



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2026-006617

In the matter between:

JUSTIN JAMES HANDS

APPLICANT

and

THE MINISTER OF JUSTICE AND CONSTITUTIONAL

DEVELOPMENT & OTHERS

FIRST RESPONDENT

THE REGIONAL MAGISTRATE P COURT,

DURBAN, MS. MEEWALAL

SECOND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION,

KWAZULU-NATAL

THIRD RESPONDENT

THE PUBLIC PROSECUTOR P REGIONAL

COURT, DURBAN, MS. S MKWANAZI

FOURTH RESPONDENT

ORDER

Accordingly, I make the following order:

1. The application is dismissed.
2. There is no order as to costs.

JUDGMENT

SAKS AJ:

[1] This matter came before me as an urgent application on 16 January 2026 in which the applicant, who is the accused in pending trial proceedings before the second respondent, sought an order interdicting the continuation of the trial pending the finalisation of the review proceedings instituted under case number: 2026-006352 ("the review"). The applicant sought this relief on limited notice in accordance with the provisions of Rule 6 (12) of the Uniform Rules of Court, upon the basis that the trial was enrolled for hearing from 13 to 16 January 2026, and that the second and fourth respondents respectively, were not disposed to adjourning the trial pending the finalisation of the review.

[2] The applicant attached a copy of the review to his founding affidavit, although the third respondent took issue with the fact that it does not appear to have been served.

[3] The background to this application is that the applicant has been arraigned on the charges set out in annexure "A" to the review, namely that the applicant has been charged with statutory rape and a charge of grooming a child in terms of the provisions of Act 32 of 2007.

[4] The complainant in the matter is a minor born on 26 May 2008. At the time of the commission of the alleged offences, the complainant was 14 years old and she is now 17 years old and still to be considered a minor in the circumstances.

[5] During the course of pre-trial proceedings, the fourth respondent, namely the prosecutor in the matter, advised the applicant's legal representatives that the State would make use of the services of an intermediary, as contemplated by s170A of the Criminal Procedure Act 53 of 1977 ("the CPA").

[6] Although the applicant's legal representatives requested copies of any reports which might have been available in respect of the complainant's assessment by a forensic social worker at the behest of the investigating officer, no such reports were obtained and, accordingly, the fourth respondent disclosed that there would be no evidence by way of a report and the matter would simply be addressed in argument at the inception of the trial.

[7] At the commencement of the trial on 13 January 2026, it became apparent that the particular court did not have the requisite facilities to accommodate matters where evidence was to be taken through an intermediary in terms of section 170A or evidence by means of close circuit television (CCTV). In the result the trial had to be transferred to another court where such facilities were available.

[8] In the interim, the parties agree to deal with the preliminary issues by way of the applications in terms of ss153, 158 and 170A, respectively, of the CPA.

[9] It was common cause that the first application, in terms of section 170A, namely for the evidence of the complainant to be taken through an intermediary, was abandoned during the course of argument.

[10] The prosecutor then moved a second application, in terms of the provisions of section 153 of the Act, for the trial to take place in camera. This application was not opposed and an order to that effect was granted by the second respondent.

[11] However, the central issue in this application before me, was the third application, namely for an order in terms of s158 (2) of the CPA, that the complainant be allowed to give her evidence through the medium of CCTV. This application was opposed and the prosecutor and the applicant's counsel argued the matter before the second respondent.

[12] It was common cause that the fourth respondent did not present any evidence by means of an expert report or lead any evidence by any such expert and confined himself to submissions made from the bar.

[13] The second respondent proceeded to grant an order in terms of s158 (2), in terms of which the complainant was allowed to give evidence by means of such CCTV facilities.

[14] It is this order, which forms the subject of the urgent application before me and which lies at the heart of the review.

[15] The urgent application was opposed by the third respondent, whose grounds of opposition initially focused on a challenge as to the urgency of the application, when the matter was initially heard on 16 January 2026; however, the third respondent then supplemented its grounds of opposition in the answering affidavit, which was delivered before the matter was heard on 23 January 2026. The third respondent's grounds of opposition can conveniently be summarised as follows:

[15.1] the application is not urgent for failure to comply with the provisions of section 35 of General Law Amendment Act 52 of 1955, read in conjunction of the provisions of Rule 6 (13) of the Uniform Rules of Court.

[15.2] the relief sought by the applicant is not competent.

[15.3] the applicant has not satisfied the requirements of an interim interdict, in that he has not established a right to review the decision and, secondly, that the balance of convenience favours the dismissal of the application. Finally, he alleged that the applicant has an alternative remedy, in that his right to review the decision of the second respondent is still available to him either in the interim or at the conclusion of the trial proceedings.

[16] I deal with each of these issues *ad seriatim*.

URGENCY

[17] At the outset of this matter I asked the third respondent's counsel whether the trial would proceed if the application is struck off the roll for lack of urgency.

[18] Mr Abraham, who appeared on behalf of the third respondent, confirmed that the trial would have to proceed, which in my view rendered the application urgent in the circumstances.

[19] In advancing his argument, Mr Abraham sought to rely on the provisions of section 35 of the General Law Amendment Act 52 of 1955, as well as the provisions of Rule 6 (13); however, in both provisions, the discretion of the court is preserved. The section in question provides that in respect of any interim interdict sought against the State, at least 72 hours' notice must be given; however, it contains a caveat, namely such notice may be for a lesser period as the court may in all the circumstances of the case consider reasonable. Furthermore, Rule 6(13) makes provision for the time periods referred to in Rule 6(5)(b) or for the return date of a rule nisi, which shall not be less than 15 days after the service of the notice of motion of the rule *nisi* as the case may be; however, similarly, the court may specially authorise a shorter period.

[20] Having considered the papers and the circumstances surrounding the application, I find that the matter is indeed urgent and warrants a departure from the time periods referred to in section 35 of the General Law Amendment Act 52 of 1955 and Rule 6(13), respectively.

INTERIM INTERDICT: IS THE RELIEF COMPETENT?

[21] There are two legs to this argument. Mr Abraham submitted that the applicant was seeking what was effectively a permanent stay of prosecution, notwithstanding the framing of the relief. He submitted that the relief was final in

nature. Secondly, he submitted that it is not competent to determine these disputes relating to rulings of the presiding magistrate by way of piecemeal litigation.

[22] As to the first question, it is manifestly obvious from the framing of the interdictory relief, both in respect of the primary relief and the alternative relief, that the applicant is seeking an order staying the criminal proceedings and interdicting the continuation thereof, pending the final determination of the review. I fail to understand how that could be final in nature, in that the interdict would only operate pending the finalisation of the review. If the review was dismissed the interim interdict would fall away automatically.

[23] Secondly, the relief could never be considered a permanent stay of prosecution, in that the applicant accepts that the trial should proceed, even on his own version, after the determination of the review, either upon the basis that he is successful in the review and, therefore, the evidence of the complainant cannot be taken through the medium of CCTV. Alternatively, if he is unsuccessful in the review, the trial would proceed subject to the existing ruling of the second respondent, namely that the evidence of the complainant would be led through the medium of CCTV facilities. There is simply no merit in this argument.

[24] The second leg of the third respondent's submission is deserving of further consideration as our courts have set their face against the piecemeal determination of disputes, especially in the context of criminal proceedings. To that end, courts are reluctant to automatically stay criminal proceedings based solely on pending reviews.¹

[25] Other courts, including the SCA, have also criticised and discouraged piecemeal litigation in criminal proceedings:

“It was well established before the present constitutional era that a criminal trial is not to be conducted piecemeal, and that continues to apply. An

¹ *S v Seth* [2024] ZAGPJHC 1962 (26 September 2024) at [74]; *S v Zuma* [2022] ZAKZPHC 5 at [57]; *Van Der Merwe v National Director of Public Prosecutions & Others* [2010] ZASCA 129 at [32]; *Williams & Others v Director of Public Prosecutions: Western Cape* [2021] ZAWCHC 187 at [53]

accused is not entitled to have the trial interrupted or to have it not even begin so as to have alleged irregularities reviewed by another court in the course of the trial. It is important to bear in mind that while the Constitution guarantees to an accused a fair trial that does not mean that the prosecution must satisfy the accused in advance that the trial will indeed be fair. It is the duty of the trial court to try a charge, and ensure that the trial is fair, and if it turns out that it was not, then any conviction that followed might be set aside. It might even turn out that the accused is acquitted, in which case the alleged irregularities will be irrelevant. Litigation of the kind that is before us falls squarely into the category of preliminary litigation that ought to be avoided and discouraged.”²

[26] It also bears mentioning that courts have observed that this piecemeal approach to criminal trials has been used by unscrupulous accused to unduly delay the proceedings, because it would usually be followed by an appeal to the Supreme Court of Appeal, and thereafter to the Constitutional Court.³ The applicant complains of a failure to follow proper procedure in the second respondent’s consideration of the state’s application in terms of s158 of the CPA. Mr Snyman who appeared on behalf of the applicant was at pains to emphasise that the applicant’s fair trial rights were adversely affected by the second respondent’s ruling in the s158 application.

[27] However, the applicant’s application cannot be summarily dismissed. These criticisms are some of the factors to be considered as to whether the applicant has established a *prima facie* right, although open to some doubt, for the purposes of determining whether an interim interdict ought to be granted in the circumstances.

HAS THE APPLICANT ESTABLISHED A PRIMA FACIE RIGHT (ALTHOUGH OPEN TO SOME DOUBT)

[28] It is now settled that in circumstances where an applicant seeks an interim interdict pending a review, a court must first be satisfied that the applicant has good prospects of success in the review. The claim for review must be based on strong grounds, which are likely to succeed. This requires a court adjudicating the interdict

² *Van Der Merwe v National Director of Public Prosecutions & Others* (supra) at [32]

³ *Williams & Others v Director of Public Prosecutions: Western Cape* (supra) at [53]

application to peek into the grounds of review raised in the main review application and assess their strengths. It is only if a court is convinced that the review is likely to succeed that it may appropriately grant the interdict.⁴

[29] It is necessary to consider the context within which any application in terms of s158(2) of the CPA would be made. Firstly, it is well-established that vulnerable children find the criminal justice system extremely intimidating and challenging when they are called to testify as witnesses or as victims of criminal acts. The importance of realising justice that not only affords an accused person the right to a fair trial but also protects and safeguards the rights of children involved as victims and witnesses to the crime is thus undeniable. In *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development*,⁵ the Constitutional Court acknowledged that children are uniquely vulnerable and that they require specific attention when brought to testify in court. The Constitutional Court provided guidelines on how child victims and witnesses should be accommodated in court proceedings relating to sexual offences, requiring the State to ensure that the children's best interests remain intact when they appear in court as victims or witnesses.

[30] Furthermore, s28(2) of the Constitution requires that the best interests of the child are of paramount importance in all matters concerning the child. In the context of child complainants and witnesses, s28(2) demands protection of children while giving evidence in Court to prevent hardship and secondary trauma. The concept of the best interests of the child is entrenched in s28 of Constitution and is aimed at ensuring the full and effective realisation and enjoyment of all children's rights as provided for.

[31] Courts in the criminal justice system must find a balance between the rights of the accused person to a fair trial and the protection and safeguarding of the rights of child victims and child witnesses. Emphasis must be placed on the role of the

⁴ *Economic Freedom Fighters v Gordhan & Others* 2020 (6) SA 325 (CC) at [42].

⁵ 2009 (4) SA 222 (CC).

judiciary to ensure that the delicate balance is maintained and all rights impacted by crime are promoted and secured.⁶

[32] Section 158 of the CPA was previously the subject of differing judgments.⁷ Those judgments, were the subject of consideration by the Full Bench in *S v Domingo*.⁸ The Full Bench followed the reasoning in *Staggie*,⁹ namely that the provisions of s158(3) must be read disjunctively.¹⁰

[33] In *S v Lenting & Others*,¹¹ In a more recent judgment of the same court, the Court stressed that the protection envisaged in ss153 and 158 is not only aimed at protecting a witness, but also ensures that the evidence that is given to the court is not reduced and diminished in quality because of the witness's fear or distress in testifying in an open court or in the presence of the accused. The protection ensures that the witness gives her evidence in a more coherent and relaxed manner. In other words, the protection is intended to ensure that the court obtains a full and candid account from the witness, of the acts complained of. This enables the witness to feel at ease to provide reliable evidence to the court to enable the court to make a finding as to the reliability of the evidence and the witnesses giving it.¹²

[34] It is trite that the rights of an accused person to be present in court throughout the trial and to observe his accusers and those who testify against him is a fundamentally important right and should not lightly be interfered with. However, the legislature specifically contemplated this and legislated an inroad to that fundamental right by codifying the protection for witnesses, in particular child witnesses, who have to give evidence in criminal proceedings. Section 158 of the CPA is one such exception and the court is to consider whether a fair balance has been struck between the applicant's fair trial rights and the protection afforded to the complainant, who was a minor (14 years old) at the time of the alleged commission of the offence and who is still a minor at the commencement of the trial.

⁶ *McKenzie v State* [2025] ZAWCHC 132 at [38] to [43].

⁷ See *S v F* 1999 (1) SACR 571 (C); cf *S v Staggie & Another* 2003 (1) SACR 332 (C) ("*Staggie*").

⁸ *S v Domingo* 2005 (1) SACR 193 (C).

⁹ *S v Staggie* 2003 (1) SACR 332 (C).

¹⁰ See *S v Domingo* (supra) at 199F-I.

¹¹ *S v Lenting & Others* 2023 (2) SACR 409 (WCC) ("*Lenting*").

¹² *S v Lenting* (supra) at [26].

[35] In *Lenting*, a similar argument was advanced, namely that the accused seeks to challenge the witness, in court, through direct cross-examination. The court dismissed this argument and observed that the accused's legal representatives would be able to exercise the right to cross examine the witness directly, even when the witness testifies through closed circuit television (CCTV).¹³

[36] Section 158(3) of the CPA record a number of factors which may or may not be present and for the reasons advanced above it is not required that all of these five factors need to be present before a Magistrate is entitled to make an order under s158(2). One or more of these factors ought to be present after it has been determined in the affirmative that facilities are readily available to allow the evidence to be taken by CCTV. These factors will then be considered and the weight to be attached to any such factor(s) which may be present, for the purposes of the judicial officer exercising his or her discretion to grant such an application.

[37] It is significant that s158(3)(e) of the CPA would appear to dovetail with the provisions of s170A; and it is often the case that the two sections operate in tandem, namely that a child witness gives evidence via CCTV through an intermediary. The physical, psychological, mental or emotional stress, trauma or suffering which is referred to in s170A(1) would fall squarely within the "prejudice or harm" referred to in s158(3)(e). Accordingly, the decisions which have considered the implementation of s170A will assist in determining the proper application of a judicial officer's discretion in whether or not to grant an application under s158(2) of the CPA.

[38] Whilst the applicant concedes that the provisions of s158(3) of the CPA must be interpreted disjunctively, the dispute in this application is focused on the implementation of s158(2) and (3) and the discretion that is to be exercised by a Magistrate in the circumstances. It is common cause that the first jurisdictional fact was present, namely facilities were available for the purposes of taking evidence by CCTV. The enquiry, therefore, is confined to the approach which the second respondent adopted when considering the fourth respondent's application in terms of s158(2) of the CPA.

¹³ *S v Lenting (supra)* at [32].

[39] It was common cause that the fourth respondent did not lead any evidence, expert or otherwise, in support of the application in terms of s158. However, he moved a separate application to have the trial proceed in camera, in terms of s153 of the CPA. That application was not opposed. However, it is relevant when considering the discretion exercised by the second respondent, namely the trial would proceed in camera and that complainant was a minor who would be giving evidence at some point in the trial.

[40] It was common cause that in the application in terms of s158, the fourth respondent made the submission that the complainant would feel more comfortable giving evidence through CCTV facilities and that it would be more convenient to do so. The applicant complained that this constituted hearsay evidence and that the Magistrate committed an irregularity in allowing such evidence in support of the application.

[41] When I queried what the applicant contemplated by way of evidence to be led in an application in terms of s158 of the CPA, Mr Snyman submitted that in the absence of competency reports from the expert(s) who would have assessed the complainant, the fourth respondent was bound to lead the evidence of such expert(s).

[42] It is fairly common for these types of applications to be made from the bar and, on occasion, with the admission of hearsay evidence. This was in fact the case in *Staggie* where there was a similar complaint. The admissibility of hearsay evidence is dealt with in s3 of the Law of Evidence Amendment Act 45 of 1988. Section 3(1)(b) and (c) are relevant for the purposes of any such application. Section 3(1)(c) sets out the issues a court must consider when examining whether the interests of justice are served by admitting hearsay evidence. The nature of these proceedings is highly relevant. It is a statutory rape case of a minor where that minor was allegedly groomed by the applicant. The purpose of any such hearsay evidence that might have been tendered by the fourth respondent was not to prove the charges themselves, but rather to deal with the interlocutory application before the

court. In this regard, the dicta of Cameron JA in *S v Ndlovu & Others*¹⁴ is apposite where he held that “*the Act requires that specific account be taken of the nature of the proceedings (s3(1)(c)(i)). This alludes to the distinction between application and trial proceedings*”. The hearsay evidence in *Staggie* was tendered in an application solely for the purposes of that application. That was similarly the case in the s158 application before the second respondent.

[43] In *Van Zyl & Another v Jonathan Ball Publishers (Pty) Ltd & Others*,¹⁵ Navsa J, as he then was, referred to *Metedad v National Employers’ General Insurance Co. Ltd*¹⁶ regarding s3 of the Law of Evidence Amendment Act where Van Schalkwyk J held that:

*“This section invests the court with the discretion, to be judicially exercised in the interests of justice. It seems to me that the purpose of the amendment was to permit hearsay evidence in certain circumstances where the application of rigid and somewhat archaic principles might frustrate the interests of justice.”*¹⁷

Navsa JA subsequently held in *Makhatini v Road Accident Fund*¹⁸ that:

“the statutory preconditions for the reception of hearsay evidence are now designed to ensure that it is received only if the interests of justice dictate its reception.”

[44] There are clear reasons why such evidence could not be given by the complainant at that point in the proceedings, nor would it have been appropriate for the complainant herself to give evidence and subject herself to cross-examination which would defeat the very purpose of the application and would serve to traumatise her before she even commenced her evidence in the trial itself. There clearly would be prejudice to the complainant if she had to testify as to why she needed to give her evidence through the medium of CCTV facilities. There were no competency reports nor any evidence to be led by experts. It was, therefore, in the interests of justice for the second respondent to consider the submissions made by

¹⁴ 2002 (2) SACR 325 (SCA) at 337 a – c

¹⁵ *Van Zyl & Another v Jonathan Ball Publishers (Pty) Ltd & Others* 1999 (4) SA 571 (W) at 588E – G

¹⁶ *Metedad v National Employers’ General Insurance Co. Ltd* 1992 (1) SA 94 (W)

¹⁷ *Metedad v National Employers’ General Insurance Co. Ltd* (supra) at 498I to 499A

¹⁸ *Makhatini v Road Accident Fund* 2002 (1) SA 511 (SCA) at [21]

the fourth respondent, specifically for the purposes of the application in terms of s158, even if they constituted hearsay evidence in the circumstances.

[45] Even if the second respondent was limited to considering submissions from the bar, the question then remains whether that would have been enough to allow her to exercise her discretion to grant an order in terms of s158(2). In other words, in the circumstances of this case, would it have been enough for the second respondent to have considered the nature of the charges and the fact that the complainant was a minor, aged fourteen at the time of the commission of the alleged offences, and that she was still a minor at the time of the application? There are no authorities that have considered this question in the context of s158 of the CPA.

[46] However, the suggestion that there should have been an extensive enquiry by the second respondent before she made her ruling, appears to have its genesis in the dicta of Ngcobo J, as he then was, in *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development*¹⁹ where he held that “if necessary, the presiding judicial officer must initiate an enquiry into the desirability of appointing an intermediary.....” (my emphasis)

[47] Admittedly that case considered the constitutionality of s170A(1) of the CPA; however, the reference to an enquiry appears to have found its genesis in those comments. I have emphasised the fact that the presiding officer is vested with a discretion as to whether to convene an enquiry. One should not lose sight of the fact that the limitation of the accused’s fair trial rights contemplated by s170A is more pronounced than that under s158(2) and so it is fair to consider that a more extensive enquiry is required to establish whether there is a need to appoint an intermediary under s170A. Any criticism of the second respondent’s decision to grant an order in terms of s158(2) must be considered in this context.

[48] Was it sufficient in this instance for the second respondent to have enquired by considering submissions from the bar in what amounted to an opposed interlocutory application?

¹⁹ *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development* 2009 (4) SA 222 (CC) at [112]

[49] The fact that the prosecutor abandoned the application in terms of 170A in the application to have minor complainant's evidence be heard through an intermediary, is not a negative factor to be weighed into consideration. Neither party disclosed any further reasons for this. The prosecutor appears to have been content with orders directing that the trial proceed in camera and that the complainant's evidence be accepted through the medium of CCTV.

[50] In *S v Mabuza*²⁰ where the court held that it is not a prerequisite that a competency report be provided before a court can make a ruling in respect of an application in terms of s170A. Similarly, a judicial officer can make the observation without any evidence even being presented by a prosecutor by taking into account the age of the witness and the nature of the charges.²¹ I find myself in agreement with that reasoning and there is no reason why the second respondent was not entitled to take into account the nature of the charges and the fact that the complainant, a minor child, who was fourteen at the time of the commission of the alleged offences and was still a minor at the time of the application, and issue the ruling pursuant to the application being argued before her. This was a discretion that she was entitled to exercise having satisfied herself, be it by way of hearsay evidence or simply on the submissions of the prosecutor when the matter was argued, that one or more factors in s158(3) were present. She had already issued a ruling, by consent, that the trial be heard in camera. Secondly, she agreed that the witness would feel more comfortable by avoiding the mental anguish and stress of having to testify in court in front of the applicant who had allegedly perpetrated the sexual acts complained of and she would have to relive and suffer the secondary trauma of giving it that evidence in front of him, quite apart from the intimidating environment of the court room and the direct cross-examination of her in person by counsel.

²⁰ *S v Mabuza* 2018 (2) SACR 54 (GP) at [23] to [26]

²¹ *S v Mabuza* (supra) at [24] to [25]; See also *S v Peyani* 2014 (2) SACR 127 (GP) at 128 to 130 (see in particular para [24] at 129 to 130).

PRIMA FACIE RIGHT: DOES THE APPLICANT HAVE A RIGHT TO REVIEW THE SECOND RESPONDENT'S RULING WHILST THE TRIAL IS PENDING?

[51] It is trite that by virtue of its inherent power to restrain illegalities in inferior courts, the High Court may, in a proper case, grant relief by way of a review, interdict or mandamus against the decision of a Magistrates' Court before a conviction. This, however, is a power which is to be sparingly exercised.²²

[52] In *Wahlhaus*, the then Appellate Division held that a court should be hesitant to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review will ordinarily be available at the end of the day.²³ The Appellate Division held that this statement correctly reflects the position in regard to incomplete criminal proceedings in the Magistrate's Court.²⁴

[53] This rule that reviews of criminal proceedings should only occur after conviction and sentence, seeks to prevent the piecemeal adjudication and serves to promote the efficient administration of justice.²⁵

[54] The principle enunciated by the then Appellate Division in *Wahlhaus* is thus informed by the effect review relief could have on the continuity of proceedings in the court below, and the fact that redress by means of review or appeal will be ordinarily be available upon concluding the proceedings in that court.²⁶ Importantly, the prejudice to an accused person being obliged to proceed to trial, and possible conviction, before being afforded the opportunity to test the correctness of a Magistrate's decision on a ruling does not necessarily justify the High Court from granting relief before proceedings are finalised.²⁷ The prospects of success in the

²² *Wahlhaus v Additional Magistrate, Johannesburg* 1959 (3) SA 113 (AD) at 119H to 120A ("Wahlhaus")

²³ See Gardiner & Lansdown (6ed) Vol. I, p570.

²⁴ *Wahlhaus v Additional Magistrate, Johannesburg* (supra) at 120A-C

²⁵ Steytler, Constitutional Criminal Procedure p396, fn 48

²⁶ *Wahlhaus* at 120B

²⁷ *Wahlhaus* at 120D-F

contemplated review proceedings represent the measure of the strength or otherwise of the alleged right being advanced in the review.²⁸

[55] Having considered what was held in *Wahlhaus*, the poor prospects of success in the review for all the reasons advanced above, the applicant has failed to meet the threshold of a prima facie right although open to some doubt.

[56] However, the applicant has further difficulties associated with meeting the requirements for an interim interdict in these circumstances.

APPREHENSION OF IRREPARABLE HARM

[57] Putting aside the applicant's complaint regarding the procedure which was followed in the adjudication of the fourth respondent's application in terms of s158, the essence of the applicant's submission as to the anticipated harm is that his fair trial right will be compromised by not being able to test the cogency of the evidence associated with the complainant's mental anguish and his ability to confront his accuser, the minor child complainant, directly in court through cross examination.

[58] The fundamental flaw in this submission is that the applicant's fair trial right is not absolute, in the sense that the legislature has already codified an inroad into that right by the enactment of ss153, 158 and 170A, respectively. Provided a court is satisfied that the jurisdictional facts are present, the said subsections empower a judicial officer to make such rulings which may negatively impact upon an accused right to conduct the proceedings in open court and to face his accuser in court.

[59] However, as was pointed out in *Wahlhaus* and many judgments subsequent thereto, it not irreparable harm to have had the second respondent issue an objectionable ruling which an accused believes is to form the subject of a review, in that that right of review remains extant, and the accused would be entitled to raise that in any review or appeal at the end of the day if he is convicted. Moreover, the complaint advanced by the applicant is one that is a projection, at best, namely there

²⁸ *Ladychin Investments (Pty) Ltd v South African National Roads Agency Limited & Others* 2001 (3) SA 344 (N) at 353 F-G

is an apprehension that his fair trial right will be compromised. However, one cannot lose sight of the peculiar facts of this matter, namely that his legal representative will be entitled to cross-examine the complainant, without the intervention or filter of an intermediary, in terms of section 170A. It is direct cross-examination albeit through the medium of CCTV.

[60] Accordingly, the balance of convenience does not favour the applicant in these circumstances.

ABSENCE OF ALTERNATIVE REMEDY

[61] I have already mentioned that the applicant does have an alternative remedy, namely if he wishes to persist in challenging the ruling upon the basis that it constitutes an irregularity that vitiates his fair trial right, then he is at liberty to raise that in either review proceedings or an appeal in the event that he is convicted in the court below.

[62] Mr Snyman submitted that, that does not constitute an alternative relief to urgent relief which the applicant now seeks in this application. I disagree. That contemplates a piecemeal approach to the litigation which should not be permitted for the reasons advanced above.

[63] In the result, the applicant does have alternative remedy.

CONCLUSION

[64] The applicant has failed to establish any of the requirements for an interim interdict in the circumstances and his application falls to be dismissed.

COSTS

[65] Ordinarily, costs would follow the result. However, in this application, it is necessary to make mention of several disturbing features that played a part in the

application, which impact upon the exercise of my discretion in the award of costs for the application.

[66] Firstly, the applicant saw fit to include the identity of the complainant, a minor child, in circumstances where the second respondent had already granted an order to preserve her identity by directing that the trial be heard in camera, as contemplated in s153 of the CPA.

[67] When I inquired as to the reason why the complainant's identity was disclosed in the founding papers, I received a glib response from the applicant's counsel, to the effect that there was no order preventing them from disclosing the identity and that it was not done with any malicious intent.

[68] Secondly, the first, third and/or fourth respondents, represented through the offices of the state attorney, saw fit to attach various pleas, in terms of s105A of the CPA, which form the subject of plea negotiations between the applicant and the prosecution authorities, which have proven to be unsuccessful. However, it is unclear whether this was done in an attempt to influence this court by putting evidence forward that the applicant was prepared to plead guilty to the two charges albeit subject to a proposed sentence. However, more importantly, that affidavit, replete with the s105A pleas attached as annexures, appears to have been served on the second respondent, who is the presiding Magistrate in the trial. Much was made of this by the applicant's counsel and this may well form the subject of a recusal application in the trial. It is not a matter on which I am to rule; However, this approach is to be deprecated as the pleas ought to have played no part in an adjudication of the issues which arise in this application, save that they now impact upon a consideration of an appropriate costs order.

[69] Both parties are at fault for these infractions, as a consequence of which I am disinclined to grant an order for costs in favour of the respondents despite their success in opposing the application.

ORDER

[70] Accordingly, I make the following order:

[70.1] The application is dismissed.

[70.2] There is no order as to costs.

SAKS AJ

Appearances:

For the Applicant: C.E. Snyman

Instructed by: Karl Van Der Merwe Attorneys
c/o Henwood Britter & Caney Attorneys

For the Third Respondents: F. Abraham

Instructed by: The State Attorney, KwaZulu-Natal

Date matter heard: 23 January 2026

Date judgment delivered: 13 February 2026