



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

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

**CASE NO. 011715/2022**

DATE  
**28/01/2026**

SIGNATURE  
**N V KHUMALO J**

**GEDION HENDRIK GROENEWALD**

**APPLICANT**

**THE SOUTH AFRICAN COUNCIL FOR NATURAL  
SCIENTIFIC PROFESSIONS**

**1<sup>ST</sup> RESPONDENT**

**ADV NOMONDE JANUARY N.O**

**(In her representative capacity as the Chairperson  
of the 1<sup>st</sup> Respondent's Disciplinary Tribunal)**

**2<sup>ND</sup> RESPONDENT**

**RITCHIE MORRIS**

**3<sup>RD</sup> RESPONDENT**

**This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 28 January 2025.**

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## JUDGMENT

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### **KHUMALO N V J**

#### **Introduction**

[1] This is an application for review in terms of Rule 53 of the Uniform Rules of Court instituted by Dr Gideon Hendrik Groenewald, (“the Applicant”), a geologist calling upon the Respondents to show cause why a ruling made by the 2<sup>nd</sup> Respondent, sitting as a Disciplinary Tribunal in Groenewald’s disciplinary hearing on 14 February 2022, dismissing his following point in limine:

“Until the specific type of natural scientific work which may be performed by registered persons in the field of practice listed as “Earth Science” in Schedule 1 of the Natural Scientific Professions Act 27 of 2003 has been identified and determined in terms of s 27 of the Natural Scientific Professions Act 27 of 2003, and therefore in the absence of such identification and determination, Dr Gideon Hendrik Groenewald’s conduct cannot be regarded as a transgression of Clauses 1 and 3 of the Code of Conduct of the South African Council for Natural Scientific Professions Act.”

should not be reviewed and corrected or set aside.

#### **Parties**

[2] Dr Groenewald is a Professional Natural Scientist registered with the South African Council for Natural Scientific Professions in terms of s 18 (1) of the Natural Scientific Professions Act 27 of 2003 (“the NSP Act”) to practice in the field of practice listed in Schedule 1 of the said Act as “Earth Science”.

[3] The South African Council for Natural Scientific Professions (referred to interchangeably as the SACNSP or “the Council”), is a juristic person established in

terms of s 2 of the NSP Act being the legislated regulatory body for natural science practitioners in South Africa, cited in its capacity as such. It has as its objectives to establish conduct that direct, sustain and enforce a high level of professionalism and ethical standards for the natural scientific profession.

[4] Adv Nomonde January, the 2<sup>nd</sup> Respondent is cited in her official capacity as the Chairperson of the Council's Disciplinary Tribunal whose ruling Groenewald is seeking that it be reviewed and set aside.

[5] The 3<sup>rd</sup> Respondent, Mr R Morris, is a hydrogeologist practicing as a Professional Natural Scientist in Geological Science. He is the complainant in the matter before the Disciplinary Tribunal against Groenewald. He is for ease of reference referred to as "Mr Morris" or just "Morris".

## **Factual Background**

[6] Mr Morris lodged a complaint with the Council that Dr Groenewald contravened the SACNSP Code of Conduct ("the Code") in that:

[6.1] his approach to locating groundwater is not in keeping with industry standards and accepted scientific methodology.

[6.2] His portrayal of an unconventional approach to sighting water in press articles and podcasts is doing reputational harm to the ground water industry and to science in general.

[6.3] He advertises his professional services in a manner that may be misleading or derogatory of the dignity of the profession, by misrepresenting or permitting misrepresentation of his professional qualifications and exaggerating his degree of responsibility in the work of a natural scientific nature through his approach and location of natural water.

[7] Acting in terms of s 29 of the Act the Council's Professional Conduct Committee appointed an investigating team to determine if a *prima facie* case existed. After

following due process and receipt of the findings of the investigating team, Groenewald was informed of the findings by the investigating committee of a prima facie case of a breach of clauses 1, 3, 4, 7, 9 and 10 of the Code and charged accordingly.

[8] The provisions of the Code relate, inter alia, to the obligations on registered natural scientists to:

“serve and protect the public from malpractice in matters involving the rendering of natural scientific services in accordance with the applicable laws, regulations, standards and guiding principles.” (Clause 1);

“discharge their duties to their employers or clients efficiently and with integrity, in compliance with applicable ethical principles, relevant legislation and standards in their field of practice.” (Clause 3);

“uphold the dignity, standing and reputation of the natural scientific Professions” (clause 4);

“not deliberately and without just cause injure, directly or indirectly, the professional reputation, prospects or business of another person.” (clause 7);

“not advertise their professional services in a manner that may be misleading or in a manner that is derogatory of the profession.” (clause 9);

“not knowingly misrepresent or permit misrepresentation of their own or their associates’ academic or professional qualifications or exaggerate their own degree of responsibility for any work of a natural scientific nature” (clause 10).

[9] The findings of the Investigating team was used to formulate the charges in the charge sheet which read as follows:

9.1. The Committee agreed that you transgressed Clauses **1** and **7** of the Code of Conduct in that the approach you followed was not based on scientific principles, relevant laws and standards published by the Department of Water Affairs (DWA). Your approach disregarded your duty to render natural scientific services, did not serve nor protect the public and the environment from malpractice.

The Committee further regarded your portrayal to the press as an inaccurate reflection of standards, guidelines and procedures a hydro geologist will follow when exploring or developing ground water resources. Your statement in the popular press, many of which are shown as verbatim, are sensational not scientific, do not promote good science and can be seen as injuring the professional reputation and prospects of business of another person.

9.2. Regarding Clauses **3** and **4** of the Code of Conduct, the Committee was in agreement that you, by portraying your unconventional approach to sighting water in the press, did not discharge your duties in compliance with standards in the field of practice, nor uphold the dignity, standing and reputation of the natural scientific profession. Although not belittling your work, standards in the field of practice did not include divine interventions and you transgressed the dignity of the profession in the way you portrayed yourself, particularly when interacting with the press.

9.3. The Committee agreed that you transgressed Clauses **9** and **10** of the Code of Conduct, since the two version of your CVs in the public domain, apparently to promote your consultancy services were highly contradictory and would appear to be misleading the public (clients). Your PHD is in palaeontology, and you claim to have extensive experience of finding fossils and in your CV to the Gift of Givers, you state to the contrary that you worked for 35 years as a geohydrologist.

This reflects on your professional conduct. You are misrepresenting yourself in that you claim to be a geohydrologist and yet you have training in palaeontology. The two different CVs refer to the same working period of 35/20 years and

actions but are being presented for two different purposes. You claimed to have worked on all possible geological formations in Southern Africa to understand how groundwater is present in the country.

You further claim to have mapped all possible geological formations in South Africa based on the general potential to find good water flows in the nine provinces although there is no published evidence of these claims available via an internet search.

[10] Dr Groenewald formally responded to the charges through his attorneys, denying all the allegations and pleading not guilty to the charges, whilst raising a point *in limine* regarding the Disciplinary Tribunal's jurisdiction to adjudicate or to try him on the charges proffered against him.

[11] At the initial hearing the matter was postponed, affording Dr Groenewald an opportunity to respond substantively to the charges. In his subsequent response he contended that no type of scientific works has yet been identified and or promulgated under s 27 of the NSP Act and until and unless the types of scientific work has been identified and promulgated, his conduct cannot be regarded as a transgression of Clauses 1 and 3 of the Code of Conduct. He, on that basis challenged the Council's competency to charge him since the Council has not recommended and the Director General not yet determined the "types of natural scientific work within the meaning of s 27. He therefore indicated that he was, amongst other things, raising the Disciplinary Tribunal's lack of jurisdiction as a point in limine.

[12] The counter by the Council on the point *in limine* was that Groenewald was registered as a natural scientist and portrayed himself as one. He is as a result bound by the Code of Conduct. The identification of types of natural scientific work under s 27 of the NSP Act is therefore irrelevant. The Disciplinary Tribunal ruled that it had jurisdiction and was properly constituted to adjudicate, hear and decide the matter.

[13] In the Tribunal's ruling on the issue, it concluded that if the parties felt that its ruling on the point *in limine* was not in line with any of the provisions of the Act, they can lodge an appeal after the hearing at the end of the matter.

[14] Mr Kruger on behalf of Groenewald argued that the issue of jurisdiction raised *in limine* was non-appealable as it was not on the merits but procedural and therefore can only be subject to a review. The Tribunal as a result postponed the matter to afford Groenewald an opportunity to proceed with a review application against its ruling.

## **Application**

[15] In answer to the review application, the Respondents argued that the review is an incompetent and or impermissible challenge as the proceedings were incomplete *medias res* and the courts warned not to intervene in untermiated proceedings unless if there would be a grave injustice.

[16] The Respondents further argued that Groenewald misconstrued the purpose of s 27 and of the charges against him. The section's purpose is to create a statutory offence or a prohibition for persons who are not registered under the NSP but nevertheless engage in defined types of work or hold themselves out to be registered persons. Whilst Groenewald is charged with contravening the Code of Conduct that every registered person is in terms of s 28 (3) compelled to comply with. None of the charges brought against him depend in any way on the determination of types of natural scientific work under s 27. Such identification therefore irrelevant.

[17] They insist that the only question that was to be determined by the Disciplinary Tribunal was whether Groenewald carried his work in accordance with the Code of Conduct. The raising of the point *in limine* improper. Further that the matter should have been finalised before the Tribunal prior to the review application, therefore the review application prior finalisation of the matter also improper.

[18] Groenewald's reply was that if he had not taken the decision of the Tribunal to dismiss his point *in limine* on review, the Council would have argued that he had

submitted himself to the jurisdiction of the Tribunal to proceed with the determination of the charge against him.

[19] Further that by agreeing that the matter be postponed so that he can proceed with the review, the Tribunal agreed with him that the issue of its jurisdiction or lack thereof be adjudicated before the hearing proceeds on the merit. It would not have made any sense to conduct a hearing when the tribunal is at risk of being found to have no jurisdiction, which would be a grave injustice to force him to defend himself before a tribunal which does not have the jurisdiction to determine such charges.

[20] On the submission by the Tribunal that he should have waited until the end of the matter and only then appeal, Groenewald argued that it is based on a presumption that he would be found guilty. As it would make no sense to take the decision on review if he is not found guilty. He was not willing to end up opportunistically accepting the jurisdiction of the Tribunal because he is found not guilty.

[21] On the Council's objection on Groenewald's reliance on s 27 of the Act in disputing the Tribunal's jurisdiction, Groenewald argued that the Council is mistaken in submitting that the sole purpose of s 27 is the creation of a prohibition and a statutory offence for persons who are not registered under the Act who nevertheless engage in defined types of works or hold themselves out to be registered persons. He argues that s 27 has everything to do with determining the scope of work for registered scientists. Furthermore, that the type of works must first be defined (identified and described) in accordance with the provisions of s 27 before the prohibition which the Council is talking about can be of any force or effect (with its heading being "identification of work"). He disputes that as a registered natural scientist he does not fall under the category of the persons s 27 is intended for, and that the non- description of the works does not apply to him.

### **Issues to be determined**

[22] The issues to be determined are:

*On the point in limine*



[22.1] Whether the insistence by Groenewald that the point in limine be determined separately and its review finalised, prior to the matter being heard on the merits was proper? or

*On the review Application*

[22.2] Whether Groenewald's bringing of the review application to set aside the Tribunal's ruling on the point in limine, prior the finalisation of the matter and a decision on the merits was premature?

[22.3] Whether the point in limine incorrectly dismissed, that is if s 27 has a bearing on the competency of the Disciplinary Tribunal to determine the charges for breach of Clauses 1 and 3 of the Code of Conduct.

## **Legal frame work**

*The insistence by Groenewald that the point in limine be determined separately and its review finalised prior to hearing the matter on the merits:*

[23] The common-law principle that before claiming judicial review a party should first exhaust internal remedies is embodied in s 7(2)(a) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) ("PAJA")<sup>1</sup>. A party who claims judicial review of an administrative action whilst he has failed to exhaust the internal remedies, may be met with an objection that the matter is not ripe for hearing.

[24] In *Koyabe v Minister for Home Affairs (Lawyers for Human Rights as amicus curiae)* the court emphasised the principle of exhausting internal remedies prior to approaching the court, stating the following:

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<sup>11</sup> Section 7 (2) (a) reads:

(a) subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

*“Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before aggrieved parties resort to litigation. Although courts play a vital role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid.*

*[36] First, approaching a court before the higher administrative body is given the opportunity to exhaust its own existing mechanisms undermines the autonomy of the administrative process. It renders the judicial process premature, effectively usurping the executive role and function. The scope of administrative action extends over a wide range of circumstances, and the crafting of specialist administrative procedures suited to the particular administrative action in question enhances procedural fairness as enshrined in our Constitution”. -Thus, the need to allow executive agencies to utilise their own fair procedures is crucial in administrative action.”<sup>2</sup>*

[25] Section 7(2)(c)<sup>3</sup> of PAJA however provides that a court or tribunal may 'in exceptional circumstances' exempt a person from the obligation to exhaust internal remedies if this is deemed to be 'in the interests of justice'. Taking into consideration that PAJA gives effect to the right to administrative action that is lawful, reasonable and procedurally fair as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996.

[26] Therefore 7(2) as much as it precludes a court from reviewing any administrative action in terms of PAJA lest any internal remedy provided for in any other law has first been exhausted, such preclusion is only if or provided there are no exceptional circumstances upon which the court deems it to be in the interest of justice. The determination of what constitutes 'exceptional circumstances' within the meaning of s

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<sup>2</sup> (CCT 53/08) [2009] ZACC 23 para 35–36; 2009 (12) BCLR 1192 (CC) par 35-36; 2010 (4) SA 327 (CC) (25 August 2009)

<sup>3</sup> Section 7 (2) (c) reads:

c. “A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.”

7(2)(c) of PAJA, is informed by the nature of the complaint for which judicial relief is sought as clarified in *Koyabe supra*<sup>4</sup> that:

38. *The duty to exhaust internal remedies is therefore a valuable and necessary requirement in our law. However, that requirement should not be rigidly imposed. Nor should it be used by administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny. PAJA recognises this need for flexibility, acknowledging in section 7(2)(c) that exceptional circumstances may require that a court condone non-exhaustion of the internal process and proceed with judicial review nonetheless.*<sup>36</sup> *Under section 7(2) of PAJA, the requirement that an individual exhaust internal remedies is therefore not absolute.*

39. *What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue.*<sup>37</sup> *Thus, where an internal remedy would not be effective and or where its pursuit would be futile, a court may permit a litigant to approach the court directly. So too where an internal appellate tribunal has developed a rigid policy which renders exhaustion futile.*

[27] In *Koyabe* the court also referred to *Nichol and Another v The Registrar of Pension Funds and Others* 2008 (1) SA 383 (SCA) at para 15. For an historical and analytical account of the duty to exhaust internal remedies in South African administrative law see Pretorius “The Wisdom of Solomon: The Obligation to Exhaust Domestic Remedies in South African Administrative Law”<sup>5</sup> Discussing the duty to exhaust internal remedies at common law, Hoexter notes the following:

*“The mere existence of an internal remedy is not enough by itself to indicate an intention that the remedy must first be exhausted . . . . [T]here is no general principle at common law that an aggrieved person may not go to court ‘while there is hope of extrajudicial redress’. In fact, there are indications that the existence of a fundamental illegality, such as fraud or failure to make any*

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<sup>4</sup> *Supra* at para 38 and 39

<sup>5</sup> (1999) 116 *South African Law Journal* 113.

*decisions at all, does away with the common-law duty to exhaust domestic remedies altogether.” (Footnotes omitted.)*

[28] Jurisdiction relates to the authority or competence of the adjudication forum or administrative body to preside over the parties, hear, decide the merits and hand down a competent sanction that is binding between the parties. The administrator must be authorised by law in terms of an empowering provision. It is therefore trite that a dispute should be brought before an adjudication forum or administrative body that has jurisdiction over the party/parties and the matter before it, as a decision made over a matter or a person upon which the administrator or administrative body lacks authority or competence to adjudicate is invalid and the proceedings a nullity therefore not binding.<sup>6</sup>

[29] The persistent contention by the Council that on the Disciplinary Tribunal’s ruling on the point in limine, Groenewald should have let the matter be finalised on both the issue of jurisdiction and the merits prior to bringing the review application, is ill-advised. Jurisdiction is a primary issue that must be determined *in limine* prior the hearing of the matter on the merits. This is not a matter where the Tribunal might be found to have wrongly acted within its jurisdiction. Groenewald alleged from the start that by virtue of the issues before it, the Tribunal could not exercise jurisdiction over him.<sup>7</sup> The determination and certainty on the Tribunal’s competency or authority, prior to the decision on the merits is logically of paramount importance. The deferment of the matter on the merits was of no exceptional moment, since the enquiry into the Disciplinary Tribunal’s authority is not about whether all the necessary facts to sustain

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<sup>6</sup> Voet 49.8.3. (Gane’s translation vol. 7 p. 636) advocacy is as follows: “By the customs of to-day such over stressful and pettifogging discussion of fine points of law as to whether a decision is ipso jure void, or holds good by strict law and must be set aside through the remedy of an appeal, has been as far as possible abolished. The ruling has rather prevailed that decisions are never annulled under cover of nullity without appealing ... There are exceptions when the nullity arises from a lack of jurisdiction, or of summons, or of an attorney’s mandate as is noticed by the authors cited below following others”

<sup>7</sup> In Baxster “Administrative Law” 1984 page 720, following said in relation to readiness for review-“It is submitted that the appropriate criterion by which the ripeness of the action in question is to be measured is whether prejudice has already resulted or is inevitable, irrespective of whether the action is complete or not. Once unlawfulness is manifest in a form which cannot be corrected no matter how the public authority continues to act, there is no point in insisting that the complainant should continue to go through the motions before bringing the matter to court.”

the charges proven, but whether, objectively speaking, the Tribunal possesses the power to adjudicate on such charges:

[30] Moreover, the Disciplinary Tribunal acquiesced to the request for a postponement or delay on hearing the merits, although it had encouraged the parties to only challenge its ruling after the final decision on the merits. The jurisdiction issue being one of elementary justice, which Groenewald is entitled to at every stage of the disciplinary proceedings, the Tribunal's subsequent postponement of the matter for Groenewald to proceed with an application for a review of its ruling on the issue was proper and in accordance with fair administration of justice.<sup>8</sup> It would have amounted to a grave injustice to subject Groenewald to a disciplinary hearing when the grounds upon which it is established are disputed, that impact on the Disciplinary Tribunal's jurisdiction.

[31] It is of importance to take note that Groenewald was also charged with breaching Clauses 4, 7, 9 and 10 of the Code. He nevertheless raised an objection to the Disciplinary Tribunal's jurisdiction to try him only on charges relating to the breach of Clauses 1 and 3 of the Code as outlined in his point *in limine*. The Disciplinary Tribunal however agreed to the postponement of the entire matter including merits on the charges relating to Clauses 4, 7, 9 and 10 for the aspect of jurisdiction to be finalised.<sup>9</sup> Since there was no objection to its jurisdiction on those charges, the Disciplinary Tribunal's deferred adjudication also on those further charges was not well thought out. The matter could have proceeded on the merits of those remaining charges. It is an aspect that was not considered and debatable if the deferment of the hearing on all the charges was a matter of convenience or caution.

*Whether the point in limine was incorrectly dismissed, that is if s 27 has a bearing to the competency of the Disciplinary Committee to hear the charges on transgressions of Clauses 1 and 3 of the Code of Conduct.*

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<sup>8</sup> See Case line 007-111 Line 10 -17

<sup>9</sup> See Case line 007-119 Line 24 -25 of the record

[32] The argument by Groenewald's Counsel was that the Code was only applicable to work that has been defined or identified in terms of s 27 of the SNP Act, absent compliance with s 27, the Code cannot be applied to the specific work unless it has been determined as work that falls within the jurisdiction of the Council.

[33] The jurisdiction of Administrative Tribunals performing administrative functions is determinable, as a creature of statute, from the statute that creates it, and the issue or issues brought before it, rather than the merits of the case.<sup>10</sup>

[34] In general, without statutory/legislative authority, administrators are not authorised to make decisions and take administrative action. Statutes therefore as the primary source of jurisdictional authority, play a fundamental role in defining the jurisdictional boundaries of administrative tribunals. They establish the scope of authority the tribunals are granted and outline the specific areas within which they can operate, through detailed provisions specifying which issues or disputes fall under the tribunal's purview and outline the steps to be taken for initiating proceedings.

[35] Accordingly the administrators must obey the law and have authority in law for their decisions. If administrators make decisions that are not allowed by law, or in matters they are not competent to adjudicate they have acted "unlawfully" and their decisions will be invalid. In most cases administrators need to be able to show the specific law that gives them the authority to perform an administrative action.

[36] In *casu*, the empowering Act that is the NSP Act, on the professional conduct of registered natural scientists, reads as follows in s 28 (1) and (3):

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<sup>10</sup> TMT Services & Supplies (Pty) Ltd t/a Traffic Management Technologies v MEC: Department of Transport, Province of KwaZulu-Natal and Others (Case no. 1059/2020) [2022] ZASCA 27 (15 March 2022)

(1) *The Council must, after consultation with the Director-General, voluntary associations and registered persons, draw up a code of conduct for registered persons.*

(2) (a) *The Council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times.*

(b) *The Council must provide the Director-General with a copy of the code.*

(3) *All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.*

[37] Sec 29 provides for the investigation of the charge of improper conduct and reads:

[1] *The Council must refer any matter brought against a registered person to an Investigative Committee established under s 17, if-*

(a) *The Council has reasonable grounds to suspect that a registered person has committed an act that might render him or her guilty of improper conduct; or*

(b) *a complaint of improper conduct has been brought against a registered person.*

[2] *The investigating committee must in the prescribed manner -*

(a) *investigate the matter; and*

(b) *obtain evidence to determine if the registered person concerned may be charged and if so recommend to the Council the charge or charges that may be preferred against that registered person.*

*[3] The Investigating Committee may not question the registered person concerned unless the Investigating Committee informs that registered person that she or he-*

*(a) has a right to (be assisted or represented by another person; and*

*(b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person .*

*[4] The Investigative Committee must after the conclusion of the investigation submit a report containing its recommendations to the Council.*

[38] Accordingly the Council is empowered to charge the registered persons for any improper conduct which is conduct contrary to the Code of Conduct.

[39] On the charge of improper conduct s 30 (1) reads:

*(1) The Council must, after considering a report contemplated in s 29(4), charge a registered person with improper conduct if the Council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.*

[40] It is Groenewald's contention that due to failure by the Council to comply with the provisions of s 27 in relation to processes and procedures the Council lacks the right to adjudicate the alleged breach of clauses 1 and 3 of the Code of conduct. According to Groenewald, that is the empowering provision to adjudicate transgressions related to Clauses 1 and 3.

[41] Section 27 on the contrary has to do with identification of work and performance thereof only by registered natural earth scientist and reads:



(1) The Council must consult with all voluntary associations regarding the identification of the type of natural scientific work which may be performed by registered persons.

(2) After the process of consultation, the Council must submit recommendations to the Director-General regarding the work identified in terms of subsection (1), for its consideration and determination.

(3) A person who is not registered in terms of this Act, may not-

(a) perform any kind of work identified for any category of registered persons in terms of this Act;

(b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;

(c) use the name of any registered person or any name or title referred to in sections 18 and 22; or

(d) perform any act purporting or calculated to lead persons to believe that he or she is registered in terms of this Act.

(4) Subsection (3) (a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the identified work and who must assume responsibility for any work so performed.

(5) Notwithstanding subsection (3), a person registered in terms of the following Acts may perform those elements of the natural scientific profession which are essential for the practising of his or her profession, if his or her education, training and experience render him or her competent to perform that work.

[42] What was brought before the Council was a complaint that the Applicant has contravened the code of conduct. In terms of the Act such situation confers jurisdiction upon the Council that it exercises through the Tribunal to determine if indeed on the facts before it, the Applicant has breached the code of conduct.

[43] An administrative tribunal or forum must follow the specific empowering provision that grants it the authority to take an administrative action, it must comply with all steps or procedures prescribed in the empowering provision. Moreover, comply with the general rules and procedures that are set out in PAJA.<sup>11</sup>

[44] The provisions that triggers the jurisdiction of the Council is therefore not s 27 but s 23. With the Code of Conduct already in existence which has been drafted following the required processes and procedure, establishing the jurisdiction of the Council and of its Tribunal to administer the Code and in the event of its breach, accordingly competent as empowered in terms of s 30 (1) to preside and decide on transgressions relating to the breach of the said Code of Conduct. Accordingly, the Council is empowered to charge the registered persons for any improper conduct which is conduct contrary to the Code of Conduct.

[45] The Applicant is a registered person in terms of s 18, therefore section 28 (3) of the NSP Act applies to him. The Code of Conduct is applicable to persons who are registered, therefore it is for the Council to determine whether the applicant has breached the Code of Conduct as well as if section 27 of the Act is applicable.

[46] An empowering provision may also grant the authority to take an administrative action subject to certain conditions being met. In such a case the administrator must ensure that the conditions are met before taking the administrative action. If this is not done the administrative action will be unlawful.

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<sup>11</sup> See s 3 of PAJA, particularly on the requirement to give notice and to hear from someone before taking a decision that will have an adverse impact on him or her.

[47] The conditions set out in the empowering authority of the Council in relation to taking an administration action on transgressions of the Code of Conduct are in s 29 and had been complied with, prior to Groenewald being charged. The requirements on PAJA also adhered to, the Council was competent to charge Groenewald as in terms of s 30 (1) and him being a registered person. Nothing is mentioned in the NSP Act in relation to s 27 being a preconditional process to the application of the Code of Conduct and the implementation of the disciplinary proceedings on breach of the Code by the registered persons.

[48] Section 27 clearly refers to the identification of natural scientific work performed by registered persons that may or is not to be performed by unregistered persons unless under the guidance and supervision of a registered person. In this matter Groenewald is a registered person and the identification of work that may not be performed by his unregistered counterparts has no bearing to the allegations levelled against him for his alleged breach of the Code of Conduct.

[49] Groenewald has therefore failed to justify or make a case for the review and setting aside of the Disciplinary Tribunal's dismissal of his point *in limine*. The matter has got to be remitted back to the Disciplinary Tribunal for the hearings to proceed on the merits.

## **Costs**

[50] In litigation, the general principle for costs is that costs follow the event. In that regard the losing party is to pay the costs of the winning party. The guiding principle is as was enunciated in *Texas Co. (S.A.) Ltd v Cape Town Municipality* by Innes CJ that;

*'...costs are awarded to a successful party in order to indemnify him for the expense to which he has been put through having been unjustly compelled either to initiate or to defend litigation, as the case may be. Owing to the unnecessary operation of taxation, such an award is seldom*

*a complete indemnity; but that does not affect the principle on which it is based.*<sup>12</sup>

[51] In *Fusion Hotel and Entertainment Centre CC v eThekweni Municipality and Another*<sup>13</sup> the following was stated in respect of costs where merits were not fully decided, that:

*[12] It is common cause that in this matter the issues at hand remained undecided and the merits were not considered. When the issues are left undecided, the court has a discretion whether to direct each party to pay its own costs or make a specific order as to costs. A decision on costs can on its own, in my view, be made irrespective of the non-consideration of the merits. I am stating this on the basis that an award for costs is to indemnify the successful litigant for the expense to which he was put through to challenge or defend the case, as the case may be...'*

[52] It is also the basic principle that the award of costs is in the discretion of the court. In *Ferreira v Levin NO*<sup>14</sup> and *Others* the Constitutional Court stated the basic rules to be the following:

*"The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. "*

[53] The Applicant has not been successful in its review application he therefore has to carry the costs, and even though the merits still have to be dealt with.

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<sup>12</sup> 1926 AD 467 at 488I n re: *Anton Piller and Interdict Proceedings* [2016] JOL 34325 (FB) par 1 and 2.

<sup>13</sup> [2015] JOL 32690 (KZD)

<sup>14</sup> 1996 (2) SA 621 (CC) at 624B—C (par [3]).

It is therefore ordered that:

1. The review Application is dismissed with costs.
2. The Disciplinary Tribunal ruling dismissing the Applicant's point in limine, that is to the effect that it has jurisdiction to hold the disciplinary hearing against the Applicant is upheld.
3. The matter is remitted back to the Disciplinary Tribunal for the hearing to proceed on the merits.

  
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**N V Khumalo**  
**Judge of the High Court**  
**Gauteng Division, Pretoria**

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