



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**CASE NO: 2026-
037602**

In the matter between:

COUNCIL OF THE COLLEGE OF CAPE TOWN
Applicant

and

MINISTER OF HIGHER EDUCATION AND TRAINING
respondent

First

**THE DIRECTOR GENERAL OF THE DEPARTMENT
OF HIGHER EDUCATION AND TRAINING**
respondent

Second

ROBERT NKUNA N.O
respondent

Third

Heard: 20 February 2026

Written submissions: 24 February 2026

Delivered: 2 March 2026

JUDGMENT

HOLDERNESS, J

[1] In an urgent application which came before me in the fast lane of third division on Friday, 20 February 2026, the applicant, the Council of the College of Cape Town (“the Council”), seeks urgent relief interdicting and suspending the statutory appointment of an administrator into the affairs of the College of Cape Town Technical and Vocational Education and Training College in terms of section 46(4) of the Continuing Education and Training Act 16 of 2006 (“the CET Act”).¹

[2] On 17 February 2026, the Government Gazette No. 54160, Vol 728 (“the gazette”), in terms of which the administrator was appointed, was published.

¹ 46(4) If an audit of the financial records of a public college, or an investigation by the person as contemplated in subsection (I), reveals financial or other maladministration of a serious nature at a public college or the serious undermining of the effective functioning of a public college, the Member of Executive Council may, after consultation with the Minister and the council of the public college concerned, if practicable, and despite any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the college and such person may perform all the functions relating to governance or management on behalf of the college for a period determined by the Member of the Executive Council, which period may not exceed two years.

The urgent relief sought in the notice of motion has accordingly been rendered moot.

[3] The applicant launched another urgent application (“the first application”) on 16 February 2026, which was issued on 18 February 2026, which the respondents contend is similarly moot.

Overview and urgency

[4] Mr. Buthelezi, who appeared on behalf of the Council, contends that the harm which will ensue if the appointment of the administrator is not suspended will have ‘irreversible or irreversible in effect consequences’, as the implementation of this decision will ‘permanently alter a legal or governance position, undermine statutory authority and render later judicial review academic.’

[5] The applicant’s case is that the urgency in *casu* is ‘triggered by impugned substantive elements of the decision taken by the Minister of Higher Education and Training published under Notice Number 7140 in the government gazette of 17 February 2026 in as far as the Minister’s Gazette of 17 February 2026 appoints an administrator to:

*‘take over the functions of council **AND** management for a period not exceeding TWO years.’*

[6] The applicant contends that the first respondent, the Minister of Higher Education and Training (“the Minister”), has exceeded the specific boundaries of section 46(4) of the CET Act, which allows an administrator to take over *either* the Council *or* Management—not both simultaneously. By merging these

roles, the Minister has created a “governance hybrid” that the law does not recognise, so the applicant’s argument went.

[7] The applicant argues that the Minister’s Gazette Notice attempts to grant the administrator powers over labour, procurement, and litigation. The argument holds that a Minister cannot expand their own powers via a Gazette; they can only do what the CET Act explicitly allows.

[8] Rule 6(12)(b) requires an applicant to explicitly set out the circumstances rendering a matter urgent and to demonstrate why substantial redress cannot be obtained in due course. Self-created urgency is generally fatal to an urgent application.

[9] The Final Report of the College of Cape Town Stabilisation and Governance Support Team (“the final report”) was provided to the Minister on 30 January 2026, after he had appointed Adv Jacob Buti Skosana to investigate allegations of maladministration, financial mismanagement, and governance failures at the College of Cape Town (“CCT”).

[10] On 5 February 2026, the final report was provided to the Council by the Minister, with an accompanying letter which highlighted the serious issues raised, for their response. The Council was required to provide their response within 5 days. They failed to do so.

[11] On 11 February 2026, a final extension was granted to the Council to provide their written response by close of business on 16 February 2026. This correspondence records receipt of a letter from the applicant’s attorney, Mr. Barnabas Xulu, dated 9 February, wherein the Council sought an extension until 20 February 2026. The extension does not, on the correspondence before the court, appear to have been granted.

[12] The Council failed to provide its feedback before close of business on 16 February 2026.

[13] On 18 February 2026, the Council uploaded the first application to Court Online (dated 16 February 2026) in terms of which it sought an order that *‘pending the final determination of the review proceedings in Part B hereof and interim interdict is granted, interdicting and restraining the First Respondent from taking any further steps in respect of the Final Report of the College of Cape Town Stabilisation and Governance Support Team dated 30 January 2026.’*

[14] The Council contends that the urgency is occasioned by the imposition on the Council by the Minister of unreasonable time constraints within which to respond to the report, and the circumvention by the Minister of a court application seeking an interim interdict against the implementation of the report.

[15] It is apposite to note that at the time of publication of the gazette, no undertaking or interdict was in place precluding the Minister from taking further steps, including the appointment of an administrator.

[16] The first application was brought to interdict such steps, however, for reasons which remain unclear. It appears that the application was not heard in the fast lane but was instead enrolled on the semi-urgent roll.

[17] Mr Buthelezi in argument placed reliance on *Council of Unisa v Minister of Higher Education Science and Innovation (Unisa)*.² However, this matter is clearly distinguishable as in *Unisa* the Minister appointed an administrator in breach of an undertaking not to do so which was incorporated in an order of

² *Council of Unisa v Minister of Higher Education Science and Innovation* (076693/2023) [2023] ZAGPPHC 1853 (1 November 2023).

court. In *casu*, there is neither an undertaking nor an interdict or order prohibiting the Minister from taking further steps, including the publication of the gazette in terms of which the administrator was appointed.

[18] This application, which sought interim relief which would be similar in effect to that in the first application, that is the suspension of the appointment of an administrator and the stay of any steps to implement the report, was brought pending the determination of the first application. Mr Buthelezi, who appeared for the applicant, could not explain why the application was brought in this manner, nor why the Council did not move for the relief in the first application, which, if granted timeously, would have interdicted the Minister from taking any further steps in terms of the final report.

[19] Counsel for the respondents, Mr Abass, emphasised that not only was the Minister accordingly entitled to act, but that he had to do so due to the serious allegations of maladministration and other irregularities, which required swift action.

[20] Having regard to the chronology of events above, it is clear that the Council created its own urgency by failing to respond within the extended deadline, instead bringing two applications after the gazette had already been published. The matter accordingly falls to be struck from the roll.

[21] In any event, the application falls to be dismissed on the merits, for reasons which I shall now turn to.

Authority and *Locus standi*

[22] It is well-established that the institution of proceedings on behalf of a juristic person must be duly authorised. When the question of authority is raised, the onus is on the applicant to show that the institution of proceedings has been duly authorised by the applicant, in this case the Council, ordinarily in the form of an appropriately worded resolution.³

[23] Dr. Alice King deposed to the founding affidavit on behalf of the Council. She avers that she is ‘duly authorised ‘to depose to this affidavit on behalf of the Council, and the requisite resolution therein is attached as Annexure NFA1.’ Dr. King does not allege that she is authorised to institute these proceedings. Anyone can be a witness in motion proceedings and depose to an affidavit without prior authorisation; instituting legal proceedings on behalf of a juristic person is however not open to anyone and it is therefore her authority to bring the proceedings on behalf of the Council which is in issue.⁴

[24] In terms of paragraph 3.1.3 of the attached resolution, which was passed on 11 November 2025, the Council resolved that the Chairperson was ‘duly authorised to act as the signatory or deponent in respect of all submission as described in 3.1.1 and 3.1.2 above, including under any court processes which are associated therewith.’

[25] It was resolved in terms of paragraphs 3.1.1 and 3.1.2 as follows:

3.1.1 ‘The conduct of the members of the Portfolio Committee of Higher Education in their meetings with the College of Cape Town, must be reported under complaints and submissions to the relevant regulatory, industry and oversight bodies; and

³ See *Pretoria City Council v Meerlust Investments (Pty) Ltd* 1962 (1) SA 321 (A).

⁴ *Ganes and Another v Telecom Namibia Ltd.* 2004 (3) SA 615 (SCA) para 19. See also *Public Protector v Chairperson, Section 194(1) Committee and Others* 2025 (4) SA 428 (SCA) para 15.

3.1.2 The complacency of the Department of Higher Education in respect of the discriminatory, unethical, unprocedural and constitutional violations must be escalated to the relevant regulatory, industry and oversight bodies.’

[26] It is clear that the resolution which Dr. King seeks to place reliance on does not authorise the institution of these proceedings. The case of *Public Protector of South Africa v Chairperson, Section 194(1) Committee and Others* finds application in this regard.⁵ The party purporting to be acting on behalf of another must show proof of authority to do so, failure to do so results in him or her being “precluded from acting further.’

[27] According to the evidence of the Minister, Dr. King’s membership of the Council was terminated by his predecessor, the then Minister, Dr. N P Nkabane, on 8 April 2025. He avers that Dr. King, without lawful authority from his office, continued to hold herself out as Council chair.

[28] Dr. King contends that correspondence addressed to her by the Minister as Chairperson of the Council, after such date, had the effect that she remained in such position. This cannot be correct. If her position was validly terminated, correspondence addressed to her as the Chairperson cannot in and of itself have the effect of reinstating her.

[29] Moreover, the resolution was passed after the termination of her membership of the Council and therefore could not have been validly passed.

⁵ *Public Protector of South Africa v Chairperson, Section 194(1) Committee and Others* 2025 (4) SA 428 (SCA) specifically paras 15 - 16.

[30] To the extent that any further doubt remains regarding the authority of the Council to pass a resolution authorising these proceedings, the following facts are dispositive of this issue:

- (a) The founding affidavit was deposed to on 18 February 2026, after the publication of the gazette on 17 February 2026.
- (b) The Minister's appointment of the third respondent, Mr. Robert Nkuna N.O in terms of section 46(4) of the CET Act had the effect that the Council was deemed to have resigned. This is expressly provided for in section 46(4).
- (c) It follows that when the application was launched on 18 February 2026 the Council was deemed to be resigned and could not have authorised the launching of these proceedings, irrespective of whether Dr. King was still the Chairperson.

[31] For the reasons set out above, the application has not been properly authorised as the Council had been dissolved when the application was launched and could not resolve to bring these proceedings. The resolution which Dr King relies on in any even does not authorise the institution of these proceedings.

Relief moot

[32] Lastly, there is no application before this court to review and set aside the Minister's decision to gazette the appointment of an administrator.

[33] Absent a challenge to that decision, no order of this court could disturb their validity.⁶ As the Constitutional Court put it in *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd*, ‘official conduct that is vulnerable to challenge may have legal consequences and may not be ignored until properly set aside’.⁷

[34] Not having challenged the Minister’s decision to gazette the appointment of the third respondent means that the decision stands and the present relief is therefore moot.

Costs

[35] There is no reason why costs should not follow the event. The respondent sought costs *de bonis propriis* against the members of the dissolved council.

[36] Whilst I agree that this matter has been handled in a most unsatisfactory manner by the applicant’s legal representatives, who should never have proceeded to seek an urgent order framed in the manner in which it was (pending the outcome of another application which is also moot) when they should properly have been aware that the relief sought was moot and that the institution of the proceedings was not authorised.

⁶ *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) ([2004] 3 All SA 1; [2004] ZASCA 48) as cited in *Public Protector of South Africa v Chairperson, Section 194(1) Committee and Others* 2025 (4) SA 428 (SCA) at paras 33 – 34.

⁷ *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) (2014 (5) BCLR 547; [2014] ZACC at para 103.

[37] It would however be necessary to first afford the applicant (or its former council members) an opportunity to file affidavits and address further submissions, as the imposition of a personal costs order is extraordinary and they must first be given an opportunity to fully place their case before this court. This would unduly delay the finalisation of this matter, and I am not persuaded that a case has been made out for costs *de bonis propriis* on the limited facts placed before me for the adjudication of this matter.

[38] Mr. Abbas referred to Rule 67A(3)(b) of the Uniform Rules, submitting that as the current application and the issues between the Council and the Minister is one that is within the public and the media's attention and is of great importance, costs on scale C as provided for in rule 69(7) is appropriate. I intend to make such an order.

Order

[39] The following order shall issue:

- (a) The application is dismissed with costs, the costs of counsel to be taxed on Scale C.

Holderness J
Judge of the Western
Cape High Court

Appearances

Applicant: Mr. B N Buthelezi

Respondents: Mr. Y Abbas