



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO:2025-233328

In the matter between:

PHOLANI BANDLA

APPLICANT

and

WALTER SISULU UNIVERSITY

1ST RESPONDENT

REGISTRAR FOR WALTER SISULU UNIVERSITY

2ND RESPONDENT

THE DEAN FOR THE FACULTY OF LAW

& HUMANITIES

3RD

RESPONDENT

THE HEAD OF DEPARTMENT FOR

FACULTY OF LAW

4TH

RESPONDENT

DR MPOFU FACULTY OF LAW, HUMANITIES &

SOCIAL SCIENCES WALTER SISULU UNIVERSITY

5TH

RESPONDENT

**THE HEAD OF EXAMINATION FOR
WALTER SISULU UNIVERSITY
RESPONDENT**

6TH

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail. The date and time for hand-down is deemed 09h30 11 February 2026.

JUDGMENT

MJALI J

1. The applicants in this matter are final year LLB students at the respondent University who are aggrieved by the marks allocated to them in respect of the Legal Research Methods Module. They allege that they were not allocated an additional "five percent" attendance marks when their papers were assessed. They approached this court on urgency basis on 28 November 2025 seeking an interim interdict pending the determination of a contemplated review. The notice of motion contemplated a hearing of the interim order application on 9 December 2025 but for reasons which do not concern this judgment, the matter was only heard on 23 December 2025. At the hearing the applicant's counsel requested to file further written argument in substantiation of the applicant's case. Such heads were filed on 29 December 2025 and the respondent's heads filed on 20 January 2026.

2. The order sought by the applicants in the interim application was couched in the following terms.
 - 2.1. That a rule nisi returnable on 20 January 2026 be issued, calling upon the respondents to show cause as to why their decision or failure to allocate the five percent attendance mark to the applicants' Legal Research Methods Module should not be reviewed and set aside.
 - 2.2. That the third to the fifth respondents be directed to do a regrade and allocate the five percent attendance marks to the applicants in respect of their Legal Research Method Module.
 - 2.3. That the third to the fifth respondents be directed to do the necessary so as to give effect to the allocation of the five percent mark including but not limited to giving written authorization for the allocation of the marks and the opening of the computer system so as to allow the registration of the aforesaid marks.
 - 2.4. That the respondents be directed to effect a change on the applicant's academic records in respect of the Legal Research Methods Module to reflect 50% in respect of the first applicant and 51% in respect of the second applicant.
 - 2.5. In the alternative, that the respondents be ordered to make a consideration for the discretionary marks adjustments and to amongst others issue the requisite management report, award discretionary marks to the applicants and update their academic records to reflect the change.

- 2.6. that the respondents are directed to subject the applicants' Legal Research Methods work to review by a different person so that relevant overall performance marks can be issued.
- 2.7. That the applicants are granted leave to specially re-submit the Legal Research Methods Module and the first respondent's officials be directed to specially consider and mark the resubmitted research and allocate marks de novo.
- 2.8. That the respondents pay costs of this application on scale C including costs consequent upon the employment of two counsel only in the event of opposition.
3. As I understand, the applicant's case is premised on the complaint that they were denied an additional five percent attendance marks when their papers were assessed in respect of the Legal Research Method Module. The orders sought are to compel the respondents to allocate those marks and update their academic records to reflect the change following the allocated five percent attendance marks.
4. The application is opposed on the grounds that there is no urgency and that the application lacks merit.
5. I deal first with the issue of urgency. In paragraph 89 of their founding

affidavit the applicants gave the following reasons as motivation for the hearing of this matter out of turn, namely,

- 5.2. that they seek to protect their constitutional right to education.
- 5.3. that there was a looming closure of the institution on 15 December 2025 for holidays and that the task of conducting a regrade requires the presence of the official who are about to go on holidays. Should the officials leave, they will be left without options.
- 5.4. The academic year 2026 is fast approaching and the Law School will be open in the first if not the second week of the year 2026.
- 5.5. Should the issue not be resolved urgently, we will miss the resolution of our dispute in the 2025 academic year and further miss the January 2026 Law attendance. This will occasion untold prejudice to us including delay in our academic progress and future.
- 5.6. Additionally, successful final year students will graduate during the May 2026 graduation stint.
- 5.7. Were the matter not be treated as one of urgency and should we be required to afford the respondents more time, by the time the matter is heard, huge and irreparable harm will have occurred as we would have been recorded as having failed with the consequence that we will not be eligible for Law School and the aforesaid graduation.

6. In a nutshell the reasons advanced for the hearing of the matter on an urgent

basis were that the applicants would be prejudiced should the application not be heard on an urgent basis. One of the reasons advanced for the urgent hearing was the looming closure of the respondent institution on 15 December 2025 and the fact that the officials would then go on holiday. At the time of the hearing of this matter on 23 December 2025, the respondent institution had already closed. As such the relief sought could no longer be implemented. Apart from that, the applicants failed to make out a case for the urgency of this matter. The long history of this matter as laid out in the applicants' founding affidavit clearly shows that the disagreement between the applicants and the respondents regarding their final marks was long standing and the final decision was made very clear to them as early as 13 October 2025. They only approached this court on 28 November 2025. I am inclined to agree with the respondents that if any, the urgency in this matter was self-created. For this reason, the application fell to be struck off the roll.

7. Even if I am wrong on the issue of urgency, this application fails to meet the requirements for the granting of an interim interdict. The established requirements for the granting of an interim interdict are:

- 7.2. a prima facie right.

- 7.3. a well-grounded apprehension of irreparable harm if interim relief is not granted.

- 7.4. a balance of convenience in favour of granting interim relief; and

- 7.5. The absence of any other satisfactory remedy.

8. The case for the applicants is premised on the alleged failure to add a 5 percent mark to their final mark. They do not challenge the validity of the final marks they obtained. They also accept that they did not attain the required pass mark. Their only contention is that the addition of the 5 percent attendance mark would result in them obtaining a pass mark. In their answering affidavit, the respondents explain that the addition of that mark is discretionary and that the final marks allocated to the applicants already include the 5 percent. Further that the applicants do not make out a case for the further consideration of their marks which can only be sanctioned by the senate. As such they fail to prove a prima facie right to the relief sought.

9. The argument made by the applicants that their right to education which is enshrined in the Constitution is denied if a reassessment and addition of the 5 percent attendance marks is not done, equally falls flat. Save for the mere allegation of the denial of their Constitutional right to education, nowhere do the applicants make a case to prove such denial. In fact, on their very own case, the applicants were registered students at the respondent institution. They were provided with an opportunity to study. They failed to obtain a pass mark even after some discretionary marks were allocated to them. Bearing all the aforesaid, the applicants failed to establish a prima facie right to the relief they

were seeking and this meant that the application fell to be dismissed on this ground too.

10. The applicants change of tech in their replying affidavit that their papers were not referred for external moderation as provided for in the respondent's examination policy, equally failed to come to their rescue. The trite rule is that an applicant must stand and fall by his founding affidavit and the facts alleged therein. An applicant cannot make out a new case in the replying affidavit.
11. Given the fact that an interim interdict is an exceptional remedy which is available before the rights of the parties are fully determined, it should therefore be granted with caution and only if a proper case is made out (see ***Memory Institute SA CC t/a SA Memory Institute v Hansen and others 2004 (2) SA 630 (SCA) at paragraph 10***). The court granting this discretionary relief must properly place on the judicial scale all the legal requirements of an interdict.
12. In this matter the applicants have failed to establish a prima facie right for purposes of an interim interdict. This therefore spells the end of the matter. In the view that I take it is not necessary to consider the matter further.
13. That brings me to the issue of costs. The general rule is that costs follow the event. There is no reason for deviation from the general rule. In the result the

following order shall issue.

The application for an interim interdict is dismissed with costs.

G.N.Z. MJALI

JUDGE OF THE HIGH COURT

APPEARANCES:

For the applicant:

Adv. L. Matotie

Instructed by:

SR Mhlawuli & Associates

No. 58 Wesley Street

Mthatha

Email:

srmhlawuli@gmail.com

For the respondents:

Adv. J. Hobbs

Instructed by:

Drake Flemmer & Osmond (EL) Inc.

No. 14 Durham Street

Mthatha

Email:

angus@drakefo.co.za