

REPUBLIC OF SOUTH AFRICA



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

1) <u>REPORTABLE</u> : NO	
2) <u>OF INTEREST TO OTHER JUDGES</u> : NO	
3) <u>REVISED</u> : YES	
 _____ SIGNATURE	2 March 2026 DATE

CASE NO: 2024-122723

In the matter between :

NEILOPAHR CASSIM

Applicant

and

**SOUTH AFRICAN LEGAL PRACTICE COUNCIL
(NATIONAL LPC)**

First Respondent

**GAUTENG PROVINCIAL LEGAL PRACTICE
COUNCIL (GAUTENG LPC)**

Second Respondent

**CHAIRPERSON OF THE PROVINCIAL LPC
INVESTIGATING COMMITTEE, DR B BEKINK**

Third Respondent

**ADVOCATED M PHUGUBJE (MEMBER OF
PROVINCIAL INVESTIGATIVE COMMITTEE)**

Fourth Respondent

ABRAHAM J HENN

Fifth Respondent

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be **2 March 2026**.

JUDGMENT

M SNYMAN, AJ

Introduction

[1] Before me is an application for review of a decision by the Legal Practice Council (“LPC”) not to charge the fifth respondent after complaints by the applicant, *inter alia*, of professional misconduct.

[2] From the outset, it should be noted that the applicant is a senior counsel, having practised since 1983. The applicant argued the matter in person despite being represented by attorneys. The 2nd, 3rd and 4th respondents were represented by Mr NC Maritz.

[3] The notice of motion sought the following relief:

- “1. *Declaring that the failure of the second respondent and / or third and fourth respondents to investigate the applicant’s complaint under reference number: 9560/2023 is unlawful and invalid.*
2. *Declaring that the findings and decision of the second respondent and / or third and fourth respondents to dismiss the applicant's complaint under reference number 9560/2023 on the 30 November 2023 as embodied in annexure “X1” is unlawful and invalid, and of no force and effect.*
3. *Declaring that the findings and decision of the second respondent and / or third and fourth respondents to dismiss the applicant's complaint under reference number 9560/2023 on the 30 November 2023 as embodied in annexure “X1” is reviewed and set aside.*
4. *Declaring that prima facie evidence furnished by the applicant in her complaint under reference number 9560/2023 constitutes prima facie*

evidence which may lead to a finding of professional misconduct on the part of the fifth respondent and consequently this matter is referred to the disciplinary committee of the second respondent for determination.

5. *Directing the second respondent alternatively all such respondents who oppose the application to pay the costs of this application on an attorney and earned client scale and such costs to include the costs of senior council jointly and severally, the one paying the other to be absolved.*
6. *Further and/or alternative relief as the Honourable Court deems fit.”*

[4] In the heads of argument filed by the applicant, further relief is set out, in the alternative to those listed in the notice of motion, which reads as follows:

“1.6. ALTERNATIVELY, and under the further or alternative relief, applicant seeks that:

1.6.1. In consequence of inter alia the unconscionable and perjured affidavit of the director of the second respondent, and the uncontested evidence by the fifth respondent.

1.6.2. This Honourable Court exercise its powers in terms of Section 8 of the Promotion of Administrative Justice Act (PAJA) and:

1.6.2.1. Finds that the fifth respondent is guilty of professional misconduct and it will serve no purpose to refer the matter to a disciplinary committee of the second respondent.

1.6.3. Imposes the appropriate sanction in the circumstances of the matter.”

[5] No formal amendment was sought with regard to these alternatives, however it is to be noted that the provisions of section 8 of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”), can only be considered and relied upon if PAJA is applicable and then only once the court concludes that the administrative conduct complained of is invalid or such administrative

decision is set aside on the grounds as set out in section 6 of PAJA.¹ It should be noted that it is not hereby proposed that the courts may not grant similar orders when setting aside any relief sought based on the common law and/or a legality review.

Brief background and chronology

[6] The applicant lodged a complaint with the second respondent against the fifth respondent's conduct on 26 July 2023.

[7] The fifth respondent duly responded to the allegations, whereafter the second respondent appointed investigation committee, consisting of the third and fourth respondents to investigate and consider the complaint.

[8] On 23 November 2023 and after the 3rd and 4th respondents found that no charges should be brought against the 5th respondent, the second respondent communicated the decision and reasons therefore to applicant in a letter on 12 December 2023, which reads as follows:

"We confirm that your complaint was considered by an investigation committee on 23 November 2023, who recommended that it be dismissed, as per the reasons attached.

You are however entitled to lodge an appeal against this recommendation in terms of the provisions of section 41 of the Legal Practice Act.

We attached for this purpose an appeal form."

[9] The applicant does not deny having received the decision contained in the email on 12 December 2023. As such, the time period within which to lodge

¹ *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC) at [52]

any internal appeal as referred to in section 41 started on that day. Section 41 provides for a 30-day period within which to submit an internal appeal to an Appeal Committee. The time period would therefore have elapsed on 11 January 2024.

[10] The applicant however failed to submit an appeal before such date and only submitted an appeal against the aforementioned finding on 14 March 2024. Having considered the appeal, the applicant was informed by the 2nd respondent by email on 22 April 2024 that the appeal was not submitted within the allowed time and that the Appeal Committee does not have the power to condone any late submission. The appeal could therefore not be considered. Receipt of the mail on 22 April 2024 is also not disputed by the applicant.

[11] The application for review was thereafter issued by court on 25 October 2024.

[12] The application was thereafter served on 2nd, 3rd, and 5th respondents on 29 October 2024 and on 1st and 4th respondents on 22 November 2024. This is clear from the returns of service filed.

[13] The notice of motion further calls upon the second, alternatively third, respondents to, within 15 days from receipt of the application, lodge the record in terms of rule 53(1)(b).

[14] The 5th respondent thereafter served a notice of intention to oppose the application on 11 November 2024. A notice of intention to oppose was served on behalf of the 2nd, 3rd and 4th on 18 November 2024.

- [15] The fifth respondent did not serve any affidavits in opposing the application and did not partake in the matter further despite the fact that the notice of set down was properly served on all the legal representatives of the 2nd, 3rd, 4th, and 5th respondents. Any reference in this judgment to “respondents” is a reference to the 2nd, 3rd, and 4th respondents only.
- [16] Respondents claim that the record of the proceedings was provided by email to the applicant’s attorneys on 17 December 2024. The applicant denies having received the record and does not state when it was received, if at all. Applicant did not deliver any supplementary affidavit to amend or supplement the notice of motion and founding affidavit as she was entitled to in terms of rule 53(4).
- [17] On 10 February 2025 the respondents’ attorneys enquired by email from the applicant’s attorneys whether the applicant wishes to supplement her application as provided for in rule 53. This clearly having been done as a result of the provisions contained in rule 53.
- [18] In response hereto, the applicant’s attorney, in an email dated 11 February 2025, did not complain that the record was not received. Instead, the applicants’ attorney informs the respondents’ attorneys that an answering affidavit must be delivered by 12 February 2025.
- [19] The respondents thereafter served an answering affidavit during March 2025, whereafter the applicant’s reply was served on 19 May 2025.

Applicant's points in limine

[20] The applicant denies the locus standi or authority of the 2nd respondent and its director. What the grounds are, is not clear, however no notice in terms of rule 7(1) to challenge the authority of the director or that of the attorney acting on behalf of the respondents was delivered by the applicant. That is the end of this issue.² This was further, correctly in my view, not persisted with at the hearing.

[21] Applicant, in the heads of argument, further complained that the answering affidavit was filed late and is not to be relied upon as the respondents do not seek condonation for having filed the answering affidavit outside of the prescribed times. It is not clear how it could have been expected of the respondents to serve answering affidavits, when on the version of the applicant no record had been lodged as required in terms of rule 53.

[22] The applicant, however, also served her replying affidavit late. The foregoing was clearly caused by the fact that the applicant did not or supplement her application after the record was sent to her attorneys by email on 17 December 2024. Applicant, despite claiming not having received the record, never approached the court or demanded that the respondents provide the record. As such, but for the letter from her attorneys, there was no obligation to serve an answering affidavit at least until the letter of 11 February 2025 referred to above.

[23] Applicant alleges that the record was only filed on 29 May 2025 when it was

² *Eskom v Soweto City Council* 1992 (2) SA 703 (W) as confirmed in *Unlawful Occupiers School site v City of Johannesburg* 2005 (4) SA 199 (SCA) at [14]

uploaded to caselines. This view is based thereon that the rule provides that the record is to be lodged to the Registrar and the parties be so informed after it has been done.

[24] The practice in this division, for at least the past 30 years, has been that a copy of the record is served on the attorneys for the applicant and any other party opposing the application. It is simply not lodged with the registrar. This procedure as still prescribed in rule 53 and having regard to the electronic systems, seems to be outdated as the very purpose of these systems is to provide for electronic filing, files and management thereof. That aside, the applicant did not object in terms of either rule 30 or 30A to the irregularity or non-compliance with the rule. If a party received the record, it is difficult to see how prejudice may result or why non-compliance with rule 53(1)(b) would be fatal.

[25] In any event, it is difficult to understand how the applicant, if it was so important to receive the record then did not complain about not receiving the record on 17 December 2024 when receiving the letter of 10 February 2025 for respondents' attorneys.

[26] The applicant never made any request for the record to be delivered, despite the answering affidavit and reply being filed before the record was uploaded to caselines. Applicant also do not seek an opportunity to supplement or amend her application after the record was uploaded.

[27] The applicant further claims that there is no date stamp from the Registrar indicating that the Record of Proceedings was not lodged with the Registrar on 17 December 2024 or any other date. That, in my view and as a result of

what is stated above, is of no moment.

[28] No party hereto sought condonation in respect of the late filing of any affidavits. This issue was further not seriously persisted with at the hearing. There is clearly no prejudice, and none is claimed by any of the parties.

[29] Applicant is further of the view that the complaint and the response by 5th respondent as attached to the application together with the rulings and correspondence from the Committee, would be adequate to rule on the matter.

[30] The applicant, after serving her reply enrolled and set the matter down for hearing.

Respondents' points in limine

[31] The respondents, however, raised two important issues, which may, if granted, be decisive of the matter.

[32] Firstly, it is claimed that the applicant failed to exhaust the internal remedies available to her, as she is obliged to do, or to seek to be excused from doing so.

[33] Secondly, the respondent states that the decision sought to be reviewed and set aside, being administrative action and subject to the provisions of the Promotion of Administrative Justice Act, 3 of 2000, had to be brought within a period of 180 days after being informed of the decision and the reasons therefore. Due to the applicant not seeking an order to extend the time period of 180 days, so it was submitted, that should be the end of the matter.

- [34] When the applicant was asked whether the application was subject to PAJA, the common law or is founded on the principles of legality, the applicant insisted that the application was founded in Rule 53.
- [35] It must therefore firstly be determined if the actions and/or decisions of the respondents and the Committees constitute administrative action as defined in PAJA.
- [36] The applicant, after having debated the issues with court and having considered the provisions of PAJA, conceded, correctly in my view, that the application is one that falls within the ambit of PAJA. The decision clearly constitute administrative action as defined in section 1 of PAJA as was found in the matter of *Williams-Pretorius v Legal Practice Council, Western Cape and Another*.³

The legislative scheme applicable to the Legal Practice Council and complaints

- [37] The Legal Practice Council “(LPC)” is a statutory body, established in terms of section 4 of the Legal Practice Act, 28 of 2014 (“LPA”), inter alia, to regulate the affairs of and exercise jurisdiction over all legal and candidate legal practitioners.
- [38] Section 37 of the LPA provides for the establishment of a disciplinary procedure and bodies to investigate, consider and rule upon complaints. The

³ *Williams-Pretorius v Legal Practice Council, Western Cape and Another* (21929/2023) [2025] ZAWCHC 256 (20 June 2025) at [3]

general sections applicable provide as follows:

“37 *Establishment of disciplinary bodies*

(1) *The Council must, when necessary, establish investigating committees, consisting of a person or persons appointed by the Council to conduct investigations of all complaints of misconduct against legal practitioners, candidate legal practitioners or juristic entities.*

...

(3) *An investigating committee must, after investigating a complaint, if it is satisfied that-*

(a) *the legal practitioner, or the candidate legal practitioner concerned may, on the basis of available prima facie evidence, be guilty of misconduct that, in terms of the code of conduct, warrants misconduct proceedings, refer the matter to the Council for adjudication by a disciplinary committee; or*

(b) *the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, as set out in the code of conduct, it must dismiss the complaint, inform the Council, the complainant and the legal practitioner, candidate legal practitioner or juristic entity of its finding and the reasons for it, whereafter the complainant may appeal in terms of section 41, if the complainant is aggrieved by-*

(i) *the manner in which the investigating committee conducted its investigation; or*

(ii) *the outcome of the investigating committee. ...”*

[emphasis added]

[39] Section 37 must be read with Rule 40 of the Rules issued in terms of the LPA. Rule 40 sets out the procedure to be followed when the LPC’s relevant Provincial Board and Committees established in terms of the LPA and the

Rules, investigate complaints lodged with it against legal practitioners. It provides, *inter alia*, as follows:

“40 *Investigation of alleged misconduct*

40.1 *When a complaint or allegation of misconduct against the respondent is referred to the investigating committee, that committee must investigate the complaint or allegation or cause the complaint or allegation to be investigated by the legal officer or by a legal practitioner appointed by the Council for that purpose.*

...

40.5 *If after investigating allegations of misconduct against the respondent the investigating committee is satisfied-*

...

40.5.2 *that the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, it must dismiss the complaint and inform the Council, the complainant and the respondent of its decision and the reasons for it. Without limiting the discretion of the investigating committee, the following may be grounds for determining that the conduct in question does not warrant misconduct proceedings-*

...

40.5.2.2 *that the respondent has given a reasonable explanation for his or her conduct;...*

...

40.6 *If a complainant is aggrieved by-*

40.6.1 *the manner in which the investigating committee conducted its investigation; or*

40.6.2 the outcome of the investigation, he or she may appeal to the appeal tribunal in terms of section 41 of the Act.”

[emphasis added and only relevant parts quoted]

[40] It is clear from section 37, read with Rule 40.6, that the LPA provides dissatisfied complainants with an internal appeal to reconsider the investigating committee’s findings. This is important for present purposes as the applicant seeks judicial review and the respondents’ first issue is that the applicant failed to exhaust the internal appeal procedure. It is as a result argued that due to the fact that the applicant is not relying on exceptional circumstances to be excused from first exhausting such remedy, the applicant is barred from pursuing a review.

[41] In terms of section 38 of the LPA, the LPC may make rules regulating the procedure for the investigation of complaints and the conduct of disciplinary hearings.⁴

[42] Section 41 of the LPA regulates appeals, *inter alia*, against decisions of the LPC's Investigating Committee which is the very subject of the decision applicant seeks to review. It reads as follows:

“(1)(b) A complainant who is aggrieved by-

(i) the manner in which an investigating committee conducted its investigation or the outcome of the investigating committee as referred to in section 37 (3) (b); or

⁴ The rules, titled “*The South African Legal Practice Council Rules made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act 28 of 2014*”, were published under GenN 401 in *Government Gazette* 41781 of 20 July 2018

- (ii) *the outcome of a disciplinary hearing referred to in section 40, may, as determined in the rules and within 30 days of being informed of the decision by the investigating committee or the disciplinary committee, as the case may be, lodge an appeal with an appeal tribunal established in terms of subsection (2) against any conduct or finding of the investigating committee or disciplinary committee, as the case may be.”*

[emphasis added]

- [43] It is clear from the record as well as the annexures attached to the founding affidavit that the LPC followed the prescribed process when investigating, considering and adjudicating upon the applicant's complaint.
- [44] The LPC's Investigating Committee's decision, as is clear from the scheme set out above, gave rise to the availability of an internal appeal.
- [45] It is also clear that the applicant does not seek to review such decision on any procedural grounds or on the basis that the decision did not comply with the prescribed procedure set out above. It is also to be noted that the applicant also does not seek to review the decision that the appeal could not be ruled upon due to it being submitted out of time. Applicant only to raise grounds such as bias, reasonableness and rationality.
- [46] As indicated above, the applicant did not submit an appeal to the LPC's Appeal Committee within the 30-day period allowed therefore in section 41 of the LPA despite applicant pertinently being advised in the letter from the 2nd respondent dated 12 December 2023 that applicant has the right to appeal the finding.
- [47] After the appeal was submitted out of time, the 2nd respondent informed the

applicant that the appeal could not be entertained as it was submitted late. applicant was also informed that the Appeal Committee do not have the power to condone the late submission thereof.

[48] It needs be noted, that even if the LPC's Appeal Committee had the authority to condone the late submission of the appeal, no condonation was sought in the documents submitted and no explanation was given why it was late.

[49] Having an internal remedy available as well as the fact that the decisions of the LPC's committees indeed constitute administrative action as contemplated in PAJA, the two points in limine raised by respondents must first be ruled upon, so it was argued by Mr Maritz, because if either should be upheld, it would be dispositive of the application.

PAJA

[50] The applicable parts of PAJA is section 7(1) and (2) of PAJA, which provides as follows:

“7 *Procedure for judicial review*

(1) Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

- (2)(a) *Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.*
- (b) *Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.*
- (c) *A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.”*

[emphasis added]

[51] The two issues identified above must *inter alia* be adjudicated in the light of these provisions.

The failure to exhaust internal remedies

[52] The first issue is the claim that the applicant failed to exhaust the internal remedy available as provided for in section 41(1)(b)(ii) of the LPA. This, so the argument goes, is a threshold requirement for the court before it can adjudicate on a review application subject to the provisions of PAJA.

[53] As pointed out above, it is common cause that the applicant did not submit the internal appeal within the prescribed time despite her attention being expressly drawn thereto.

[54] Generally, any internal appeal procedure is created to resolve or address an applicant's difficulties with the decision without having to incur the time,

expense and delay of resorting to litigation.⁵

“[35] Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before aggrieved parties resort to litigation. Although courts play a vital role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid.”

[55] As already pointed out, it is clear from the procedure described above that the Appeal Committee has not been granted any power to condone the late submission of an internal appeal.

[56] Neither counsel relied on any caselaw to the effect that the Appeal Committee had any inherent or implied power to condone the late filing of the internal appeal, even if it was sought.

[57] It needs also be pointed out that the applicant provided no real explanation for the passing of the time periods in any of the affidavits or annexures thereto as pointed out above.

[58] In *Koyobe v Minister of Home Affairs*,⁶ the Constitutional Court held that:

[47] Although the duty to exhaust defers access to courts, it must be emphasised that the mere lapsing of the time period for exercising an internal remedy on its own would not satisfy the duty to exhaust, nor would it constitute exceptional circumstances. Someone seeking to avoid administrative redress would, if it were otherwise, simply wait out the specified time – period and proceed to initiate judicial review. That interpretation would undermine the rationale and purpose of the duty. Thus, an aggrieved party must take reasonable steps to exhaust available internal remedies with a view to obtaining administrative

⁵ *Koyabe and others v Minister for Home Affairs and others (Lawyers for Human Rights as Amicus Curiae)* 2010 (4) SA 327 (CC) paras 34-39

⁶ *Koyabe and others v Minister for Home Affairs and others (Lawyers for Human Rights as Amicus Curiae)* 2010 (4) SA 327 (CC) at [47]

redress.'

[emphasis added]

- [59] The result is that bar any condonation that may be granted, the right to submit an internal appeal lapsed and it is to be regarded as if no appeal had been lodged or at least that the appeal was refused. No decision needs be made in this regard.
- [60] Where an applicant have not exhausted the internal remedy, the court can only proceed to hear the review application once it finds on application, that exceptional circumstances exist and that the applicant is excused from exhausting the internal remedy.
- [61] That is however in my view not the issue in this matter even if it is required that the court can only grant such relief if sought in a formal application. The point is that applicant could not point to any exceptional circumstances whether relied upon in the affidavits or annexures filed, or not.
- [62] It is by now trite that when an applicant for review failed to exhaust an internal remedy and then do not make out a case that the applicant be excused from exhausting such remedy before seeking a review, the court does not have the authority to review the decision complained of. That much is quite clear from the wording of section 7(2)(c) of PAJA. It needs also be noted that there may be instances where no effective internal remedy is available, but the general statement above do not intend to deal with such cases.
- [63] Even if I am wrong in the conclusion that the application cannot succeed as the internal remedy was not exhausted before embarking on the review

application no application was made to be excused from doing so, there is a second threshold to cross before the court may entertain the merits of the review itself.

180-day time limit

[64] It is clear from the quoted wording of section 7 of PAJA above, that the court also has no authority to consider a review application if the application was not instituted without any unreasonable delay, but in any event no longer than 180-days after the decision and reasons therefore was provided to the applicant, or from when an applicant would reasonably have become aware thereof or when the internal remedy is concluded, except if the interest of justice so require.

[65] In the matter of *City of Cape Town v Aurecon South Africa (Pty) Ltd*⁷ the Constitutional Court confirmed the position set out above.

[66] Section 9 of PAJA provides for the power to extend the time periods prescribed *inter alia* in section 7, if the interests of justice so require.

[67] The dates when the decisions were made and the reasons communicated to applicant are not in dispute. It is also not disputed when the internal appeal was lodged and the date when applicant was informed that no appeal lies as a result of the appeal being submitted out of time.

[68] At this stage it needs be pointed out that applicant, when conceding that the

⁷ *City of Cape Town v Aurecon South Africa (Pty) Ltd* 2017 (4) SA 223 (CC) at [41]

application falls to be adjudicated in terms of the provisions of PAJA and upon being invited by court to do so, sought and was granted an amendment to insert in the notice of motion a prayer providing for the extension of the time period of 180-days.

[69] Mr Maritz did not object to such amendment to provide for an extension of the 180-day limit to condone the late institution of the review application, by he did not concede that a proper case is made out to grant such extension of time.

[70] In order to adjudicate whether the time periods needs be extended, two questions arise. Firstly, when does the 180- day period begin to run? Secondly, is it required to formally seek condonation if such application was instituted late? In the light of the amendment that was sought and granted, the second question is no longer relevant, but replaced with the question whether a case has been made out for the extension of the time period.

[71] Having regard to the relevant provisions of section 7(1) of PAJA quoted above, the answer seems simple. The section however does not provide an answer to the question what the position would be if the applicant did not exhaust any available internal remedy at all or where there is such a remedy available, but no condonation for the lateness was sought or the appeal authority is not granted the power to grant condonation.

[72] On a purposeful interpretation, it seems as if the time period would start to run when the applicant is informed that there is no internal remedy available, or that the committee has no power to condone the late submission, alternatively when the time for lodging an appeal lapsed without having filed

an appeal. However no decision in this regard needs be made as it will be accepted in favour of the applicant that the 180-day time period started when the 2nd Respondent informed the applicant on 22 April 2024 that no appeal lies due to it being submitted late and the Appeal Committee lacks the authority to grant condonation.

- [73] It needs be determined how the days are to be calculated as it is not defined PAJA. If any enactment does not provide it own definitions certain words are to be interpreted in terms of the Interpretation Act 33 of 1957, which inter alia define the word “Day” in section 4. It reads as follows:

“4. Reckoning of number of days

*When any particular number of days is prescribed for the doing of any act, or for any other purpose, **the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.**”*

- [74] The 180-day period if calculated from 22 April 2024, would then run out on 19 October 2024. That was a Saturday. Due to the wording of the latter part of the section, the application had to be “instituted” by 18 October 2024.
- [75] The word “instituted” is similarly not defined in PAJA and may logically mean the date when it is submitted or presented to court, or the date that it was served upon the respondents.
- [76] In the matter of *Commissioner, South African Revenue Service v Sasol Chevron*

*Holdings Limited*⁸ the Supreme Court of Appeal concluded thus:

*“..... Taking as one's logical point of departure, the requirement in s 7(1) that 'any proceedings for judicial review . . . **must be instituted** without unreasonable delay and not later than 180 days' after either of the dates referred to in paragraphs (a) and (b) of s 7(1), **it must ineluctably follow that the word 'institute' when considered contextually and purposively, [*] as it must be, means to commence the review proceedings by issuing the process and effecting service thereof on the decision-maker whose administrative action is impugned.***

[emphasis added - * footnote not included]

[77] I accept by using the word “issue” the Supreme Court of Appeal did not find that applications, unlike summonses are to be signed by the Registrar of court for it to be valid. The statement can only be interpreted as to mean that the application which is to be “addressed to the registrar” needs be filed at court and provided a case number. That is however not necessary before it is served on the respondents. Simply put, applications are only filed at court and provided with a case number.

[78] The review can therefore only be regarded as properly instituted, no matter whether application or action procedure is utilised, when the process is served on the respondents.

[79] The full court in *Absa Bank Ltd v Maré and Others*⁹ stated that:

*“[22] **The purpose of a summons or notice of motion, so Rumpf JA held in Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A) at 780D, is to implicate or involve a defendant or respondent into a lawsuit, and that such a party is only***

⁸ (1044/2020) [2022] ZASCA 56; 85 SATC 216 (22 April 2022).

⁹ 2021 (2) SA 151 (GP) at para [22] – [24]

implicated or involved in the lawsuit once service of the summons or notice of motion had been effected. Rumpf JA also referred to Marine and Trade Insurance Co Ltd v Reddinger 1966 (2) SA 407 (A) at 413D, where it was held that '[a]lthough an action is commenced when the summons is issued the defendant is not involved in litigation until service has been effected, because it is only at that stage that a formal claim is made upon him'.

[Emphasis added]

- [80] Despite service of the application on 1st and 4th respondents only taking place on 22 November 2024 the remainder of respondents were served with a copy of the application on 29 October 2024. The application, addressed to the Registrar, was provided with a case number on 25 October 2025.
- [81] The result is that the application for review which had to be served by the latest on 18 October 2024, was instituted after the 180-day period prescribed in section 7(1) had expired. No explanation is given why the application was only served after the period expired.
- [82] The court cannot, without any factual basis set out in the affidavits before it, exercise its discretion whether the interest of justice would require an extension of the time period or not.¹⁰
- [83] This means that the application was never properly instituted and the court is barred from reviewing the administrative decision as it has no authority to determine the merits of the application.¹¹

¹⁰ *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) at [48] and [53]

¹¹ *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd* [2013] 4 All SA 639 (SCA) at [26]; *Mostert NO v Registrar of Pension Funds and Others* 2018 (2) SA 53 (SCA) at [34]

[84] As a result, the application must also be dismissed on this ground raised.

Costs

[85] Mr Maritz for the respondents argued that an award for costs should include the costs incurred upon the employment of counsel on a scale C.

[86] In seeking such a determination Mr Maritz indicated that it is an important matter, not only for the applicant, but also for his client. That is however not the only criteria to be weighed up. The court must also consider the level of difficulty of the matter and the seniority of both counsel, to name but only two more factors.

[87] The issues involved are clearly not of a simple nature. In my view, had the respondents opposing the matter appointed senior counsel, that would not have been misplaced.

[88] As a result, the submission that a costs order should include a determination that the costs of counsel be awarded on scale C, is not misplaced.

Order

[89] The following order is therefore granted:

1. The application is dismissed with costs on a scale as between party and party;
2. The costs order granted shall include the costs of counsel on scale C as provided for in rule 67A of the uniform rules of court.

BY ORDER

A handwritten signature in black ink, appearing to read 'M SNYMAN, AJ', is written over a solid black rectangular redaction box.

M SNYMAN, AJ

DATE HEARD:	11 September 2025
DATE OF JUDGMENT:	2 March 2026
Counsel for Applicant:	In Person/Adv N Cassim SC
Applicants' Attorneys:	Mbazima Dickson Inc Attorneys
Counsel for 2 nd to 4 th Respondents:	Adv NC Maritz
Applicants' 2 nd to 4 th Respondents:	Fourie Fismer Inc Attorneys
Counsel for 5 th Respondent:	No appearance
Applicants' 5 th Respondent:	Lacante Henn Inc