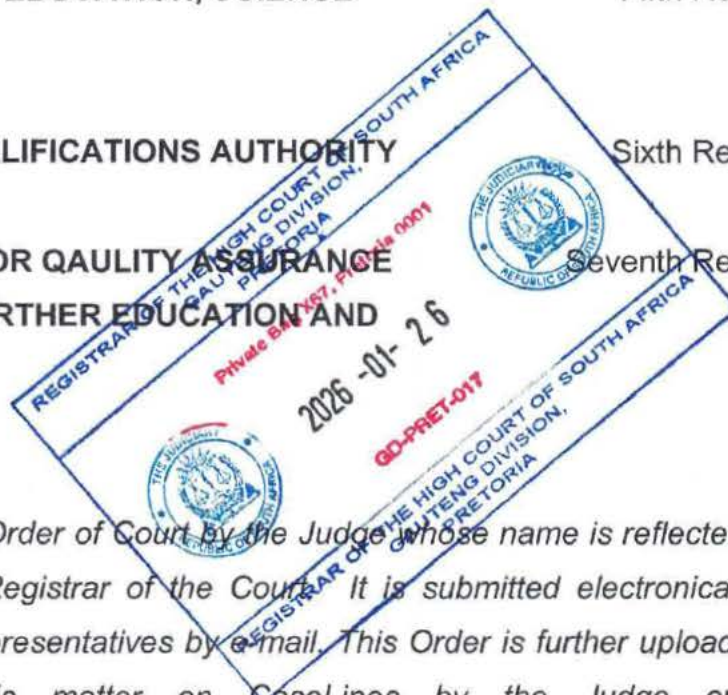
Fifth Respondent

SOUTH AFRICAN QUALIFICATIONS AUTHORITY

Sixth Respondent

UMALUSI COUNCIL FOR QUALITY ASSURANCE IN GENERAL, AND FURTHER EDUCATION AND TRAINING

Seventh Respondent



Disclaimer:

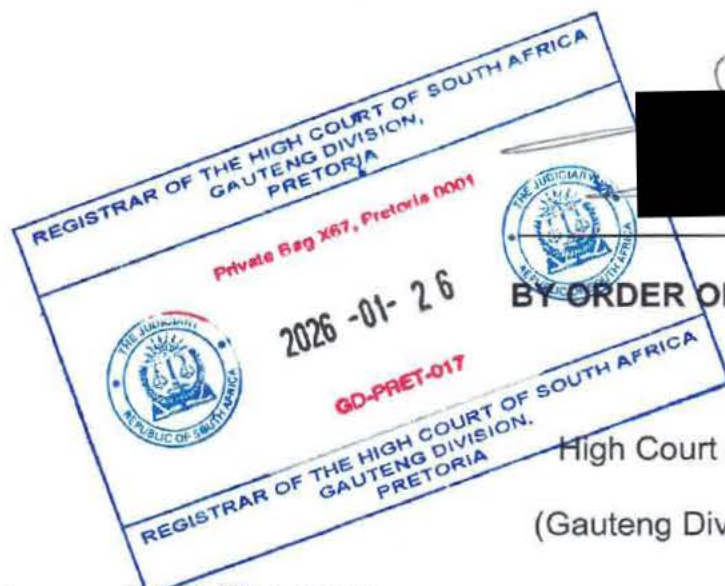
This order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court. It is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her Secretary/Registrar. The date of this Order is deemed to be 6 November 2025.

DRAFT ORDER

Having read the Notice of Motion, Notices and documents filed of record, heard counsel and considered the matter,

The application is dismissed with costs, including the costs of counsel taxable on Scale C.

*Mu
26/01/26*



BY ORDER OF THE COURT

REGISTRAR

High Court of South Africa

(Gauteng Division, Pretoria)

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