

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 020428/2026

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
<u>24/2/2026</u>	
DATE:	SIGNATURE

In the matter between:

CATHERINE MWILA MWABA

Applicant

AND

**THE UNIVERSITY OF THE WITWATERSRAND
REGISTRAR OF THE UNIVERSITY OF THE
WITWATERSRAND**

First Respondent

Second Respondent

JUDGMENT

MIA J

[1] This is an urgent application in which the applicant seeks to review and set aside the decision taken by the University's Readmissions Committees refusing her permission to renew her registration for the 2026 academic year in the program she had undertaken, Bachelor of Science. She seeks interim relief permitting her registration pending the University's reconsideration as directed by this court. The application is brought in terms of section 6 of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'). The respondents oppose the application on the grounds of lack of urgency citing that the urgency is self-created, that the question of readmission is moot and the absence of a procedural irregularity warranting a review.

BACKGROUND FACTS

[2] The applicant is a student enrolled in the Faculty of Science for a three-year Bachelor of Science degree which commenced in 2022. The requirements for completion of the degree required that the applicant achieve 144 credits per year which would result in a total of 432 credits upon completion of the programme. Whilst the degree is usually completed in three years, the student may complete the programme requirements over a period of five years.

[3] The Faculty of Science Undergraduate Student Information book indicated students had to achieve 144 credits per year and 432 credits after three years to graduate with a Bachelor of Science degree. The applicant enrolled for 8 subjects in 2022 and obtained 72 of the 144 credits required. She had dropped four subjects and did not meet the requirements to obtain a credit in two courses. In 2023, the applicant enrolled for six courses and achieved credits for five courses and was permitted to proceed into the next academic year. In 2024, the applicant enrolled for twelve courses and achieved credits in four courses. The applicant enrolled in 2025 to complete the eight courses where credit was required. The applicant achieved credits in five of the eight courses carried over from 2024. The total credits obtained at the end of 2025 were thus 264 out of the 432 credits required to graduate with a Bachelor of Science degree.

[4] The applicant completed the first-year course requirements over two years. The second-year course requirements were not completed in the following two years. This precluded the applicant from registering for the third year according to the Faculty of Science's progression rules. Of significance for the applicant is the Faculty of Science's requirement that a student pass Linear Algebra II and/or Mathematical Statistics II in the second year to progress to the third year of Computer Science or Computational Applications course. The applicant has not met this requirement, and this appears to bar the applicant from progressing to the third-year academic year.

[5] The respondents indicate that the successful completion of the courses is required as they are foundational to the eight courses a student would register for in the third year of Computational Science or Computational Applications. In the absence of progression in the two third year options, the applicant could register for Environmental Studies in the third year. This however would not ensure the applicant held sufficient credits in a second major which is required to ensure the applicant can graduate with a Bachelor of Science degree in 2026, within the five years permitted to complete the three-year degree.

[6] On 12 January 2026, the Wits Readmissions Committee (WRC1) refused permission for the applicant to renew her registration. WRC1 refused permission after considering the reasons the applicant submitted through the online platform. Notwithstanding that the applicant's appeal to be readmitted failed during the WRC1, students are permitted to attend a further appeal in person where they may make oral representations and to consider any documents or issues not brought to the attention of the readmissions committee. This is by way of in person attendance at WRC 2 following the online appeal. On 16 January 2026, the applicant was permitted to address the WRC 2 in person or represented by a member of the SRC. WRC2 dismissed her appeal.

[7] The applicant contends that the decision constitutes unlawful administrative action and ought to be reviewed as the respondent failed to

follow the correct procedure in terms of its rules. The respondents, on the other hand, maintain that the decisions were taken in accordance with university rules and applicable legislation governing higher education institutions.

[8] The matter raises issues concerning:

- 8.1 Whether the matter is urgent;
- 8.2 Whether the decision constitutes administrative action under PAJA and is reviewable;
- 8.3 Whether the applicant was afforded procedural fairness;
- 8.4 Whether the decision was lawful, rational, and reasonable;
- 8.5 Whether there has been undue delay in bringing the review;
- 8.6 The appropriate remedy if review succeeds.

URGENCY

[9] I deal with the question of urgency first. The registration for students for the 2026 academic year opened on 20 January 2026 and closed on 4 February 2026 when the academic year commenced. Without an intervention the applicant may not register for the 2026 academic year. Whilst the delay is not significant, exclusion from the academic year carries consequences that cannot be easily remedied retrospectively. The respondents contend that the applicant was aware that she was at risk of academic exclusion since December 2025. She thus created her own urgency. Moreover, the university registration for 2026 has closed and the university is not able to accommodate students after the close of the academic year. Considering the impact of a lost year the matter is urgent. The delay in launching this application must be weighed against the granting of intrusive interim relief.

ADMINISTRATIVE ACTION UNDER PAJA

[10] In *Hamata v Chairperson, Peninsula Technikon Internal Disciplinary Committee*¹ the Supreme Court of Appeal held that proceedings conducted

¹ (384/2000) [2002] ZASCA 44; 2002 (5) SA 449 (SCA); 2002 (7) BCLR 756 (SCA); (2002) 23 ILJ 1531 (SCA) (17 May 2002) at paras 11-2 and 19.

by a higher education institution constitutes the exercise of public power and are subject to constitutional scrutiny. The university's exercise of public power affecting students constitutes an administrative action and is reviewable under PAJA. In *Pharmaceutical Manufacturers Association of SA: In re Ex parte President of the RSA*² the Constitutional Court held that all exercises of public power must be rationally related to the purpose for which the power was conferred. Section 3(1) of PAJA requires administrative action which materially and adversely affects rights to be procedurally fair.

[11] The review must be considered in the context of the university's recognised academic freedom and institutional autonomy. Its decision ought not be overridden except where the decision is unlawful, irrational, or procedurally unfair. In the present matter, it is thus necessary to consider whether the respondent's decision-making process complied with the requirements of procedural fairness.

PROCEDURAL FAIRNESS

[12] The applicant contends that the decision to exclude her is procedurally unfair and unreasonable in view of her circumstances. The respondent, on the other hand, submits that the decision falls squarely within its statutory powers and that the readmission committee complied with procedural requirements. In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs*³ the Constitutional Court explained that a review requires consideration of the nature of the decision, the identity of the decision-maker, the expertise involved, and the range of factors relevant to the decision.⁴

² (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (25 February 2000).

³ (CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004).

⁴ The Court said in *Bato Star* above n 2 at para 45:

"[45] What will constitute a reasonable decision will depend on the circumstances of each case, much as what will constitute a fair procedure will depend on the circumstances of each case. Factors relevant to determining whether a decision is reasonable or not will include the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and well-being of those affected. Although the review functions of the Court now have a substantive as well as a procedural ingredient, the distinction between appeals and reviews continues to be significant. The Court should take care not to usurp the functions of administrative agencies. Its task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution."

[13] In determining procedural fairness, the court will ascertain whether the applicant was informed of the possible adverse decision and was afforded a reasonable opportunity to make representations. The fairness is context specific.⁵ If the review is successful the default remedy is a remittal to the decision maker. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation*⁶ the Constitutional Court held that substitution is exceptional and appropriate only where the court is in as good a position as the administrator to make the decision.⁷

REASONABLENESS OF THE DECISION

[14] The applicant's grounds for review centres on the complainant that the university failed to properly exercise the discretion afforded by its rules and did not follow its own procedure and failed to afford her an opportunity to make representations. She maintains that the rules permit her to renew her registration where she has not achieved the minimum requirements subject to the Senate's approval and conditions. In this regard, she envisages a specific curriculum be prescribed to enable her to complete her degree. This requires the WRC decision be discretionary and flexible in exceptional circumstances.

[15] In the present matter, the applicant does not seek a substitution of the respondent's decision. She seeks an interim order to register and an order that the decision to exclude her remitted to the respondent to consider the exceptional factors she relies upon. She argues that the WRC did not evaluate her circumstances fully as her 'exceptional' circumstances were not considered when the WRC2 failed to consider the report of her psychologist. The WRC's thus failed to consider the proximity to completing her degree and only furnished certain reasons after the decision had been taken. She maintains that if the WRC's exercise its discretion having regard to her exceptional circumstances it may refer the decision to the Senate to permit her to register for a special curriculum with conditions.

⁵ See *Hamata* above n 1 at para 12-3 and 21.

⁶ (CCT198/14) [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) (26 June 2015) at paras 47-55.

⁷ *Ibid.*

[16] The respondent relies on the applicant's academic history. She accumulated 264 credits after registering for the first and second year of the Bachelor of Science degree. After four years in a three-year programme, she had accumulated 264 credits instead of the required 432. She required 168 credits to accumulate the required 432 credits to graduate with a degree in the Faculty of Science. Apart from the credits required, she was required to successfully complete certain foundational subjects before being permitted to enrol for the third-year course programme. If she registered in 2026, this would be her fifth year in the Faculty of Science, and she would have to complete the required course programme. She would be required to enrol for subjects which formed her second major to graduate with the degree she enrolled for. However, she has not completed two subjects successfully to enable her to register for third year subjects in Computer Science or Computational Analysis. Thus, the applicant is required to repeat her second year both academically and practically. The applicant did not contest these facts.

[17] The second respondent excluded the applicant based on academic performance having regard to the university's requirements. The applicant does not dispute the respondent's version in respect of the academic requirements. This review thus considers whether the Readmission Committees considered the applicants academic record, permitted her the opportunity to make representations accompanied by the supporting documentation before coming to a final decision. The mere fact that a discretionary power exists does not oblige a decision-maker to grant relief requested. Nor does it follow that refusal demonstrates a failure to exercise discretion. The decision must be rational, reasonable and lawful.

[18] Whilst the applicant states that the respondent did not reply to enquiries she made, it is not disputed that she was aware that she could make representations at WRC 2 and could submit documents she relied upon. Upon considering the respondents conduct around the decision, the applicant was informed that she was at risk of exclusion and advised to consider other institutions. During the sitting of the second readmissions committee, she was afforded the opportunity to present further information. An independent record

of the proceedings is not available to ascertain whether the applicant was rebuffed and not permitted to place information before the second readmissions committee. In terms of a consideration that she be afforded an opportunity to make submissions the applicant was present during the proceeding and on her version, she responded to questions. The complaint regarding procedural fairness must be mindful that procedural fairness does not guarantee a favourable outcome, only a fair process. On the papers, that threshold has been met. The respondents' conduct is lawful to the extent that it acts in accordance with the university rules and applicable legislation governing higher education institutions. When the respondents' decision is considered having regard to the applicants admissions regarding the applicable it is evident that the respondent's version prevails in the absence of an objective record. I am not persuaded that the respondent did not act rationally and reasonably or that they failed to follow procedures which afforded the applicant an opportunity to appeal their decision.

[19] Even when considering the respondent's reasons for the exclusion, the applicant's academic shortfall is not marginal. It relates not only to the gap between the credits achieved and those required to graduate, but to the period within which the degree is required to be completed. The applicant requires special accommodation, but it is not clear how it is anticipated she be accommodated in her particular circumstances which complies with the university's rules. Does the special accommodation require an extension of the five-year period permitted to complete the degree or to be permitted to enrol for third year subjects whilst completing second year subjects. Without the prerequisite courses, it is doubtful that she will complete the degree within the reasonable time frame permitted. That the readmissions committee did not have regard to her health challenges does not suggest a failure to follow the appropriate procedure without due consideration of her circumstances. The health challenges do not support the view that the requirements for completion of the degree will be met in terms of the rules.

[20] The respondents contend that the relief sought is moot because registration had closed before the application was issued. Mootness is not

decisive as the court may still grant effective relief. It does however underscore the practical difficulty of compelling a university to reopen academic processes after the commencement of the academic year. The court will not usurp the function of an administrative agency. It is required only to ensure the decisions taken such administrative agency falls within the bounds of reasonableness. This weighs heavily against granting interim relief as sought.

[21] Whilst accepting the seriousness of exclusion, the applicant has not demonstrated a prima facie right to provisional registration for 2026. To grant the relief will require this court to intrude into the academic administration. This is a step courts take only in the clearest cases of unlawfulness and irrationality. This is not such a case.

[22] The applicant has not established that the decisions taken by the respondents was unlawful, irrational or procedurally unfair. The issue as appears from the papers do not permit a conclusion that there was administrative injustice. The academic performance was considered within a lawful institutional framework. Intervention in such circumstances undermines the autonomy necessary for universities to maintain academic standards. The application must therefore fail.

[23] The costs in the present matter is informed by the decision in *Biowatch Trust v Registrar, Genetic Resources*⁸, the applicant appeared in person to seek the opportunity to pursue her education.

[24] Consequently, I grant the following order:

ORDER:

1. The application is heard as one of urgency.
2. The application to review and set aside the decisions of the respondents is dismissed.

⁸ (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC) ; 2009 (10) BCLR 1014 (CC) (3 June 2009).

3. The application for interim relief permitting provisional registration is dismissed.
4. There shall be no order as to costs.



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JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicant : CATHERINE MWILA MWABA
Instructed by : IN PERSON

On behalf of the respondent : ADV M MUSANDIWA
Instructed by : MVT ATTORNEYS

Date of hearing : 13 February 2025
Date of judgment : 24 February 2025