



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 801/2025

In the matter between:

BONKI JACOB NHLAPO

FIRST APPLICANT

MOTSAMAI JOHNY RAMOHAPI

SECOND APPLICANT

and

SOUTH AFRICAN POLICE SERVICE

FIRST RESPONDENT

THE MINISTER OF POLICE

SECOND RESPONDENT

THE NATIONAL COMMISSIONER OF SOUTH

THIRD RESPONDENT

**THE PROVINCIAL COMMISSIONER OF SOUTH
AFRICAN POLICE SERVICE: FREE STATE**

FOURTH RESPONDENT

Neutral citation: *Nhlapo & Another v South African Police Service & Others*
(801/2025) [2026] ZAFSHC 89 (10 March 2026)

Coram: MHLAMBI J

Heard: 20 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 10 March 2026.

Summary: Declaratory relief – constitutional challenge – South African

Police Service Regulations of 2016 – Regulation 9 – jurisdiction – delay –
s 21(1)(c) of the Superior Courts Act 10 of 2013 – s 172(1)(a) of the Constitution.

ORDER

The application is dismissed with costs.

JUDGMENT

Mhlambi J

[1] The applicants were charged under the first respondent's disciplinary regulations for corruption. They were found guilty and dismissed on 28 September 2020. On 14 February 2025, they filed an application seeking an order in the following terms:

- '1. It is declared that the entire Regulation 9 of the South African Police Service Disciplinary Regulations, 2016, titled "Expeditious Process," which was used to unlawfully dismiss the applicants, is unconstitutional and invalid.
2. First, second, and third respondents are directed to amend or remove Regulation 9 as a whole, and the said order will not affect the normal application of the South African Police Service Disciplinary Regulations; instead, it will make the said regulation in compliance with the labour laws and the Constitution of South Africa.
3. It is declared that the applicants' dismissals are unlawful and void ab initio, and respondents are ordered to reinstate the applicants retrospectively from the date of their dismissals with benefits enjoyed before their unlawful dismissals.
4. The respondents are ordered to pay the costs of this application only if they oppose it.'

[2] The application is opposed.

[3] The applicants were charged with two similar offenses. The first charge was that on 16 August 2019, they arrested Aubakwe Daniel Zim (Aubakwe) at Marquard for possession of an undisclosed amount of dagga and released him after he paid R400.00. They retained R300.00 and did not endorse the dagga in the SAP 13(a) register or the SAPS 13(b) store for safekeeping pending the investigation. They kept the dagga for themselves. The second charge was that, on the same day at Marquard, they threatened to arrest Tshokolo David Rasekho (Tshokolo) and Khehla Godfrey

Dlamini (Khehla) and demanded R400.00 for being in the company of Aubakwe, who had an undisclosed amount of dagga. They collected R400.00 from Tshokolo's house.

[4] The essence of the applicants' case is that they were found guilty on the basis of hearsay evidence. They pleaded not guilty to the charges. No witnesses were called for cross-examination, and that was the end of the trial. They were denied the constitutional right to cross-examine witnesses or to present their own witnesses in defence. Major General Moloi served as chairperson, initiator, and judge, finding them guilty and recommending their dismissal. Even though their colleagues in the police unions represented them, the expeditious process was flawed, as it was used to secure the speedy dismissal of police members without a proper hearing. The applicants opined that they should have been subjected to the normal disciplinary process set out in Regulation 11, under which evidence is led and witnesses cross-examined by the parties, as in *Major General Khan v South African Police Service and Others (Khan)*.¹

[5] The respondents stated in their answering affidavits that the South African Police Service Disciplinary Regulations were promulgated and gazetted on 1 November 2016 to distinguish between the procedures to be followed when a member has committed less serious misconduct and when a member has committed serious misconduct. Less serious misconduct is addressed in clause 7, while serious misconduct is addressed in clause 8. Clause 9 addresses expeditious processes and provides as follows: a supervisor who is satisfied that the alleged misconduct is serious and/or falls within the ambit of Regulation 5/4 must ensure that the expeditious process is initiated and that the full substantiated report is submitted to the National Commissioner or to a person designated by the National Commissioner, who may not hold a rank lower than that of Brigadier and who assumes the power of employer for purposes of this regulation. If the alleged misconduct does not justify an expeditious procedure, the procedure set out in Regulation 8 must be followed.

[6] The respondents stated that, according to Major General Moloi's report, he was appointed the presiding officer under Regulation 9(1) to the Expeditious Process

¹ *Khan v South African Police Service and Others* [2024] ZALCJHB 488.

(the expeditious process) relating to the applicants' alleged misconduct. The applicants pleaded not guilty to both charges. Their union representatives represented them and acknowledged that the applicants were on duty on 16 August 2019 when they stopped a vehicle driven by Khehla in Marquard. They searched Tshokolo and Aubakwe, who was still a minor. They found dagga in Aubakwe's possession and stated that the quantity was small.

[7] They took Aubakwe and left him at his brother's house without arresting him. They took the seized dagga and admitted that they had disposed of it by scattering it on the ground, without entering it into the SAPS 13 register for storage and safekeeping. They did not arrest Khehla, who offered the applicants a bribe. Having assessed the evidence, the presiding officer found that the applicants had committed acts of misconduct in both charges.

[8] After their dismissal in September 2020, the applicants did not use any of the avenues available to them under labor law to challenge it. They waited more than four years to bring a review application challenging their dismissal. They neither approached the CCMA nor the Labour Court to challenge their dismissal. The applicants have therefore approached the wrong forum to challenge their dismissal and are still four years out of time to do so.

[9] The applicants argued that their sole aim was to have only Regulation 9 of the South African Police Disciplinary Regulations declared unconstitutional, and all respondents directed to reinstate the applicants retrospectively from the date of the unlawful dismissals, with all benefits enjoyed before their dismissals. The applicants conceded that they were mindful of the Labour Courts' duty to deal with unfair dismissals. However, they contended that their case was based on unlawful and unconstitutional dismissal, and this Court had jurisdiction derived from s 172(1)(a) of the Constitution of the Republic of South Africa, 1996, which provides that the court may declare any law or conduct that is inconsistent with the Constitution invalid. Besides, they argued, s 21(1)(c) of the Superior Courts Act 10 of 2013 allowed them to bring this application to the court.

[10] The applicants conceded that they did not dispute that the regulations were

agreed upon by their unions, gazetted, and signed by the Minister of Police in terms of s 24(1) of the South African Police Service Act 68 of 1995 (South African Police Service Act). However, they submitted that the unions and respondents unlawfully and unconstitutionally agreed to and signed the regulations, which must be declared void *ab initio*.

[11] The respondents argued that the judgment in *Khan* is distinguishable because the applicant had declared a dispute under s 188A(11) of the Labour Relations Act 66 of 1995 (Labour Relations Act). That case confirmed that the applicants had approached the wrong forum, as the judgment is a Labour Court judgment. That decision could not have a retrospective effect. The gazetted regulations were based on the agreement reached between the employer and all the unions admitted to the Safety and Security Sector Bargaining Council and applied to the employer and all its employees within the registered scope of the said council.

[12] The respondents contended that the purpose of the regulations was, amongst others, to support constructive labour relations in the police service and to ensure that supervisors and employees share a common understanding of misconduct and discipline to provide a user-friendly framework in the application of discipline, and to prevent the possible arbitrary actions by supervisors towards employees in the event of misconduct.² It was therefore clear that the disciplinary and appeal procedures culminating in the respondents' dismissal involved employment relations expressly regulated by s 23 of the Constitution and s 185 of the Labour Relations Act. There was nothing unlawful about the procedure agreed in the collective agreement. The application should be dismissed because Regulation 9 was promulgated in compliance with s 24 (1) of the South African Police Service Act.

[13] Section 21(1) of the Superior Courts Act 10 of 2013 provides as follows:

'(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power-

(a) to hear and determine appeals from all Magistrates' Courts within its area of

² *Provincial Commissioner, Gauteng: SA Police Service and Another v Mnguni* [2013] ZASCA; (2013) 34 ILJ 1107 (SCA) para 20.

jurisdiction;

(b) to review the proceedings of all such courts;

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.'

[14] In *Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service*,³ it was stated that s 21(1)(c) is a statutory remedy. The question of whether relief should be granted under this section has to be examined in two stages. In the first place, the jurisdictional facts must be established. When this has been done, the court must decide whether the case is a proper one for the exercise of its discretion. Thus, even if the jurisdictional requirements are met, an applicant does not have an entitlement to an order. It is for such an applicant to show that the circumstances justify the grant of an order.

[15] In *Pasiya and Others v Lithemba Mining (Pty) Ltd and Others*,⁴ the court dismissed the appellants' argument that the high court failed to apply the test for declaratory relief correctly. The high court found that the first part of the test was satisfied. Still, this alone was insufficient for the court to exercise its discretion in favour of granting the declaratory order they requested because the appellants delayed too long in seeking the court's help. The appellants only requested the court's assistance in 2020, demanding it 'turn the wheels back to the position prevailing in 2009'. The court noted that, while the appellants did nothing to protect their rights, LM and other shareholders moved forward with their lives, made plans, and conducted business as usual after their shares were diluted. Several decisions had been made since 2009, relying on resolutions that the appellants only belatedly sought to have declared unlawful.

[16] It is clear to me that the main relief sought by the applicants is reinstatement with full benefits, retroactively, which constitutes an abuse of declaratory relief. The

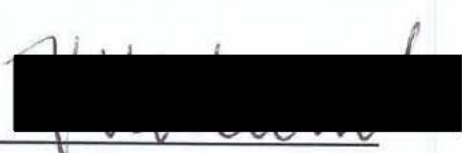
³ *Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service* [2023] ZASCA 144; 86 SATC 474 para 12.

⁴ *Pasiya and Others v Lithemba Mining (Pty) Ltd and Others* [2023] ZASCA 169; [2024] 1 All SA 626 (SCA); 2024 (4) SA 118 (SCA) para 48.

applicants recognise that Regulation 9 and the other regulations were properly and lawfully enacted under s 24(1) of the South African Police Service Act. They are also aware of the Labour Courts' duty to handle unfair dismissal cases. The applicants were dismissed on 28 September 2020, and this application was filed on 14 February 2025. The applicants failed to explain in their submissions why they waited so long to challenge their dismissals or to pursue labour remedies. To frame an unfair dismissal claim as a constitutional challenge to Regulation 9 does not transform it into a matter deserving of declaratory relief.

[17] In light of the above, I am not persuaded that the applicants have established an interest in an existing or contingent right, as required by the Act. Even if they may have such a right, the declaratory relief sought should be denied because of the delay and the failure to pursue the matter in the Labour Court. Consequently, the application must fail.

[18] I, therefore, make the following order:
The application is dismissed with costs.



J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the applicants:

T Maqebhula

Instructed by:

Mhlokonya Attorneys, Bloemfontein.

For the respondents:

Shole S

Instructed by:

State Attorneys, Bloemfontein.