

Reportable:	YES
Circulate to Judges:	YES
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO



9 February 2026

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

CASE NUMBER: 2025/145669

In the matter between:-

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	1 st Applicant
DIRECTOR OF PUBLIC PROSECUTIONS, NORTH GAUTENG	2 nd Applicant
and	
R DU PLESSIS	1 st Respondent
CONRAD PRETORIUS	2 nd Respondent
AFRIFORUM NPC	3 rd Respondent

In re:

R DU PLESSIS	Applicant
and	
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	1 st Respondent
CONRAD PRETORIUS	2 nd Respondent

AFRIFORUM NPC

3rd Respondent

**DIRECTOR OF PUBLIC PROSECUTIONS,
NORTH GAUTENG**

4th Respondent

This judgment is handed down electronically by circulation to the parties email addresses. The date of the judgment is deemed to be 9 February 2026.

JUDGMENT

Reid J

Introduction

- [1] This is the return date of a *rule nisi* order that was issued on 25 August 2025 by Millar J on an urgent, *ex parte* and *in camera* basis (the order). The matter before this Court also includes a reconsideration application of the order in terms of Rule 6(12)(c) of the Uniform Rules of Court.
- [2] The order suspends a decision made on 21 August 2025 by the National Director of Public Prosecutions (for ease of reference, the National Prosecuting Authority (NPA)) to institute criminal prosecution for the charge of attempted murder against the applicant, pending the finalisation of a review application against that decision.
- [3] The nub of the order reads:

“That first respondent (NPA) be prohibited from taking any further

steps of any nature whatsoever, to execute its decision that was taken on 21 August 2025, by the fourth respondent (DPP) to prosecute the applicant for attempted murder, pending a review application of that decision to be instituted by the applicant within 15 days from date of this order."

[4] The following parties are involved:

- 4.1. The applicant, Mr. Roelof du Plessis (du Plessis). He is a senior counsel advocate (SC) practicing at the Pretoria Association of Advocates. Du Plessis is potentially facing prosecution for attempted murder.
- 4.2. The State Prosecution Authorities (holistic referred to as the National Prosecuting Authority = NPA), which are:
 - 4.2.1. The National Director of Public Prosecutions (NDPP); and
 - 4.2.2. The Director of Public Prosecutions for North Gauteng (DPP).
- 4.3. The complainant in the criminal matter, Mr. Conrad Pretorius, and his wife who was a witness to the incident (Mrs Pretorius). Where I refer to Pretorius, it will be in reference to Mr Pretorius.
- 4.4. The applicant also cites a third party as a pivotal role player, being AfriForum NPC, a non-profit company (AfriForum). The applicant claims that AfriForum is the driving force behind the decision to prosecute him. AfriForum has been cited as a party to these

proceedings and filed a notice to abide by this Court's decision.

AfriForum also filed an "explanatory affidavit", to which I will refer hereunder.

- [5] To avoid confusion and due to the different citations of the parties in the *rule nisi* and in the reconsideration applications, I will refer to the parties by their respective identities instead of citations.
- [6] The review application against the decision of the NPA to institute criminal proceedings against du Plessis, has been instituted by du Plessis and is opposed. The documents of the review application, including the record, are included in the papers before this Court.
- [7] It serves to emphasise that the review application itself is not before this Court for determination. The review application is only relevant in as far as it relates to prospects of success of du Plessis proving a *prima facie* right in relation to the confirmation of the interim order to prevent prosecution of the criminal matter, pending the outcome of the review application.
- [8] The issues before this Court engage several intersecting legal principles:
- 8.1. The constitutional and statutory mandate of the NPA to prosecute without fear, favour or prejudice (section 179(2) of the

Constitution of the Republic of South Africa 108 of 1996 (the Constitution); section 32(1)(a) of the **National Prosecuting Authority Act** 32 of 1998 (NPA Act) and section 22 of the NPA Act relating to the powers, duties and functions of the NPA.

- 8.2. The separation of powers and the need for judicial restraint when asked to interfere with executive functions.
- 8.3. The right to a fair trial and the limited circumstances in which a prosecution may be stayed.
- 8.4. The scope of the *audi alteram partem* principle in prosecutorial decision-making.

- [9] The crisp question before this Court is whether an accused is entitled to the content of all the representations made to the NPA, and legally entitled to an opportunity to respond to all the representations made to the NPA prior to the NPA making a decision as envisaged in Section 22(2)(c) of the NPA Act, read together with the Constitution.

Factual background

- [10] On an evening in September 2023, there was a road rage altercation between Roelof du Plessis (then about 60 years old) and Conrad Pretorius (then about 30 years old). Both men were crossing an intersection with non-working traffic lights due to load shedding. Du Plessis's vehicle was nearly hit, or was hit, on the rear bumper.

- [11] Du Plessis followed Pretorius to obtain his license plate number. Both vehicles came to a stop in a cul-de-sac. Pretorius alighted his vehicle and approached du Plessis, who then got out of his vehicle. When Pretorius approached him, du Plessis pushed Pretorius away. In response, Pretorius punched du Plessis with a clenched fist. Du Plessis fell to the ground, and Pretorius fell on or with him. Du Plessis states that he was briefly knocked unconscious when his head hit the ground. When he came to, Pretorius was still assaulting him with clenched fists. While on the ground, du Plessis used a pocket knife and stabbed Pretorius twice.
- [12] Both men respectively went to the hospital.
- 12.1. Pretorius was hospitalised for approximately a week to treat his stab wounds.
- 12.2. Du Plessis was admitted for observation to check for a concussion or head injury. He was treated and discharged later that same evening.
- [13] The core facts of the physical fight are disputed, but it is agreed that it escalated from a traffic incident to a physical fight, ending with du Plessis stabbing Pretorius twice. One stab wound was in the neck whilst the other was in Pretorius's upper thigh.
- [14] Criminal charges followed against both du Plessis and Pretorius

respectively.

- 14.1. Du Plessis was charged with attempted murder in Brooklyn South African Police Service Case No: 169/08/2023, Pretorius being the complainant.
- 14.2. Pretorius was charged with assault with intention to inflict grievous bodily harm under Brooklyn CAS 51/08/2023, du Plessis being the complainant. The charges in respect of Pretorius have been provisionally withdrawn.

[15] Initially, in 2023, the NPA decided to not prosecute du Plessis for attempted murder, but to prosecute Pretorius for assault. The reasoning behind the decision was that du Plessis used his pocket-knife in self defense against the attack of Pretorius.

[16] A media hype followed in which the media (mostly Maroela Media, alleged by du Plessis to be backed by AfriForum) accused the judiciary of protecting “one of their own” in that the prosecuting authority failed to prosecute du Plessis for attempted murder or any other criminal charge.

[17] During 2024 AfriForum, representing Pretorius, made repeated representations to the NPA, criticising the decision to not prosecute du Plessis but to prosecute Pretorius. On 31 January 2025, the NPA directed the matter to mediation. This process was unsuccessful.

[18] On 21 August 2025, and in terms of section 22(2)(c) of the **National Prosecuting Authority Act 32 of 1998** (NPA Act), the NPA self-reviewed their earlier decision and on 20 August 2025 elected to prosecute du Plessis for attempted murder. The correspondence from the NDPP relating to the decision reads as follows:

"In making my final decision in this matter, I have duly considered the prima facie evidence per Brooklyn CAS 51/08/2023 and Brooklyn CAS 169/08/2023, the respective representations received, referred to above, and the reports of the DPP.

The central issue in this matter is who acted unlawfully in attacking whom and in this regard, whether Adv. Du Plessis acted in private defence when he twice stabbed Mr. Pretorius with his (i.e. Adv. Du Plessis") pocketknife.

It is my considered view that the prima facie evidence and the probabilities emerging from the case as a whole show that Adv. Du Plessis did not act in private defence when he attacked Mr. Pretorius with the knife, and indeed, that Adv. Du Plessis acted unlawfully when he twice stabbed Mr. Pretorius.

Furthermore, the nature of the stab-wounds inflicted on Mr. Pretorius prima facie show that Adv. Du Plessis committed the crime of Attempted Murder when he stabbed Mr. Pretorius.

I have accordingly Instructed the present Acting DPP: Gauteng, Pretoria, Adv. M. Jansen van Vuuren, to institute a prosecution against Adv. Du Plessis in the Regional Court on a charge of Attempted Murder.

I have also accordingly reviewed the decision of the DPP: Gauteng, Pretoria, dated 3 October 2023, to decline the representations of Mr. Pretorius and to proceed with a prosecution against Mr. Pretorius on charges of Assault and Malicious Injury to Property. My decision is that the said prosecution against Mr. Pretorius must not be proceeded with."

- [19] This decision came after representations were made by AfriForum to the NPA. Du Plessis contend that the representations contain a strong, one-sided attack on himself and a new, more damning version of events from Mr. and Mrs. Pretorius. He was never privy of these new allegations, and the NPA never granted him an opportunity to respond to these new allegations. It is argued on behalf of du Plessis that the contradicting versions of Mr and Mrs Pretorius, the contradicting evidence of Mrs Pretorius in her 2 statements, and his (du Plessis's) answer to these new allegations, would have resulted in a decision to not prosecute him. As such, so the argument goes, he should not be charged with attempted murder as he was never given the *audi alteram partem* right to answer the new allegations.
- [20] Pretorius instituted a civil claim for damages against du Plessis for R12 million on the basis of, *inter alia*, injuries suffered. It is stated by du Plessis that the process of mediation, as directed to by the NPA in 2025, was used by Pretorius as an instrument to scare du Plessis with a civil suit, and to establish whether Pretorius could "buy" du Plessis's silence about the incident. This is denied by Pretorius.
- [21] Before the criminal prosecution could commence, du Plessis launched an urgent *ex parte* application, obtaining the order that effectively stays the prosecution pending a review.

Du Plessis's case

- [22] It is du Plessis's case that the self-review of the initial decision to not prosecute him, was illegal because the NPA failed to consult the Gauteng Director of Public Prosecution (DPP) and failed to give him (du Plessis) a proper chance to respond to the damaging new allegations in AfriForum's representations.
- [23] AfriForum's representations were not made available to du Plessis by the NDPP, but only came to light as an annexure to AfriForum's explanatory affidavit filed in the application.
- [24] Du Plessis's position is that the interim order should be confirmed on the basis that the NPA's decision is unlawful in that it violates constitutional procedures and natural justice. Allowing a prosecution based on this decision would violate his fundamental rights to liberty and dignity while the review, which (so he argues) has high prospects of success, is pending.
- [25] Du Plessis further claims the allegations in AfriForum's representations are factually flawed and contradict earlier police statements. He holds the view that the interim interdict should be confirmed because the prospects of success in his review application against the decision of the NPA to prosecute him, is very strong and will likely succeed, resulting in

the pending current prosecution being unlawful.

[26] The argument of du Plessis is that the boundaries of self defence can not be overstepped in the absence of an assault.

[27] According to du Plessis, the nature of the injuries cannot play a role as he had no intention to injure Pretorius but only to get him to stop assaulting du Plessis. Du Plessis states that he did not even know whether the use of the knife could cause any harm as he only used it in self- defence. In making these statements, Du Plessis ventures in the merits of the criminal case. Whether there was intent, or whether his actions were self-defence, are issues that is to be determined by the criminal court in criminal proceedings. It has no place for this Court to interfere with the decision of the NPA on the basis of triable merits in the criminal matter.

[28] Du Plessis states that prominent members in AfriForum have a personal vendetta against him, which originated in 2011 during the court proceedings that dealt with the song *"Kill the Boer, kill the Farmer"*. Du Plessis acted for the Transvaal Agricultural Union as co-plaintiff with AfriForum. According to du Plessis, Afri-Forum used the platform of the court to gain additional members during the 3-day hearing. The origin of the alleged vendetta was du Plessis's being outspoken against AfriForum abusing the court for ulterior motives. It further escalated

when du Plessis greeted Mrs Winnie Madikisela-Mandela and Mr Julius Malema after the legal proceedings. The gripe between the managers of AfriForum and du Plessis continued during 2017 with legal proceedings that are irrelevant to this proceeding.

[29] When the first set of du Plessis's representations were sent to the DPP, it was apparently circulated by the media and although du Plessis acted as a judge in 2018, it was widely reported that an Acting Judge is prosecuted for attempted murder. This, so the argument goes, brought the judiciary in great disrepute. Du Plessis's good name, character and reputation as counsel was also damaged.

[30] The Pretoria Bar Council considered taking disciplinary steps against du Plessis for his involvement in the incident in 2023, but it was not proceeded with after du Plessis convinced the Bar Council that he was a State Witness in the process, not an accused (See: Founding Affidavit of du Plessis, paragraph 54). I will be remiss of my duties in not pointing out that this is factually incorrect as du Plessis was, in fact, accused of attempted murder.

National Director of Public Prosecutions

[31] The NPA's position is that the interim order should be set aside and should not have been granted in the first place. Du Plessis must air his grievances in the criminal trial court. It is argued that the ex

parte application was improper, and interim orders interfering with prosecutions are only for the "clearest of cases." The NPA insists that the criminal court is the proper forum and that du Plessis's rights should be raised there.

[32] The NPA contends that the *rule nisi* order was granted without proper grounds for urgency, without justification for *ex parte* relief, and in a manner that unlawfully interferes with its constitutional mandate.

[33] The NPA anticipated the return date of the order of Millar J, claiming the *ex parte* application was an abuse and lacked urgency. During October 2025 the matter served before Potteril J, who removed it since it was incorrectly enrolled. During November 2025 the reconsideration application served before Jansen van Nieuwenhuizen J, who struck it from the roll for lack of urgency.

[34] The anticipation of the *rule nisi* order ended up being heard together with the reconsideration application currently before this Court. The two applications morphed together as set out hereunder.

The filing of affidavits with dual purposes and Explanatory Affidavits

[35] The proceedings followed no specific process in as far as the affidavits and applications were identified and isolated. All counsel agreed that the review application does not serve before this Court, and the

remaining documents of the *rule nisi* and reconsideration order were to be considered *in toto*.

- [36] The practical effect of doing this, has the potential to cause unnecessary pitfalls and confusion in established legal procedures. The founding affidavit in the reconsideration application was to serve as the opposing affidavit to the *rule nisi*. The answering affidavit in the rescission application was to be considered the replying affidavit in the *rule nisi*. This practice must be discouraged in the strongest possible terms.
- [37] Legal consequences and inferences are drawn from the documents before court. For example, the absence of a replying affidavit has a direct consequence in the outcome of an application. Both counsel requested in argument that the facts should be considered holistically without giving credence to the identification of the affidavits. Rule 6 of the Uniform Rules of Court provides for a founding affidavit, an answering / opposing affidavit and a replying affidavit to be filed in specific procedural periods. If an answering affidavit (of the *rule nisi*) is found in the founding affidavit (of the reconsideration application), as in this case, the litigating party should file an affidavit titled answering affidavit and refer to the content of the founding affidavit of the reconsideration application to be considered as the content of the answering affidavit.

- [38] The absence of following established procedure as described in the Uniform Rules, is an invitation to a muddled legal process; which should be discouraged.
- [39] The “explanatory” affidavit as filed by AfriForum is a new creature that is developing in our courts. The status there-of is unclear. It is not an opposing affidavit, but the party filing same wishes it to be taken into consideration in determination of the application. In my view, an explanatory affidavit should only be filed if a party that is before Court has to explain something to the court which would not be proper in a founding or answering affidavit. This should only be in exceptional circumstances.
- [40] Where a party is before Court, and abides by the decision of the Court, I hold the view that it should not be allowed to file affidavits that may influence the outcome of the proceedings. One example for the reasoning of my view, is the costs implications involved in litigation. When a party files an explanatory affidavit that influences the ultimate decision of the court, the consequences are unclear: is such a party to be included in an adverse cost order? Furthermore, are parties that are referred to in the explanatory affidavit, under any obligation to answer to allegations made in the explanatory affidavit? Explanatory affidavits often find itself to bamboozle the legal process before court.

[41] Explanatory affidavits should only be filed in circumstances where an explanation is required that would not influence the reasoning of the court, and that would not call for any party to answer to the explanatory affidavit.

Applicable legislation

[42] Du Plessis argues that the decision to prosecute him was unlawful as the Constitution provides in section 179(4) that National Legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice and those principles are echoed in the legislation applicable to the NPA. He alleges that did not happen.

[43] Section 179(5)(d) of the Constitution provides that the NDPP may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the NDPP, from the following:

- 43.1. the accused person.
- 43.2. the complainant.
- 43.3. any other person or party whom the national director considers to be relevant.

[44] The process is administrative and not judicial. While fairness is required, it does not entail full disclosure akin to civil discovery or the

right to cross-examine. The NPA has a discretion in managing such representations, balanced against its duty to act independent and efficiently.

[45] Du Plessis argues that, in this matter, it does not appear that there was any consultation with the relevant Director of Public Prosecutions which would include the Provincial Director and the district court prosecutor, and it does not appear from the letter giving reasons for the decision. That also makes the decision unlawful.

[46] Du Plessis argues furthermore that AfriForum is not a relevant person that could have made representations to the NDPP under the circumstances of this matter, and their representations should not have been considered at all.

[47] Section 12(2)(c) of the NPA Act echoes section 179(5)(d) of the Constitution and permits the NDPP to review a decision to prosecute after taking representations from “the accused person, the complainant and any other person or party whom the national director considers to be relevant.”

Prosecutorial Independence and the Separation of Powers

[48] Section 179(2) of the Constitution vests the power to institute criminal proceedings in the prosecuting authority. This power is integral to the

executive function and is protected by the principle of prosecutorial independence.

[49] As emphasised in *Sanderson v Attorney-General, Eastern Cape* 1998 (2) SA 38 (CC), courts must be slow to intrude upon this terrain. The appellant in *Sanderson* sought a **permanent** stay of prosecution on the basis that an unreasonable delay in his prosecution violated this constitutional rights.

[50] *Sanderson* expanded the scope of section 25(3)(a) of the Constitution to protect non-trial-related interests such as liberty, security, and social prejudice. *Sanderson* also remains a foundational precedent on the right to a speedy trial in South African constitutional law, balancing individual rights against the public interest in effective criminal prosecution.

[51] The Constitutional Court in *National Treasury and Others v Opposition to Tolling Alliance and Others* 2012 (6) SA 223 (CC) reiterated that interim interdicts restraining state organs from performing statutory or constitutional duties should be granted only in the clearest of cases and where unlawfulness, fraud, corruption or manifest irrationality is shown.

[52] Section 179(2) of our Constitution is emphatic: "*The prosecuting authority has the power to institute criminal proceedings on behalf of the State and to carry out necessary functions incidental to instituting*

criminal proceedings."

- [53] In *Mapisa-Nqakula v National Director of Public Prosecutions and others* 2024 JDR 1749 (GP) the facts are similar to this application. The following was held by Potteril J:

"[5] The first issue the Court has to decide is urgency. The grounds for the accelerated or anticipated urgency application is set out as that the unlawful arrest is imminent and it intended to take the applicant and her attorney by surprise. The imminent arrest will harm the applicant's dignity, as a normal citizen, and under the Constitution of the Republic of South Africa: "Merely by virtue of her office and status as Speaker of Parliament." It is further averred that there has been constant and unrelenting attempts by the state to arrest, despite the necessary threshold to arrest her, let alone charge a statutory and constitutional authority. In this case one of the three most important functionaries appointed in terms of the Constitution of the Republic of South Africa.

[6] It is further set out that the state's case is underpinned by an underwhelming weak investigation and riddled with irregularities which could never justify the infringement and imperilment of the applicant's constitutional rights; let alone the applicant's position as the Speaker of the Parliament."

- [54] In the *ratio decidendi* of the *Mapisa-Nqakula* matter, Potteril J found:

[20] It is most certainly not within the power of this Court to instruct the Minister and his officials to summons the applicant versus to arrest her. There is in anyway no such prayer sought in the application before me. I cannot find this, firstly, because there are no grounds set out as to why this should be done, except that the applicant's standing in society and her dignity. The NDPP has stated, under oath, that her attorney can take her to Lyttleton Police Station and her attorney can take her to the court. This is already

a courtesy and an exception to what ordinary citizens are afforded.

[21] *There is not a single fact set out as to why the future arrest will be unlawful. Seemingly because there is a weak case made out. Yet, the applicant does not know what case has been set out and this is pure speculation. I can make no finding on such speculation that there will be an unlawful arrest or that there is a weak case. These facts cannot underpin urgency.*

[22] *The respondents argued **that it would not be competent for this Court to interdict an arrest. I am in full agreement with this submission.** Not on the facts presented, but more importantly, a Court has to take cognisance of the fact that if the Court grants such an order the floodgates will be opened. Every suspect will be in a position to approach a Court, on an urgent basis, setting out on speculation that there is a weak case against it and interdict an arrest.*

Any suspect would merely have to set out in a founding affidavit that the arrest in future will be unlawful. The whole criminal justice system will fail and will be controlled by suspects."

(own emphasis)

[55] As mentioned above, Du Plessis claims that any arrest would be unlawful on the basis that the process in deciding to prosecute, contravenes the *audi alteram partem* rule, and secondly, on the basis that AfriForum is not a competent party to make submissions on behalf of a complainant (or any other party) in terms of section 22(2)(c) of the NPA Act read with section 179(5)(d) of the Constitution. I disagree.

[56] I am of the view that the legislature clothed the NPA with the authority to

prosecute and to take any information presented to it, into account. The legislature could not have intended to limit the powers of the NPA, in deciding whether to prosecute or not, to receiving representations of only certain categories of people. To ensure that criminal proceedings will be fair and fruitful, the NPA is entrusted with this responsibility.

- [57] The order granted on 25 August 2025 effectively suspends the NPA's constitutional duty to criminally prosecute, pending a civil review of the decision to prosecute. It constitutes a judicial pre-emption of a core executive function and, absent compelling evidence of irreparable trial prejudice or *mala fides*, cannot be justified.

Equality before the law

- [58] Equality before the law is a dual principle that a) the law must be applied impartially and procedurally fairly to every person, and b) the law itself must provide equal protection and not create arbitrary or unjustified distinctions between people. It is the bedrock of democratic justice, designed to prevent privilege and oppression by ensuring all are subject to the same fair rules.
- [59] The rule of law requires that all persons be treated equally before the courts and that the criminal justice system operates without fear or favour.

[60] Du Plessis invokes his right to dignity and privacy, arguing that prosecution would damage his reputation and subject him to public scrutiny. While these rights are important, they are not absolute. The public interest in the prosecution of alleged crimes, the principle of equality before the law, and the constitutional mandate of the NPA must be balanced against individual reputational concerns. In most cases, as *Sanderson* confirms, the social prejudice of being accused is an inherent burden of the criminal process, not a basis for its interruption.

[61] In *Sanderson*, the Constitutional Court underscored that a stay of prosecution is a “radical” remedy, “far-reaching” and “seldom warranted in the absence of significant prejudice to the accused.” The Court identified three categories of prejudice: liberty, security, and trial-related interests. Only where delay or procedural unfairness results in irreparable trial prejudice—or in exceptional circumstances where non-trial prejudice is overwhelming—may a stay be justified.

[62] Du Plessis has alleged social prejudice, reputational harm, and anxiety. However, as *Sanderson* makes clear, these forms of prejudice, while real, do not ordinarily justify a stay of prosecution. The proper forum for addressing his complaints is the criminal trial itself, where he may present his defence and challenge the evidence against him.

[63] Despite significant social prejudice against du Plessis, this Court’s duty

is to balance the rights of du Plessis, and Pretorius, against societal interests in the execution of justice. Social prejudice (embarrassment, anxiety, reputational harm) is present due to the seriousness of the charge and the publicity of the developments in the matter. The adage is apt that “justice is not only to be done but must be seen to be done.”

Urgency and Ex Parte Relief

[64] Rule 6(12) requires an applicant for urgent relief to demonstrate that he cannot obtain substantial redress in the ordinary course. Du Plessis’s claim of urgency was based on speculation that he would be arrested with “huge fanfare” and that AfriForum would publish prejudicial articles. These fears were not substantiated by evidence of imminent arrest or any NPA policy of sensationalist arrests.

[65] During argument, it was submitted by Adv van der Merwe SC that the documents in the review application refer thereto that du Plessis was arrested in this matter, which was the basis for the fear of a further arrest. Adv van der Merwe SC referred to annexures of the review application. As mentioned, the review application is not before this Court. It also did not serve before the court that made the urgent order on 25 August 2025.

[66] As such, it cannot be taken into consideration in this judgment.

Requirements of an interim interdict:***Prima facie* right**

[67] Du Plessis argues that he has a *prima facie* case for review of the decision of the first respondent to prosecute me. In addition, he also has a *prima facie* case to have his good name, reputation and character protected, as well as the reputation of his profession, and to have the Judiciary protected against attacks from AfriForum. He states that AfriForum drives the matter in a personal attack against him.

[68] Du Plessis failed to show a *prima facie* right. His complaint lay against the decision to prosecute him, yet the Constitution vests that discretion in the NPA. At best, du Plessis raises a disagreement with the prosecutorial assessment, which does not constitute a legally protectable right capable of sustaining interim relief.

Irreparable Harm

[69] Du Plessis argues that he stands to suffer irreparable harm and damage to his good name and reputation in the profession if the same defamatory allegations as was made in 2023 are to be made in the press.

[70] In addition, his enemies in the Bar who wanted to take disciplinary steps against him will not waste time to do so and his practice as senior counsel may suffer irreparable harm.

[71] The harm alleged was speculative (possible arrest and adverse publicity) neither of which amounts to irreparable prejudice. Any harm flowing from a criminal charge can be addressed in the criminal trial itself, where he may advance his full defense and vindicate his rights.

[72] In the result, du Plessis failed to show irreparable harm.

Balance of convenience

[73] Du Plessis argues that the balance of convenience is in his favour as his name and reputation will be damaged, whereas there is no harm for the prosecution should the interim interdict be granted. Mr du Plessis invokes his right to dignity and privacy, arguing that prosecution would damage his reputation and subject him to public scrutiny.

[74] While these rights are important, they are not absolute. The public interest in the prosecution of alleged crimes, the principle of equality before the law, and the constitutional mandate of the NPA must be balanced against individual reputational concerns.

[75] The public interest in ensuring that prosecutions proceed without undue interference outweighs the personal anxiety or inconvenience of an accused person who has adequate remedies in the criminal courts. The order granted has the effect of suspending prosecution of du Plessis. It has the potential to undermine public confidence in the rule of law.

[76] In most cases, as *Sanderson* confirms, the social prejudice of being accused is an inherent burden of the criminal process, not a basis for its interruption of the criminal process.

[77] In the result, the balance of convenience favours the NPA.

Alternative remedy

[78] Du Plessis has an adequate alternative remedy at his disposal, namely the criminal trial process itself. He could raise all his defences before the criminal trial court, and if dissatisfied with the prosecutorial decision, he retains the right to review the process in due course.

Conclusion

[79] Du Plessis was given notice of the review of its decision by the NPA and invited to make representations. He did so. The fact that he was not given the other party's representations does not, in itself, render the process unfair. The NPA's obligation is to consider the matter impartially, not to facilitate a full adversarial exchange.

[80] Moreover, the explanatory affidavit filed by AfriForum—though not strictly necessary given its notice to abide—does not demonstrate procedural unfairness. Its purpose appears to be to clarify AfriForum's role and to rebut allegations of malice. It does not expand the case

against du Plessis in a manner that required his (du Plessis's) prior comment.

[81] The *rule nisi* order granted on 25 August 2025 should be discharged. If confirmed, It has the potential to undermine the constitutional separation of powers and encroaches on the NPA's independence. Du Plessis has adequate remedies: he may raise his defences in the criminal trial and, if appropriate, pursue a review of the prosecutorial decision in due course.

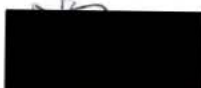
[82] The interim interdict effectively amounts to a stay of prosecution without the requisite showing of irreparable trial prejudice. This is contrary to the principles in *Sanderson* and *Mapisa-Nqakula* in addition to the NPA legislation and the constitutional framework governing prosecutions.

Order

[83] In the result, the following order is made:

- i) The *rule nisi* order granted by this court on 25 August 2025 under case number 2025-145669 is discharged with immediate effect.
- ii) The reconsideration application is successful and the order dated 25 August 2025 is set aside.

- iii) The first respondent, Mr Roelof du Plessis, is to pay the costs of the *rule nisi* and the reconsideration application, including the costs of two counsel where employed.


FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION
SEATED IN GAUTENG DIVISION
PRETORIA

DATE OF ARGUMENT: 26 JANUARY 2026

DATE OF JUDGMENT: 9 FEBRUARY 2026

APPEARANCES:

FOR THE APPLICANT (DU PLESSIS) ADV JL (MAC) VD MERWE SC
ADV DC DU PLESSIS

INSTRUCTED BY:

JACQUES CLASSEN INC ATTORNEYS
CNR OF FLINDERS LANE & LYNNWOOD
ROAD
LYNNWOOD PRETORIA
TEL: 012 942 9476
EMAIL: jacques@propdevlaw.co.za &
gen@propdevlaw.co.za
Ref: JA CLASSEN/JC/GB/RDP1-0009

FOR THE RESPONDENTS: **ADV N CASSIM SC**
ADV J JANSE VAN RENSBURG

INSTRUCTED BY: **THE STATE ATTORNEY**
ATTORNEY FOR THE FIRST AND
SECOND APPLICANT
316 THABO SEHUME STREET
PRETORIA CENTRAL PRETORIA
REF: MS A MOODLEY-3342/2025/Z10
Email address: Arimoodley@justice.gov.za

AND TO: **HURTER SPIES ATTORNEYS**
REPRESENTING CONRAD PRETORIUS
AND AFRIFORUM
SECOND FLOOR, BLOCK A, LOFTUS
PARK 416
KIRKNESS STREET ARCADIA PRETORIA
REF: W SPIES