REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no: 2026-033955

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 6 March 2026

[redacted]

In the matter between:

ROBERRE VAN ZYL	**APPLICANT**
and	
FEDHEALTH MEDICAL SCHEME	**FIRST RESPONDENT**
THE REGISTRAR OF MEDICAL SCHEMES	**SECOND RESPONDENT**
THE COUNCIL FOR MEDICAL SCHEMES	**THIRD RESPONDENT**
HERMANUS FRANCOIS LE ROUX	**FOURTH RESPONDENT**

JUDGMENT

K STRYDOM, AJ

Introduction

1. The Applicant, appearing in person, approached the urgent Court in the early hours of Monday morning the 16th of February 2026 for urgent relief against the First, Second and Third Respondents based on what can loosely be described his right to healthcare and/or right to life. The relief sought against the Fourth Respondent was spoliatory in

nature. A final order against the Fourth Respondent was made on the 20th of February 2026 and does not form part of the reasoning of this judgment.

2. From the outset it is important to reiterate that the Applicant appeared in person. In this regard the guidance set out in *Mpange and Others v Sithole*,[1] proved invaluable:

"15. It has been long accepted that the Court should make allowance for the inexperience of lay litigants who "cannot be cannot be expected to display the same ability of draughtsmanship and precision of language as is expected by a legally trained and experienced pleader " This approach was restated by the Constitutional Court in Xinwa and others v Volkswagen of South Africa (Pty) ltd [2003] ZACC 7; 2003 (4) SA 390 CC , where was said

> *" Pleadings prepared by laypersons must be construed generously and in the light most favourable to the litigant. Lay litigants should not be held to the same standard of accuracy, skill and precision in the presentation of their case required of lawyers. In construing such pleadings, regard must be had to the purpose of the pleading as gathered not only from the content of the pleadings but also from the context in which the pleading is prepared. Form must give way to substance." [at paragraph 13]*

16. In the present case, the applicants have set out all relevant facts and the context to those facts. Over the course of four Court appearances, the true legal issues and remedies possibly available have been discussed and argued in great detail notwithstanding that they were not all identified by the applicants in their Notice of Motion and supporting affidavits. There has been no prejudice to the respondent. Indeed, respondent's counsel submitted in the Heads of Argument which he prepared that the remedy of specific performance should be ordered and, in argument, presented certain proposals as to how this could be implemented"

Background to urgent application

3. The Applicant suffers from chronic epilepsy, bipolar disorder and ADHD. He had previously been a member of the Discovery Health Medical Scheme, which scheme provided him with the necessary medication and, where required, emergency medical treatment for *inter alia* the aforementioned conditions.

4. He had been a partner in a tax consultancy company until he terminated said partnership on ethical considerations. His employment at the tax consultancy firm was

[1] *Mpange and Others v Sithole* (07/7063) [2007] ZAGPHC 202; 2007 (6) SA 578 (W) (22 June 2007)

formally terminated on the 6th of October 2025. His membership with Discovery Health Medical Scheme, however, had been terminated on the 31st of August 2026 already.

5. These dates, namely the termination of his membership of the scheme and termination of his employment, form the nub of the factual dispute between the Applicant and the First to Third Respondents.

6. On the 23rd of December 2025 the Applicant applied for membership of the medical scheme of the First Respondent ("Fedhealth"). The scheme approved his application for membership however it imposed the following waiting periods based on the fact that there was a break in membership from the previous medical scheme (Discovery) for more than ninety (90) days:
   6.1. Three (3) months general waiting periods;
   6.2. Twelve (12) months conditions waiting period on the disclosed conditions;
   6.3. The waiting periods also exclude prescribed minimum benefit cover.

7. These waiting periods were imposed per Section 29A(1) of the Medical Schemes Act, No 131 of 1998 ("MSA") which provides that:

   "*29A. Waiting periods.*
   (1) A medical scheme may impose upon a person in respect of whom an application is made for membership or admission as a dependant, and who was not a beneficiary of a medical scheme for a period of at least 90 days preceding the date of application-
   (a) a general waiting period of up to three months; and
   (b) a condition-specific waiting period of up to 12 months."

8. Aggrieved by the imposition of the aforementioned waiting periods the Applicant approached the Registrar of the Council for Medical Schemes (Second Respondent) ("CMS"), arguing that the exemption contained in Section 29A(6)(a) of the MSA applied to him:

   "(6) A medical scheme may not impose a general or condition-specific waiting period on a person in respect of whom application is made for membership or admission as a dependant, and who was previously a beneficiary of a medical scheme, terminating less than 90 days immediately prior to the date of application, where the transfer of membership is required as a result of—

   (a) change of employment; or

   (b) an employer changing or terminating the medical scheme of its employees, in which case such transfer shall occur at the beginning of the financial year, or reasonable notice must have

been furnished to the medical scheme to which an application is made for such transfer to occur at the beginning of the financial year."

9. Fedhealth had calculated the ninety-day window period until application date (23 December 2025) from date of termination of membership with Discovery (31 August 2025) whereas, according to the Applicant, it should have calculated same from the date of termination of employment, namely the 6th of October 2025. Had Fedhealth calculated the period from that date, he would have been without medical aid cover for a period of less than ninety days and as a result the waiting periods as envisaged in the MSA would not have been applicable to him.

10. As a result, he requested the Registrar:
    10.1. Immediately waive the 3-month general and 12-month condition-specific waiting periods.
    10.2. Provide full, backdated cover for all PMB conditions and emergency services effective 01 January 2026.
    10.3. Recognize the formal "Change of Employment" date as 06 October 2025.

11. On the 4th of February 2026 the Registrar found that Fedhealth's application of the MSA and its provisions was correct and that they were entitled to impose the waiting periods per Section 29A(1) thereof.

12. In the interim it should be noted that the Applicant, being without medical cover had been unable to obtain the necessary preventative treatment for his medical conditions which in turn resulted in his inability to properly function and concomitantly earn an income in his new company. He also therefor could not make payment of the monthly premiums towards Fedhealth. On the 10th of February 2026 Fedhealth therefor issued a final demand for payment of the premiums threatening summary termination of his medical cover by the 16th of February 2026.

13. It was based on this threat of withdrawal of medical aid cover that the Applicant initially framed urgency in bringing the matter to this Court in the early morning hours of Monday the 16th of February 2026.

Proceedings of the 16th of February 2026

14. In his founding papers, the Applicant argued urgency on the basis that the withdrawal of his medical aid cover would result in the immediate cessation of life sustaining medication which according to him is a direct violation of Regulation 8(3) of the Medical

Schemes Act, which upon his construction, mandates funding for prescribed minimum benefit emergencies regardless of arrears.

15. In his original notice of motions, he sought the following relief:

> *"2. That a Rule Nisi be issued calling upon the Respondents to show cause on a date to be determined by this Honourable Court, why an order should not be made final in the following terms:*
>
> *2.1. Interdicting and Restraining the 1st Respondent from suspending or terminating the Applicant's medical scheme membership …… pending the final determination of this matter.*
>
> *2.2. Ordering a 90-day stay on all premium payments and arrears collections by the 1st Respondent, effective from the date of this order, to allow for the Applicant's clinical stabilisation and professional recovery.*
>
> *2.3. Directing the 1st Respondent to immediately authorise and fund a Home-Based Stabilisation Bridge, to be conducted under the clinical oversight of Dr……., including the administration of compounded Ketamine nasal spray (as a cost-effective PMB alternative) monitored by Sr ……..(Professional Nurse).*
>
> *2.4. Directing the 1st Respondent to pay an emergency infrastructure and clinical stipend of R30,000.00 into the Applicant's business account …… within 4 (four) hours of the granting of this order, for the preservation of the Applicant's practice and clinical nutrition."*

16. When his application was heard at 10h00 on the 16th of February 2026, none of the Respondents had (understandably considering the extremely truncated time periods) given notice of intention to oppose as yet.

17. During the course of his submissions, it became evident that the fundamental underlying urgency in his application related to the imminent threat posed by the non-medication of his very severe chronic conditions and especially his epilepsy which had previously, following an attack, resulted in a brain haemorrhage.

18. Whether the failure to obtain timeous preventative and emergency treatment was due to the withdrawal of membership benefits as a result of non-payment or due to the waiting periods applied, the nature of the imminent harm remained constant.

19. However, vis-à-vis the relief sought against the First, Second and Third Respondents as initially framed I had indicated to the Applicant that his reliance on medical scheme cover to provide treatment for these conditions (whether it be by virtue of the nature of prescribed benefits or by virtue of the alternative calculation of the waiting periods), is

reliant on him being a member of the medical scheme. In essence the relief sought against the First to Third Respondents would become moot should his membership be terminated on the 16th due to non-payment.

20. Given the wide-ranging nature of the relief sought against the First, Second and Third Respondents as well as the extremely truncated time periods for their opposition, I deemed it prudent to frame an order preserving the *status quo* to afford them an opportunity to meaningfully respond to the application. As a result, I made an order in terms of which the matter was set down for argument on Friday the 20th of February 2026 as well as order interdicting the First Respondent from suspending or terminating his membership pending the outcome of that hearing. The order also provided time frames for filing of answering affidavits and replying affidavits herein.

21. The First Respondent (Fedhealth) opposed the application and filed its answering affidavit. The Second and Third Respondents have filed notices to abide.

22. The Applicant, on the 17th of February 2026, settled the arrear payments. In his amended Notice of Motion, he withdrew prayer 2.4 *supra*.

Proceedings of 20 February 2026

23. At inception of the hearing, the Applicant indicated that he also withdrew prayer 2.3 of the amended Notice of Motion (authorisation funding of the home-based stabilisation bridge) after consultation with his medical care provider. He therefore persisted with:

    23.1. Prayer 2.1: *Interdicting and Restraining the 1st Respondent from suspending or terminating the Applicant's medical scheme membership (.....) pending the final determination of this matter.*

    23.2. Prayer 2.2: *Ordering a 90-day stay on all future premium payments by the 1st Respondent, effective from 1 March 2026, to allow for the Applicant's clinical stabilisation and professional recovery following the 27 February 2026 IRP6 revenue surge.*

24. However, the draft order uploaded on the 19th of February 2026 encompasses different relief than the remaining prayers 2.1 and 2.2 of the amended Notice of Motion.

    "2. The First Respondent is directed to immediately reinstate the Applicant's membership without the imposition of any condition-specific exclusions or waiting periods.

    3. It is declared that the Applicant's application for membership fell within the 90-day period contemplated in Section 29A(1)(a) of the Medical Schemes Act, calculated from the termination of his professional association on 6 October 2025.

4. The First Respondent is directed to provide final authorization for all chronic protocols, medications, and specialist consultations as prescribed for the Applicant's clinical conditions (Epilepsy and Mental Health), within 24 hours of the granting of this Order."

25. The difference in the framing of the relief sought created some confusion as to the nature of these proceedings: Whereas the amended Notice of Motion (ostensibly) provides for interim relief pending finalisation of future proceedings (the nature of those proceedings will be discussed presently), the draft order provides for final relief

26. Whilst allowance must be made for the drafting and legal submissions of a lay litigant, this must be countenanced against the rights of the opposing party to know the case they are called upon to meet. As such, having framed the relief sought in the notice of motion as being interim relief, I intend to make my determination based on the requirements for such relief. This also accords with the line of reasoning pursued by the Applicant at the hearing in which he lay emphasis on the balance of convenience in granting the interim relief sought noting that the only prejudice should he at a later stage be proven wrong to be suffered by the First Respondent is an adjustment in funds which they can recover from him whereas if the relief is not granted his life is in imminent danger.

27. That having been said, as pointed out by Fedhealth, the Applicant's pleadings do not indicate the nature of the pending proceedings which the interim relief are subject to.

28. From a conspectus of the papers filed by the Applicant as well as following questioning by this Court at the hearing, it would seem that the Applicant in all probability will appeal the decision of the CMS Registrar per Section 49 of the Medical Schemes Act which provides that such appeal must be lodged with the CMS Appeals Committee within thirty (30) days of the decision. In this regard I note that in the founding affidavit one of the grounds of urgency advanced was that the appeals process is lengthy and would not be concluded in sufficient time to offer him substantial redress. Likewise in his supplementary note on rebuttal, he notes that: "*the balance of convenience is absolute: the scheme faces a minor financial adjustment; I face permanent physical injury or death"*.

Interpretation of Section 29A(6)

29. Even though the interim relief sought is founded on the imminent danger posed to the Applicant's right to life or right to health in terms of the Constitution, insofar as the right to be assessed for purposes of the present application is concerned, the right must be

established within the context of the "main" future application. In other words, whilst the Applicant undoubtedly has a constitutional right to life and a right to health, in the present proceedings he needs to establish a *prima facie* right that is the subject matter of the infringed right that he will rely upon for purposes of obtaining final relief.

30. *In casu* with regards to the pending review/appeal of the Registrar's determination, the Applicant's main contention is that, properly constructed, he has a right in terms of Section 29A(6)(a) to not have waiting periods imposed on his benefits in terms of his medical scheme coverage with Fedhealth.

31. The Applicant contends that no waiting period can be imposed in instances where the change of medical scheme results from change of employment. He concedes that Section 29A(6) does make this exception subject to the gap in membership of a medical scheme not having exceeded a period of 90 days. The dispute lies with, as the Applicant as termed, the "triggering date" for the calculation of the 90 days. He argues that the correct interpretation of S27A(6)(a) would be that the 90-day window period is calculated from date of termination of employment, whereas the Registrar had determined that the calculation is from date of termination of membership of the previous scheme.

32. Section 29A(6) reads as follows:

> *"(6) A medical scheme may not impose a general or condition-specific waiting period on a person in respect of whom application is made for membership or admission as a dependant, and who was previously a beneficiary of a medical scheme, terminating less than 90 days immediately prior to the date of application, where the transfer of membership is required as a result of—*
>
> *(a) change of employment; or*
>
> *(b) an employer changing or terminating the medical scheme of its employees, in which case such transfer shall occur at the beginning of the financial year, or reasonable notice must have been furnished to the medical scheme to which an application is made for such transfer to occur at the beginning of the financial year."*

33. I have underlined the operative portions of the section. On a simple interpretive approach there is no other construction than the following: the word "*terminating*" applies to the previous "*medical scheme*". Subsection (a), "*change of employment"*, is one of the listed causes of the "*transfer of membership."* There is no construction of the section and subsection that allows for any other interpretation than that the membership

of the previous medical scheme must have been terminated less than 90 days before the application to the new medical was made.

34. Accordingly, the Applicant has no right founded on this section, to not have waiting periods imposed upon him.

Alternative argument based on regulation 8(3)(b)

35. I have also considered the remote possibility of the future proceedings relating to the more general contention that a medical scheme should not be able to contract itself out of providing emergency life sustaining treatment (PMB's) as contended for in the Applicant's practice note

36. The Applicant indicated that the basis for such a contention relates to his interpretation of Regulation 8(3) of the Medical Schemes Act as read with Section 29A(1) thereof. For the sake of evincing a full consideration of the submissions made and giving the Applicant an unwarranted berth and benefit of doubt I will briefly address the argument below

37. The Applicant relies selectively the selective wording of Regulation 3(b): " *Immediate medical or surgical treatment for a prescribed minimum benefit condition was required under circumstances or at locations which reasonably precluded the beneficiary from obtaining such treatment from a designated service provider*."

38. However, the regulation must be read within the correct context:

Regulation 2: "*.....subject to Section 29(1)(t) of the Act the rules of a medical scheme may in respect of any benefit option provide that:*

(a) …;

(b) A co-payment or deductible the quantum of which is specified in the rules of the medical scheme may be imposed on a member if that member or his or her dependants obtained such services from a provider other than a designated service provider, provided that no co-payment or deductible is payable by a member if the service was involuntarily obtained from a provider other than a designated service provider. "

Regulation 3:"...*for purposes of sub-regulation 2(b) a beneficiary will be deemed to have involuntarily obtained a service from a provider other than a designated service provider, if:*

(a) ....

(b) Immediate medical or surgical treatment for a prescribed minimum benefit condition was required under circumstances or at locations which reasonably precluded the beneficiary from obtaining such treatment from a designated service provider; or

(c) ....."

39. It should immediately be apparent from the wording that Regulation 8(3) in itself does not place a duty on medical schemes to in emergency instances pay for prescribed minimum benefit conditions.

40. Regulation 8(3) (as well as 8(1) and 8(2)) regulate co-payments for treatments of prescribed minimum benefit conditions on the circumstances where a beneficiary did not avail itself of a scheme's designated service provider. There is simply no scope for an inference that read with Section 29A(1) the regulation dealing with co-payments somehow imposes the duty on a medical scheme to, regardless of waiting periods imposed in terms of Section 29A(1) of the Act, pay for the emergency treatment of prescribed minimum benefit conditions.

41. I pause to note that it was within the context of this regulation that the Applicant placing reliance on *Genesis Medical Scheme v Registrar of Medical Schemes and Another*[2] originally asserted that a medical scheme must pay for emergency treatment for prescribed minimum benefit conditions regardless of whether any arrears are due. *Genesis* related to the circumstances under which a medical scheme may levy contributions where a prescribed minimum benefit condition was not treated by the scheme's designated service provider. It in no way or form relates to either the question of non-payment or arrears nor does it infer any duty of payment under any and all circumstances of emergency treatment of prescribed minimum benefits.

Rationality of Fedhealth's decision

42. The Applicant also argued that Fedhealth is constitutionally barred from imposing the 12-month waiting period in respect of emergency PMB conditions where such conditions also constitute conditions excluded on the basis that they are specified conditions.

43. The Applicant's argument seemed to be that his right to healthcare in terms of Section 27 of the Constitution is being disproportionately limited by the interpretation afforded to the MSA by Fedhealth and/or the manner in which Fedhealth has chosen to apply the provisions of the MSA.

44. The Applicant contends that Fedhealth is incorrect in stating that they are bound to apply the 12-month exclusionary period as per Section 29(1)(a). According to him they

[2] Genesis Medical Scheme v Registrar of Medical Schemes and Another (CCT139/16) [2017] ZACC 16; 2017 (9) BCLR 1164 (CC); 2017 (6) SA 1 (CC) (6 June 2017)

have a discretion whether or not to impose the waiting periods. In this regard it is undoubtedly so that the Act states that medical schemes may impose waiting periods as per Section 27A. According to the Applicant the imposition of the waiting periods is discretionary and may be waived by Fedhealth. It is the decision of Fedhealth not to waive the imposition of the waiting periods in his case that he would want to review and set aside.

45. The Applicant contends that Fedhealth, a medical scheme performs a public function and therefore every exercise of power by it must be rational and fair. The essence being that it is subject to review in terms of PAJA or the principle of legality.

46. The First Respondent (Fedhealth) denies that it is a public body exercising public administrative functions and in this regard has referenced the recent case of *Famous Idea Trading 4 (Pty) Ltd t/a Deli Road Career Pharmacy v Government Employees Medical Scheme and Others (2026) ZACC* where the constitutional Court definitively held that the conduct of business of medical schemes does not constitute administrative action.

47. The Applicant denies that *Famous Idea Trading* is applicable to the facts *in casu* as the facts in that matter related to the commercial doings of a medical scheme whereas *in casu* the decision is made within the context of the broader statutory rights and duties to healthcare. He relies on the decision of the constitution Court in *Swanepoel N. O. v Profmed 2024 ZACC 23* which, according to him, definitively held that decisions affecting a member's rights under the Act do constitute administrative action it can also involve the exercise of public power.

48. In *Swanepoel*, it was held that:

> *"[54] The decision of the Appeal Board appears to me to constitute administrative action. In terms of the definition of administrative action in PAJA, the Appeal Board's decision is by an organ of state exercising public powers and performing public functions under legislation. The Appeal Board exercises a public function – its establishment under the MSA serves the purpose of scrutinising decisions of the Council and, indirectly, those of the Registrar (since those decisions are appealed to the Council). This is very similar to internal appeals within other public bodies. Thus, the Appeal Board is performing a public function when it exercises its statutory appeal power over a decision of a scheme to terminate the membership of one of their members. The conclusion is therefore inescapable that the Appeal Board is an organ of state whose decisions constitute administrative action."*

49. The Applicant has misapplied the dicta in *Swanepoel* which related to the CMS appeal board, to Fedhealth, a medical scheme. The provisions of PAJA, or the principle of legality, apply to the CMS appeal board's ruling in respect of decisions taken by a medical scheme, but do not apply directly to the medical scheme's decisions themselves.

General arguments based on constitutionality/invalidity

50. The Applicant's arguments relating to constitutionality were raised tangentially within the context of his arguments relating to interpretation and application of either Section 29A(6) and Regulation 8(3)(b) as discussed *supra*.

51. No standalone challenge was brought to the legislation or the regulations themselves. At most the Applicant submitted that the imposition of a 12-month waiting period for specified conditions (which also constitute prescribed minimum benefit conditions) is a disproportionate limitation on his right to health in terms of Section 27 of the Constitution, which does not serve the purpose (anti-selection) of imposing such waiting periods. This argument was raised at the hearing within the context of the two interpretative arguments discussed *supra* without any independent substantiation.

52. To elevate this, and the other general arguments based on the Constitution, to constitute validity challenges to the MSA and the Regulations would not only require submissions and argument not presented in the present application, but would also be completely outside the bounds of a Court merely providing assistance in framing of issues on behalf of an unrepresented litigant.

Unjustified enrichment

53. The Applicant, belatedly, in his "notes on rebuttal" obliquely raised an argument based on unjustified enrichment (within the context of his argument based on Regulation 8(3)). The totality of the argument was that:

"Their demand for a monthly contribution of R5,488.00 while contractually excluding the very life-sustaining treatment they are legislatively mandated to provide is not "underwriting"; it is unjust enrichment and a "death sentence by paperwork."

54. I do not intend to embark on an in-depth evaluation of the merits of the argument as same had not been developed in the pleadings nor fully expanded on in the proceedings themselves. Suffice to say that, given my findings supra, the Applicant would not have proven that there was no legal cause (*Sine Causa*) for Fedhealth's "enrichment"

Finding

55. From the aforementioned it should be evident that regardless of whether the application is of an interim nature or a final nature, the Applicant has failed to prove any right (*prima facie* or clear) that would entitle him to the interim relief sought per the amended notice of motion or even the final relief per the draft order. My findings are dispositive to each of the arguments raised pertinently by the Applicant and even to those raised by inference on a generous interpretation of the Applicant's arguments. As Madlanga, J writing for the majority in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others 2023 (4) SA 325 (CC) (23 December 2022)* Madlanga, J remarked:

> *"[251] There are legal questions that are capable of easy resolution to any judge worth their salt. Those must be decided definitively. If, as a matter of law, the right asserted by the applicant for interim relief is held not to exist at all, that will be the end of the matter. And that will result in a saving in costs as there will be no subsequent litigation..."*

56. As indicated *supra* technically the amended Notice of Motion only makes provision for 2 prayers both of which by necessary implication are to be dismissed. However, even assuming the order sought per the draft order was properly canvased and in issue between the parties, those would also have to be dismissed.

Costs

57. The First Respondent contended costs on a high Court scale with counsel fees at scale C on the basis that the application was stillborn *ab initio* alternatively that it should have been withdrawn upon receipt of the answering affidavit. Despite arguing various factors which traditionally are taken into account for punitive attorney and client scale costs, to its credit, Fedhealth did not contend for such an order.

58. The Applicant on the other hand relied on the *Biowatch* principle to assert that no order as to costs should be made against him.

59. I am mindful of the fact that Fedhealth is not a state entity. However, sight should not be lost of the fact that the Second Respondent, the Council for Medical Schemes, does exercise public functions in terms of statute. Even though the disjointed manner in which the relief sought was phrased by the Applicant had the effect that no relief was sought against the CMS in this application, as discussed *supra,* any interim relief would

probably have been granted pending final relief against CMS registrar or CMS appeal board.

60. That the Applicant in bringing this application sought vindication of his constitutional rights is undoubtable: By virtue of the provisions of the MSA he is excluded from receiving treatment for very serious conditions that whilst being defined as prescribed minimum benefit conditions, are due to their pre-existing nature and diagnosis also now excluded as condition specific exclusions for a period of 12 months. Left untreated, these conditions pose a very real threat to his health and even his life. The fact that the finding herein went against him, does not detract from his bona fides in launching this application.

61. In this regard the following dicta of the Constitutional Court in *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others 2020 (6) SA 325 (CC) (29 May 2020)* finds application:

> *"[82] Whilst this Court must be slow to interfere in the exercise of a true discretion, which includes the granting of a costs order, here it is entitled to interfere. That is so because the High Court's decision was influenced by a misdirection on the applicable principles on the matter. For the reasons already advanced above, these matters are of a constitutional nature. That much is perspicuous from the High Court's careful engagement with the principles set out in OUTA. Therefore, the High Court erred in not applying Biowatch to the question of costs.*
>
> *[83] Regardless of the EFF's motivation to involve itself in these proceedings, as a private party acting seemingly in the public interest, it pursued arguments of genuine constitutional concern. Although those arguments have been unsuccessful in both the High Court and on appeal before this Court, it would be parsimonious to contend that the constitutional arguments the EFF raised were of a specious or opportunistic calibre. The EFF therefore should have received the benefit of the Biowatch principle and should not have had costs awarded against it.*
>
> *[84] Accordingly, as far as the order of the High Court instructed the EFF to pay Mr Gordhan's, Mr Pillay's and Mr Magashula's costs that part of the order should be set aside."*

62. Even though he erred in the legal application and principles thereof, it cannot be said that the constitutional arguments or rights alluded to by the Applicant were raised speciously or opportunistically.

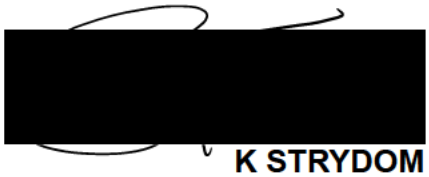
63. Furthermore, I am persuaded that it would also not be in the interest of justice to order the Applicant to pay Fedhealth's costs: It is already abundantly clear that he is

financially constrained due to his medical conditions and surrounding circumstances - to the extent that he has already struggled to make payment of the premiums due to Fedhealth. To exacerbate his already financially precarious position by saddling him an additional cost order would not be in his or Fedhealth's interest.

ORDER

64. As a result, the following order is made:

1. The application is deemed urgent and condonation is granted for non-compliance with the Uniform Rules of Court.
2. The application against the First, Second and Third Respondents is dismissed.
3. No order as to costs.



K STRYDOM
ACTING JUDGE OF THE HIGH COURT, GAUTENG DIVISION PRETORIA

Date of hearing: 20 February 2026

Date of judgment: 6 March 2026

Appearances:

For the Applicant: In person

For the 1st Respondent: Adv E Kromhout, instructed by Jacobs Roos Fouche Inc. Attorneys