



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

Case No: 2026-047062

In the matter between:

SOLAM MDINGI

Applicant

and

THE UNIVERSITY OF THE WESTERN CAPE

First Respondent

**THE VICE-CHANCELLOR / RECTOR, THE UNIVERSITY
OF THE WESTERN CAPE**

Second Respondent

SAAJID KOOTBODIEN N.O.

Third Respondent

ADRIAAN ENGELBRECHT N.O.

Fourth Respondent

ANDREW MANELI N.O.

Fifth Respondent

**THE DEPUTY VICE-CHANCELLOR / VICE-RECTOR,
THE UNIVERSITY OF THE WESTERN CAPE**

Sixth Respondent

ROBERT CHARLES VERWANT

Seventh Respondent

**THE PROCTOR, THE UNIVERSITY OF THE
WESTERN CAPE**

Eighth Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 24 March 2026

Delivered: Electronically on 24 March 2026

Summary: Urgent application – previously struck – no new grounds for urgency – matter struck – directed not to enrol again until future event actually occurs

ORDER

1. The application is struck from the roll.
 2. The applicant may not re-enrol this application for hearing until such time as he has launched an application, if any, for the review and setting aside of the sentence of expulsion served on the applicant on 2 March 2026 wherein he seeks, *inter alia*, the suspension of the operation of the expulsion sanction.
 3. The applicant shall bear the costs of the respondent and scale C shall apply.
-

JUDGMENT

Anderssen AJ:

- [1] The application for relief in terms of Part A of the notice of motion – for the staying of the execution and / or operation of the sanction handed down on 13 February 2026 – first served before this court on 10 March 2026. At the hearing the matter was struck from the roll for lack of urgency. In a supplementary founding affidavit the applicant seeks to explain why the matter is so urgent that it requires a hearing in fast lane. The matter was

set down for hearing before me on 24 March 2026, once again in fast lane. The supplementary affidavit reiterates the steps taken by the applicant between 13 February and 27 February 2026 when the application was launched. I agree with Ms Gabriel that the supplementary affidavit does not raise new matter.

[2] It seems to me that the applicant has a bigger problem than urgency. The matter before the court relates to the review application arising from a disciplinary hearing where the applicant was accused of threatening and harassing one Nthuthuko Shivuri (*“the Shivuri matter”*). The sanction / sentence was delivered to him on 13 February 2026 and, in terms thereof, he is excluded for a period of 6 months from attending any part of the first respondent’s premises, including a residence unless he has prior authorisation to access such premises. I will hereafter refer to the first respondent as “UWC”. It is the operation of this sanction that the applicant seeks to suspend / stay until such time as his review application (Part B of the notice of motion) has been heard.

[3] There is a second disciplinary hearing that also commenced in 2025. This arose from charges that the applicant physically assaulted a fellow student and behaved in a disorderly manner, which forced a primary school to cease their activities (*“the Jama matter”*). The applicant was found to be guilty and the sanction, handed down on 2 March 2026, expelled him from studying at UWC. The applicant was informed of his right to appeal the decision but was warned that an appeal will not suspend the operation of the decision. The applicant has not availed himself of the opportunity of lodging an appeal but I was informed that he is in the process of finalising

a further review application to this Court.

- [4] The respondents, after receiving service of the application in the Shivuri matter pointed out to the applicant that the relief sought has been rendered moot by the sanction imposed in the Jama matter. The applicant does not accept this and has pressed ahead with the application. During argument the applicant's counsel submitted that I am able to grant an order suspending the operation of the sanction imposed in the Shivuri matter, which order can be conditional on this court, at a future date, granting an order suspending the operation of the sanction in the Jama matter. He referred me to three cases, which he said supported his argument that this is permissible, namely:

- [4.1] ***Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another***¹ at para [97]

It is clear that section 172(1)(b) confers wide remedial powers on a competent court adjudicating a constitutional matter. The remedial power envisaged in section 172(1)(b) is not only available when a court makes an order of constitutional invalidity of a law or conduct under section 172(1)(a). A just and equitable order may be made even in instances where the outcome of a constitutional dispute does not hinge on constitutional invalidity of legislation or conduct. This ample and flexible remedial jurisdiction in constitutional disputes permits a court to forge an order that would place substance above mere form by identifying the actual underlying dispute between the parties and by requiring the parties to take steps directed at resolving the dispute in a manner consistent with constitutional requirements. In several cases, this Court has found it fair to fashion orders to facilitate a substantive resolution of the underlying dispute between the parties. Sometimes orders of this class have taken the form of structural interdicts or supervisory orders. This approach is valuable and advances constitutional justice particularly by ensuring that the parties themselves become part of the solution.

- [4.2] ***Central Energy Fund SOC Ltd and Another v Venus Rays***

¹ (CCT40/09) [2009] ZACC 32; 2010 (2) SA 415 (CC) ; 2010 (3) BCLR 177 (CC) (14 October 2009).

Trade (Pty) Ltd and Others² at para [37]:

It is settled law that s 172(1)(b) of the Constitution confers on the courts very wide powers to craft an appropriate or just remedy even in 'exceptional, complex or apparently irresolvable situations'. The Constitutional Court has held that '[t]he power to grant a just and equitable order is so wide and flexible that it allows courts to formulate an order that does not follow prayers in the notice of motion . . . ' and enables them ' . . . to address the real dispute between the parties'.

[4.3] **Electoral Commission v Mhlope and Others³** at para [132]

Section 172(1)(b) clothes our courts with remedial powers so extensive that they ought to be able to craft an appropriate or just remedy even for exceptional, complex or apparently irresolvable situations. And the operative words in this section are "an order that is just and equitable". This means that whatever considerations of justice and equity point to as the appropriate solution for a particular problem, may justifiably be used to remedy that problem. If justice and equity would best be served or advanced by that remedy, then it ought to prevail as a constitutionally sanctioned order contemplated in section 172(1)(b). In this case a just and equitable order is one that would pave the way for the August elections to be held although our voters' roll is the product of unlawful conduct. Failure to do so, could indeed lead to constitutional crisis with far-reaching implications.

[5] Mr Moela has argued that considerations of justice and equity demand that, as the applicant is entitled to an order on the merits, such an order should be granted and that the order should be crafted that would place substance above mere form by identifying the actual underlying dispute between the parties and by requiring the parties to take steps directed at resolving the dispute in a manner consistent with constitutional requirements. In this instance the constitutional right that must be protected is the applicant's right to basic education and the applicant will not be afforded substantial redress unless this order is granted.

[6] This argument loses sight thereof that, firstly, the applicant's right to basic

² (119/2021) [2022] ZASCA 54; 2022 (5) SA 56 (SCA); [2022] HIPR 191 (SCA) (13 April 2022).

³ (CCT55/16) [2016] ZACC 15; 2016 (8) BCLR 987 (CC); 2016 (5) SA 1 (CC) (14 June 2016).

education does not entitle him to attendance at a specific university – his right is generalised and he has not set forth any facts from which it can be determined that he is not able to attend a different university in South Africa. Secondly, rule 6(12) compels an applicant seeking urgent relief to set forth explicitly the reasons why the applicant claims that they could not be afforded substantial redress at a hearing in due course. Once again the applicant, who has deposed to a supplementary founding affidavit after he became aware of the 2 March 2026 sanction, did not set out the reasons why he cannot be afforded redress in due course. The belated argument, made out in a replying affidavit, that the 2 March 2026-sanction is not yet in effect as it was not confirmed, cannot be accepted. It is not permissible to make out a case in reply. Furthermore, it seems that it is not the proctor personally who must confirm, but the office of the proctor.

- [7] The further problem is the practical implementation of the order sought by the applicant in the Part-A-prayers. As long as the expulsion sanction stands, the order sought will have no practical effect. The Constitutional Court in ***Eke v Parsons***⁴ affirmed the essential characteristics of a Court Order and accepted that a Court Order must be enforceable and immediately capable of execution. The rule of law requires not only that a court order be couched in clear terms but also that its purpose be readily ascertainable from the language of the order. The order that the applicant wishes me to make will not be capable of immediate execution. I am therefore unable to grant the order even in the amended terms sought by the applicant.

⁴ 2016 (3) SA 37 (CC) (2015 (11) BCLR 1319; [2015] ZACC 30).

[8] I am not refusing the application. I am affording the applicant an opportunity of renewing the application in due course once he has instituted the review application in the Jama matter. This is an indulgence as the applicant comes before court for a second time in the fast lane whilst being well aware of the defence of mootness raised by UWC and the other respondents. Therefore the applicant should be mulcted in the costs of this application.

[9] The order is recorded above.

ANDERSSEN J S

Acting Judge of the High Court

Appearances:

For the applicant: Adv L Moela
Instructed by: L J Nemugumoni Inc

For the respondent: Adv P Gabriel
Instructed by: Hayes Inc