

REPUBLIC OF SOUTH AFRICA



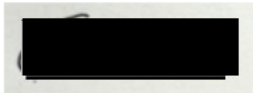
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-014708

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

DATE: 20 January 2026

SIGNATURE OF JUDGE:



In the matter between:

WYNAND NAUDE

NAUDE (WYNAND) INCORPORATED ATTORNEYS

First Applicant

Second Applicant

and

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Respondent

JUDGMENT

Woodrow, AJ:

Introduction:

[1] On or about 15 February 2023, the applicants launched a review application,¹ seeking the following relief (which I quote verbatim from the applicants' notice of motion):

- “1. *That the resolution dated 23 August 2022 of the investigating committee appointed by the respondent to refer the first applicant's misconduct to the applicant in terms of section 37(3)(a) read with section 43 of the Legal Practice Act, 28 of 2014 (“the Act”) with a view to institute urgent legal proceedings against the first respondent, be reviewed and set aside.*
2. *That the resolution of the respondent dated 10 October 2022 to instruct the attorneys of the Gauteng Provincial Office of the Legal Practice Council be instructed to apply to court for the urgent suspension of the applicant in his practice as a legal practitioner, be reviewed and set aside.*
3. *Remitting the complaint dated 24 June 2020 lodged against the applicant by Opes Properties (Pty) Limited, which complaint is the subject matter of the application issued out of this honourable court under case number 2022/48948, to the respondent for a reconsideration thereof, inclusive but not limited to instituting disciplinary proceedings against the applicant in accordance with the provisions of section 39 of the Act.*

¹ Review application, p 1-2 (the “**review application**”).

4. *That the respondent upon the conclusion and/or finalisation of the disciplinary proceedings instituted in accordance with prayer 2 above, within 1 (one) month thereafter, submit its written report and recommendations to this honourable court in case number 2022/48948, and to the applicant, in respect of the suspension and/or striking off from the roll of attorneys of the applicant, duly substantiated by the reasons therefor.*
5. *That the costs of this application be reserved for determination by this honourable court in case number 2022/48948 on the future date when the report of the applicant is considered by the court.”*

[2] The respondent delivered the record of proceedings,² referred to on CaseLines as:

- a. *“Record of Proceedings before Investigating Committee on (23 August 2022)”*;³
- b. *“Record of Proceedings before Investigating Committee on (10 October 2022)”*.⁴

[3] The applicants did not deliver any supplementary founding affidavit in the review application.

² Apparently on 9 March 2023 – see, p 5-4, par 8.

³ Record of proceedings of 23 August 2022, p 3-1 to 3-171.

⁴ Record of proceedings of 10 October 2022, p 3-174 to 3-351.

- [4] The respondent delivered its answering affidavit to the review application on 25 April 2023.⁵
- [5] The applicants did not deliver a replying affidavit.
- [6] The review application had been set down to be heard in the week of 14 April 2025.⁶ On or about 11 December 2024, the applicants brought a substantive application for the postponement of the review application.⁷ The respondent opposed the postponement application and delivered an answering affidavit.⁸ The review application was postponed to 9 June 2025 (as there were no Judges sitting in the opposed motion court of the week of 14 April 2025).⁹
- [7] Before me, the applicants sought the postponement of their review application. As appears from the judgment below, the postponement was refused and thereafter the merits were argued.

⁵ Answering affidavit, p 6-1 to 6-622. Proof of service and filing at p 6-623 to 6-625.

⁶ The respondent set the application down for hearing in both April 2025 and June 2025 – notice of set down, p 0001 and 000-1 (the second thereof).

⁷ Application for postponement, p 11-1 (affidavit later ‘re-commissioned’ at p 11-61).

⁸ Answering affidavit to postponement application, p 11-24. The applicants replied thereto – replying affidavit, p 11-84.

⁹ This appears from a widely shared note on CaseLines dated 27 February 2025.

Brief background

- [8] The first applicant is an attorney, conveyancer and notary, duly admitted and previously practising as Wynand Naude Incorporated (the second applicant).
- [9] On 24 June 2020, Opes Properties (Pty) Ltd ("**Opes Properties**") lodged a complaint with the respondent against the first applicant.¹⁰
- [10] On 12 August 2020, the first applicant provided a written response to the complaint of Opes Properties.¹¹
- [11] On 13 November 2020, Papier J handed down judgment in the Eastern Cape Circuit Local Division of the High Court, in the matter in which Opes Properties was applicant and Wynand Naude Incorporated was the third respondent. (the "**Papier J Judgment**")¹² The Papier J Judgment contained certain adverse remarks and findings regarding Wynand Naude Incorporated, the second applicant in the present review application.

¹⁰ Complaint of misconduct, p 3-189 to 3-191.

¹¹ Written response to complaint, p 3-195 to 3-202.

¹² Papier J Judgment, p 3-57 to 3-73.

- [12] Leave to appeal against the Papier J Judgment was dismissed by the High Court in March 2021 and thereafter by the Supreme Court of Appeal (“**SCA**”) in February 2022.¹³
- [13] On 13 May 2022, an inspection report that had been prepared by an Inspector was submitted to the investigating committee of the respondent.¹⁴
- [14] On 23 August 2022, the investigating committee of the respondent resolved to recommend to the Council that urgent legal proceedings be instituted against the first applicant.¹⁵ (the “**23 August 2022 resolution**”) Apparent from the recommendation is the fact that the investigating committee paid particular attention to the content of paragraph 74-78 of the Papier J Judgment,¹⁶ and

¹³ Orders dismissing leave to appeal, p 3-228 and p 3-235.

¹⁴ Nyali inspection report, p 3-10 *et seq.*

¹⁵ Recommendation of the investigating committee dated 23 August 2022, p 3-183 at p 03-186.

¹⁶ Paragraphs [74] – [78] of the Papier J Judgment, at p 3-69 to 3-70, read as follows (the third respondent in those proceedings being the second applicant in the review application, Wynand Naude Incorporated):

[74] *It is apparent from the evidence that the third respondent, in April 2017, represented to the applicant that the funds, in excess of R50m, was part of the financial resources upon which the applicant could rely.*

[75] *From the respondents’ answering papers it is apparent, in my view, that the representation made by the third respondent, with regard to the funds held in trust, was intended to muddy the water, and misrepresent the true position to the applicant, which it did.*

[76] *The third respondent, having represented to the applicant that the funds in excess of R50m were being held by the third respondent in its trust account, transferred the funds to*

accordingly recommended, “4.6 ... a referral to Council to consider suspension or striking.”

[15] The 23 August 2022 resolution reads as follows:

*“After having considered the complaint by Opes Properties (Pty) Ltd and the Inspection report and the findings made, the Committee on the basis of the available prima facie evidence **RESOLVED** to refer the practitioner’s misconduct to the Council in terms of section 37(3)(a) read with section 43 of the Legal Practice Act, 28 of 2014 with the view to institute urgent legal proceedings against Attorney Naude.”*

[16] The 23 August 2022 resolution forms the subject matter of the applicants’ review in prayer 1 of their notice of motion.

[17] On 10 October 2022, the Council resolved to launch urgent legal proceedings to suspend the first applicant as a legal practitioner.¹⁷ (the “**10 October 2022 resolution**”) The Council’s 10 October 2022 resolution reads as follows:

Worldwide Capital on the 27th of December 2017, without notifying the applicant of its intention to do so.

[77] *The applicant, in my view, had good reason to doubt the truthfulness of the allegations made by the second and third respondents in the rescission of judgment application, as they were never informed of the transfer of the funds from the third respondent’s bank accounts prior thereto.*

[78] *On the respondents’ own version, the conduct of the third respondent amounted to providing the applicant with false comfort, by introducing possession of in excess of R50m of unencumbered funds, when the funds were irrelevant to the transaction. That in itself would, in my view, be tantamount to fraudulent misrepresentation.*

¹⁷ Resolution of the respondent dated 10 October 2022, p 3-351.

“

...

Application for the suspension in practice as a legal practitioner:

WAYNAND (sic) NAUDE

IT WAS RESOLVED BY THE COUNCIL THAT:

- 1. the attorneys of the Gauteng Provincial Office of the Legal Practice Council, be instructed to apply to Court for the urgent suspension of attorney Mr Waynand (sic) Naude in his practice as a legal practitioner AND THAT;*
- 2. the Chairperson and/or any other member of the Management Committee be and they are hereby authorised to sign all documents necessary to give effect to this resolution on behalf of the Council.”*

[18] The resolution of 10 October 2022 forms the subject matter of the applicants’ review in prayer 2 of their notice of motion.

[19] It is apparent that both the 23 August 2022 resolution and the 10 October 2022 resolution pertain to the bringing of urgent legal proceedings for the suspension of the first applicant.

[20] On or about 18 November 2022, the respondent launched an urgent application in the High Court under case number 48948/2022 to (a) urgently suspend the first applicant from practising as a legal practitioner and (b) strike the first applicant from the roll.¹⁸ (the “**suspension and striking application**”)

¹⁸ Applicants’ founding affidavit, p 1-11, par 8.

- [21] The applicants launched applications seeking to postpone the suspension and striking application in December 2022 and January 2023.¹⁹
- [22] Thereafter, on 10 February 2023, the applicants delivered their answering affidavit to the suspension and striking application.²⁰ At the conclusion of the aforesaid answering affidavit, the applicants request the court to dismiss the suspension and striking application, alternatively to grant relief in terms of a counter application which the applicants' deponent states as "... *being, inter alia, to postpone this matter [the suspension and striking application] sine die pending the outcome of the review application I am in the process of issuing ...*".²¹
- [23] On 16 February 2023, the applicants launched the present review application in order to seek the review of the 23 August 2022 resolution and the 10 October 2022 resolution.²²
- [24] On 22 February 2023, the court having heard the parties in the suspension and striking application granted an order *inter alia* suspending the first

¹⁹ Respondent's answering affidavit, p 6-17, par 3.9.2 – 3.9.3.

²⁰ Answering affidavit in suspension and striking application, p 1-28 to 1-101.

²¹ Answering affidavit in suspension and striking application, p 1-100, par 113.

²² Review application, p 1-2.

applicant from practising as a legal practitioner pending the finalisation of the respondent's suspension and striking application.²³ (the “**suspension order**”)

[25] Leave to appeal against the suspension order was refused by the High Court but later granted on application to the SCA. Leave was granted by the SCA to appeal to the full court.

The postponement application

[26] At the hearing before me, the applicants sought the postponement of the review application. The postponement was opposed by the respondent. Having heard argument, the postponement application was refused with costs and *ex tempore* reasons were provided. In essence, it was found that the applicants had not shown good cause for the postponement for the reasons that were provided *ex tempore*. I indicated at the time that fuller reasons would be provided in the written judgment in the review proceedings. Notwithstanding the aforesaid indication, the applicants filed a request for reasons. I accordingly set out the further reasons herein briefly.

[27] The essence of the postponement application is the argument that the appeal to the full court in respect of the suspension order ought to be finalised before the review application is heard, and for such reason the review application

²³ Court order of Francis-Subbiah J, p 6-171 to 6-180.

ought to be postponed.²⁴ The applicants argued that the appeal in the suspension proceedings may render the review application moot and that certain underlying issues will be dealt with in the full court appeal.

[28] The arguments of the applicants lose sight of the nature of the two proceedings:²⁵

- a. The suspension and striking application proceedings, and accordingly the appeal against the suspension order, is based on the underlying merits of the suspension order. The court in those proceedings must evaluate *inter alia* whether the relevant legal practitioner is fit and proper. Those proceedings are *sui generis*.
- b. The review application is aimed at and based on the method by which the result was reached, in this review application the method by which the suspension and striking application was brought.

[29] Stated differently, and as submitted on behalf of the respondent “... *in the review proceedings the [applicants seek] to declare unlawful and set aside the*

²⁴ This approach and argument appears to me to conflict with at least (a) the relief sought at the conclusion of the answering affidavit in the suspension and striking proceedings which seeks the postponement of those proceedings pending the determination of the review application, and (b) the manner in which the notice of motion in the review application is crafted.

²⁵ Cf. **Snyders and Others v De Jager** 2016 (5) SA 218 (SCA) at par [13]; **Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd** 2003 (6) SA 407 (SCA) par [52].

Council's resolutions taken by the Council and a Committee of the Council. This has nothing to do with a disciplinary enquiry by the Court into whether a practitioner is fit and proper person to remain on the roll of attorneys."

[30] The applicants' argument misses this fundamental difference.

[31] The nature of the relief differs in the two proceedings. The full court is not asked to grant review relief (but deals with the merits of the suspension order), and there is not an overlap in the proceedings in respect of the relief sought. The fact that the full court appeal judgment might render the review application moot does not constitute sufficient cause to postpone the review application. At the time of the argument for a postponement, this was only a speculative possibility.

[32] The further reasons for the refusal of the postponement included *inter alia*:

- a. At the time of the hearing of the application, and with reference to the papers filed on record and those parties' heads of argument that were filed on record, my *prima facie* view was that the applicants' prospects of success in the review application were very slim. In my view, a postponement would have been an exercise in futility.
- b. The applicants were *dominus litis*, having launched the review application on 16 February 2023, but not having progressed the matter at all. Finality in litigation is important.

- c. The explanation for the need for the postponement was not satisfactory, and the application for postponement was opposed on good grounds by the respondent.
- d. A further postponement of the review application was not in the interests of justice. A postponement would probably simply have led to another court being belaboured with the matter.

[33] For the aforesaid reasons the postponement was refused with costs on a party and party scale.

Mootness:

[34] On 12 August 2025, the attorney for the applicants furnished to the registrar the judgment of the full court in the appeal in respect of the suspension order and brought the appeal judgment to my attention via the registrar (the “**Appeal judgment**”).²⁶

[35] The following order was granted in the Appeal judgment by the full court:

[71.1] The appeal is upheld with costs on the scale as between attorney and own client.

[71.2] The order of the Court a quo is set aside and replaced with the following:

²⁶ The judgment is available on ‘Saflii’ and reported as **Naude and Another v South African Legal Practice Council** (A262/2023) [2025] ZAGPPHC 774 (12 August 2025).

“The application is dismissed with costs on the scale as between attorney and own client.””

[36] Having considered the Appeal judgment, I requested that a directive and request be directed to the parties’ legal representatives requesting short written submissions in respect of:

- a. Whether the full court appeal decision had rendered the review application moot.
- b. If so, what the parties submit the appropriate order ought to be *in casu*.
- c. Any further aspects that are relevant with reference to the full court decision.

[37] The legal representatives for the parties submitted written submissions pursuant to my request. I thank them for the additional submissions.

[38] The applicants and the respondent are *ad idem* that the review application is moot. The parties however differ as to (a) when the review application became moot, and (b) what rendered the review application moot.

[39] The essential submissions of the respondent are that:

- a. The applicants' review application has always been moot, since its inception.
- b. Because the review application has always been moot, the Appeal judgment of 12 August 2025 did not 'render' the review application moot.
- c. There is binding authority (dealt with extensively in the respondent's main heads of argument) supporting the submission that the review application has always been moot. The respondent relies on *inter alia*: **Du Plessis v Prokureursorde, Transvaal** 2002 (4) SA 344 (T) at 349 F – G; **Bothma v Law Society of the Northern Provinces** 2017 JDR 1021 (GP) at par [19], [27] and [29]; and **Law Society of the Northern Provinces v Mokone** (6370/2018) [2022] ZALMPPHC 61 (25 November 2022) at par [9] and [33].
- d. The application should be dismissed with costs on an attorney and client scale as the applicants have brought an application doomed to failure from the outset.

[40] The essential submissions of the applicants are that:

- a. When the matter was argued the applicants submitted that the facts and circumstances underlying the issues, and/or the issues, are the same, if not identical, in both applications, and that when the full court

issues its judgment in respect of the suspension order, the issues will have become moot and not justiciable.²⁷

- b. In support of the submission that there is no “*existing or live controversy*” which still exists, counsel refers to the following sentences in the Appeal judgment: paragraph [50] (last sentence) which reads, “*The failure on the part of the LPC to afford Mr. Naude a right to be heard does not appear to have moved the members of the Council in their consideration of the matter and this is a matter of concern.*” and paragraph [66], last sentence, which reads, “*Here there was to my mind a manifest failure to properly consider what was before it and an unnecessary and unjustified abdication of its own responsibility to the urgent court.*”
- c. the case law referred to by the court in its directive²⁸ supports the submission that the full court decision rendered this matter moot.

²⁷ Referring to **National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others** 2000 (2) SA (1) CC at par [21]. It no longer “*presents an existing or live controversy*”.

²⁸ The authorities that are referred to in the Directive are **Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs** (104/2022) [2023] ZASCA 35 (31 March 2023) par [12]; and **Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others** (531/2015) [2016] ZASCA 197; [2017] 1 All SA 354 (SCA); 2017 (3) BCLR 364 (SCA); 2017 (3) SA 152 (SCA) (6 December 2016) par [25 – [26].

- d. The case law relied on by the respondent to argue that the review application was moot from its inception is distinguishable from the present matter for the reasons addressed in the submissions.²⁹
- e. The full court Appeal judgment rendered the review application moot.
- f. The applicants refer to **Mavudzi and another v Majola and others** 2022 (6) SA 420 (GJ) at par [37].
- g. The applicants refer to the chronology of proceedings in arguing that the respondent improperly advanced the review application by filing an answering affidavit and taking further steps, and submit that the appropriate order would be to (a) dismiss the review application; (b) order the applicants to pay the unopposed costs of the review

²⁹ The applicants rely on *inter alia* the case of **Groundup News NPC and Others v South African Legal Practice Council and Others** (20150/2021) [2023] ZAGPJHC 559; 2023 (4) SA 617 (GJ) (24 May 2023) ("**Groundup**") and contend that the statutory disciplinary process is mandatory. What occurred in **Groundup** was that a complaint against a legal practitioner was dismissed, the file was closed and no further investigation was to occur. In that context, the court found that the decision of the LPC is final, has legal effect and is reviewable: "*The dismissal of the complaint and the closing of the file are final, as is the investigation or failure to investigate by the LPC. There is no intimation that the process is ongoing. I am satisfied that the decision of the LPC is final, has external legal effect, and is reviewable.*" (at par 30) That is not the case *in casu* where the disciplinary matter in the form of the suspension and striking application was placed before the court, is ongoing and where the resolutions to recommend the bringing of and to bring the suspension and striking application are not final and have no external legal effect.

application; (c) order the respondent to pay the costs for its opposition of the review application on a punitive scale as between attorney and own client.

- h. Finally, the applicants submit that because the respondent has brought an application for leave to appeal to the SCA against the full court Appeal judgment, the judgment in the review application ought to be reserved until after “*the appeal processes have been finally concluded.*”

[41] In my view, the review of (a) the resolution recommending to the Council that urgent legal proceedings be instituted against the first applicant, (the 23 August 2022 resolution), and (b) the resolution of the Council to launch urgent legal proceedings to suspend the first applicant as a legal practitioner, (the 10 October 2022 resolution), will have no practical effect on the parties. The High Court heard and adjudicated the urgent legal proceedings and granted an order (the suspension order) almost three years ago on 22 February 2023. That order has been taken on appeal. The full court has granted the full court Appeal decision upholding the appeal against the suspension order. The review of the resolutions to commence the urgent proceedings can have no practical effect whatsoever. In my view, the parties are correct that the present review application is moot.

[42] In **Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs**³⁰ the SCA held as follows: (footnotes excluded)

“[12] The general principle is that a matter is moot when a court’s judgment will have no practical effect on the parties. This usually occurs where there is no longer an existing or live controversy between the parties. A court should refrain from making rulings on such matters, as the court’s decision will merely amount to an advisory opinion on the identified legal questions, which are abstract, academic or hypothetical and have no direct effect; one of the reasons for that rule being that a court’s purpose is to adjudicate existing legal disputes and its scarce resources should not be wasted away on abstract questions of law. In President of the Republic of South Africa v Democratic Alliance, the Constitutional Court cautioned that ‘courts should be loath to fulfil an advisory role, particularly for the benefit of those who have dependable advice abundantly available to them and in circumstances where no actual purpose would be served by that decision, now’.

...

[15] As previously stated, the main relief sought by the appellants in the high court was for the setting aside of the impugned regulations. Having regard to the fact that the impugned regulations were long since repealed and no longer in force before the matter came before the high court, there was nothing to set aside. There was no live issue for that court to adjudicate upon.

...

[18] It must be borne in mind that s 16(2)(a)(i) of the Superior Courts Act confers a discretion on a court of appeal to hear an appeal notwithstanding mootness. Therefore, when a court of first instance has determined that the subject matter of litigation has ceased to exist before judgment, it has no jurisdiction to entertain the merits of the matter. Only an appeal court has a discretion to hear an appeal notwithstanding mootness. In the matter

³⁰ (104/2022) [2023] ZASCA 35 (31 March 2023).

of Minister of Justice and Correctional Services v Estate Late Stransham-Ford, this Court said:

‘The appeal court’s jurisdiction was exercised because “a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required”. The high court is not vested with similar powers. Its function is to determine cases that present live issues for determination.

. . .

If a cause of action ceases to exist before judgment in the court of first instance, there is no longer a claim before the court for its adjudication.’

[19] *In a recent judgment, Minister of Tourism v Afriforum NPC, dated 8 February 2023, and also dealing with the effects of the COVID-19 pandemic, the Constitutional Court stated as follows:*

‘A case is moot when there is no longer a live dispute or controversy between the parties which would be practically affected in one way or another by a court’s decision or which would be resolved by a court’s decision. A case is also moot when a court’s decision would be of academic interest only.’”

[43] There is no live dispute or controversy between the parties in respect of the review application which would be practically affected in one way or another or be resolved by this court’s decision. The court’s decision in the review application would be of academic interest only.

[44] In **Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others**,³¹ the SCA held as follows: (footnotes omitted, my emphasis)

“[25] *The situation before Fabricius J was not comparable to the position where this court or the Constitutional Court decides to hear a case notwithstanding that it has become moot. When a court of appeal addresses issues that were properly determined by a first instance court, and determines them afresh because they raise issues of public importance, it is always mindful that otherwise under our system of precedent the judgment at first instance will affect the conduct of officials and influence other courts when confronting similar issues. A feature of all the cases referred to in the footnotes to para 22 above is that the appeal court either overruled the judgment in the court below or substantially modified it. The appeal court’s jurisdiction was exercised because ‘a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required’. **The High Court is not vested with similar powers. Its function is to determine cases that present live issues for determination.***”

[45] The High Court has no jurisdiction to hear cases that raise no live issues and are moot.

[46] I agree with the submissions on the part of the respondent that the review application has in fact been moot from inception, and any decision granted in the review application will be of academic interest only, based on the authority relied upon by the respondent. Whatever the outcome of the review

³¹ (531/2015) [2016] ZASCA 197; [2017] 1 All SA 354 (SCA); 2017 (3) BCLR 364 (SCA); 2017 (3) SA 152 (SCA) (6 December 2016).

application may be, will have no effect on the outcome of the suspension and striking application.³²

[47] Counsel for the applicants submits that this judgment ought to be further delayed until after the further appeal proceedings, leave to appeal against the full court judgment which is pending in the SCA. The further appeal can have no effect on the review application. No case is made out for the further delay of the present application.³³

[48] The review application ought to be dismissed.³⁴ Based on my finding that the review application was moot from inception, the applicants ought to be

³² Cf. also: **Wild v Legal Practice Council** 2023 (5) SA 612 (GP) at par [99]:

[99] *Furthermore, it has repeatedly been held that the courts will not deal with abstract, hypothetical or academic questions in proceedings for a declaratory order (Ex parte Mouton and Another 1955 (4) SA 460 (A) at 464; South African Mutual Life Assurance Society v Anglo-Transvaal Collieries Ltd 1977 (3) SA 642 (A) at 658). Even if a declaratory order 'that the first respondent did not take any of the decisions' were to be granted, it will have no practical effect. It is for the court to consider the applicant's conduct and give an appropriate order, irrespective of whether a decision was taken to issue the advisory note or not (Du Plessis v Prokureursorde, Transvaal 2002 (4) SA 344 (T) at 349F – G). For these reasons I have to exercise my discretion against the applicant and refuse the granting of a declaratory order.*

(Confirmed on appeal: **Hutchinson Wild v Legal Practice Council and Others** 2025 (3) SA 393 (SCA))

³³ Cf. **Du Plessis v Prokureursorde, Transvaal** 2002 (4) SA 344 (T) at p 349.

³⁴ **Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs** (104/2022) [2023] ZASCA 35 (31 March 2023) par [10] read with par [21].

directed to pay the costs of the review application. If I am wrong regarding the stage at which the matter became moot, and the review application became moot only once the full court Appeal decision was rendered, I nonetheless incline to granting costs against the applicants due to the fact that had the review application not been moot it would have been dismissed on the papers before me on the merits.³⁵ Without being exhaustive, in my view the applicants fail to make out a case for the relief that they seek in their founding affidavit. Neither of the resolutions that the applicants seek to attack on review constitute administrative action and the PAJA review brought against such resolutions is without merit.³⁶

[49] I do not uphold the argument that the respondent ought to be faulted for advancing the review application. The respondent cannot be faulted for filing an answering affidavit and taking steps to enrol the matter.

[50] Punitive costs are not warranted. I intend to grant costs on a party and party scale. Based on the fact that there are certain aspects in the matter that have some complexity and based on the importance of the matter to all of the parties, costs on Scale B are warranted.

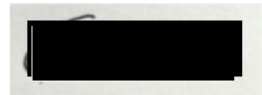
³⁵ Where a decision concerning costs is divorced from the merits because a decision on the merits may no longer be required, regard must still be had to the merits in determining costs (see, for example, **Erasmus v Grunow** 1980 (2) SA 793 (O) at 798D; **Johnson v Minister of Home Affairs** 1997 (2) SA 432 (C) at 434B; **Thusi v Minister of Home Affairs & 71 Other Cases** 2011 (2) SA 561 (KZP) par [64]).

³⁶ See for instance **Law Society of the Northern Provinces v Adekeye and Another** (21758/2018) [2018] ZAGPPHC 371 (17 May 2018) at par [19]-[21].

Order:

[51] Accordingly, I make the following order:

- a. The application is dismissed.
- b. The applicants are directed to pay the costs of the application jointly and severally, the one to pay, the other to be absolved, including costs of counsel where so employed on Scale B.



WOODROW AJ
ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by e-mail and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on the 20TH day of January 2026.

Appearances

Counsel for the Applicants: HF Geyer

Attorney for the Applicants: Smit & Marais Attorneys

Counsel for the Respondent: N Collett (heads prepared by R Stocker)

Attorney for the Respondent: Rooth & Wessels Inc.

Date of Hearing: Friday 9 June 2025

Date of Judgment: 20 January 2026