



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

Case number no: 2026-049031

In the matter between:

CARL EUGEN ANDRE BINEDELL

Applicant

and

STELLENBOSCH UNIVERSITY

First Respondent

**THE READMISSIONS APPEAL COMMITTEE OF THE
FACULTY OF LAW, STELLENBOSCH UNIVERSITY**

Second Respondent

Heard : 17 March 2026

Delivered : 07 April 2026

Summary : Interdict — Application against semi-autonomous public institution — Requirement that relief sought does not infringe upon university autonomy. Prima facie right — Former registration as a student insufficient to establish right — Potential right extinguished by academic exclusion.

ORDER

1. The applicant's application be and is hereby dismissed.
2. The applicant shall pay the respondents' costs, such costs to include the costs of two counsel, where so employed.

JUDGMENT DELIVERED ELECTRONICALLY

Nziweni, J

Introduction

[1] The application is divided into two parts. In Part A, the applicant seeks an interim relief to resume his studies, pending the final determination of the review sought in Part B. Effectively, the applicant seeks to interdict the first respondent ("the University") from enforcing the decision taken by the second respondent to academically exclude him. The core of the relief sought in Part A is actually based on the premise of seeking a relief whilst litigation is pending. Thus, the applicant in this matter does not seek to preserve the status quo pending litigation; rather, he seeks to prevent enforcement of the decision.

[2] The applicant was a student at the University of Stellenbosch until his academic exclusion in 2025 ("the decision"). Following the decision, he exhausted the University's internal appeal processes. It is common cause that, despite being excluded and lacking the requisite permission from the University, the applicant has continued to attend lectures.

[3] The applicant's contention is that the denial of interim relief in Part A will result in the loss of the 2026 academic year, thereby rendering the review in Part B largely academic. His case rests primarily on the assertion that his internal appeal was wrongly dismissed. Consequently, in Part B, the applicant seeks to review and set aside the decision to refuse his readmission.

[4] Another relevant submission is that the applicant asserts that if the interim relief is not granted, he would suffer an inevitable delay in the completion of his degree which would lead to consequent delay in his progression into the legal profession, a delay in his employment and a material postponement of his earning capacity.

[5] One final point that bears mentioning at this stage is that the applicant argues that if the interim relief is denied and the review application eventually succeeds that would result in an immediate interruption of his academic trajectory, in circumstances where the enrolments of other universities have closed. According to the applicant, he would lose a year of his life which would be irreversible and irreparable.

The background

[6] The chronology of events as set out by the University was not challenged. Accordingly, I am going to use it.

[7] In 2023, the applicant was in his first year, he had to obtain 144 HEMIS [Higher Education Management Information System] credits but obtained 120. The HEMIS credits are used inter alia, to decide if a student has obtained enough progress to be allowed back the following year and in the government's determination of how much subsidy a university ought to receive for each student.

[8] In 2024, the applicant was in his second year, ought to have obtained 130 HEMIS credits, but obtained 86.

[9] In 2025, the applicant was in his third year, and he had modules carried from the second year. The carried over modules meant that the applicant had to obtain 206 HEMIS credits. However, he only obtained 150 credits.

[10] It is not in dispute that, from his first year [2023] to the year of his academic exclusion [2025], the applicant obtained only 254 HEMIS credits out of 424. The applicant's failure to obtain the required academic credits triggered the operation of Rule 10.1.5 of the University academic rules. According to the University, this is so because the applicant failed to obtain the minimum number of HEMIS required for automatic progression. The application of University's Rule 10.1.5 meant that the applicant was academically excluded.

[11] After numerous back-and-forths with the University, the applicant formally placed an appeal before RAC ("the second respondent"), in response to his academic

exclusion. The second respondent considered the appeal application that was manually submitted. On 28 January 2026, the second respondent dismissed the appeal. Pursuant to the applicant asking for reasons, a summary of the reasons was furnished for his exclusion. On 18 February 2026, the University Ombuds found that there was no procedural prejudice committed by the University.

Evaluation

[12] The big and vexing question is whether the interdict sought by the applicant can be granted. I am mindful that this court has to assess as to whether the circumstances call for such relief.

[13] One of the considerations in granting an interdict is whether there is danger that irreparable harm will result to the applicant if the interdict is not granted, pending the litigation of a subsequent application. Thus, the applicant needs to show that an emergency calls for an immediate delay in the enforcement of the decision [University academic exclusion of the applicant]. Of course, at this point this Court must juxtapose and balance the harm to each party in considering whether to grant an interim order. Before I deal with the requirements for an interim interdict, I am going to deal first with the requirement pertaining to prima facie right.

(a) Prima facie right even if it is subject to some doubt

[14] Against the foregoing general law, it has been held by a long line of authority such as *OUTA* that an interim order, by its very nature, is one of extraordinary relief. This is so because, the request for interim relief allows a drastic relief without the benefit of hearing the evidence on the merits.

[15] Hence, in this regard, a key consideration is that the applicant has an onus to prove the prima facie right which he seeks to protect. In the opening paragraphs of its judgment in *Thabang v North West University and Another* (UM 27/2023) [2023] ZANWHC 42 (20 April 2023), the court at paragraph 3, expressly associated itself with the case of *National Treasury and others vs Opposition to Urban Tolling Alliance and others* (“*OUTA*”) 2012 (6) SA 223 (CC) at para [50], wherein the court held that the

Setlogelo requirements in respect of an interdict still found application within a constitutional democracy; and cited the court when it stated that the right that the applicant needed to prove was the right to which, if not protected by an interdict, irreparable harm would ensue.

[16] In the circumstances of the present case, a prima facie right arises from a student's admission to the university. In that context, the prima facie right the applicant must establish is the [prima facie] right to readmission pending the outcome of litigation. Prior to his exclusion, the applicant possessed a prima facie right to, inter alia, attend lectures, sit for tests, and submit assignments. This is analogous to a property owner's prima facie right to use their property as they see fit, subject only to the rights of others. Critically, the existence of this right must be determined at the time of the hearing, rather than by looking back to the period preceding the academic exclusion.

[17] With that in mind, it bears noting that this prima facie right was defeated or superseded by the applicant's academic exclusion. Another way to put the point is this: the academic exclusion, in essence, affected the essence of the right in question. In this regard, the academic record of the applicant does not help him at all. In the present case, I venture to say that the applicant's academic record is not open to attack, or the provisions of Rule 10.1.5.

[18] With the application in Part B, the applicant seeks to bring back that prima facie right that was defeated by the exclusion. Until the applicant's exclusion, the applicant as a student of the University had a prima facie right which of course was subject to the University's rules and regulations. However, Rule 10.1.5, put a restriction to and negated that right with the view of protecting the University. At this juncture, the applicant failed to prove any constitutional or statutory right that would allow a court to rule on the speculative outcome of his career or graduation. Essentially, the court cannot grant relief based on hypothetical future success when no underlying legal right was breached.

[19] In essence, the prima facie right to be admitted is no longer there. On interim basis the applicant seeks to resuscitate a right that has been extinguished by the

academic exclusion. In *Manaka v University of the Witwaterstrand* (021837/2023) [2023] ZAGPJHC 252 (22 March 2023), the court emphasised amongst others, the university's obligation to uphold its academic standards and standing.

[20] It must be stressed that should this Court grant the mandamus sought by the applicant, it would be interfering with the second respondent's decision without justification and would require of the University to act in direct contradiction of Rule 10.1.5. See *OUTA* at paragraphs 27, 71 and 72.

[21] In *OUTA*, [see paragraph 18 above], the Constitutional Court, succinctly expressed in paragraphs 71 and 72 that deference to authorised power unless a compelling case is made out for interference.

"The High Court does not mention a word about the submissions of the government applicants on separation of powers. As a result, we do not have the benefit of its attitude to the submissions. It is equally unclear whether the High Court had considered the submissions at all. Before granting interdictory relief pending a review a court must, in the absence of mala fides, fraud or corruption, examine carefully whether its order will trespass upon the terrain of another arm of Government in a manner inconsistent with the doctrine of separation of powers. That would ordinarily be so, if, as in the present case, a state functionary is restrained from exercising statutory or constitutionally authorised power. In that event, a court should caution itself not to stall the exercise unless a compelling case has been made out for a temporary interdict. Even so, it should be done only in the clearest of cases. This is so because in the ordinary course valid law must be given effect to or implemented, except when the resultant harm and balance of convenience warrant otherwise."

[22] From the foregoing, it is clear, therefore, that the starting point is that in an application where an applicant seeks to interdict a semi-autonomous public institution, the court has to establish as to whether the interdict sought by the applicant will directly interfere with the autonomy of the University. Thus, the reasoning of *OUTA* is of central importance in this matter.

[23] In this context, I do not think it by any means fanciful, therefore, for the University to assert that, the applicant failed to establish a prima facie right. It is further to be observed that the fact that the applicant was a student at the University does not create a prima facie right.

[24] In my mind, failure to show a prima facie right though open to some doubt is an independent basis for a denial of an interdict. In coming to this conclusion, I have of necessity been compelled to look into whether there are prospects in Part B. In *Manaka* case, supra, a strikingly similar case to the present one the following was stated at paragraph 33:

“All of the foregoing translate into a failure on the part of the applicant to establish a prima facie right. It seems to me that there is very little prospect, if any, of Mr Manaka persuading the Review Court that his right to a fair and reasonable administrative decision had been infringed. Whilst he has a right to apply for re-admission to the MBBCh III in 2023, that right was subject to the University and Faculty Rules. To establish a prima facie right for purposes of requiring Wits, in the interim, to readmit him, he must show this Court that he could succeed in Part B in reviewing and setting aside the impugned decision on the basis that it was unreasonable and irrational. For the reasons already alluded to, I am not persuaded that he has prospects of success in that regard.”

[25] I am also mindful of the fact that the critical question to ask is whether there is reasonable cause to believe that an unfair process has been committed. I do not attempt to pass on the merits of the case. That is a matter for determination by the court hearing Part B. Furthermore, even if the Court were to assume some prima facie validity in the process leading to the applicant's exclusion, such a procedural claim cannot, in and of itself, displace the material reality of the applicant's academic record.

[26] The applicant's prima facie consistent failure to meet the requisite academic standards remains the primary hurdle in this matter. This conclusion is reinforced by the principle in *Outa* (at para 71), wherein the Constitutional Court held that, in the absence of mala fides, fraud, or corruption, a court must be careful not to trespass upon the terrain of another arm of Government. As the present case demonstrates, a clear absence of mala fides on the part of the respondents, it would be inconsistent with the doctrine of separation of powers for this Court to interfere with the academic assessment.

[27] In the circumstances of this case, this Court is disinclined to interdict the decision of the University. To this end, I accord great deference to the University's discretion

regarding its internal processes. Such deference remains appropriate unless and until the merits of the review in Part B are determined. The court in Part B of these proceedings, unlike this Court would possess a unique opportunity to evaluate the merits and demerits of this matter.

[28] For the foregoing reasons I find that the applicant has failed to establish either a prima facie, or even one that is subject to some doubt.

(b) The irreparable harm and the balance of convenience requirements

[29] Firstly, before the Court determines the existence of irreparable harm and balance of convenience, the Court should also consider the contrary hypothesis which is: if the applicant eventually succeeds in Part B, can the University's undertaking as to damages sufficiently mitigate the applicant's interim loss? It is submitted that any financial or professional loss resulting from the delay can be quantified and adequately redressed through such an undertaking, thereby negating the requirement for an interim interdict. The parties, in the present case did not postulate this hypothesis, that pertains to the requirement of adequate alternative remedy.

[30] Instead, the University contends that this case does not threaten irreparable injury [to the applicant] as to justify this Court to grant an interim interdict against the University. In my view, the danger of irreparable harm should be viewed against the balance of convenience. If it is unclear whether damages can truly adequately redress the harm for either side, the court must decide the case based on the balance of convenience.

[31] After the [the University's] ombuds found that there was no procedural prejudice regarding the second respondent's consideration of the applicant's application, the applicant only launched this application in the third week of the academic year.

[32] The principal contention upon which the motion for the interdict [mandamus] rests is that the applicant is of the view that should this Court keep the status quo [his academic exclusion] until the final hearing of Part B, that might ruin his academic and career trajectory. Moreso, should the court in Part B decide in his favour. It is further

argued on applicant's behalf that the refusal of the interdict would render Part B proceedings ineffectual.

[33] The University contends that granting an interim interdict would result in significant prejudice. Central to this argument is the applicant's continued attendance of lectures despite exclusion, a blatant act of self-help. By ignoring the University's regulatory frameworks, the applicant has attempted to create an artificial status quo and present this Court with a *fait accompli*.

[34] This unauthorised attendance undermines the integrity of the University's enrolment systems and bypasses mandatory resource allocation protocols. It effectively forces the institution to provide educational services to an individual with no lawful standing or contractual relationship. Such conduct creates a false atmosphere of "admission security" that improperly pressures the court's determination on the balance of convenience. Similarly, this conduct can easily be regarded as an impermissible affront to the rule of law and the University's internal rules and administrative authority.

[35] In the consideration for balance of convenience, the court cannot be seen as promoting a situation where an unregistered student is allowed to stay. This would certainly set a precedent that could lead to administrative chaos and the collapse of academic exclusion rules.

[36] The applicant's interest in avoiding academic ruin, pales in comparison to the University's interest in preventing the loss of financial subsidy, and of control over academic exclusion. The applicant's interests at best are speculative.

[37] This Court must also be mindful of the practical realities and the unique relationship between students and the University when adjudicating matters of this nature. Furthermore, the Court should consider the broader implications and the complexities inherent in the University-student relationship, as presented by the facts of this case. Hence, it is critical that the applicant in such applications must establish that the balance of convenience is in his favour; i.e. that the inconvenience of the order not being granted outweighs the inconvenience to the University of it being granted. I

am however, satisfied that the balance of convenience do not favour the granting of the interdict.

(c) Conclusion

[38] I find that the applicant showing insufficient to meet the first two, most critical requirements [prima facie right and balance of convenience] for obtaining an interdict pending litigation and I could deny the request primarily on that basis. In addition, however, I also conclude that the third and fourth requirements do not favour the mandamus pending hearing of Part B. Regarding the urgency aspect, this matter was a borderline case as far as urgency is concerned. Hence, I decided to deal with the merits.

(d) Costs

[39] There is no reason as to why the costs should not follow the results. Costs, to be taxed on scale C including the costs of two counsel where so employed.

[40] In the result, I make the following order:

- 40.1 The applicant's application be and is hereby dismissed.
- 40.2 The applicant shall pay the respondents' costs, such costs to include the costs of two counsel, where so employed.

CN NZIWENI
JUDGE OF THE HIGH COURT

Appearances:

Counsel for Applicant : Advocate R Engela

Instructed by : Morne Binedell Attorneys

Counsel for Respondents : Advocate R Patrick SC
Advocate M Maddison

Instructed by : Cluver Markotter Attorneys