

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



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

Case No: 2026-013902

In the matter between:

RA

First Applicant

ZA

Second Applicant

and

THE HEAD OF DEPARTMENT:

WESTERN CAPE EDUCATION DEPARTMENT

First Respondent

THE CIRCUIT MANAGER, METRO EAST

EDUCATION DEPARTMENT: THABO MANGANENG

Second Respondent

LAERSKOOL MIKRO

Third Respondent

DE KUILEN PRIMARY SCHOOL

Fourth Respondent

BASTION PRIMARY SCHOOL

Fifth Respondent

MEMBER OF THE EXECUTIVE COUNCIL

FOR EDUCATION, WESTERN CAPE

Sixth Respondent

DIRECTOR OF THE METRO EAST

EDUCATION DISTRICT

Seventh Respondent

THE GOVERNING BODY, LAERSKOOL MIKRO

Eighth Respondent

THE GOVERNING BODY, DE KUILEN

Ninth Respondent

THE GOVERNING BODY, BASTION PRIMARY SCHOOL

Tenth Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 25 February 2026

Delivered: Electronically on 9 March 2026

Summary: Review application – procedural unfairness – applicants notified of decision after deadline for appeals had passed – decision remitted, not substituted

Urgency – self-created urgency – best interests of children paramount – non-compliance with Rule 6(12) condoned in terms of Rule 27(3) – applicants deprived of costs

ORDER

1. The application for the review of the decision of the first, second, sixth and seventh respondents to refuse the applicants' minor children placement at the third or fourth respondents and, instead to place them at Rouxville Primary School (*"the decision"*), succeeds.
2. The decision is set aside and remitted to the first, second, third, fourth, sixth and seventh respondents (*"the named respondents"*) for re-consideration.

3. The applicants shall furnish the named respondents with their written submissions in this regard, in an appeal of the decision, by 17h00 on Friday, 13 March 2026.
4. The named respondents shall provide the applicants with their new decision, together with reasons therefore, by 17h00 on Tuesday 24 March 2026, and the second and sixth respondents are directed to file the new decision with Mr Brill (the court's registrar) on the same day.
5. There shall be no order as to costs.

JUDGMENT

Introduction

- [1] This is an application instituted by the first and second applicants in their capacity as the guardians of twin boys, aged 6, who should be attending Grade 1 in 2026. It is an application for the review and setting aside of the decision taken by the first, third, fourth and fifth respondents in refusing the twins placement at the latter three respondents' respective schools. In addition, the applicants seek certain interdictory relief directing the first and second respondents to place the children at third, alternatively fourth, alternatively fifth respondent for the 2026 academic year and for the first and second respondents to take certain steps to ensure the twins are able to meet academic requirements despite the late start.
- [2] Although this matter required an urgent judgment, my judgment and the order was delayed as I was informed on 26 February 2026 that counsel for

the first, second, sixth and seventh respondents wished to bring a new case to my attention. The applicants consented to them doing so on 3 March 2026 and furnished me with a note in reply in the afternoon of 5 March 2026.

[3] I will, in this judgment, refer to the first, second, sixth and seventh respondents as '*the WCED*', to the second respondent as '*the circuit manager*' and to the third, fourth and fifth respondents as '*Mikro*', '*De Kuilen*' and '*Bastion*' respectively.

[4] All the respondents vigorously opposed the relief sought, some on different grounds, but all of them raised objections on the same two grounds: the complaint is, firstly, that the urgency in this matter is self-created and that, when launching the application, the applicants did not comply with the provisions of Rule 6(12), and secondly, that the applicants utilised Rule 6 instead of Rule 53. In addition the WCED seek the striking out of certain paragraphs of the applicants' replying papers in terms of Rule 6(5)(g) on the basis that it constitutes impermissible new information and new relief.

The averred facts in the founding affidavit

[5] The applicants made online application for the twins' placement at Mikro, De Kuilen and Bastion primary schools. They preferred Mikro – as their older son was enrolled there for Grade 7 – but also applied at De Kuilen as their daughter is in De Kuilen High School and at Bastion because it is on the way to Paarl where the first applicant works. The family only has one car and the second applicant usually fetch the children in the afternoons using public transport. Mikro and De Kuilen are near one another and

Bastion is not much further away. The family does not have substantial means and live in a high crime area. It is important for them, from a financial and safety perspective, to have the children in the same schools or schools that are close to one another. On 29 August 2025 they were informed, however, that the children were placed at Rouxville Primary School ("*Rouxville*") – a school they had not applied to. On 2 September 2025 the applicants appealed to Mikro to accept the twins. On 18 September 2025 they were informed by the WCED that the twins could not be placed at their schools of choice as the schools are 'oversubscribed'.

- [6] On 22 September 2025 Mikro informed the applicants that the WCED should have informed them in the first week of June 2025 that their applications were not successful. The applicants say they were not informed (this is disputed by the WCED). On the same day their attorney noted an appeal to the WCED, which was copied to the circuit manager. The applicants were, however, informed by the WCED that they lodged their appeal too late as the closing date for appeals was 31 August 2025. They therefore continued to engage the circuit manager in an effort to secure a place at their school of first choice, being Mikro. On 1 October 2025 they made a further appeal to the WCED and the circuit manager. They continued to engage with the circuit manager through October and secured a meeting with him on 7 November 2025. At this meeting they were told they do not have to complete any paperwork to place the twins on a waiting list. On 26 November 2025 they were again told their schools of choice are oversubscribed. They remained in contact with the circuit manager until 10 December 2025 and reached out again on 12 January 2026. On 14 January 2026 they were told that there was nothing that could

be done to place the twins at their schools of choice.

- [7] The application followed, which was set down in the fast lane on 29 January 2026 on 4 days' notice to the respondents. The matter was postponed and came before me on a preferred allocation date with the leave of the judge president.

The relevant facts set out in the WCED's answering affidavit

- [8] The WCED recorded that the twins have a school placement but that the applicants elected to keep them out of school without explaining why they are unable to attend Rouxville. There is a negligible difference in distance and travel time between all the schools and the applicants' home. The applicants are unhappy with the placement as they find it inconvenient and their review application serve their own interests and not the twins' best interests. The WCED's policy regarding school placements gives effect to the section 29 constitutional right to basic education. Their obligation is to ensure that there are sufficient places so that each child in its province can attend school. By placing the twins at Rouxville, after their applications to the other schools were unsuccessful, they met these criteria. The WCED informed the applicants of the unsuccessful outcome of their applications on 30 May 2025 and that the twins were placed on the waiting list at Mikro.
- [9] Each public school's governing body is responsible for its own admission policy. The applicants live within the catchment areas of Mikro, De Kuilen and Rouxville but not Bastion. It is common cause that the applicants did not seek to review the admissions policy for any of the three schools of choice. The WCED provided the following facts regarding each school:

[9.1] Mikro has 1120 learners in its school with 35 per class and 140 in each grade. It employs a preferential allocation process. According to the WCED's records the school admitted 124 Grade 1 learners for 2026 to be accommodated in 4 classes. The number is made up of 30 English medium learners and 83 Afrikaans medium learners. Of the 30 English medium learners, 28 learners would progress from Grade R. The school received 140 applications of which 16 was successful (6 English medium and 10 Afrikaans medium). The actual number of Grade 1 learners enrolled for 2026 is 132 (I note that the numbers are not consistent and do not match).

[9.2] De Kuilen is also a dual medium school with a preferential allocation process. The WCED records show that De Kuilen planned to enrol 170 Grade 1 English medium learners to be accommodated in 5 classrooms of 34 learners each. It estimated that 117 learners would progress from its Grade R class. The school received 519 applications of which 52 were successful, it admitted 172 learners (117 Grade R learners plus 52 successful applicants plus an additional 3 Grade R learners that they initially anticipated would not be progressing).

[9.3] Bastion admits learners in terms of a selection process and not a first-come-first-served basis. They have a preferential 3-phase allocation process. Bastion planned to admit 217 Grade 1 learners of whom 76 would be English medium learners, according to WCED records. The school received 277 applications of which 21 was successful (15 English medium and 6 Afrikaans medium) with 57

learners progressing from Grade R, which included 5 learners they had not anticipated would pass. This left the English medium class oversubscribed.

The relevant facts pertaining to Mikro per the answering affidavit

- [10] For the 2026 school year Mikro has one English Grade 1 class with a capacity of 27 learners determined in accordance with the guidelines from the Federation of Governing Bodies of South Africa Schools (“FEDSAS”) and infrastructure constraints. For the 2026 Grade 1 intake, the school received about 120 applications for the English medium class. Of these, 29 learners were admitted from the 2025 Grade R English class (which included one learner transferring from the Afrikaans stream). To accommodate demand, Mikro increased the Grade 1 capacity to 33 learners, being 6 learners over FEDSAS guidelines. The class is therefore oversubscribed and no further admissions are possible without compromising educational quality, safety, and compliance with statutory norms. All additional admitted Grade 1 learners reside or have parents working within the school’s catchment area. The majority of the 120 learners were from within the catchment area, reflecting high local demand. The school’s admission policy is governed by its’ *Leerdertoelatingsbeleid* (spanning some 22 pages and incorporating 17 clauses and 2 annexures with tables). The annexures include formulas relating to capacity with criteria such as numbers of classrooms, classroom sizes, teacher’s space, space for learner’s tables, and other available facilities (such as bathrooms, a club house and a small café), being used to inform its’ capacity formula.

- [11] Mikro assessed the twins on 15 January 2026 for potential admission to the Afrikaans stream but the outcomes indicate that the twins do not have sufficient proficiency in Afrikaans, and enrolment in this stream would not be in their interests. The first applicant attended at school on the following day and informed the school he was removing his son from Grade 7 and would be enrolling all his children elsewhere. The son did not attend school from 14 January 2026 and given this, on 28 January 2026, he was deregistered as a learner on CEMIS (a centralised education management information system). In terms of WCED policy the school has the right to deregister a learner if he has not attended school for 10 consecutive days.

The relevant facts pertaining to De Kuilen

- [12] De Kuilen's admission process is similarly regulated by its admission policy – a 14-page document with 17 clauses incorporating topics such as admission criteria, the practical implementation of these criteria, criteria relating to learners with special needs, school zoning (the feeder zone or catchment area), a right to appeal and so forth. This school also serves both Afrikaans- and English-speaking learners. Their learner / educator ratio is 34:1 for Grade 1 to Grade 7 learners.
- [13] De Kuilen has 5 classes for each grade and place for 170 learners in terms of their admission policy. There are 4 Grade R classes, which means that they have 120 learners in that grade who automatically progress to Grade 1. They therefore only have 50 places available for new Grade 1 learners each year. The school is in high demand and therefore preference is given to learners residing within its core catchment area. In addition they give preference to learners with older siblings in the school. Close attention is

paid to the language of preference for each learner. De Kuilen received 476 applications for placement in 2026. Of the 476 applicants, 8 had older siblings in the school. Of the remaining, there were 59 learners for whom De Kuilen is the closest school offering English as a language of instruction. The school accepted 42 of the latter applications. All offered places were accepted. No places could be offered to children, such as the twins, residing further away. The applicants have not complained about a defect in the school's decision-making policy.

The relevant facts pertaining to Bastion

- [14] The school's *Toelatingsbeleid* is, once again, a comprehensive document typed in single spacing with 11 clauses and multiple sub-clauses. The school's criteria for admission include the older-sibling-preference policy, the policy to prefer children living closest to the school and the policy to ensure that children can receive education in their mother tongue. In addition this school also prefers to admit their own Grade R learners first. Bastion's capacity to admit learners are based on the number and size of their classrooms (56 m²) and the capacity of other facilities. Their policy provides for the admission of 38 learners per classroom. The applicants' application did not meet the primary criteria for admission as they live outside the school's geographical catchment area. When their application was unsuccessful, the applicants did not appeal the decision.

The complaint concerning self-created urgency / lack of urgency

- [15] It is well-established that an applicant cannot create its own urgency by

simply waiting until the normal rules can no longer be applied.¹ It is also well-established that a litigant seeking relief on an urgent basis must explain the circumstances, which render the matter urgent and the reasons why substantial redress in the ordinary course would not be obtained. A litigant should carefully analyse the facts of each case to determine the degree of relaxation of the rules and the ordinary practice of the court that is required. A litigant's entitlement to deviate from the rules is dependent upon and limited to the urgency which prevails.²

- [16] The usual consequence that follows where an application lacks the requisite degree of urgency was confirmed by the SCA in **Commissioner, SARS, Hawker Air Services (Pty) Ltd**³ to be the following:

“Where the application lacks the requisite element of degree of urgency, the Court can, for that reason, decline to exercise its power under Rule 6(12)(a). The matter is then not properly on the Court’s roll, and it declines to hear it. The appropriate order is generally to strike the application from the roll.”

- [17] There seems to be a practice that has arisen in this division of applicants who blithely rely on section 28(2) of the Constitution to support urgency. That a child's best interests are of paramount importance in every matter concerning the child is undeniable. The best-interests-of-the-child principle enshrined in section 28(2) is a right in and of itself, and has been described as the ‘benchmark for the treatment and protection of children’.⁴ Our jurisprudence also holds, however, that the paramountcy principle

¹ **Edrei Investments 9 Ltd (In Liquidation) v Dis-Chem Pharmacies (Pty) Ltd** 2012 (2) SA 553 (ECP); **Bandle Investments (Pty) Ltd v Registrar of Deeds and Others** 2001 (2) SA 203 (SE) 213; **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others** (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at para [6] and [9] – The fact that Applicant now wants the matter resolved urgently does not render the matter urgent.

² **Luna Meubels Vervaardiger (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)** 1977 (4) SA 135 (W); **Gallagher v Norman's Transport Lines (Pty) Ltd** 1992 (3) SA 500 (W).

³ 2006 (4) SA 292 (SCA) at para [11].

⁴ In **Centre for Child Law and Others v Media 24 Ltd and Others** 2020 (4) SA 319 (CC) at [37].

does not automatically override other rights as every right is itself capable of being limited. The word 'paramount' does not automatically mean that a child's best interests can never be limited by other rights:⁵

*[60] ... Further, given that the right to dignity is extended to include the right to family life, it is clear that the rights of children protected by s 28(1)(b) and (2) are limited, in that where a parent is required to leave the Republic in order to apply for a change of visa status, this may result in the child's family being separated. Section 28(2) of our Constitution provides that a child's best interests are of paramount importance in every matter concerning the child. Although the words "paramount importance" appear in s 28(2), our jurisprudence holds that they do not automatically override other rights as every right is itself capable of being limited. In *De Reuck v Director of Public Prosecutions*, this Court made it clear that the word "paramount" in s 28(2) does not automatically mean that a child's best interests can never be limited by other rights, and that therefore, in certain instances, s 28(2) may be subjected to limitations that are reasonable and justifiable in terms of s 36.*

[18] What is in the best interests of a particular child is furthermore a question of fact in each specific case.⁶ As such it is incumbent on any applicant, who seeks to rely on the best-interests-principle to establish urgency by setting out the necessary facts. Any applicant who does not, runs the risk that the court will strike the matter from the roll. Section 173 of the Constitution empowers this Court to regulate its own process in the interests of justice. I remind the applicants in this matter that section 7 of the Children's Act⁷ lists no less than 14 factors (from subsection (1)(a) to (n) with many of the factors having sub-categories) that should be considered when applying the best-interests-principle.

[19] In this matter, the applicants knew on 29 August 2025 that the twins were accepted at Rouxville, and they knew on 18 September 2025 that their applications at the three schools of their choice had been unsuccessful as

⁵ *Nandutu and Others v Minister of Home Affairs and Others* 2019 (5) SA 325 (CC).

⁶ *Lubbe v Du Plessis* 2001 (4) SA 57 (C) at 66B/C-C and E-E/F.

⁷ Act 38 of 2005.

the schools were ‘over-subscribed’. They also knew by 22 September 2025, or an unspecified date thereafter – but certainly by 1 October 2025 when they reached out to the circuit manager – that their appeal to the WCED would not be heard as they were out of time. By then they had already appointed their attorneys of record.

[20] I well understand, and sympathise with, the respondents’ collective frustration that the applicants would, in these circumstances, wait until 25 January 2026 (some four months later) to launch their application and would then give the respondents only four days’ notice. The time periods imposed on the respondents were wholly unreasonable and largely the result of the applicants’ own actions in delaying the launching of the application. It should be noted that they had already threatened legal action on 1 October 2025. I agree with the submissions by counsel for each of the respondents that the applicants created the urgency in this matter. Setting a matter such as this down on such short notice, is an abuse of the latitude afforded to practitioners in deserving cases, in terms of Rule 6(12) of the Uniform Rules, that regulate timeframes to prosecute matters ahead of pending cases on the court role. Urgency is not for the taking and is available only in deserving cases.⁸

[21] Subrule 6(12)(b) specifically require an applicant who seeks leave from the court to condone its non-compliance with the rules, to set forth explicitly the circumstances, which render the matter urgent, and why the applicant claims they cannot be afforded substantial redress at a hearing in due

⁸ *NJBD v CD* (unreported case number 8780/2021P) available on Saflii at ZAKZPHC 112, 27 November 2024. See in particular para [19] to [24].

course. In ***Several Matters***⁹ the Johannesburg High Court also emphasised that the procedure set out in Rule 6(12) is not there for the taking. The rule allows the court to come to the assistance of a litigant because, if the latter were to wait for the normal course laid down by the rules, it will not obtain substantial redress. This must be determined by the facts of each case.

[22] Once again, the applicants' founding papers fall far short in respect of the necessary facts. The three principle reasons advanced by them in support of urgency are (a) the twins are not attending school, (b) it is imperative that the twins be placed immediately, as Grade 1 learners are undergoing baseline assessments at this time to determine early support needs and to prevent learning gaps, and (c) the applicants are severely prejudiced by the respondents' conduct and (d) they have no alternate remedy. Once again I find myself sympathetic to the respondents' complaints that these few reasons do not render the matter so urgent as to merit a four-day notice period to them.

[23] Despite the above, I am willing to grant the relief sought in terms of rule 6(12)(a), in light of the following considerations:

[23.1] The applicants may have created the urgency but ultimately it is the best interests of the twins that must be considered. However unreasonable the applicants' actions, the twins are currently not attending school and this cannot be in their best interests. I acknowledge the WCED submission that the children could have started at Rouxville already but I also acknowledge that it may not

⁹ *In re Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (W).

be in their best interests to start at one school, and, if the application succeeded, to be transferred to another school.

[23.2] In terms of section 7(1)(n) of the Children's Act I must consider which action or decision would avoid or minimise further legal or administrative proceedings in relation to the twins. Striking this matter from the roll would not minimise further proceedings and will perpetuate the current uncertainty. I also refer to section 6(4)(b) of the same Act which require that a delay in any action or decision to be taken must be avoided as far as possible.

[23.3] The High Court, as upper guardian of all minor children,¹⁰ bears a duty to ensure that judicial processes do not prejudice a child's welfare. As upper guardian the High Court¹¹

'... has extremely wide powers in establishing what is in the best interests of minor or dependent children. It is not bound by procedural structures or by the limitations of the evidence presented or contentions advanced by the respective parties. It may in fact have recourse to any source of information, or whatever nature, which may be able to assist it in resolving custody and related disputes.'

[23.4] In the **AD v DW** case¹² the Constitutional Court endorsed the minority view in the SCA that the interests of minors should not be "*held to ransom for the sake of legal niceties*" or "*mechanically sacrificed on the altar of jurisdictional formalism*".

[24] In light of all of the above, and despite the sparsity of facts in the founding affidavit, I am following the approach of Van Heerden J in the **Lubbe-**

¹⁰ **Fletcher v Fletcher** 1948 (1) SA 130 (A).

¹¹ **Terblanche v Terblanche** 1992 (1) SA 501 (W) at 504.

¹² **AD and DD v DW and Others (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party)** 2008 (3) SA 183 (CC).

matter and, in terms of Rule 27(3) of the Uniform Rules, I condone the non-compliance by the applicants with Rule 6(12).

- [25] My displeasure with the actions of the applicants, and their non-compliance with the rules, is, however, expressed in the cost order I am making.

The use of rule 6 instead of rule 53

- [26] I turn to the further *in limine* submissions of the respondents who – to a lesser or larger degree – contended that the application had been improperly brought in terms of Rule 6, rather than Rule 53 of the Uniform Rules.

- [27] It is so that in the ordinary course, applicants in judicial review proceedings launch those proceedings in terms of Rule 53 and call for a record, which evidences the decision-making process, to determine whether a decision is susceptible to review on the grounds contended for. If the review is successful, the application is remitted to the decision-maker to make the decision afresh, alternatively, a court may substitute its order for the decision impugned. The respondents aver that, because the applicants did not follow the procedure set out in Rule 53, there is no record of the decision-making process before the court. I was referred to the various SCA and Constitutional Court authorities, which recognised the importance of a record in review applications.¹³

¹³ ***Head of Department: Western Cape Education Department and Others v Equal Education Law Centre and Others*** 2026 (1) SA 372 (SCA) at para [15]; ***Helen Suzman Foundation v Judicial Services Commission*** 2018 (4) SA 1 (CC) para [16]; ***Turnbull-Jackson v Hibiscus Coast Municipality and Others*** 2014 (6) SA 592 (CC) at para [37]; ***Rustenburg Platinum***

[28] Mr De Villiers-Jansen SC also submitted, with reference to ***Front for All v MEC, Environmental Planning***, that judicial reviews are not concerned with the actual decision but with the decision-making process. I am in complete agreement with this submission. The submission further was that, without the records of the impugned decisions, the applicants cannot legitimately attack the process followed in making these decisions. This may be true in respect of the applicants' contention that the decision by the WCED (and the respective schools) was unreasonable and irrational. I do not believe that the same is true in respect of the complaint regarding procedural unfairness.

[29] Mr Oosthuizen SC has, in turn, referred me to the ***Jockey Club*** case.¹⁴ He submits that the applicants were fully entitled to proceed with launching this application in terms of Rule 6 as a party in review proceedings is not confined to procedures laid down in Rule 53. The only qualification is that the Court must be placed in a position to determine the issues raised by all the respective parties to the application. His contention is that the Court has been placed in this position by the respondents who have provided the reasons upon which the impugned decisions by the schools and the WCED are based. This appears from the content of the various answering affidavits as well as the annexures thereto. He also drew my attention to the ***Government Body of Mikro*** case,¹⁵ which was also brought on application in terms of Rule 6 rather than using the processes in terms of Rule 53, wherein interdictory relief was sought by one of the very same

Mines Limited (Rustenburg Section) v Commission for Conciliation, Mediation and Arbitration and Others 2007 (1) SA 576 (SCA) at para [31].

¹⁴ ***Jockey Club of South Africa v Forbes*** 1993 (1) SA 649 (AD).

¹⁵ ***Governing Body of Mikro Primary School and Another v Western Cape Minister of Education and Others*** 2005 (3) SA 504 (C).

respondents to this matter.

- [30] There is no doubt that an applicant in review proceedings are not bound by Rule 53 and may elect to proceed in terms of Rule 6. The advantage of Rule 53 is simply that it obviates the delay and expense of an application to amend a notice of motion and to supplement the founding affidavit – Rule 53(4) enables an applicant as of right to amend, add or vary the terms of the notice of motion and to supplement the founding affidavit. In substance, Rule 53 has done no more than to adapt the ordinary Rule 6 procedure.¹⁶ It is understandable, in light of the applicants' decision to keep the twins out of school until the review application has been heard, that the applicants elected to use Rule 6 and to rely on Rule 6(12) to expedite a hearing – after all, the primary purpose of Rule 53 is to aid an applicant, "*not to shackle him*".¹⁷ These applicants must, however, accept the risk associated with this decision, in that the purpose of the judicial review is to scrutinise the legality of administrative action. In light of the decision I have reached, I do not need to say more.

The relevant statutory context and legal principles

- [31] The Constitution enshrines a child's right to basic education, further education, and to receive education in their language of choice. The South African Schools Act¹⁸ ("SASA") provides for the organisation, governance and funding of schools to give effect to this constitutional right. Public schools are run in partnership with national government, provincial government and the parents of learners with members of the community

¹⁶ See the detailed comparison between the rules as set out by the AD at 660H/I to 661E.

¹⁷ At 661E-F/G.

¹⁸ Act 84 of 1996.

where the school is situated. When SASA addresses issues of admissions of learners and the capacity of schools to provide placement, it does so with reference to this partnership.¹⁹

[32] Section 3(3) of SASA places an obligation on the MEC for Education at provincial level to ensure that there are enough school places so that every child in its province may attend school. At school level it is the governing bodies of the public schools that determines the admission policy in their school (section 5(5)). If a learner is refused a place at the school despite application, the obligation lies with the Head of Department (*in casu* the first respondent) to inform the parent in writing and to provide reasons for such refusal. If a learner has been refused admission, they or their parent may appeal the decision to the Member of the Executive Council (*in casu* the sixth respondent).

[33] In the discussion above, I have outlined the relevant principles relating to review. Suffice to say that reviews are not directed at the correctness of a decision on the merits. The function of the judicial review is to scrutinise the legality of administrative action, not to secure or substitute the decision by a judge in the place of the decision by an administrator.

The grounds for review

[34] The applicants appear to have invoked the grounds of review provided for in section 6(2)(c) (procedural unfairness), section 6(2)(f)(ii) (rationality) and section 6(2)(h) (unreasonable administrative action) of PAJA.²⁰ The respondents oppose the relief sought in respect of each and every ground,

¹⁹ *MEC for Education, Gauteng Province and Others v Governing Body, Rivonia Primary School and Others* 2013 (6) SA 582 (CC) at para [35] to [37].

²⁰ Promotion of Administrative Justice Act 3 of 2000.

as well as in respect of the interdictory relief.

Procedural unfairness

[35] The applicants' case in this regard is simply that they were only informed of the twins' placement in Rouxville on 29 August 2025 (this was a Friday). The WCED did not dispute this averment but merely 'noted' same. The date for the appeal closed on 31 August 2025 (the Sunday). The applicants further averred that they only learned the status of their applications to the three schools of their choice on 18 September 2025, which was after the last day on which an appeal could be lodged in terms of section 5(9) of the Schools Act, namely 31 August 2025. The WCED contends that this statement is disingenuous as the applicants were informed on 31 May 2025 that their applications to the three schools of their choice was unsuccessful. Furthermore, they argue, the applicants could have accessed the results via the Department's website, given that they applied online.

[36] The WCED relies, firstly, on two annexures, dated 30 May 2025, to their answering affidavit that read as follows (I only quote the first part):

Dear Sir / Madam

**WCED ONLINE ADMISSIONS 2026
OUTCOME OF APPLICATION(S) FOR ADMISSIONS**

Re: APPLICATION(S) FOR ADMISSION FOR (child's name)

Your application status for admission for (child's name) for GR1 to school(s) are listed in the table below, in order of preference:

<i>SCHOOL</i>	<i>STATUS</i>
<i>DE KUILEN PRIMARY SCHOOL</i>	<i>UNSUCCESSFUL – SCHOOL OVERSUBSCRIBED</i>
<i>BASTION PRIMARY SCHOOL</i>	<i>UNSUCCESSFUL – SCHOOL OVERSUBSCRIBED</i>

Please note that this is not the end of the process. Places may open as parents confirm places at schools. Schools will start filling available Grade R, 1 and 8 spaces after parents confirm by 17 June 2025.

The WCED, secondly, also relies on annexure BW15 in support of their contention that the applicants were notified on 31 May 2025 of their lack of success.

[37] Yet this annexure, which appears to be a printout of communications in terms of an App does not list either 30 May or 31 May 2025 as a date on which an email was sent to the applicants or a document was uploaded on the App. Other dates are listed, namely 29 April, 13 May, 21 May, and 27 June. A contact number and email address is listed but no confirmation that any notice was sent at any time to the contact number and email address. The only date that co-incides more or less with the timeline put forward by the applicants is 28 August and the status is listed as “successful”. The information on this document is sparse. By way of example it does not mention the names of schools. The only “confirmation” status shows emails on 31 May 2025 to “h[...]”, “m[...]”, and “n[...]”.

[38] Even if, as the WCED contends, the applicants had – or should have had – knowledge of the outcome of their applications to the schools of their choice by end May 2025, I am troubled by the wording employed in the above-quoted 30 May-notice. The notice records that the twins are on the waiting list at Mikro and *“Please note that this is not the end of the process. Places may open as parents confirm places at schools.”* On the face of it, no person in the applicants’ shoes would have known that their applications were finally unsuccessful. I am also troubled by the content of

annexure “F” to the founding affidavit, which is the notification the applicants say they received on 18 September 2025. When compared to the previous notice (partly reproduced above) this notice does indicate finality – the former one did not. The notice reads as follows:

Dear Sir / Madam

**WCED ONLINE ADMISSIONS 2026
OUTCOME OF APPLICATION(S) FOR ADMISSIONS**

Re: APPLICATION(S) FOR ADMISSION FOR (child's name)

Your application status for admission for (child's name) for GR1 to school(s) are listed in the table below, in order of preference:

<i>SCHOOL</i>	<i>STATUS</i>
<i>DE KUILEN PRIMARY SCHOOL</i>	<i>UNSUCCESSFUL – SCHOOL IS OVERSUBSCRIBED</i>
<i>BASTION PRIMARY SCHOOL</i>	<i>UNSUCCESSFUL – SCHOOL IS OVERSUBSCRIBED</i>
<i>MIKRO LAERSKOOL</i>	<i>UNSUCCESSFUL – SCHOOL IS OVERSUBSCRIBED</i>
<i>ROUXVILLE PRIMARY SCHOOL</i>	<i>SUCCESSFUL</i>

You are required to make a final choice and accept a place offered before Tuesday, 30 September 2025.

- [39] The founding affidavit sets out the many steps taken by the applicants after they learned of the twins' placement at Rouxville. These steps commenced on 2 September 2025. Neither the WCED nor Mikro alleged that the applicants took any steps prior to this date. It is common cause that the applicants did not approach Bastion directly with an appeal. Their appeal in respect of the decision by De Kuilen was directed through the circuit manager and was in general terms. The appeal by their attorney on 22 September 2025 was in respect of Mikro only.
- [40] It seems to me that it is probable that the applicants had not known that their applications had been unsuccessful prior to the 31 August cut-off

date. Certainly, even on the WCED's papers they would not have known about the Rouxville placement before 29 August 2025.

[41] The WCED policy for the management of admission and registration of learners at ordinary public schools record the right of appeal in terms of SASA. In terms of section 5(9) of SASA any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council. The same policy document also sets out, in a table, the Annual Admission Time Frames. I have not, through an examination of this table, been able to establish the cut-off date of 31 August 2025 for appeals or why this date would have been chosen.

[42] In light of what has been stated above, I am of the view that the applicants have established, on a balance of probabilities, that they only learned that the twins were placed at Rouxville on 29 August 2025 and that they were informed by the WCED of the outcome of their applications to their schools of choice on 18 September 2025. The section 5(9) right of appeal would thus only have been 'triggered' on 18 September 2025, which is when the applicants learned that the twins had been refused admission to a public school. This was after the cut-off date for appeals to the sixth respondent. In my view this was procedurally unfair.

[43] I am, however, not prepared to substitute my order for the decision impugned. This is the consequence of the applicants' decision to utilise Rule 6 instead of Rule 53. Although the schools have set out their admission policies, they have not provided a full record of the proceedings inclusive of the reasoning in preferring each of the successful applications

whilst denying the unsuccessful applications. In this I am mindful of the view expressed by the Constitutional Court in the **Rivonia** case.²¹ The WCED's obligation to ensure that there are enough school places for every child to attend school must take into consideration the fact that

“determination of capacity is a complex process that applies not only to the school as an entity, but also to each and every grade and class within the school. It involves a consideration of a range of interwoven factors relating to the planning and governance of the school as a whole. Planning and coordination in partnership with school governing bodies is crucial.”

[44] I am thus remitting the applicants' applications to enrol the twins at Mikro and De Kuilen (not Bastion) back to the WCED as well as to Mikro and De Kuilen to consider afresh. My order reflects this. I have also provided therein that the applicants be afforded an opportunity to lodge their appeal against the decisions (lack of success at both Mikro and De Kuilen). In light thereof that the twins are seemingly not at school I am placing short time periods on the lodging of the appeal. The applicants are the ones who have delayed substantially in launching this application.

[45] My order also provides that the sixth respondent, alternatively the second respondent, report back to court on the outcome of the process. I do so on the strength of this court's duty as upper guardian of the twins with reference to the authorities quoted above and the full court decision in **J v J**.²² During the hearing Mr De Villiers-Jansen SC confirmed that Rouxville is now also over-subscribed (although I should record that at the time the decision was made on 29 August 2025 the school was apparently not over-subscribed). It thus seems to me that mere over-subscription can therefore not be the defining factor in determining which school the twins

²¹ At [71].

²² 2008 (6) SA 30 (C).

will attend. The respondents have not put up facts showing that it is physically impossible to put another two children in the facilities utilised as Grade 1 classrooms in Mikro and De Kuilen.

- [46] In light of my decision, I do not believe it is necessary to deal with the other grounds for review raised by the applicants or with the WCED's application to strike out certain paragraphs in the replying affidavit (which deals with these two grounds of review).

Further submissions received

- [47] Finally I record that, I have (with the consent of the applicants) received a brief note from the WCED's counsel in respect of the Constitutional Court judgment in ***Governing Body of the Juma Musjid Primary School v Kyubwa***.²³ They point out, in support of the WCED's convenience argument, that the Constitutional Court, having found that the MEC had taken reasonable steps to secure alternative placements for the learners for the 2011 school year, rejected the complaints from parents about transport and siblings being split to attend different schools and travelling at different times, and in different busses. The Constitutional Court observed that it may well be ideal for siblings to attend the same school and to travel together in the same bus, but that the applicants had not persuaded the court that the MEC was constitutionally obliged to provide transportation for the convenience of each parent and learner.
- [48] Mr Oosthuizen SC has filed a supplementary note in reply and referred me to the doctrine of precedent. He has pointed out that the WCED seeks to

²³ 2011 (8) BCLR 761 (CC) at para [78].

rely on an *obiter* remark made by the Constitutional Court, and such remarks have no binding effect.²⁴ He also pointed out that the ***Juma Musjid***-matter is wholly distinguishable from this matter for various reasons. Firstly, because there were no schools in the immediate vicinity but numerous schools in the adjoining areas. Secondly, because the issue was whether the school's conviction was just and equitable – i.e. whether the MEC had fulfilled the constitutional mandate of providing basic education by taking reasonable steps to secure alternate placements of the learners. Thirdly, because there is no suggestion in this matter that the WCED is obliged to provide transport for the twins.

[49] These issues are relevant to the review grounds of irrationality and unreasonableness. In light of my decision regarding the review ground of procedural unfairness, I do not need to make a determination on the further arguments advanced.

Costs

[50] The ordinarily rule is that the successful party is entitled to its costs. I am, however, not prepared to follow the rule in circumstances where I have found that the applicants should have launched this application on proper notice to the respondents (without truncating the time periods). I do not consider four days' notice in the circumstances of this matter to have been sufficient. The timeline imposed on the parties by agreement in the postponement order does not save the applicants from this court's displeasure, which I am expressing by depriving them of costs.

²⁴ ***Turnbull-Jackson v Hibiscus Court Municipality and Others*** 2014 (6) SA 592 (CC) at para [56].

[51] I understand the *Biowatch* rule to dictate that in South Africa, when private parties win constitutional litigation against the State, the State usually pays their costs. If the private party loses, they generally bear their own costs and are protected from paying the State's legal fees.

[52] Although I have granted the applicants no relief in respect of Bastion, I am not prepared to mulct them in costs in this regard. Bastion, being outside the catchment area, could have abided the court's decision and relied on the WCED's thorough submissions. I am also not aware of any request made by the school to the applicants to abandon the relief sought against the school. It does not appear from the founding affidavit that Bastion was ever a strong choice of the applicants.

[53] It is noted that the applicants' counsel acted *pro bono*, for which the court thanks them.

[54] The order is recorded above.

ANDERSSEN J S

Acting Judge of the High Court

Appearances:

For the applicants: Adv A C Oosthuizen SC with Advs M Holland and N Essa
Instructed by Bossr Attorneys Inc

For the first, second, sixth and seventh respondents: Adv E A De Villiers-Jansen
SC with Adv S Mahomed
Instructed by: Office of the State Attorney

For the third and eighth respondents: Adv G Gagiano
Instructed by Laäs & Scholtz Attorneys

For the fourth and ninth respondents: Adv A Christians

Instructed by Carolissen Attorneys Inc

For the fifth and tenth respondents: Adv P Coston

Instructed by Smith & Hugo Attorneys