**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case number: 2025-125031**

**Date of hearing: 24 February 2026**

**Date delivered: 9 March 2026**

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) ~~REVISED~~

9/3/26 ...... [redacted]
DATE SIGNATURE

In the application between:

| | |
|---|---|
| **MAKHOSINI MSIBI** | **Applicant** |
| **and** | |
| **THE BOARD: ROAD TRAFFIC MANAGEMENT CORPORATION** | **First Respondent** |
| **THE SHAREHOLDERS COMMITTEE: ROAD TRAFFIC MANAGEMENT CORPORATION** | **Second Respondent** |
| **THE ROAD TRAFFIC MANAGEMENT CORPORATION** | **Third Respondent** |
| **THE MINISTER OF TRANSPORT** | **Fourth Respondent** |

## JUDGMENT

**SWANEPOEL J**:

[1] The applicant is the Chief Executive Officer ("CEO") of the third respondent. The third respondent is the Road Traffic Management Corporation ("RTMC"), a Schedule 3 public entity in terms of the Public Finance Management Act, 1 of 1999 ("the PFMA"), which was established in terms of the Road Traffic Management Corporation Act, 20 of 1999 ("the Act"). The first respondent is the Board of the RTMC ("the Board").

[2] On 1 July 2025 the Board, having received a number of whistleblower's complaints, delivered a letter to the applicant in which it advised that he was being placed on:

> "precautionary suspension pending the consultation with the Shareholder and/or the Minister of Transport. The Shareholder has now been consulted with regard to your precautionary suspension. As a result you are placed on cautionary suspension with effect from 1 July 2025."

[3] The applicant was also advised that his suspension was with full pay, for an initial period of 30 days which could be extended to 60 days, or any further period "as may be reasonably necessary". It must be noted that when this application was heard, the applicant had been suspended for almost eight months.

[4] The applicant initially sought an order that his suspension be declared unlawful, that it be reviewed and set aside, and that the Board's decision to appoint an interim CEO be similarly reviewed and set aside. The main thrust of the applicant's case is that the Board did not have delegated powers to suspend him. In its answering affidavit the Board disclosed a 'Board Charter' which, it says, authorized it (inter alia) to suspend the applicant. The applicant then delivered a supplementary affidavit and an amended notice of motion. He took the stance that the authority to establish a Board Charter had also not been delegated to the Board. The applicant now seeks an additional order reviewing and setting aside the Board Charter.

*The issues*

[5] The Board has raised a number of in limine points. The only points pursued by the Board in argument, however, are the following: Firstly, it submits that there is a material non-joinder of the interim CEO, who has an interest in whether the applicant's suspension is uplifted. The applicant has abandoned the prayer that the appointment of the interim CEO be reviewed and set aside. It submits that, if the suspension is set aside, then by operation of law the appointment of the interim CEO is automatically of no force and effect. Secondly, the Board has pleaded that this matter implicates a Constitutional issue, and that notice should have been given in terms of Rule 16 A. Thirdly, the Board submitted that the applicant had not sought leave to supplement, and that the supplementary affidavit should be disregarded. Fourthly, the Board

submitted that the applicant had not sought the filing of a Rule 53 record, but that it had, instead, employed the provisions of rule 6 of the Uniform Rules in bringing the application. Finally, the applicant seeks condonation, to the extent required, for the delay in delivering the amended review application in respect of the Board Charter.

*The statutory matrix*

[6] In order to understand the applicant's contentions, it is important to understand the legislative matrix within which the RTMC exists. The RTMC was established by virtue of section 3 of the Act. It consists of[1]:

[6.1] A Shareholders Committee;

[6.2] A chief executive officer;

[6.3] A Board, subject to a decision by the Shareholders Committee to establish a Board in terms section 8;

[6.4] Managers of functional units;

[6.5] Professional, technical, administrative and support staff.

[7] Section 6 established the Shareholders Committee, which consists of the Minister of Transport, every MEC with responsibility for road traffic in each province, and two appointed representatives. The Shareholders Committee is responsible for directing and guiding the

proper functioning of the RTMC in the public interest.[2] Section 8 (1) provides as follows:

> "(1) The Shareholders Committee may subject to section (2) establish a board of the Corporation consisting of-
>
> (a) the Chief Executive Officer;
>
> (b) if the Minister specifies an office in the Department for the purpose of this subsection, the person for the time being holding that office; and
>
> (c) not more than eight persons appointed by that Committee."

[8] The material subsections of section 8 are the following:

> "(3) The Shareholders Committee must, before appointing a board, come to a decision as to-
>
> (a) the powers which may be delegated to the board after its appointment; and
>
> (b) the conditions it thinks fit to impose in respect of the exercise of delegated powers.
>
> (4) The Shareholders Committee may, in writing, delegate to the board any of the powers contemplated in subsection (3) (a).
>
> (5) The Shareholders Committee may continue to issue directives in terms of section 13 with regard to powers delegated to the board.

(6) The board must exercise the powers delegated in terms of subsection (4) subject to the conditions, if any, contemplated in subsection (3) (b).

(7) The Shareholders Committee may, at any time, withdraw a delegation effected in terms of this section.

(8) Any delegation in terms of subsection (4) does not prohibit the Shareholders Committee from exercising the delegated power."

[9] From a reading of the above provisions it is clear that the appointment of a Board is within the discretion of the Shareholders Committee, and is not mandatory. Furthermore, the powers of the Board are strictly limited to those powers specifically delegated to the Board by the Shareholders Committee in writing. The Board does not have any powers save for the powers delegated to it.

[10] In terms of subsection 12 (f), a decision to delegate powers to the Board requires a special two-thirds majority of the Shareholders Committee. Section 9 also requires the Shareholders Committee to enter into a governance agreement with the Board, which agreement must be published in the published in the Gazette and in every Provincial Gazette. Section 28 of the Act sets out the functions of the Shareholders Committee. Its functions are wide-ranging: It monitors the performance of the RTMC, decides which functions are to be carried out by each of the RTMC organs, approves the financial and business plan, approves the award of tenders, consults on and facilitates the implementation of the

Act, and publishes particulars of policies. It generally performs all the powers and duties conferred on it by the Act.

[11] It is against the above legislative background that the matter must be considered. However, it is necessary to first deal with the in limine points.

*Non-joinder*

[12] Section 10 of the Uniform Rules provides for the joinder of parties having an interest in the matter. The test was stated by the Constitutional Court in *SA Riding for the Disabled Association v Regional Land Claims Commissioner*[3] as follows:

> "[9] It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court."

[13] The person to be joined must, therefore, have a legal right that may be adversely affected by the decision. The following question comes to mind: What legal interest in these proceedings does the interim CEO have? She has been appointed on a temporary basis. She has no legal entitlement to remain employed as interim CEO. Save for alleging that the interim CEO has an interest in the matter, the Board does not say what

that interest might be, nor what legal right may be affected. In my view this point has no merit.

*Rule 16 A notice*

[14] Rule 16 A requires a party who raises a constitutional issue in a matter to give notice thereof to the registrar at the time of filing the affidavit or pleading. The purpose of the notice is to notify persons interested in the constitutional issue to intervene as *amici curiae* in order to advance submissions in respect thereof.

[15] In *Phillips v SA Reserve Bank and Others 2013 (6) SA 450 (SCA)*[4] the Supreme Court of Appeal held that the provisions of rule 16 A (1) (a) should be interpreted:

> "...in light of the purpose for which it was enacted, viz to bring cases involving constitutional issues to the attention of persons who may be effected by or have a legitimate interest in such cases, so that they may take steps to protect their interests by seeking to be admitted as amici curiae with a view to drawing the attention of the court to relevant matters of fact and law to which attention would not otherwise be drawn."

[16] In my view, there is no true constitutional issue to be decided in this matter, nor an issue regarding which other persons, other than the respondents, would have an interest. I do not believe that this is a matter which required notice in terms of rule 16 A (1) (a).

*Admission of the supplementary affidavit*

[17] I will deal with the merits of the matter, namely, whether the Board was authorized to suspend the applicant, hereunder. The applicant has, since he was suspended, sought confirmation that the power to suspend him had been delegated to the Board. His main contention is that the Shareholders Committee solely held the power to suspend him, and that it had never delegated that power to the Board. The response to the applicant's request was contained in a letter in which the Board's attorneys said:

> "2. At the outset we do not agree with the position advanced therein. The Board of the Road Traffic Management Corporation ("the Board") has acted squarely within its legal mandate and in full compliance with its internal governance framework.
>
> 3. The precautionary suspension of your client is and (sic) administrative measure undertaken in terms of the RTMC policies and applicable legislation...
>
> 4. The Board is empowered to take decisions of this nature, and any suggestion that the suspension is procedurally irregular or ultra vires is misplaced..."

[18] Save for the aforesaid *ipse dixit*, the requested proof of delegation was not forthcoming.

[19] The Board sought to prove its authority by attaching to its answering affidavit a "Board Charter", which was signed by the Board

Chairperson on 29 January 2024. The Board submits that the Charter afforded it the authority to suspend the applicant.

[20] In a supplementary affidavit (which was filed within days of the answering affidavit being delivered) the applicant challenged the Board's powers to adopt the Charter. The applicant contends that he was never aware of the existence of the Charter, and he disputes its validity on the basis that the Board was never delegated the power to approve a Charter. The applicant has amended the notice of motion to include a prayer that the Charter be declared unlawful.

[21] The Board submitted that the applicant has not sought condonation for the filing of the supplementary affidavit, nor has he sought leave to amend the notice of motion. It is trite that a party is not entitled, as of right, to deliver a further affidavit, other than those ordinarily allowed. The applicant has not delivered a formal application for leave to supplement, nor does a party have to do so, in my view.[5] To insist on a formal application would be over-formalistic.

[22] A party seeking to admit an affidavit must, however, provide a proper explanation why the evidence was not placed before Court at the appropriate time, and why it is in the interests of justice to admit the affidavit. In *Porterstraat Eiendomme (Pty) Ltd v PA Venter Worcester (Pty) Ltd*[6] the Court summarized the factors that must be considered in considering whether to admit the further evidence (this is not an exhaustive list):

[22.1] The reason why the evidence was not produced timeously;

[22.2] The degree of materiality of the evidence;

[22.3] The possibility that it may have been shaped to 'relieve the pinch of the shoe';

[22.4] The balance of prejudice;

[22.5] The stage of the litigation;

[22.6] The 'healing balm' of an appropriate costs order;

[22.7] The need for finality in litigation.

[23] In this case the supplementary affidavit followed immediately on a disclosure made by the Board in its answering affidavit. The Board has fully replied to the supplementary affidavit in its own supplementary answering affidavit, and there can be no prejudice to it should the affidavit be admitted. The submissions made in the affidavit go to the heart of the matter, namely whether the Board was empowered to suspend the applicant. It is, in my view, in the interests of justice to allow the affidavit.

*Rule 53 as opposed to rule 6*

[24] Rule 53 of the Uniform Rules envisages a review procedure akin to rule 6, save for an important exception. Rule 53 requires an applicant

to deliver the application to the person whose decision is sought to be reviewed[7]. It also requires the applicant to call on such person to show cause why the decision should not be reviewed, corrected or set aside, and to dispatch the record of proceedings to the registrar.

[25] The applicant delivered the application to the Board as required, but it did not require the Board to show cause for its decision, nor did it seek the dispatch of the record to the registrar. I suspect that it did not call for the record due to the urgent basis on which the application was initially brought. The Board argued that if the entire record of the proceedings had been part of the court record, it would have assisted the Court in coming to a conclusion as to the legality of the suspension. This argument begs the question why, if the Board believed the record to be important in bringing context to the matter, did it not simply file the record itself, without having to be asked.

[26] It was held in *Jockey Club of South Africa v Forbes*[8] that the record operates to the benefit of the applicant, and it may waive the requirements of subrule 53 (1) (b).[9] I believe that the papers have provided a comprehensive picture of the events leading up to the suspension, and as I have said, if the record was of value to the Board, it would no doubt have proffered it in evidence.

*Condonation for the late filing of the review in respect of the Board Charter*

[27] The applicant argued, correctly so, I believe, that the decision to implement a Board Charter constitutes the exercise of executive authority

as opposed to the suspension of the applicant which constitutes administrative action under the Promotion of Administrative Justice Act, Act 3 of 2000 ("PAJA"), and which should be reviewed under PAJA.

[28] In *Minister of Defence and Military Vererans v Motau and Others*[10] the court said:

> "[38] ...A power that is closely related to the formulation of policy is likely to be executive in nature and, conversely, one closely related to its application is likely to be administrative."

[29] If one applies that principle in this matter, then the decision to adopt a Charter is executive action which must be considered under legality. A review brought under legality must be brought within a reasonable period, whilst a review under PAJA must be brought within 180 days. The test is two-fold. Firstly, has the review been brought within reasonable time periods, and if not, then, secondly, should condonation be granted for the delay?

[30] The applicant's version is that he only became aware of the existence of the Charter when he read the answering affidavit. The Board argued that it was highly unlikely that the applicant would not have been aware of a Charter that was adopted in January 2024.

[31] It is certainly strange that the applicant was not aware of the Charter. However, there is no evidence to suggest that he was in fact

aware thereof, nor can I simply reject his statement. If I accept what the applicant says, which I do, then his review of the Charter was timeous.

*Was the Board empowered to suspend the applicant, and was it empowered to adopt a Board Charter?*

[32] There is little doubt that it was the Board that suspended the applicant. The notice of suspension says the following:

> "1. Be advised that the Board, through its chairperson, was alerted by whistleblowers of allegations of misconduct that include fraud, corruption, and wasteful expenditure against you. By their nature, the allegations are serious and warrant an investigation.
>
> 2. In an in-committee meeting of the Board held on 13 June 2025, you were advised and excused to enable the Board to deliberate on these issues and related matters.
>
> 3. Following the deliberations in the aforesaid meeting, the Board resolved to place you on precautionary suspension, pending the consultation with the Shareholder and/or the Minister of Transport. The Shareholder has now been consulted with regard to your precautionary suspension. As a result, you are placed on a precautionary suspension with effect from 01 July 2025."

[33] In the answering affidavit the Board confirmed that it had placed the applicant under suspension. The Board's contention is that by virtue of the applicant's employment contract, the Board is authorized to take disciplinary steps against him. It also contends that the employment agreement must be read in tandem with the performance agreement between the Board and the applicant, and that considering both agreements, the Board was acting within its powers.

[34] These two documents clearly purport to empower the Board to take disciplinary action against the applicant. However, there is no evidence that the Board had delegated powers to enter into the agreements in the first place.

[35] I have set out the relevant provisions in the Act above. The structure of the RTMC is unlike other entities. It is controlled by the Shareholders Committee. The Shareholders Committee not only appoints the Chief Executive Officer, it may also appoint a Board. The Board is bound to act within the confines of those powers specifically delegated to it by the Shareholders Committee. The Shareholders Committee must decide, before appointing a Board, which powers shall be delegated to the Board, and the conditions it deems fit to impose in respect of those powers.

[36] The Board submitted that the Board of a company derives certain powers relating to the business and its affairs directly from the Companies Act, 2008. By virtue of the Companies Act, therefore, the Board says that

it is automatically empowered to conduct the affairs of the company, argues.

[37] This argument reflects a basic misunderstanding of the Act. The RTMC scheme is sui generis. The RTMC is established as a juristic person by virtue of section 3 of the Act. It is not registered under the Companies Act. The "Shareholders" are not shareholders as defined by the Companies Act, and they have powers that shareholders under the Companies Act do not have. The RTMC may or may not have a Board, depending on the decision of the Shareholders Committee. In contrast, each company has a board of directors. The Companies Act does not, in my view, apply to the RTMC.

*Accounting Authority*

[38] The Board submitted that it is the accounting authority of the RTMC and it thus has certain powers by virtue of section 51 of the PFMA. Section 49 (1) of the PFMA provides that every public entity must have an authority which must be accountable for the purposes of this Act. Subsection (2) reads as follows:

> "(2) if the public entity-
>
> (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or

(b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority."

[39] The Board argued that as the accounting authority for the RTMC, its responsibilities include the responsibility to take disciplinary steps against an employee who contravenes the PFMA, commits any act that undermines the financial management and internal control systems of the entity, or who makes or permits fruitless or wasteful expenditure.

[40] I do not agree with the Board's submission. The appointment of the Board is within the discretion of the Shareholders Committee. Should the Shareholders decide not to appoint a Board, on the Board's interpretation, the RTMC would then be left without an accounting authority, which is untenable. It is clear, from a holistic consideration of the Act, that the Board only exercises the powers delegated to it by the Shareholders Committee in writing, that its delegated powers may be revoked, and that, notwithstanding that a power has been delegated, the Shareholders Committee may nonetheless exercise that power. I hold that the Shareholders Committee is the 'other controlling body' referred to in section 49 (1) of the PFMA, and thus it is the accounting authority.

[41] My view, that the Board did not have powers to suspend the applicant, is supported by the provisions of subsection 39 (3) of the Act. It reads as follows:

"(3) Any complaint regarding the chief executive officer must be submitted to the Shareholders Committee or the Minister for investigation."

[42] The above subsection is clear, and it is peremptory. In light of this provision, it seems to me that it is not open to the Shareholders Committee to delegate the power to investigate the Chief Executive Officer to the Board, even if it wished to do so.

[43] The Board has not responded to the applicant's averment that there has been no written delegation of powers by the Shareholders Committee. The applicant has been asking for copies of all delegations for months, without success. It is inconceivable to me that, if written delegations exist, the Board would not have disclosed same. The only possible explanation is that that there are no written delegations in existence. If that is so, then any action by the Board is unlawful, but particularly, the suspension of the applicant was unlawful. The adoption of the Board Charter is, therefore, equally unlawful.

[44] Section 172 (1) (a) of the Constitution provides that a court must declare any conduct that is inconsistent with the Constitution invalid, to the extent of the inconsistency. Furthermore, a court may make any order that is just and equitable[11], including an order suspending the invalidity to allow the competent authority to correct the defence.[12]

[45] Consequently, the applicant's suspension must be reviewed and set aside. As far as the Board Charter is concerned, it must, equally, be

reviewed and set aside. However, the Board is central to the operations of the RTMC, and it would be prejudicial to the RTMC to merely set aside the Charter with immediate effect. Consequently, the declaration of invalidity of the Charter must be suspended for a brief period in order to allow the Shareholders Committee to delegate to the Board the authority to adopt a Charter within the provisions of the Act.

*Costs of the postponements of 12 and 26 August 2025*

[46] The matter was initially set down in the urgent court of 12 August 2025. On 5 August 2025 the Board delivered an unsigned answering affidavit annexed to which was the Board Charter. It bears repeating that the applicant had been seeking clarity on the Board's authority to suspend him for some time, and that it was only at this stage that the Charter came to light.

[47] The applicant took the view that it would be necessary for him to challenge the Charter, which would require an amendment of the notice of motion, and the filing of a supplementary affidavit. It removed the matter from the urgent roll without seeking the Board's consent.

[48] Once the applicant had considered the matter further, he concluded that the issues were of such a nature, and the papers so voluminous, that the matter should not be heard in the urgent court. The applicant's attorney thus approached the AJP for an allocation as a special motion, and the matter was also not heard in the urgent court on 26 August 2025.

[49] The first postponement was the result of the Board's rather coy approach to the applicant's request for proof of its delegated powers. It only disclosed the existence of the Charter (which I have held is unlawful) a week before the matter was to be heard. The applicant's decision to remove the matter from the 12 August roll was understandable. However, it should have become apparent immediately that the matter could not be heard in the urgent court. The applicant's decision to enroll the matter for 26 August 2025 was ill advised.

[50] In my view, therefore, both parties had a hand in the postponements of 12 and 26 August 2026. It would be appropriate to order each party to pay its own costs for those two dates.

**[51] Consequently, I make the following order:**

**[51.1] The first respondent's decision to adopt the Board Charter dated 29 January 2024 is invalid, and is reviewed and set aside;**

**[51.2] The declaration of invalidity above is suspended for 90 days in order for the first respondent to be delegated appropriate powers;**

**[51.3] The first respondent's decision on 1 July 2025 to place the applicant on suspension is unlawful, and is reviewed and set aside.**

**[51.4] In respect of the matter being set down on 12 and 26 August 2025, each party shall pay its own costs.**

**[51.5] The first respondent shall pay the applicant's costs (save for the costs referred to in paragraph 51.4 above) on Scale C, including the costs of two counsel where so employed.**

[redacted]

**C SWANEPOEL J**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION PRETORIA**

| | |
|---|---|
| **Counsel for the applicant:** | **Adv. JA Motepe SC**<br>**Adv. S Manganye** |
| **Instructed by:** | **Soldatos Coopers Inc** |
| **Counsel for the First Respondent:** | **Adv. PL Mokoena SC**<br>**Adv. P Managa** |
| **Instructed by:** | **Mothle Jooma Sabdia Inc** |
| **Heard on:** | **24 February 2025** |
| **Judgment on:** | **9 March 2025** |

[1] Section 5 of the Act
[2] Section 7 (2)

[3] SA Riding for the Disabled Association v Regional Land Claims Commissioner v 2017 (5) SA 1 (CC) at 5 A-D
[4] Phillips v SA Reserve Bank and Others 2013 (6) SA 450 (SCA)
[5] Meropa Communications (Pty) Ltd and Another v Verb Media (Pty) Ltd [2017] ZAGPJHC 464 (11 August 2017)
[6] Porterstraat Eiendomme (Pty) Ltd v PA Venter Worcester (Pty) Ltd 2000 (4) SA 598 (C) at 617 A-E
[7] Subrule 53 (1) (b)
[8] Jockey Club of South Africa v Forbes 1993 (1) SA 649 (A) at 660 E-H
[9] Motaung v Mukubela and Another NNO; Motaung v Mothiba 1975 (1) SA 618 (O) at 625 H – 626 A
[10] Minister of Defence and Military Veterans v Motau and Others 2014 (5) SA 64 (CC)
[11] Subsection 172 (1) (b)
[12] Subsection 172 (1) (b) (ii)