



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

- | | |
|-----|-------------------------------------|
| (1) | REPORTABLE: YES/NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |

CASE NO. 125574/23

DATE
16/03/2026

SIGNATURE
N V KHUMALO J

NEVILLE MITCHELL

APPLICANT

and

**CENTURION RESIDENTIAL ESTATE SPORTS &
SOCIAL CLUB**

1ST RESPONDENT

JAKOBUS BROODERYK

2ND RESPONDENT

ROGER KNEIDEL

3RD RESPONDENT

INA MEYER

4TH RESPONDENT

**(2ND to 4TH Respondent represent the Disciplinary
Committee of the 1st Respondent)**

ELEFTERIOS PIAGALIS

5TH RESPONDENT

ANDRIES GRUNDLINGH **6TH RESPONDENT**

WELMA DE WET **7TH RESPONDENT**

GERT VAN STADEN **8TH RESPONDENT**

ROBERT VAN BEMMEL **9TH RESPONDENT**

PER-GUNNAR WANLAND **10TH RESPONDENT**

**(The 5th to 10th Respondents represents the Management
Board of the Centurion Residential Estate, Sports & Social Club)**

**This judgment was handed down electronically by circulation to the parties’
representatives by email. The date and time of hand-down is deemed to be 16
March 2026.**

JUDGMENT

KHUMALO N V J

Introduction

[1] In this Application, the Applicant seeks an order to review and set aside a decision to suspend him as a member of the 1st Respondent, the Centurion Residential Estate Sport and Social Club trading as the Centurion Country Club, (“the Club”). He seeks the review in terms of section 6 (1) and 6 (2), read with section 8 (1) and 8 (2) of the Promotion of administrative Justice Act 3 of 2000 (“PAJA”), alternatively the common law.

[2] The impugned decision to suspend him was made after he was found guilty by the Club’s Disciplinary Committee (“DC”) on 12 October 2023 for gross misconduct

and breaching the Club's Constitution (Clause 11.2). The decision together with the sanction was upheld and or ratified on appeal by the Club's Management Board on 3 November 2023, hence the review.

Parties

[3] The Club, a recreational, social and sports club, is a voluntary association entity with full legal capacity. It is duly incorporated and governed in terms of a registered Constitution and situated within the Centurion Golf and Residential Estate in Centurion. The members of the Club are provided with sports, leisure and recreational facilities which includes tennis, squash and mashie courts, a golf course, bar lounge and a restaurant.

[4] The Applicant is a fully paid-up gold member of the Club, an annual membership payable in advance. The membership allows him the use of all the recreational facilities, to bring guests and only pay the members rate to play at the golf course, enjoy preferential golf bookings 14 days in advance and compete in the Club's leagues and championships.

[5] The 2nd Respondent is the Chairperson of the Club's DC, and cited in his representative capacity as such. Whilst the 3rd to 4th Respondent are cited in their capacity as ordinary members of the DC. The 5th to the 10th Respondent are cited in their representative capacities as members of the Club's Management Board.

[6] None of the Respondents is opposing the Application, except the Club, which is also applying for condonation of the late filing of its Answering Affidavit. The Club's reason for the late filing is alleged to have been as a result of an assumption the Club made when the Applicant failed to amend, add or vary his Founding Affidavit as per Rule 53 (4) Notice, that is within 10 days of its filing of the record of proceedings in compliance with Rule 53 (1) (b) Notice, that the Applicant may have elected not to proceed with his application. The Club however did comply when it was put on term to file its Affidavit. Since the Application is not opposed and due to no apparent prejudice alleged to have been suffered by the Applicant, condonation is granted.

Factual Background

[7] A complaint was lodged by the Club's General Manager against the Applicant and three other patrons of the Club, a Mr Tiaan Strydom ("Strydom"), Mr Fichardt (Fichardt) and Mr Mandy Mitchell, the Applicant's father. The four were alleged to have been involved in a brawl at the club house on 15 June 2023 ("the incident"). On 29 June 2023, the Club served the four with a notice in terms of Clause 11.2 of the Club's Constitution to appear at a Disciplinary Hearing on 3 July 2023, on charges of:

[7.1] Gross misconduct, that is conduct that is unbecoming of a resident and member;

[7.2] Gross misconduct: conduct that is detrimental to the reputation of the Club and the good order of the environment maintained by the Club;

[7.3] Conduct that is in breach of the Constitution that governs the Club.

[8] In terms of the Notice the Applicant was to be afforded, inter alia, a right to legal representation, to call witnesses and to cross examine witnesses, access to all relevant information intended to be used as evidence and to a fair and objective DC.

[9] He was subjected to a disciplinary hearing before the Club's appointed DC and found to have participated in the events that caused the incident. His actions were found to be conduct unbecoming of a resident and member as evidenced through the video footage of the date of incident. The incident caused found to be detrimental to the reputation of the Club and the good order of the environment maintained by the Club. His conduct was also found to be in breach of the Constitution governing the Club. A sanction suspending the Applicant's club membership for a period of three (3) years was imposed. The ruling was confirmed by the Management Board on appeal on 3 November 2023. Two years of the three years being further suspended for a year subject to certain conditions imposed.

The Applicant's case

[10] The Applicant challenges the decision taking issue with the way his Disciplinary hearing was conducted. He alleges that the procedure the DC followed was unlawful, unreasonable and unfair. It was contrary to what was indicated he was to be afforded in terms of the Club's Notice, in that:

[10.1] the Club refused to furnish him with relevant information that was going to be used as evidence against him which he required to prepare for the hearing. The information he was refused included:

[10.1.1] the incident report that was filed by the Club manager on duty on the day of the incident, used only against him but not the other perpetrators and his father. The report was only made available to him at a very late stage of the hearing although it was in existence since 30 June 2023.

[10.1.2] commissioned witness statements were only made available to his attorneys on 5 July 2023, the day of the hearing, having provided him with unsigned ones a day before the hearing of the matter.

[10.2] The Club proceeded with the disciplinary hearing against the other two on 3 July 2023 without him or any of his family members who witnessed the incident being called as witnesses. His and his father's hearing postponed on 3 July 2023.

[10.3] In contradiction to what was stated in the charge sheet, the evidence of the witnesses was led on affidavits, depriving him of an opportunity to cross examine the witnesses, which was procedurally unfair.

[10.4] He was not afforded an opportunity to watch and consult on the video footage from the CCTV cameras of the day of the incident, prior the hearing and its presentation in evidence by the Club's Woodroffe, which he was seeing for the first time. Woodroffe pointed out scenes on the video even though he was not sworn in as a witness.

[11] Besides, the decision according to him constitutes an administrative action therefore subject to review in terms of s 6 (1), s 6 (2), s 8(1) and s 8 (2) of PAJA and or under common law as it was contrary to the fair administration of justice and to be set aside for the reason that it was taken:

[11.1] for an ulterior purpose or motive,

[11.2] because of the unauthorised or unwarranted dictates of another person or body,

[11.3] due to irrelevant considerations and relevant considerations not considered,

[11.4] in bad faith, arbitrarily or capriciously.

[11.5] whilst not rationally connected to the information that was before the Disciplinary Committee.

[12] The Applicant argued that the hearing on 5 July 2023, as a result constituted an unlawful, unreasonable and procedurally unfair administrative action as contemplated in s 6 (2) (a) (iii), (b), (c), g (iv) and (h) of PAJA.

[13] He points out to have noted from the recording and transcripts of the hearing of 3 July 2023 that took place against the other two accused, that is Strydom and Trichardt, which recording he was furnished with at the time of the launch of this review, that when presenting the video footage Woodroffe, although not a witness but an evidence leader, was permitted to lead evidence on behalf of the Club. He amongst others referred to the un-commissioned witness statements to support his evidence. He was allowed to provide his comments and opinion on what had according to the Club transpired. The remarks Woodroffe made and comments or opinions he expressed do not constitute evidence and should have been disregarded.

[14] He complained that the stance taken by the DC on Woodroffe whilst denying Roodt, his legal representative from commenting was unfair and biased. The DC

accepted the whole of the video footage without hearing any other witnesses who could have corroborated the evidence depicted there. He was furnished with neither the affidavit by Henny from the Security Company nor the stills taken from the video footage that Henney referred to in his affidavit that was furnished to them prior the hearing.

[15] The Committee also posed questions to the other two accused, Strijdom and Trichardt on Applicant's conduct and sobriety without giving him a chance to respond to the questions and their answers.

On his hearing

[16] The Applicant complains about the fact that the same DC members who presided on the 3 July 2023 disciplinary hearing against the other two accused presided over his disciplinary hearing. Also, found it unacceptable the DC's use of the evidence of the video footage against him that was led in that hearing reliant more on it to find him guilty rather than on the written statements that were contradictory. He argues that this constitutes unreasonable administrative action as contemplated in s 6 (2) (h) of PAJA, as no reasonable person could have presided on both hearings. The proceedings to have been procedurally unfair as in s 6 (2) (c) and to have created a reasonable suspicion of bias as contemplated in s 6 (2) (a) (iii).

[17] Moreover the Club refused to provide him with the video footage and the incident report without a court order. He was therefore compelled to request a postponement that was granted to 15 August 2023 so that he can be able to bring an application in terms of the Promotion to Access to Information Act 2 of 2000 (PAIA) to obtain the evidence used against him by the Club.

[18] He was also not furnished with his co-accused statements. The incident report was only furnished to him on 10 August 2023 after numerous requests including the formal PAIA application, again not affording him adequate time to consult. He alleges the incident report not to have been given to him because there were discrepancies between the incident report prepared by Dunkelman and the statement Dunkelman made two weeks after the incident.

[19] His father on the one hand was told that no incident report exists or was on record that was going to be used or considered. The various statements of the Club's witnesses are what formed the incident report, however there would not be any witnesses for his father to cross examine.

[20] He likewise prior to their resumption with the hearing on 15 August 2023, raised with the Club the question of snapshots taken from the video footage. The Club confirmed that the snapshots also formed part of the record, however failed to advise them prior to the hearing. The DC instructed Woodroffe to furnish him with the snapshots that were compiled by Henney from Bidvest, the Security Company, obviously for evidence against the accused.

[21] Henney is alleged to have taken it upon himself to provide comments and opinions on the snapshot when he is not an expert and was not present during the incident. Henney's statement that Applicant was approached and calmed down by two ladies, Strydom's wife and her friend is denied. They instead told him that he deserved what happened to him. The Applicant also denies Henney's *allegation* that he was the aggressor, he shouted and cursed, noting that the video has no audio, therefore there is no evidence of that. Even of throwing a punch at Strydom. Strydom was the aggressor. Henney was speculating or coached by either Dinkelman or Woodroffe. He argues that the allegations constitute bias towards him as Henney was not present. He also denies that his father was aggressive or fuelled the ongoing commotion.

[22] He was also refused a request for Woodroffe to take them through the snapshots on the basis that it has been presented already. They only provided Henney's affidavit after they protested against his evidence which process was unfair. He was refused to cross examine Woodroffe and Henny on their statements or affidavit but advised to file a Supplementary Affidavit in response thereto.

[23] He presented his evidence on affidavit as the Club also did the same.

[24] There was also an issue on cross examination of witnesses which ended with a postponement so that his legal representative could have an opportunity to do so on

31 August 2023. The offer allowing him to cross exam came late on 23 August 2023, after the Applicant had accepted that the Club was not going to allow the cross examination of their witnesses. The Applicant disputes that it was for Woodroffe to decide whether to allow or not to allow the Club's witnesses to be cross examined. He argued that the hearing as a result constituted unlawful, unreasonable and procedurally unfair administrative action in terms of s 6 (2) (e) (iv) due to:

[24.1] Woodroffe's unauthorised and unwarranted dictatorship of how the proceedings should be conducted. (refusing witnesses to be cross examined)

[24.2] not being allowed to consult on the Club's witness statements and affidavit.

[24.3] irrelevant considerations of snapshots and the comments by Henney thereon taken into account.

[24.4] The hearings conducted arbitrarily and capriciously, s 6 (2) (e) (v).

[24.5] The hearing and procedure so unreasonable that no reasonable person could have done it in the same manner.

On the ruling

[25] The Applicant argues that in reaching the ruling, the DC considered the irrelevant evidence of Henney, placing much emphasis on the video footage and snapshots whilst disregarding his version and the explanation in his affidavit. Woodroffe presented the video footage without putting any version or corroborative evidence to the DC. He failed to put to the Applicant the allegations made against him or the version that was put to the DC at the hearing of 3 July 2023. He was therefore not able to respond thereto when it is obvious that the DC was also influenced by what was said on that day. Woodroffe confirmed that he made allegations pursuant to the information he got from the statements of the witnesses, which statements the DC did not consider when it made its finding.

[26] There is no evidence supporting the factual findings made by the DC, especially that the Applicant participated in the events that caused the incident were in actual fact not captured on any video footage. The preceding events that led to the incident. Further if regard is given to the record of the hearing of 5 July 2023, there is no evidence that is presented by the Club on which the DC could make a finding that his conduct was unbecoming of a member. The DC primarily relies on the video footage, without indicating where on the video footage his conduct is unbecoming. The DC therefore, took the impugned decision

[26.1] considering irrelevant considerations and relevant considerations not considered.

[26.2] because of the unauthorised and unwarranted dictates of another person or body;

[26.3] in bad faith, arbitrarily and capriciously

[27] Consequently arguing that the impugned decision is unlawful, being not rationally connected to information that served before the DC or to the reasons given by the DC for it.

The Management Board's decision on appeal

[28] In the appeal hearing on 31 October 2023, the Applicant was represented by his father as his attorney before the Management Board. He alleges to have struggled as the record on his disciplinary hearing was not made available to him. He was told that such record did not exist. It was noted that the DC finding was made on the video footage, and the Board took into consideration all the statements and affidavits filed and found them contradictory.

[29] His father submitted heads of argument addressing the procedure followed at the Disciplinary Hearing. The Management Board in its ruling on 3 November 2023, stated that; they considered the video footage prior to coming to a conclusion. The

Club was entitled to present its evidence by way of affidavits. The incident report compiled by Dunkelman which he later amplified in a statement was of no moment, as little weight was put on the statements. Furthermore, the Applicant had an opportunity to cross examine the witness but chose not to.

[30] He argues that Woodroffe confirmed that he led the Club's evidence based on the witness statement provided, if the DC disregarded them, the Club would not have had a version. The DC had however indicated to have anyway relied on the video footage because the statements were contradictory. The witnesses would not have been afforded an opportunity to consider his affidavit in any case.

[31] According to him the Managing Board in fact considered the video footage whilst considering the contradictory statements as there was no other version placed before the DC during his hearing. He makes an assumption that if the Management Board considered the evidence Woodroffe presented at Strydom and Fichardt's disciplinary hearing, that would be unfair and unlawful, as he was not afforded an opportunity to address same, as it was not put to him by Woodroffe, disregarding the Club's own charge sheet by not providing him with an opportunity to cross examine.

[32] He considers the Management Board to have been biased towards him when they disregarded the arguments made on his behalf by his father, and stating that the submissions his father made was with reference to himself.

[33] He continued on appeal throughout to object to the way the DC conducted the proceedings, pointing out that when the Chairperson was informed of the Club's attorneys having confirmed that the Applicant can lead witnesses and let them be cross examined, he decided that as the 2 other charged persons and the Applicant's father were not present, he is not going to allow the cross examination of the Club's witnesses. He allowed a postponement on the cross examination and evidence to be led by affidavit in the interim).

[33.1] When his attorney was refused a copy of the oral evidence led at the DC hearing on 3 July 2023 including that of Strydom and Fichardt, he

consequently could not test that evidence through cross examination or deal with the allegations against him in his affidavit.

[33.2] After the video footage he was shown on 5 July 2023 was accepted in evidence by the DC whilst the Club was aware that he did not have access to it. The DC instructed him not to comment on the video footage denying him the right to lead evidence on the footage or put it in context.

[33.3] When the hearing resumed on 15 August 2023 Woodroffe submitted snapshots with timestamps and hearsay commentary and remarks knowing that he was only furnished with the snapshots on the same day. He argues that the commentary on the snapshots consists of hearsay and inadmissible evidence as the person who made the comments neither knows him nor was he present on the day.

[33.4] His evidence stood uncontested as the Club did not cross examine him nor file any affidavits to dispute his evidence and did not call any of its own witnesses to answer thereto.

[33.5] The DC was not able to give a subjective ruling as to the merits of the case. They found him guilty even though they confirmed that huge discrepancies existed in the written statements. Also, that there is no video footage or other credible evidence that proves that he caused the incident or assaulted anyone or that shows that his participation resulted in the incident.

[33.6] He argues that the DC therefore considered irrelevant evidence and did not consider the uncontested relevant evidence contained in his affidavit.

On whether or not impugned decision constitutes an administrative action (PAJA applicable)

[34] In support of his allegation that the ruling constitutes an administrative action, the Applicant submits that the Club, through its DC, took a decision to suspend his

membership, while (i) *exercising a public power* (ii) *in terms of its Constitution, adversely affecting his rights*.

[35] His rights in terms of PAJA, the Common law and the Constitution to lawful, reasonable and procedurally fair hearing and administrative action were denied because of non-compliance with the *audi alteram partem* rule because”

[35.1] He should have been given an opportunity to be heard on every matter and every piece of evidence the Chairman may have taken into account. The Club ambushed him with evidence that he had not had an opportunity to properly consider, notwithstanding the request made to the Club to be furnished with the relevant reports and statements.

[35.2] The evidence by Fitchard and Strydom, was neither put to him or provided to him prior to or during the hearing and yet it formed part of the record and was considered by the DC.

[35.3] There was no stage when the Club presented evidence against him that was substantiated by admissible evidence. During his hearing Woodroffe merely confirmed the identity of the parties that appeared in the video footage.

The Club's response

[36] According to the Club the Applicant was notified of the charges which are in line with Clause 11.2 of the Constitution. He was found guilty and sentenced. He was afforded an opportunity to appeal which he did but did not challenge the authenticity of the video footage.

[37] The Club dismisses Applicant's claim that the video footage does not indicate or show that he caused or initiated the incident as irrelevant, as he was not charged with the assault of a member or for initiating the altercation that took place on 15 June 2023. He was rather found guilty of the charges against him reliant primarily on the video footage of the incident.

[38] The procedural irregularities alleged by the Applicant to have permeated the conduct of the hearing by the DC as alleged by the Applicant are denied. The DC is alleged to have been accommodative to the Applicant. The commencement of Applicant's Disciplinary hearing was postponed for, inter alia, him to have an opportunity to ask for further information and documentation from the Club. He was on 5 July 2023 offered an opportunity to view the video footage as it was shown at the hearing of Strydom and Fichardt and to go through the incident report. He was also offered an opportunity to cross examine the witnesses on their statement which offer he declined. On 15 August 2025 he was willing to continue notwithstanding that he had not separately viewed the video footage. There was a further postponement to 31 August 2023 so that the witnesses can again be made available to him for cross-examination on their statements. He also failed to pursue his call for cross examination.

[39] In addition, the Applicant was granted an opportunity to serve a Supplementary Affidavit to the Affidavit he submitted on 15 August 2025, so that he can answer to the comments and submission on the snapshots from the video footages made by Henney. He still did not file the Supplementary Affidavit arguing that it served no purpose as he has already put his version in his affidavit submitted on 15 August 2023.

[40] The Club reiterated that no reliance was placed on the witness' statements filed before them. Reliance was on the video footage. As a result, even though the statements were more damning on Applicant's father, he was notwithstanding found not guilty.

[41] On observing the video footage, the Applicant was seen being aggressive, belligerent or argumentative and pushed back by his step-mom, who was trying to calm him, his father and Wiaan, and their guest down. The Applicant continued being aggressive, pushing towards Strydom and Fichardt who were near the door. He was also seen trying to throw punches whilst Strydom and his wife were trying to leave.

[42] The Club points out that the Applicant confirms in his affidavit that it was clear from the video footage that he was emotionally charged and his actions must therefore be evaluated from that point of view. By doing so, he accordingly admitted behaving

in a manner that is unbecoming of a member and detrimental to the reputation and good order of the environment the Club has built, breaching the Constitution of the Club. The Club so far has been able to maintain a good reputation for so many years and will not tolerate untoward conduct and any threats of its good reputation.

[43] It further pointed out that Applicant's allegations that he was a victim of assault and was innocent the whole time or that he did not start the incident was irrelevant as he was not being charged with assault or having caused the incident on 15 June 2023 circumstances but rather that he acted in a manner that is unbecoming of a member as indicated in the charge sheet.

Main argument on PAJA

[44] The Club disputes that the Applicant can bring this Application under the provisions of PAJA since the DC's ruling and the Management Board's upholding of same on appeal does not constitute an administrative action.

[45] The Club denies that:

[45.1] the Applicant has made any basis for his allegations that the ruling was made for an ulterior motive or purpose nor what such motive or purpose is, irrelevant considerations considered and relevant consideration excluded. It contends that it cannot be argued that the video footage considered by the DC and the Management Board in reaching their respective rulings was irrelevant. The witness statements filed by the Club's witnesses and the persons charged were considered but found to be contradictory and no weight put on them.

[45.2] that there is evidence of allegations that the DC and the Management Board's ruling was motivated by or handed down due to the unauthorised or unwanted dictates of another person or body, and to have been in bad faith.

[45.3] It likewise denies that the rulings handed down arbitrarily and capriciously. It argues that the Applicant was given an opportunity to access documents and or information before the hearing, to consider new evidence

produced, to file supplementary affidavits and to cross exam witnesses, acquiescing to the Applicant's requests in the interest of justice.

On the appeal

[45.4] On appeal only the submissions by the Applicant's legal representative as set out in his heads of argument and the video footage were considered. It is evident as it was found, that the Applicant's actions as depicted in the video footage constitute conduct unbecoming of a member of the Club. The incident report had no impact on both rulings. The Club disputes Applicant's allegation that the ruling is not rationally connected to the information that was before the Managing Board.

[45.5] The DC or Management Board did not place any reliance on the evidence of Strydom and Fichardt to find the Applicant guilty of the charges against him but primarily relied on the video footage.

[45.6] Whether or not he was provided with the incident report or statements of Henny's affidavit and any alleged discrepancies is of no consequence as no reliance was placed on any of those documents.

[45.7] It denies that there is any basis for alleging that the DC was influenced by what transpired at the 3 July 2023 hearing, but clear from the DC's ruling that no adverse findings were made against the Applicant based on anything which took place at that hearing. The DC emphasised that contradictions existed in the versions before it and therefore reliance placed on what is available on the video footage.

[45.8] The Club's argument on the appeal is that the Applicant only focused on the procedural matters and irregularities instead of the merits, indicating as to why he should not be found guilty on the charges against him. The criticism Applicant levelled against the DC however was unfounded. The decision of the Management Board is therefore sustainable.

Mootness

[46] According to the Club, after filing the record of proceedings in the DC hearing and on appeal in compliance with Rule 53 (1) (b), it expected the Applicant to amend, add or vary its Notice as per Rule 53 (4) within 10 days, which never happened. It as a result assumed that the Applicant may have elected not to proceed with his Application, since in the urgent application he brought following the Management Board's upholding of the DC decision, he anticipated that by the time the review application is heard, the matter will be moot, as the suspension is effectively for a year. The Club did not advance anything further on the issue.

Applicant's Reply

[47] The Applicant alleges in reply that the Club had, in its own version, stated that it had not considered his disciplinary hearing afresh but relied on the evidence that was led in another disciplinary hearing. Further that there is no defence to the relief he is seeking.

[48] He further alleges anew in reply that the charges against him were a mere repetition of the Club's Constitution, lack particularity and are vague and embarrassing therefore difficult to respond to them meaningfully. They were not put to him and he therefore was not afforded an opportunity to plead, respond or rebut the charges in the specific format as alleged by the Club.

[49] He criticises the Club's reliance on the video footage arguing that it does not show that he was involved in any verbal altercation and shown to him without leading admissible evidence thereon or indicating what part of the video was relevant to the charges against him, whilst ignoring his version on what happened that day.

[50] He reiterated the allegations regarding his request for the relevant documents the Club intended relying upon, which was not complied with and the affirmed the DC's postponement of the matter so that he can make his request and be furnished with the documents. According to him the Club is silent about that as it cannot deny that its steadfast refusal to furnish him with the footage was procedurally unfair and irregular.

[51] He alleges the Club to disingenuously insinuates to have invited him and his legal representative to come and watch the video footage in a procedurally fair and regular manner, when he was invited to do so in the presence of Woodroffe, the Club's evidence leader without affording him an opportunity to consult and prepare thereon. He denies that he was prepared to proceed on 15 August 2023 without any reservations but that his attorney agreed to do so as he was faced with the arduous decision after the Chairman refused any reservation of rights, whether to continue with participation or run the risk of being found guilty because of a default to attend or participate in the proceedings. His willingness to proceed did not condone any irregularity or give credibility to the process, which remains fatally flawed.

[52] He accordingly was ready to proceed on 15 August 2023 with the cross examination but was denied doing so by the Chairman. He denies the Club's narration that he changed his stance and refused to cross examine the witnesses. He confirms that the DC arranged a date for the cross examination of all parties concerned to take place, postponing the hearing to 31 August 2023. According to him the Club took too long to consider whether it would make its witnesses available for cross examination which led to his attorney informing the Club that he accepts its stance not to make the witnesses available.

[53] According to him his affidavit on the turn of events and a further affidavit pertaining to the snapshots and comments by Kennedy was not considered. They decided to rely only on the video footage. He denied that he did not file a Supplementary Affidavit without indicating when it was filed. He also denied that the video footage supported the DC on its ruling that he was part of the verbal altercation that led to the physical altercation.

[54] He argues that the Club's conjecture that because he was emotionally charged, he may well have been guilty of any of the charges that the Club brought against him without any evidence, was speculative and opportunistic and to be struck out. His guilt or not is irrelevant as the relief he is seeking is not an appeal as misconstrued by the Club but a review to set aside the irregular and fatally flawed disciplinary proceedings.

[55] He further disputes that what is depicted in the video footage, which was pointed out in evidence led by Woodroffe at the hearing of 3 July 2023 and accepted by the DC, shows him being aggressive and being pushed back by his stepmom. The video footage was shown at his hearing with no evidence led. The DC cannot accept the evidence led at someone else's hearing for the purpose of proving his guilt. Charges against him had to be proven at his hearing and failure to do that resulted in an irregular and unlawful administrative action. He agrees that he was emotionally charged but argues that the evidence is only addressed by the Club now in its answering affidavit.

[56] He denies that it was put to him during his hearing that his conduct was unbecoming of a member and or which part of the video was relevant to the charges against him. He also denies that there was any stage during the hearing when it was put to him that the verbal arguments he was engaged in led to the physical altercations. Also, that there is a video footage or recordings which shows that the physical altercations broke out due to any conduct on his part or because of his verbal communications. Roodt was also not allowed to query or make a submission on the video footage being told that, that evidence has already been dealt with.

[57] He alleges that no evidence was put to him that he was guilty of any offences that he was charged with and no mention of the content of his affidavit or his version of events. He claims the Club to have deprived him of a fair disciplinary hearing and refused to suspend the impugned rulings pending the review application. It also failed to safeguard him and his father against the assault. The senior manager stood back and denied that an incident report was filed and thereafter filed a contradictory affidavit.

[58] He noted that the DC has now conceded that it considered the evidence provided on 3 July 2023 in the hearing against the other two who were charged during his absence, which is sufficient reason to review and set aside the decision. The mere showing of the video footage during his disciplinary hearing does not constitute evidence against him. The evidence they should have considered is the one that was in his affidavit. The Club is trying to place evidence it led in the other hearing when he was absent as evidence in his Disciplinary Hearing.

[59] He argues that he had no obligation to supplement his affidavit on receipt of the record even though it appeared incomplete. He did not take issue with the record as there was nothing new that warranted a response. Notwithstanding his indication to the urgent court that the matter will have become moot or academic by the time of the decision, the review still remains relevant since the sentence remains alive for the three years plus the reputational damage he suffers.

Issues to be determined

[60] Issues to be determined are:

[60.1] Whether or not the matter is moot,

[60.2] Whether the impugned decision constitutes an administrative action as defined in section 1 of PAJA, (Is it a PAJA reviewable decision?) If so, if the Applicant has made a case for the impugned decision to be reviewed and set aside, under PAJA , it being allegedly non-compliant with the requirements of PAJA in that:

[60.3.1] a procedure that constituted an unlawful and an unreasonable administrative action was followed:

[60.3.2] taken with an ulterior purpose or motives,

[60.3.3] with irrelevant considerations and relevant considerations not considered, because of the unauthorised or unwarranted dictates of another person or body,

[60.3.4] made in bad faith, arbitrarily or capriciously.

[60.3.5] not rationally connected to the information that was before the Disciplinary Committee.

[60.4] If not reviewable under PAJA, whether the Applicant has made a case for a review under common law.

Interrogations of the issues

Whether or not the matter is moot

Legal framework

[61] A case is moot, that is, no longer justiciable, if it no longer presents an existing or live controversy or the prejudice or threat of prejudice to the parties. Mootness being a possible but not absolute bar to relief when there are no other triable issues in the case. The mootness doctrine is therefore relevant to cases in which the issues underlying the dispute have been resolved,¹ and the interest of the parties is no longer affected by the case, unless if the issues affect matters of general public importance and or there is an enduring prejudice.

[62] Part of what underlies this doctrine is the notion that the courts should avoid giving advisory opinions on abstracts propositions of law, however at the same time guard against the unfortunate effect of a finding of mootness on a matter that engages issues of public interest.² In the matter of *S v Manamela and Another*³ the court held that “it would decide a case where it is in the public interest despite the argument of mootness.” Further that “It would be in the public interest to decide on the matter if there are constitutional issues raised that remain relevant”. Moreover, when continuing uncertainty in that regard may well prejudice the general administration of justice as well as the interests of the persons affected.

¹ Loots C “Ripeness and Mootness” in S Woolman, M Bishop (ed) Constitutional Law of South Africa p 7-19)

² In *Western Cape Provincial Government and Others v D C Security (Pty) Ltd t/a D C Security and Others* (971/2023) [2025] ZASCA 35 (1 April 2025). The SCA was scathing in its critique that courts of appeal already face congested court rolls and are not there to give advice gratuitously, but rather to decide real disputes *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* [1999 \(3\) BCLR 280](#) (C); [1999 \(3\) SA 173](#) (C)

³ 2000 (3) SA 1 (CC) 11,

[63] The interest of justice also plays a major role in deciding whether a matter should continue to be heard. In *Legal Aid South Africa v Magidiwana & Others*⁴ the court held that:

“Mootness is no bar to deciding an appeal if it is in the interest of justice to do so. As this Court said in Van Wyk, relevant considerations are whether the order that the Court may make will have any practical effect either on the parties or on others, whether it is in the public interest for the court to exercise its discretion to resolve the issues and whether the decision will benefit the larger public or achieve legal certainty.”

[64] In *casu*, the Club has argued that in the Applicant’s urgent application to stay the DC’s decision and the Management Board’s ruling pending the outcome of the review application, the Applicant submitted that if the decision is not stayed, by the time the review application is heard it will be moot and only of academic nature. The Applicant was referring to the matter being moot in the context of the period of suspension of the sentence having lapsed but the long-term implication of the ruling to his person, the reputational damage, which is an enduring prejudice, remains. The decision will provide potential clarity to the members of the Club.

[65] Furthermore it could not be said that the issues underlying the dispute in this matter have been resolved and the interest of the parties no longer affected. The Applicant made allegations on violation of fundamental human rights as guaranteed by the Constitution,⁵ particularly the Constitution’s interplay with the right to fair administration of justice that connotes equal treatment and subjection to fair processes and procedures. This encourages further scrutiny in the interest of justice, which cannot be regarded as resolved. The Club has conversely taken issue with that proposition denying that the decision of its DC and Management Board being a private voluntary entity can be subjected to Constitutional scrutiny as contemplated in PAJA. It argued that PAJA intended for public policy and not applicable to such decision.

⁴ 2015 (6) South Africa 494 (CC) par 58

⁵ The Constitution of the Republic of South Africa, 1996

[66] The scrutiny is directed at the protection of the fundamental human rights as public interest rights in as far as members of the Club are concerned whilst bound by a private agreement. It therefore might not be in the interest of justice to determine the merits but of public interest and interest of justice to establish whether the Club, being a private entity, can be subjected to constitutional scrutiny to determine the validity of its decision given its practical effect and alleged far-reaching effect.⁶ To that extent, the matter is justiciable. The Constitutional scrutiny of the decision due to implication of its enforcement, far-reaching effect and fairness of the procedure followed, besides personal prejudice, is to be determined.

[67] In *Predwin*,⁷ in the light of the particular and extraordinary facts, it was decided to be in the interests of justice for the Court, notwithstanding the matter being moot, to proceed and determine whether the decision to terminate a parent contract without a hearing, being legible to do so as per terms of the contract was valid, considering the best interest of the child as a Constitutional right. The court stated that:

“what will have practical and far-reaching effect was the pronouncement on the constitutionality and the enforcement thereof. To that extent, and to that extent only, it is in the broader public interest for this Court to make a decision on that point alone, and to thus grant leave to appeal notwithstanding mootness”.

[68] Finally, whether the argument that the matter is moot is persuasive depends on whether the judgment or order will have a practical effect or result.⁸ In the case of the *Independent Electoral Commission v Langeberg Municipality*⁹, the CC held that the Court has a discretion to decide issues on appeal even if they no longer present existing or live controversies. That discretion must be exercised according to what the interests of justice require and further that:

⁶ AB and Another v Pridwin Preparatory School and Others [2020] ZACC 12 at para51

⁷ Supra ft note 6

⁸ In *Western Cape Department and Another v George*, 14 4 2001 (3) SA 925 (CC)

⁹ CCT 49/00 [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) (7 June 2001)

“A prerequisite for the exercise of discretion is that any order which this court may make will have some practical effect either on the parties or on others.” Other factors that may be relevant will include the nature and extent of the practical effect that any possible order might have, the importance of the issue, its complexity, and the fullness or otherwise of the argument advanced.”

[69] The practical effect need not be restricted to the position between the parties but can also include a practical effect on a matter of public interest or to resolve conflicting High Court judgments.¹⁰ Consequently where there are considerations of compelling public interest that require the court to reach a decision, an argument that the matter is moot is unlikely to succeed. The Constitutional Court has held that its discretion must be exercised according to what the interests of justice require.

[70] The matter currently before the court, is semi-complex in nature as it also narrates the relationship between fundamental human rights and the obligations of private entities to respect such rights, which may invoke public interest. It is therefore in the interest of justice that the matter be adjudicated. The Constitution in s 8 provides a way of dealing with such disputes that may be encountered between individuals or between people and the government or other institutions like private companies.

Whether the impugned decision constitutes an administrative action as defined or contemplated in section 1 of PAJA, (Is it susceptible to being impugned under a PAJA review?)

Legal Framework

[71] Section 1 of PAJA reads:

Unless the context indicates otherwise:
an administrative action’ means any decision taken or any failure to take a decision,
by-

(a) an organ of state; when-

¹⁰ Constitutional Law of South Africa 2nd ed **S Woolman, M Bishop (2013) 7-21.26.**

- (i) exercising power in terms of the Constitution or a provincial constitution;
- (ii) exercising a public power or performing a public function in terms of any legislation
- (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

which adversely affects the rights of any person and which has a direct, external legal effect, but does not include;

- (ii) any decision taken, or failure to take a decision, in terms of s 4 (1);

'administrator' means an organ of state or any natural or juristic person taking administrative action.

[72] Whether the decision can be subject to conditions set out by PAJA depends to some extent on whether the parties have pleaded their case in a way that demonstrates the direct applicability of constitutional rights to the impugned conduct or decision. The courts are encouraged not to avoid direct horizontal application where it appears to be the most appropriate means of resolving a constitutional dispute.

[73] This is not an easy task as illustrated In *Ma-Afrika Hotels (Pty) Ltd v Cape Peninsula University of Technology*,¹¹ with the court opining that:

“It is well recognised that distinguishing what falls within the ambit of 'administrative action' from what does not, can often be a difficult undertaking. It has been remarked more than once that there can be no all-embracing test, and the question is one that the courts have to decide on a case-by-case basis.”

¹¹ 2023 (3) SA 621 (WCC) at para 12.

[74] Reflecting on the definition of administrative action in terms of PAJA, the Constitutional Court in *Minister of Defence and Military Veterans v Motau and Others*¹² found it to be characterised by seven constitutive elements, namely:

- (a) a decision of an administrative nature.
- (b) by an organ of state or **a natural or juristic person**.
- (c) *exercising a public power or performing a public function*,
- (d) in terms of any legislation or **an empowering provision**,
- (e) that adversely affects rights.
- (f) that had a direct, external legal effect, and
- (g) that did not fall under any of the exclusions listed in the definition.

[75] Since the club is not an organ of state, what is applicable to the present impugned decision is section 1(b) of PAJA, which states that:

“any decision taken, or any failure to take a decision, by- . . . a natural or juristic person, other than an organ of State, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect . . .”

[76] The Act contemplates an administrative action by persons other than organs of state in circumstances where they are exercising a public power or performing a public function in terms of an empowering provision (not only limited to legislation). According to Hoexter:¹³

“This formulation seems to exclude the exercise of private powers by private bodies, such as the exercise of disciplinary powers by a church or a club in

¹² [\[2014\] ZACC 18](#) (10 June 2014); [2014 \(8\) BCLR 930](#) (CC); [2014 \(5\) SA 69](#) (CC) in para 33

¹³ Hoexter and Penfold *Administrative Law in South Africa* 3rd ed (Juta, Cape Town, 2021) at 273 and the cases cited at fn 419.

terms of a contract with its members. Such conduct would be reviewed not under PAJA but in terms of the common law.”

[77] This is to be juxtaposed with the observation made by Moseneke J in support of the notion of accountability notwithstanding the derivation of the power, that:

“Private power cannot be held to be immune from constitutional scrutiny. This is particularly so, as we have already seen, when private power approximates public power or has a wide and public impact. But the horizontal application of rights and values may also be invoked even in a dispute between two private parties with no public ramification. This must be so because all rights conferred by our Constitution should be capable of full vindication. Everyone, whether faced with a big corporation or his or her neighbour only, is entitled to effective relief in the face of an unjustified invasion of a right expressly or otherwise conferred by the highest law in our land.”¹⁴

[78] The Constitution is supposed to provide a way of dealing with any dispute that may be encountered between individuals or between people and the government or other institutions like private companies, as it seeks to promote fairness, restoration, and social cohesion, ensuring that legal disputes are resolved in line with the law by empowering courts and independent tribunals to hear and determine disputes.

[79] Madlanga J recently in explaining, extra-curially, the transformative aims of the Constitution as ingrained in s 8 (2)¹⁵ wrote that:

“If we are to take seriously the transformative injunction of our Constitution to ‘[i]mprove the quality of life of all citizens and free the potential of each person’, then our private interactions cannot be left out of the reach of those human rights obligations that may appropriately be borne by private individuals. We cannot take a business as usual approach and maintain the status quo insofar as our private interactions are concerned. By imposing certain human rights obligations on private individuals and companies, we acknowledge that our

¹⁴ Transformative Constitutionalism: Its Implications for the Law of Contract” (2009) 20 Stellenbosch Law Review 3.

¹⁵ S 8 (2)

current social and economic realities have arisen out of our perverted past and cannot be sanitised. *Simply put: if we refuse to impose human rights obligations on private individuals for fear of interfering with their autonomy, we risk maintaining a perverse status quo which entrenches a social and economic system that privileges the haves, mainly white people in the South African.*¹⁶

[80] Bearing that in mind, it is illustrated in *Turner v Jockey Club of South Africa*¹⁷ and the so – called ‘Jockey Club’ cases, that decisions of private bodies are not immune from judicial review. The main principle in this regard being that voluntary associations are required to afford their members a fair and impartial hearing before their domestic tribunals. However, there are arguments that suggest that some apparently private regulatory bodies exercise public functions – which would allow PAJA to govern at least some of their actions – and such argument difficult to make for private sport clubs. It would gain traction in relation to an organisation such as a Jockey club, for example, which regulates entry into a closely guarded profession, a function that might have to be performed by an organ of state if the National Horse Racing Authority (“NHA”) didn’t exist.¹⁸

[81] It’s not all functions of private regulatory bodies that would be regarded as the exercise of public power or the performance of a public function. The principal focus is on the nature of the function in question, or the nature of the power being exercised rather than the functionary itself. This was explained in *Chirwa v Transnet Ltd and Others*¹⁹ as follows:

“Only acts of an administrative nature are subject to the administrative justice right in section 33 (1) of the Constitution. The focus of the enquiry as to whether conduct constitutes administrative action is not on the position which the functionary occupies but rather on the nature of the power being exercised. This Court has held in a number of cases that in this enquiry what matters is not so much the functionary as the function; that the question is whether the task itself is administrative or not and that the focus of the enquiry is not on the

¹⁶ Madlanga “The Human Rights Duties of Companies and other Private Actors in South Africa” (2018) 29 Stellenbosch Law Review 359 at 364 and 368.

¹⁷ [1974 \(3\) SA 633 \(A\)](#).

¹⁸ Hoexter above n 3 at 273 -274.

¹⁹ 2008 (4) SA 367 (CC) at para 72.

arm of government to which the relevant functionary belongs but on the nature of the power such functionary is exercising.' (footnotes omitted)."

[82] The court in this matter is met with a challenge to the validity of a decision purportedly taken by the private Club in the exercise of a power derived from the provisions of its Constitution that the Applicant has voluntarily associated himself with, based on a fact that it is an administrative action. The respondent, on the other hand contends that the club is a voluntary association which finds its life in its Constitution. The regulation of members derives from contract, with members having voluntarily accepted the provisions of its constitution, including the provisions regarding disciplinary action. The power exercised by the privately organised structure over its members cannot be regarded as the public power, due to it being exercised only over the Club community.

[83] It has been recognised that whilst regulatory power is normally exercised by the state or its organs, including regulatory agencies, power of this nature is not solely preserved for the state.²⁰ The Act does not define public function or power, and our courts have not formulated a specific test for distinguishing between private and public power. In *Chirwa*²¹ Langa CJ in the minority judgment noted that:

"Determining whether a power or function is public is a notoriously difficult exercise. There is no simple definition or clear test to be applied. Instead, it is a question that has to be answered with regard to all the relevant factors, including: (a) the relationship of coercion or power that the actor has in its capacity as a public institution; (b) the impact of the decision on the public; (c) the source of the power; and (d) whether there is a need for the decision to be exercised in the public interest. None of these factors will necessarily be determinative; instead, a court must exercise its discretion considering their relative weight in the context."

²⁰ Hoexter above n 3 at 297.

²¹ Supra fn 19 at para 186.

[84] In *AAA Investments (Pty) Ltd v Micro finance Regulatory Council*,²² in analysing the character of the rules that were in question and of the Council, the court remarked as follows:

“... one should not focus merely on the fact that it is a private company. The question that needs to be answered is whether the rules are relevant to the performance of a public function or are merely a form of private ordering. It is true that no bright line can be drawn between 'public' functions and private ordering. Courts in South Africa and England have long recognised that non-governmental agencies may be tasked with a regulatory function which is public in character. In determining whether rules are public in character, although made and implemented by a non-governmental agency, several criteria are relevant: whether the rules apply generally to the public or a section of the public; whether they are coercive in character and effect; and whether they are related to a clear legislative framework and purpose. This list is not exhaustive, nor are any of the criteria listed necessarily determinative.” (my emphasis)

[85] Under the circumstances the Club's decision is, as much as it adversely affects rights of the Applicant, however does not have a direct, external legal effect, and consequently not an administrative action, albeit that it can be subjected to scrutiny if there was just administration of justice in conformity with the principles of natural justice,

[86] As argued by the Club, the impugned decisions were made by a disciplinary committee and a management board of a private, voluntary Club. The decisions of the Club are limited to its members. The applicant, when he took up membership, consented to be bound by the Constitution of the Club. The empowering provision is its Constitution. The impugned decisions only affected the Applicant and no one else. The Club is not under any statutory duty to act in the public interest and its activities are of no general interest to the public. Those decisions do not constitute administrative action for the purposes of PAJA as described by the Applicant. The Club is a sport and social club that provides its members with sports, leisure and

²² 2007 (1) SA 343 (CC) at para 119.

recreational facilities. Based on the general principles that have emerged from precedent, its decision not subject to PAJA.

[87] It is also of interest to note that in many instances where this issue of the applicability of PAJA has been raised in matters against sporting Clubs, especially golf clubs, the courts shy away from making any pronouncements, let alone deal with the issue. It was also tempting in this case to follow suit as the Applicant has alleged that PAJA applicable without any motivation see; *Ackerman v Mbombela Golf Club*²³

Judicial review under the common law

[88] The Club is alleged to have arrived at its decision to suspend the Applicant, without following a lawful, reasonable and fair procedure. The procedure meaning the decision-making process followed, alleged to be irregular, the decision to have been influenced by ulterior motives, bias, taken capriciously based on irrelevant consideration that resulted in an unreasonable decision, lacking a logical basis or deemed irrational,

[89] Judicial review involves the assessment of the decision-making process whether it was lawful, reasonable and procedurally fair. It involves evaluating if the process was legally sound and the decision with a logical basis or is deemed irrational. The fundamental principles of natural justice being adhered to.

[90] The following conclusions were made in *Buckham and Others v Plattner Golf (Pty) Ltd and Others*²⁴ on judicial review of decisions by private entities:

“It has long been accepted that certain decisions by private entities are subject to the fundamental principles of justice. This means that domestic tribunals must follow a fair procedure to afford persons a fair hearing and allow them to present their evidence. Fair play must always be observed, and this must be done honestly and impartially. The relevant tribunal must make ‘fair and bona

²³ (5584/2023) [2024] ZAMPMBHC 50 (19 July 2024)

²⁴ (21472/22) [2024] ZAWCHC 64 (1 March 2024)

fide' findings of fact, acting honestly and in good faith. [\[35\]](#) *Turner v Jockey Club of South Africa* (1974 3) 633 (A) at 646 G-H.

[91] In *Russell v. Duke of Norfolk and Others*,²⁵, Lord TUCKER said that-

"The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

[92] The learned Judge of Appeal in *Turner*, commenting on the principles of natural justice as applicable in domestic tribunals stated that:

*"Accordingly, the principles of natural justice do not require a domestic tribunal to follow the procedure and to apply the technical rules of evidence observed in a court of law, but they do require such a tribunal to adopt a procedure which would afford the person charged a proper hearing by the tribunal, and an opportunity of producing his evidence and of correcting or contradicting any prejudicial statement or allegation made against him"*²⁶ (*Marlin's case, supra* at p. 126; *Bekker v Western Province Sports Club (Inc)*, [1972 \(3\) SA 803](#) (C) at p. 811). The tribunal is required to listen fairly to both sides and to observe "the principles of fair play" (*Marlin's case, supra* at pp. 126 and 128). In addition to what may be described as the procedural requirements, the fundamental principles of justice require a domestic tribunal to discharge its duties honestly and impartially (*Dabner v SA Railways and Harbours*, [1920 AD 583](#) at p. 589). They require also that the tribunal's finding of the facts on which its decision is to be based shall be "fair and *bona fide*" (*Jockey Club of S.A. v Transvaal Racing Club, supra* at p. 450). It is, in other words, "under an obligation to act honestly and in good faith" (*Macleane v Workers' Union, supra* at p. 623).

²⁵ (1949) 1 All E.R. 109 at p. 118

²⁶ [1974 \(3\) SA 633](#) at 646 Botha JA; (*Marlin's case, supra* at p. 126

[93] The Applicant was accordingly furnished with a Notice of the charges he is to face at the Disciplinary Hearing. The Notice outlined the rules of engagement or the manner in which the hearing was to be conducted, clearly setting out what rights the Applicant was afforded and the information he was entitled to. The Notice gave an impression of the rules of natural justice to be followed in a fair procedure, with the disciplinary hearing to proceed against the 4 persons charged on 3 July 2023.

[94] The Club did not deny that other than the charge sheet the Applicant was furnished with only the statements of the Club's witnesses that were on affidavit, albeit unsigned. However, it was evident that the Club had made a choice to render evidence by way of affidavits as a result had collated the affidavits prior the hearing and handed them over to the Applicant a day before the hearing. The Applicant was as a result not going to get an opportunity to cross examine the witnesses as indicated in the Notice. The DC's Notice as a result should have referred to the fact that the parties are entitled to submit their evidence by way of oral evidence or sworn affidavits and indicate what would happen if same is to be by way of affidavit. The Affidavits were nevertheless apparently so discrepant that they were not referred to or relied upon by the DC in its finding against the persons charged Applicant.

[95] The Applicant was also not told that at the hearing that took place on 3 July 2023 he was mentioned adversely, and in that instance, he complains that he was as a result not given an opportunity to cross examine the two witnesses to deal with any of their account on the incident that was adversarial or incriminating him. The evidence was however not under oath, discrepant and was according to the findings of the DC disregarded for the purpose of the decision.

[96] It is nevertheless evident that the Club endeavoured to ameliorate the lapse in that regard by agreeing to make the witnesses available for cross examination prior to the Applicant tendering his Affidavit albeit later in the hearing. The DC postponed the matter accordingly, including a further postponement so that the two other charged persons could be available. The Applicant decided to forego the opportunity. He too instead submitted his evidence by affidavit and likewise was not subjected to cross examination. In that regard the procedure cannot be criticised for want of fairness and to justify the relief sought by the Applicant.

[97] In *Trustees for the Time Being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd*²⁷ the court held that:

“The bottom line is that the extent of the right to natural justice will depend on what is rational and justifiable, as opposed to what the parties had notionally agreed.

[98] The Applicant complains about the same Disciplinary Committee members sitting on both hearings. The complaint is not sustainable. It was the same DC before whom all the charged members were supposed to appear on 3 May 2023 and from whom the Applicant obtained a postponement of his hearing to 5 July 2023. No objection was raised regarding its composition notwithstanding the Applicant being legally represented.

[99] Applicant has also failed to advance any cogent reasons for imputing any bias to the DC or to show how the DC's presiding over both hearings could have prejudiced him, a point only raised in his reply. The complain of biased lacks substance. Nevertheless, the identity or form of the decision-maker may become immaterial, what is of significant is the fairness of the process followed and the Applicant being granted an opportunity to be heard. His matter was at his request postponed to proceed on a different day, separate from the other persons charged with him. It was the same with his father's hearing, who is also an attorney.

The rules of justice will not permit whimsical and biased decisions that will have significant effects on third parties, such as the termination and then the suspension of the applicants' memberships without a hearing, let alone a fair hearing.

[100] The Applicant also alleged that the Club ambushed him with evidence that he had not had an opportunity to properly consider, notwithstanding the request made to the Club to be furnished with the relevant reports, namely the incident report and video

²⁷ [2022 \(1\) SA 424](#) (SCA) at [40].

footage that was going to be used as evidence against him which he required to prepare for the hearing. The report was only made available to him at a very late stage of the hearing although it was in existence since 30 June 2023.

[101] He was however offered an opportunity to view the video footage together with his legal representative and furnished with the incident report to which he had queries. This was before he submitted his evidence on Affidavit and therefore he could have covered his concerns in his Affidavit that was submitted after the Club's evidence. He had another opportunity to address the incident report, snapshots and the video footage in the Supplementary Affidavit that he was advised to file if he still had further submissions to make on the evidence tendered by the Club.

[102] The Applicant's further argument that he should have been given an opportunity to be heard on every matter and every piece of evidence the DC may have considered. The DC had indicated in its findings that, in deciding the matter only the video footage was found credible and to evidence the conduct of the Applicant', which conduct was found unbecoming of a member and resident. None of the witnesses' statements or affidavits including Henney's comments and that of the Applicant were found credible or relied upon. The decision was therefore made reliant solely on what was depicted in the video footage as presented by the Club's Woodroffe who pointed out the different role players depicted in the footage. It was confirmed by the Applicant in argument that during his hearing Woodroffe merely confirmed the identity of the parties that appeared in the video footage. The Applicant's appearance and his depiction therein was not challenged, neither was the authenticity of the footage.

[103] Taking into consideration the whole proceedings and the opportunities the Applicant was afforded to deal with the evidence, the complaint by the Applicant that the hearings conducted arbitrarily and capriciously, cannot sustain a review of the decision unless there is proof of a serious impairment suffered as a result., The conduct of the DC was indeed reasonable more so in dealing with any shortcomings, affording the Applicant several postponements and an opportunity to file a Supplementary Affidavit so that his right to be subjected to a fair process is not impaired. Strict adherence to rules of evidence observed in a court of law is not

expected from a disciplinary tribunal of a voluntary association but procedural fairness and indeed reasonable conduct.

[104] In *Lunt v University of Cape Town*²⁸ the court warned that:

“It should be recognized that the contract of the association could be formulated by a lay person or a group of persons not well-versed in the law or even vested with powers that source their gravitas from common law or natural justice; hence, the disciplinary procedure is not expected to adhere to legal procedures as applied in a court of law. It suffices that these bodies give an affected person the opportunity to state his or her case and that the tribunal is not biased”.

[105] The conclusion arrived at by the DC after it had found all the statements submitted to be contradictory and therefore unreliable, and reliant only on the video footage in holding the Applicant and Strydom accountable for the incident is reasonable.

[106] The Management Board was correct when it upheld the ruling by the DC. It confirmed that having gone through the video footage, ruling in the matter and the Applicant’s Heads of Argument, it was in agreement with the DC that the Applicant was involved in the actions that led to the incident as per video footage evidence. The narration of the incident on 3 July 2023 by Strydom and Trichardt was not under oath and therefore could not be considered as evidence, let alone against the Applicant. Any arguments raised in that regard are of no impact to the decision.

[107] In its decision, the Board stated that; they considered the video footage prior to coming to a conclusion. The incident report compiled by Dunkelman which he later amplified in a statement was of no moment, as little weight was put on the statements. It correctly concluded that the Club was entitled to present its evidence by way of affidavits. Furthermore, the Applicant had an opportunity to cross examine the witness but chose not to. There was therefore no denial of cross examination. The Applicant also chose to submit his evidence by Affidavit. Overall, the Managing Board could not

28

find the DC not to have afforded the Applicant an opportunity to deal with the evidence submitted against him.

Costs

[108] I do agree with the Club Counsel that the matter was not of such a complexity to justify costs on a scale higher than scale A.

[109] It is therefore ordered that:

1. The review Application is dismissed with costs payable on scale A.


N V Khumalo
Judge of the High Court
Gauteng Division, Pretoria

For the Applicant: Adv Du Preeze
 Adv Vorster
Instructed by: MD Mitchell (Withdrawn)
 ivy@mdmitchell.co.za

For the 1st Respondents: R Bekker
Instructed by: Cox Yeats Attorneys
 gpritchard@coxyeats.co.za