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REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024-073036

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE **25 February 2026**

SIGNATURE

In the matter between:

F[...] B[...] C[...]

Applicant

obo M[...] K[...] C[...]

and

MOTORSPORT SOUTH AFRICA NPC

Respondent

This judgment and the order incorporated herein is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading to CourtOnline.

JUDGMENT

Moultrie AJ:

[1] The applicant proceeds in this matter on behalf of her minor son, who is a competitive motor racing driver. This is Part B of an application in which the

applicant seeks final relief in the form of a declaration that the respondent's decision to suspend her son's national motorsport competition license on medical grounds following a serious accident was unlawful together with further relief "reviewing and setting it aside". The cause of action upon which all of this relief is based is the contention that the suspension decision either constitutes administrative action under the Promotion of Administrative Justice Act, 3 of 2020 (PAJA) or that it is reviewable under the common law and – in either case – that it was *ultra vires* the powers of the respondent and/or taken in a procedurally unfair manner. Although the respondent disputes the allegations of lack of *vires* and procedural unfairness, it expressly "admits that it fulfils a public function and that its decisions are required to comply with [PAJA]".¹

- [2] Shortly before the hearing, I placed a widely-shared note on the Caselines hearing bundle requesting the parties to be prepared to address me on the implications of the fact that it appeared that the suspended licence had expired since the time that an earlier application for urgent interim relief under Part A of the notice of motion had been struck off the roll (with costs) for lack of urgency. My request referred in particular to the decision of the Supreme Court of Appeal in *Akani Retirement Fund Administrators v Moropa*.² During a virtual 'meeting in chambers' convened immediately before the matter was called, I enquired whether either of the parties might require further time, or seek the opportunity to adduce further facts, to deal with the issue. I was assured that they didn't. I was further informed that the parties were in agreement that the licence had

¹ I take no view regarding the correctness of this concession, but am prepared to proceed on the assumption that it is correct for the purposes of deciding this case.

² *Akani Retirement Fund Administrators (Pty) Limited and Others v Moropa and Others* [2025] ZASCA 13; 2025 JDR 0776 (SCA).

indeed expired and that the relief sought would have no practical effect in the sense that the applicant's son would not be able to race under the licence even if the application were to succeed in all respects.³

[3] Despite this, counsel for the applicant argued that the Court was not merely entitled, but obliged, to hear and determine the application for declaratory relief.

In summary, the argument was as follows:

- a. Section 16(2)(a) of the Superior Courts Act, 13 of 2010 specifically deals with 'moot' appeals and neither that section nor the *Akani* judgment finds any application in this matter.
- b. Whereas a court of first instance has a discretion at common law to decline to entertain a matter where the relief sought would have no practical effect, no such discretion exists where such a court is called upon to grant declaratory relief in a PAJA-based review. It was argued that this is because such proceedings are constitutional matters in the sense that PAJA gives effect to section 33 of the Constitution, and because section 172(1)(a) of the Constitution stipulates that: "[w]hen deciding a constitutional matter within its power, a court ... must declare that any ... conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency".
- c. Thirdly, even if the Court indeed has a discretion to decline to entertain the matter on the basis that the relief sought will not have any practical consequences, that discretion should not be exercised in the current

³ In the words of the applicant's counsel, the expiry of the licence meant that the applicant's son "can't seek any entitlement to exercise a licence".

instance because a determination of the matter would potentially “vindicate” the applicant’s son’s best interests (which section 28 of the Constitution stipulates are of paramount importance in all matters concerning him), by addressing his sense of having been done an injustice.

[4] On the other hand, the respondent’s counsel argued that the ‘default’ position is that a court of first instance should in general not entertain a moot application. Although such a court possesses a discretion to entertain the matter should that be in the interests of justice (for example where the issue was an important one on which there are conflicting judgments and which is likely to arise again in the future) this was not such a case. In this regard, the respondent’s counsel sought to argue at the hearing that the *vires* issue raised by the suspension decision (i.e. whether the respondent has the power to suspend a racing licence on medical grounds, or whether its power to do so was limited to disciplinary proceedings) was an “esoteric and unusual” one that had not previously been the subject of any dispute between the respondent and any party, but conceded in response to queries from the bench that there was no evidence on the papers in this regard one way or another.⁴

[5] Whilst I agree with the applicant that section 16 and *Akani* only apply to

⁴ This exchange (combined with the parties’ agreement following the hearing to furnish the court with the judgments in the *Stransham-Ford* and *Wally* judgments, to which I refer below) appears to have prompted the applicant’s attorneys to address correspondence requesting “to place further material” before the Court. The respondent responded to this request by pointing out that it was purportedly made pursuant to rule 4.13 of the Uniform Rules of Ethics of the General Council of the Bar and that no application had been made pursuant to Rule 6. In my view, this point was well-made, and I considered that it would be inappropriate –even improper – for me to engage in correspondence seeking an indication whether or not I might be prepared to entertain such an application. Ultimately, the applicant was afforded more than sufficient time within which to launch a formal application but did not do so.

appeals,⁵ I am unable to agree with any of the other contentions advanced on behalf of either of the parties at the hearing. I reach this conclusion on the basis of the unambiguous pronouncements of the Supreme Court of Appeal in *Minister of Justice v Estate Late Stransham-Ford*,⁶ to which I was referred after judgment was reserved in this matter. In *Stransham-Ford*, the SCA held that only courts of appeal are vested with a discretion to decide disputes in which the cause of action has fallen away – and even then, only if this has occurred subsequent to the judgment of the court *a quo*. Since the function of a court of first instance “is to determine cases that present live issues for determination”, it is quite simply “not open” to such a court to decide a matter in which the “cause of action ceases to exist before judgment”, and it has no “power” to do so, since “there is no longer a claim before the court for its adjudication”.⁷

[6] This *dictum* in *Stransham-Ford* has been followed by the SCA on two subsequent occasions.⁸ What is more, one of those cases (*Solidariteit*) was a PAJA-based review, and *Stransham-Ford* has been applied to PAJA-based reviews seeking declaratory relief on numerous occasions in the High Courts.⁹

The only instances that I have been referred to or identified where the same

⁵ The same applies to *Mabotwane Security Services CC v Pikitup Soc (Pty) Ltd* 2019 JDR 2367 (SCA); *President of the RSA v DA* 2020 (1) SA 428 (CC) and *Normandien Farms v PASA* 2020 (4) SA 409 (CC), to which the respondent referred me during argument.

⁶ *Minister of Justice v Estate Late Stransham-Ford* 2017 (3) SA 152 (SCA) paras 24 to 26

⁷ *Stransham-Ford* (above) paras 24 to 26.

⁸ *Solidariteit Helpende Hand NPC and others v Minister of Cooperative Governance and Traditional Affairs* 2023 JDR 0964 (SCA) para 18; *MEC for Health Gauteng Province v Solomons* 2025 JDR 0051 (SCA) paras 27 – 30.

⁹ See for example: *Vinpro NPC v President RSA* [2021] ZAWCHC 261 (WCC); *Habitat Council v Cape Town City and others* 2022 (6) SA 383 (WCC); *Trustees for the Time Being of the Humane Society International Africa Trust and others v Minister of Forestry, Fisheries and the Environment and another* 2024 JDR 0207 (WCC); *Construction Company (Pty) Ltd v City of Cape Town and Others* 2025 JDR 5149 (WCC); *Green Point Residents and Ratepayers' Association and others v Gärtner and others* [2025] 3 All SA 486 (WCC); *Naude and Another v South African Legal Practice Council* 2026 JDR 0671 (GP).

approach was not taken in PAJA-based reviews are those where *Stransham-Ford* was not mentioned at all and appears to have been overlooked. They are in any event distinguishable from the current matter:

- a. In *British American Tobacco*, a full bench sitting as a court of first instance appears to have considered that the principles applicable to appeals applied in circumstances where the cause action had only fallen away after the case had been argued.¹⁰
- b. In *Wally & Others v Word of Motorsport ZA*¹¹ to which the applicant referred me, the court did not deal pertinently with the question but expressed the view that, even though the setting aside of the disciplinary suspensions imposed by an apparently similar body would have no practical impact, “the sanctions had a reputational impact” which would continue in future, and which led the court to conclude that they “should not be left in place”. This is different to the current instance, where the suspension was not only not a disciplinary one but one whose “impact” (including any impact on the applicant’s son’s sense of injustice) was entirely historical.

[7] While section 172(1)(a) of the Constitution was not expressly considered in any of these judgments, I am not persuaded that it makes any difference: as the respondent’s counsel pointed out during the hearing, the section only purports to regulate what a court is required to do “when deciding a constitutional matter

¹⁰ *British American Tobacco v Minister of Co-Operative Governance* 2021 (7) BCLR 735 (WCC) paras 23 - 27. A similar approach was followed, albeit not in the context of a PAJA-based review, in *The Fonarun Naree, The: Trustees, Copenship Bulklers A/S (in Liq) v Afri Grain Marketing (Pty) Ltd* 2020 (4) SA 188 (GJ).

¹¹ *Wally & Others v Word of Motorsport ZA* (unreported, ZAGPJHC, 6 December 2022).

within its power”, and does not purport to stipulate if it must (or may) decide such a matter, or whether that would be “within its power” in the first place.¹² In the words of the SCA in *Stransham-Ford*, that issue is governed by the “logically anterior question” of whether there is any cause of action at all before the court of first instance, and in relation to which “the principles governing mootness have little or no purchase”.

[8] I thus consider that I am bound by the authority of the SCA in the cases I have referred to above to conclude that it is not open to me to decide the application because the cause of action advanced by the applicant was no longer live by the time that the matter served before me. In the absence of a discretion to do so, I decline to engage with the creative contention that the applicant’s son should be afforded the “comfort” of knowing that “what was done to him was wrong”.

[9] Although the court in *Solidariteit* upheld the high court’s order “dismissing” an application on the basis that the matter was moot, and although most of the courts in the cases referred to in footnote 9 above (with the exception of *Vinpro*)¹³ granted orders “dismissing” the applications, the SCA in *Solomons* expressly considered that the court *a quo* should have struck the matter from the roll.

¹² The applicant referred me to *Fose v Minister of Safety & Security* 1997 (3) SA 786 (CC) (where the court dealt with the equivalent provision in ss 98(7) and 101(4) of the Interim Constitution, 200 of 1993); *Economic Freedom Fighters v Speaker, National Assembly and Others* 2016 (3) SA 580 (CC) paras 102 – 103 and *Mazibuko and Others v Minister of Home Affairs and Another* 2024 (3) SA 469 (GP) para 97, but no question akin to mootness or the ability of a court of first instance to decide a matter in the absence of a live cause of action arose in any of these cases.

¹³ The court in *Vinpro* simply made an order to the effect that “the application as formulated is moot”. While the fact that it did not dismiss the application in its entirety may be significant, the fact that it did not strike the matter from the roll is explained by the fact that it made an order dismissing other relief that was not “moot”.

[10] It seems to me that the question of the proper order may well depend on whether the absence of a cause of action at the time of the hearing (or judgment) has the effect that this court has no “jurisdiction” to hear the matter, as is suggested not only in *Solidariteit* but also in *Solomons* itself, or whether it is simply “not open” to me to decide the case, as the SCA put it in *Stransham-Ford*. However, since neither *Solidariteit* nor *Stransham-Ford* could be said to have dealt pertinently with the question of the proper order that should have been made by the court of instance,¹⁴ it seems to me that the proper course is to apply the formulation of the order that the SCA held should have been issued by the court of first instance in *Solomons*. The order will thus be that the matter is struck from the roll.

[11] As to costs, some courts appear to favour the approach what where a decision on the merits is no longer sought or permissible, a decision as to costs should not be reached in total isolation from considerations linked to the merits.¹⁵ In *Solomons*, however, the SCA did not follow this approach, saying that “the aspect of costs could have been dealt with purely on the basis that the cause of action that the MEC was pursuing had been extinguished before the matter served at first instance”, that “this, on its own, would have justified an order of costs against the MEC” and that “the issue of costs could have been dealt with by asking which party was responsible for the pursuance of the matter that was no longer live before the court”.¹⁶ In my view, the approach of attempting to

¹⁴ In *Stransham-Ford*, the SCA simply ordered that “the order of the court below is set aside”, which effectively left no order at all, which is more consistent with a striking than a dismissal. On the other hand, the SCA in *Solidariteit* simply dismissed the appeal, thus leaving the order of the court of first instance dismissing the application intact.

¹⁵ *Erasmus v Grunow en 'n Ander* 1980 (2) SA 793 (O) at 798C–H, *The Fonarum Nagee* (above) at 22 and *Naude* (above) para 48.

¹⁶ *Solomons* (above) para 32.

determine which party was responsible for pursuing the matter after it ceased to have any practical effect is more appropriate than declining to determine the merits of the matter and then proceeding to do precisely that – albeit in an attenuated and potentially less careful manner – for the purposes of determining the question of costs.

[12] In the current instance, the applicant has already been mulcted in costs in relation to the launching of the proceedings and the delivery of all the affidavits as a result of the costs order granted against it in Part A, and the respondent prepared and delivered no further affidavits or heads of argument after the licence expired. The only outstanding costs are therefore those relating to the preparation for, and the hearing of, Part B before me. Furthermore, although both parties ought to have realised that the expiry of the licence would have implications for the continuation of the litigation and raised it in their joint practice note, it was apparent to me that neither of them had paused to consider the implications of this prior to the placement of my widely shared note on Caselines. In addition, despite both sets of counsel indicating during the virtual ‘meeting in chambers’ that they were ready to address the issue, neither of them identified the leading authority on the issue during the hearing. It was left to the Court itself to establish and apply the applicable law. In the circumstances, I am of the view that neither party should be awarded its costs.

[13] I make the following order:

1. The application is struck from the roll.

**RJ MOULTRIE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

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