

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED: YES</u>
PILLAY J	
SIGNATURE	DATE 30/03/2028

In the matter between:

CASE №: 10455/2024

SAVIOUR ASSOCIATION OF SCHOOL GOVERNING BODIES

1ST APPLICANT

THE SCHOOL GOVERNING BODY OF THOMO
PRIMARY SCHOOL

2ND APPLICANT

V

HEAD OF DEPARTMENT, LIMPOPO DEPARTMENT
OF EDUCATION

1ST RESPONDENT

MEMBER OF EXECUTIVE COUNCIL, LIMPOPO
DEPARTMENT OF EDUCATION

2ND RESPONDENT

MIKATEKO ESTHER HONWANA

3RD RESPONDENT

LINAS RUBEN BALOYI

4TH RESPONDENT

In the matter between:

CASE №: 10456/2024

SAVIOUR ASSOCIATION OF SCHOOL GOVERNING BODIES

1ST APPLICANT

THE SCHOOL GOVERNING BODY OF PHALABORWA
PRIMARY SCHOOL

2ND APPLICANT

V

**HEAD OF DEPARTMENT, LIMPOPO DEPARTMENT
OF EDUCATION**

1ST RESPONDENT

**MEMBER OF EXECUTIVE COUNCIL, LIMPOPO
DEPARTMENT OF EDUCATION**

2ND RESPONDENT

KGAUGELO GLADYS MALATJI

3RD RESPONDENT

MATALANE BARNARD MAAKE

4TH RESPONDENT

In the matter between:

CASE No: 10641/2024

SAVIOUR ASSOCIATION OF SCHOOL GOVERNING BODIES

1ST APPLICANT

**THE SCHOOL GOVERNING BODY OF MASHABELA
PRIMARY SCHOOL**

2ND APPLICANT

V

**HEAD OF DEPARTMENT, LIMPOPO DEPARTMENT
OF EDUCATION**

1ST RESPONDENT

**MEMBER OF EXECUTIVE COUNCIL, LIMPOPO
DEPARTMENT OF EDUCATION**

2ND RESPONDENT

MAKADIKWE EUNICE LESHILO

3RD RESPONDENT

MOKGABUDI LAZARUS RALEKWE

4TH RESPONDENT

Delivered : 30 March 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **30 March 2026 at 15:00 PM.**

Dates heard : 10641/2024 - 19 Jan 2026; 10456/2024 - 21 Jan 2026; 10455/2024 - 22 Jan 2026

Coram : Pillay J

JUDGMENT

PILLAY J:

INTRODUCTION:

- [1] These three applications for review are being decided together on the premise that all three concern the same principles and disputed issues in respect of the appointment of the Principals of the aforementioned Schools by the first respondent in contravention of the recommendation made by the second applicant. The reviews were sought in terms of the Promotion of Administrative Justice Act¹ (PAJA) against the first and second respondent for the setting aside and or reviewing of their decision to deviate from the recommendation of the second applicant in all three cases wherein the appointment of the third respondent as opposed to the recommended candidate being the fourth respondent. The review was sought on the basis that the impugned decision was made without consulting the second applicant prior to the appointment of the third respondent. This was applicable in all three cases, and it is for these reasons that the judgment in respect of the three applications were dealt with in this one judgment. In essence the applicants are seeking relief in the form of reviewing and setting aside the impugned decision and remitting the matter back for reconsideration by the first respondent of the three appointments *de novo*. The applicants also applied for the appropriate cost order.
- [2] All three applications were opposed by the first and second respondents. The answering and replying affidavits with the heads of argument have been filed by the parties. In all three cases, the third and fourth respondents did not participate in the proceedings.

¹ Act 3 of 2000

BRIEF BACKGROUND:

- [3] In **case number 10455/ 2024**, it was common cause that around April 2024 the first respondent advertised the post of Principal at the Thomo Primary School. The second applicant conducted shortlisting and interviews for the post in question, which was followed by the second applicant's recommendations of suitable candidates with the fourth respondent being the first choice and the third respondent being the third choice for appointment in the post of Principal at the School. On 16 August 2024, the first respondent appointed the third respondent as Principal at the Thomo Primary School, notwithstanding the fact that the second applicant had recommended the fourth respondent as number one for appointment.
- [4] The applicants in terms of PAJA were dissatisfied that the first and second respondents had failed to provide reasons for their decision prior to deviating from the second applicant's recommendation. It is for those reasons that the applicants sought the Court to review and set aside the decision made by the first respondent in respect of the appointment, which was contrary to the recommendation by the second applicant.
- [5] The applicants maintained that the meeting of 27 August 2024 was held after the impugned decision was made to appoint the third respondent and that by the time that meeting was held the first respondent had already failed to give the second applicant adequate notice of the right of review or internal appeal when the first respondent took the impugned decision on 20 August 2024. The decision to justify the appointment did not remedy the failure to give adequate notice of the right of review or internal appeal on 20 August 2024, when the impugned decision was taken.

- [6] The applicants contend that the first respondent failed to comply with section 3(2)(b)(i) of PAJA by failing to give adequate notice of the nature and purpose of the proposed administrative action when taking the impugned decision on 20 August 2024. Moreover, at the time that the meeting of the 27 August 2024 took place, the first respondent had already failed to comply with section 3(2)(b)(v) of PAJA by failing to give adequate notice of the right to request reasons in terms of section 3(2)(b)(v) when taking the impugned decision on or about 20 August 2024. As there was non-compliance with PAJA at the time of taking the decision of 20 August 2024, the meeting of 27 August 2024 did not remedy the failure to comply with the provisions of section 3 of PAJA.
- [7] The respondents in opposing the application indicated to the Court that the authority and locus standi of Mr. Kubu Caiphas Mashutla to act on behalf of the second applicant and by him compiling the founding affidavit on behalf of the second applicant, in respect of all three matters were questionable and disputed. It was required of him to provide documentation to substantiate his claim that he was authorised by the second applicant to depose to the founding affidavit on behalf of the members of the School Governing Body. Therefore, the first applicant's *locus standi* to submit a founding affidavit and move the review application was challenged since the first and second respondents had received letters of dissatisfaction in the conduct and manner of the first applicant, following the appointment of the third respondent.
- Moreover, the first and second respondents indicated that the second applicant was not properly before Court with the relevant authority of all the members of the School

Governing Body, as the letter of authority to support this application lacked particulars reflecting the details of all the members having consented to institute review proceedings, in circumstances where various important role players in the School Governing Body had not participated in the decision.

[8] The first and second respondents briefly indicated that the application was without foundation, nonsensical, baseless and the relief sought was incompetent. The appointment, promotion and or non-appointment decision in respect of employees was exclusively within the purview and discretion of the employer and that as long as an objective procedure applicable to all the applicants had been followed in the non-appointment and or identification of candidates and appointment, the applicants before the Court could not bring a review application that sought to usurp the employer's discretion in the employment process and the Court should be very slow to interfere with the legitimate exercise of Governmental powers save in the clearest cases.

[9] The first and second respondents indicated that they were guided by the implementation of the Employment Equity Plan in line with the Constitution of the Republic of South Africa,² the Guidelines for the Implementation of Employment Equity Plan in the employment of Employees, in line with the provisions of the Employment of Educators Act³, and complied with the relevant procedure in that;

[9.1] On 30 July 2024, A formal meeting was held with members of the School Governing Body, the second applicant in particular, to conscientize them with

² See Act no 108 of 1996

³ See Act 76 of 1998

regard to the employment equity plan, they sketched out the steps and initiatives, in the advancement and appointment of under-represented groups and previously disadvantaged female educators, in relation to the vacant position of Principal at Thomo Primary School. Specific reference was made to the need to address the egregious lacunae(s) concerning the previously marginalized representation of females in the positions of Principal and the developed guidelines which were adopted in June 2023 and circulated to all relevant parties including the second applicant.

[9.2] The first and second respondents indicated that the applicants did not have any power to appoint educators but were required to recommend to the Head of Department the appointment of educators at the school, subject to the Employment of Educators Act,⁴ and the Labour Relations Act.⁵ The School Governing Body was required to submit in order of preference to the Head of Department, a list of at least three names of recommended candidates. This recommendation was to give effect to the principles of equality, redress, and representativity that were complied with, in the interview and recommendation process, and adhere to the provisions of the Employment Equity Act, and the Constitution.

[9.3] Section 6(3)(f) of the Employment of Educators Act provided that *"Despite the order of preference in paragraph(c) and subject to paragraph(d) the Head of Department may appoint any suitable candidate on the list."* accordingly the first and second respondents complied with the relevant provisions of the Act

⁴ See 3 above

⁵ See Act 66 of 1995.

and appointed the most appropriate candidate to the position of the Principal at Thomo Primary School, namely the third respondent.

[9.4] The first and second respondents indicated that once it came to the attention of the first and second respondents that the appointment of the third respondent was not as per the recommendation of the first preferred and recommended candidate from the second applicant, a series of meetings were held with the School in an attempt to assist and bring clarity in respect of the appointment of the third respondent, as opposed to the fourth respondent, who was a male and in conflict with the provisions of the Employment Equity Plan and the Employment of Educators Act. The first and second respondents contended that it was unfortunate that the applicants persisted and were unshaken and discontented with the appointment of the third respondent on account of her gender, amidst the fact that she was competent and capable of performing the duties as per the recommendation by the second applicant although not being the first choice candidate.

[10] The first and second respondents denied that there was non-compliance with the provisions of the relevant legislation and that the decision was in line with the Guidelines for the Implementation of Employment Equity Plan in the appointment of employees in line with the provisions of the Employment of Educators Act and the Department of Education's Equity Plan adopted on 2 June 2023. There was no basis for the applicants approaching the Court in terms of PAJA and that the application was to be dismissed with a cost order against the applicants.

- [11] In reply, the applicants maintained their authority to move the application. They highlighted that the first and second respondents failed to appreciate that the impugned decision was taken without consultation and without affording them the opportunity of making representations, prior to same and as a result this Court was obliged to review the decision which conflicted with PAJA. The only issue that they sought to be adjudicated before the Court was the procedural compliance and not the appointment itself. The applicants sought that the decision be reviewed and set aside and the matter be reverted back to the first respondent for reconsideration. The applicants sought costs if successful and if not that the Biowatch principle be applicable and each party is liable for his or her costs.
- [12] In **case number 10456/ 2024**, it was common cause that around April 2024 the post for Principalship at Phalaborwa Primary School was advertised. The School Governing Body held interviews and shortlisted candidates for the appointment, identifying the fourth respondent as the first choice and the third respondent as the second choice to be appointed to the position. The first respondent appointed the third respondent as Principal of Phalaborwa Primary School without providing reasons to deviate from the second applicant's recommendation. The applicants aggrieved by this decision approached this Court to have this decision reviewed, set aside and reverted to the first respondent for reconsideration.
- [13] The applicants contend that the first respondent failed to comply with section 3(2)(b)(i) of PAJA by failing to give adequate notice of the nature and purpose of the proposed administrative action when taking the impugned decision. Moreover, at the time that the decision was made, the first respondent had already failed to comply

with section 3(2)(b)(v) of PAJA by failing to give adequate notice of the right to request reasons in terms of section 3(2)(b)(v) when taking the impugned decision. As there was non-compliance with PAJA at the time of taking the decision, the meetings that followed did not remedy the failure to comply with the provisions of section 3 of PAJA.

- [14] The first and second respondents opposed the application questioning the authority and *locus standi* of Mr. Kubu Caiphas Mashutla to act on behalf of the second applicant as this was disputed. The first and second respondents indicated that it was required of him to provide documentation to substantiate his claim that he was authorised by the second applicant to depose to the founding affidavit on behalf of the members of the School Governing Body as this was disputed in respect of the relevant members of the School Governing Body and same was not complied with. The decision of the second applicant to support the first applicant in the review process was also disputed as the authority was questioned as certain members of the School Governing Body resigned due to the way certain members of the first applicant conducted themselves and they were not aligned with the decision to institute proceedings.
- [15] The first and second respondents guided by the implementation of the Employment Equity Plan in line with the Constitution of the Republic of South Africa, the Guidelines for the Implementation of Employment Equity Plan in the employment of Employees in line with the provisions of the Employment of Educators Act, complied with the relevant procedure in that;

[15.1] A formal meeting was held with members of the School Governing Body, the second applicant in particular to conscientize them with regard to the employment equity plan, sketched out the steps and initiatives, in the advancement and appointment of under-represented groups and previously disadvantaged female educators, in relation to the vacant position of Principal at Phalaborwa Primary School. Specific reference was made to the need to address the egregious lacunae(s) concerning the previously marginalized representation of females in the positions of Principal and the developed guidelines which were adopted in June 2023 and circulated to all relevant parties including the second applicant. This was done prior to the interviews and shortlisting of the recommended candidates by the second applicant. The respondents filed a record of said meeting dated 23 July 2024. The second applicant thereafter proceeded with the relevant interviews and the fourth and third respondents were shortlisted in order of preference as first and second for appointment on 31 July 2024.

[15.2] According to the first and second respondents the applicants did not have any authority to appoint educators but were obliged to recommend to the Head of Department the appointment of educators at the school, subject to the Employment of Educators Act, and the Labour Relations Act. The Governing Body was required to submit in order of preference to the Head of Department, a list of at least three names of recommended candidates. This recommendation must give effect to the principles of equality, redress and representativity that were complied with, in the interview and recommendation process, and adhere to the provisions of the Employment Equity Act, and the

Constitution. Having regard to the recommendations, it was established that the fourth respondent was already appointed to the position of Principal at Kgopsane Primary School, therefore not a suitable candidate to be considered for appointment as Principal at Phalaborwa Primary School. The first respondent guided by the second respondent considered the other recommended candidates and appointed the third respondent who was the most appropriate candidate to be appointed to the position of Principal at Phalaborwa Primary School and was one of the recommended candidates by the second applicant.

[15.3] The first and second respondent highlighted that Section 6(3)(f) of the Employment of Educators Act provides that *"Despite the order of preference in paragraph(c) and subject to paragraph(d) the Head of Department may appoint any suitable candidate on the list."* accordingly the first and second respondents had complied with the relevant provisions of the Act and appointed the most appropriate candidate to the position of the Principal at Phalaborwa Primary School, namely the third respondent.

[15.4] Once it came to the attention of the first and second respondents that the appointment of the third respondent was not as per the recommendation of the first preferred and recommended candidate, a series of meetings were held with the School in an attempt to assist and bring clarity in respect of the appointment of the third respondent, as opposed to the first recommended candidate, who was a male and already appointed to the post of Principal at Kgopsane Primary School and in conflict with the provisions of the Employment Equity Plan and the Employment of Educators Act. The first and

second respondents contended that the applicants persisted and were unshaken and discontented with the appointment of the third respondent on account of her gender, amidst the fact that she was competent and capable of performing the duties as per the recommendation of the second applicant although not being the first choice.

[16] The first and second respondents denied that there was non-compliance with the provisions of the relevant legislation and indicated that the decision was in line with the Guidelines for the Implementation of Employment Equity Plan in the appointment of employees in line with the provisions of the Employment of Educators Act and the Department of Education's Equity Plan adopted on 2 June 2023. There was no basis for the applicants approaching the Court in terms of PAJA and that the application should be dismissed with a cost order against the applicants.

[17] In reply, the applicants maintained their authority to move the application. The applicants highlighted that the first and second respondents failed to appreciate that the impugned decision was taken without consultation and without affording them the opportunity of making representations prior to same and as a result, this Court was obliged to review the decision which conflicted with PAJA. The only issue was the procedural compliance and not the appointment itself. The applicants sought that the decision be reviewed and set aside and the matter be reverted back to the first respondent for reconsideration. The applicants sought costs if successful and if not that the Biowatch principle be applicable and each party is liable for his or her costs.

- [18] In **case number 10641/2024**, it was common cause that around April 2024 the post for Principalship at Mashabela Primary School was advertised. The School Governing Body held interviews and shortlisted candidates for the appointment, identifying the fourth respondent as the first choice, and maintained that the third respondent had not been shortlisted to be appointed to the position. On 1 August 2024, the first respondent appointed the third respondent as Principal of Mashabela Primary School without providing reasons to deviate from the second applicant's recommendation or informing the second applicant how the third respondent was appointed as the third respondent was not shortlisted at all for appointment. The applicants aggrieved by this decision approached this Court to have the decision reviewed, set aside, and reverted to the first respondent for reconsideration.
- [19] The applicants contend that the first respondent failed to comply with section 3(2)(b)(1) of PAJA by failing to give adequate notice of the nature and purpose of the proposed administrative action when taking the impugned decision. Moreover, at the time that the decision was made, the first respondent had already failed to comply with section 3(2)(b)(v) of PAJA by failing to give adequate notice of the right to request reasons in terms of section 3(2)(b)(v) when taking the impugned decision. As there was non-compliance with PAJA at the time of taking the decision, the meetings that followed did not remedy the failure to comply with PAJA and at the time of this application, same was still not made available to the applicants.
- [20] The first and second respondents opposed the application questioning the authority and *locus standi* of Mr. Kubu Caiphas Mashutla to act on behalf of the second applicant as this was disputed. The first and second respondents indicated that it was

required of him to provide documentation to substantiate his claim that he was authorised by the second applicant to depose to the founding affidavit on behalf of the members of the School Governing Body as this was disputed in respect of the relevant parties, which made up the School Governing Body and same was not complied with. In this regard certain members of the School Governing Body had not consented to the second applicant approaching the Court and the second applicant was acting without authority.

- [21] The first and second respondents guided by the implementation of the Employment Equity Plan in line with the Constitution of the Republic of South Africa, the Guidelines for the Implementation of Employment Equity Plan in the employment of Employees in line with the provisions of the Employment of Educators Act, complied with the relevant procedure in that;

[21.1] A formal meeting was held with members of the School Governing Body, the second applicant in particular to conscientize them with regard to the employment equity plan, the first and second respondents sketched out the steps and initiatives, for the advancement and appointment of under-represented groups and previously disadvantaged female educators, in relation to the vacant position of Principal at Mantlatle Primary School. Specific reference was made to the need to address the egregious lacunae(s) concerning the previously marginalized representation of females in the positions of Principal and the developed guidelines which were adopted in June 2023 and circulated to all relevant parties including the second applicant. This was done prior to the interviews and shortlisting of the recommended candidates by the second applicant. The respondents filed a record of said

meeting dated 17 July 2024. The second applicant thereafter proceeded with the relevant interviews and the fourth respondent was shortlisted as first for appointment on 1 August 2024. The third respondent was listed as number three and was the first female candidate shortlisted by the second applicant. It was because of the need for compliance with the aforementioned legislation that it was fitting that the third respondent be appointed.

[21.2] The applicants did not have any right to appoint educators but were expected to make recommendations to the Head of Department for the appointment of educators at the school, subject to the Employment of Educators Act, and the Labour Relations Act. The Governing Body must submit in order of preference to the Head of Department, a list of at least three names of recommended candidates. The recommendation must give effect to the principles of equality, redress and representativity that were complied with in the interview and recommendation process, and adhere to the provisions of the Employment Equity Act, and the Constitution. Having regard to the recommendations, it was established that the fourth respondent was the first recommended candidate, but this was not in compliance, and as such the most appropriate candidate to be appointed was the third respondent who was appointed to the position of Principal of Mantlatle Primary School.

[21.3] The first and second respondent highlighted that Section 6(3)(f) of the Employment of Educators Act provided that *"Despite the order of preference in paragraph(c) and subject to paragraph(d) the Head of Department may appoint any suitable candidate on the list."* accordingly the first and second respondents complied with the relevant provisions of the Act and appointed

the most appropriate candidate to the position of Principal at Mantlatle Primary School, namely the third respondent.

[21.4] The appointment of the third respondent was not as per the recommendation of the first preferred and recommended candidate, resulting in a series of meetings which were held between the first and second respondent and the School in an attempt to assist and bring clarity in respect of the appointment of the third respondent, as opposed to the first recommended candidate, who was a male and in conflict with the provisions of the Employment Equity Plan and the Employment of Educators Act. The respondents contended that the applicants persisted and were unshaken and discontented with the appointment of the third respondent on account of her gender, amidst the fact that she was competent and capable of performing the duties as per the recommendation of the second applicant although not being the first choice. The second applicant's recommendation was flawed as there was non-compliance with the provisions of the Employment Equity Plan and the Employment of Educators Act. The first and second respondents appreciated that as the third respondent was not from the community, her presence at the school was challenged by the parents of the school and community to the extent that the third respondent had to be placed at another School.

[22] The first and second respondents denied that there was non-compliance with the provisions of the relevant legislation and that the decision was in line with the Guidelines for the Implementation of Employment Equity Plan in the appointment of employees in line with the provisions of the Employment of Educators Act and the Department of Education's Equity Plan adopted on 2 June 2023. There was no basis

for the applicants approaching the Court in terms of PAJA and that the application be dismissed with a cost order against the applicants.

[23] In reply, the applicants were silent concerning their authority to move the application and highlighted that the first and second respondents failed to appreciate that the impugned decision was taken without consultation and without affording them the opportunity of making representations prior to same and as a result this Court was obliged to review the decision which conflicted with PAJA. The only issue was the procedural compliance and not the appointment itself. The applicants sought that the decision be reviewed and set aside and the matter be reverted back to the first respondent for reconsideration. The applicants sought costs if successful and if not that the Biowatch principle be applicable and each party is liable for his or her costs.

[24] Both parties handed in written arguments in respect of all three matters with the applicants praying for the orders as sought in the review applications with costs and the first and second respondents sought for the dismissal of the review applications with costs.

ISSUES FOR DETERMINATION

[25] The crisp issues to be determined are:

[25.1] Whether there was non-compliance with the procedural requirements as provided in section 3 of PAJA as alleged by the applicants.

[25.2] Whether the first and second applicants had *locus standi* to institute these proceedings on behalf of the School Governing Bodies in respect of the three different Schools.

- [25.3] Whether there was an obligation on the first and second respondents to only consider and appoint the first recommended candidate as appropriate for the position of Principal at the abovementioned Schools.
- [25.4] Whether there was an obligation on the first respondent to revert to the second applicant when the decision was made to deviate from the first choice of the second applicant.
- [25.5] Whether the decision was in line with the Guidelines for the Implementation of Employment Equity Plan in the appointment of employees in line with the provisions of the Employment of Educators Act and the Department of Education's Equity Plan adopted on 2 June 2023 and that the aforesaid provisions having not been complied with by the applicants, rendered the first choice candidate unsuitable for appointment.

LEGAL PRINCIPLES AND APPLICABILITY IN RESPECT OF ALL THREE CASES

- [26] In order to litigate in the public interest, an applicant must show that he or she is truly acting in the public interest, and that the 'public' has sufficient interest. In **Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others**⁶ O' Regan J stated:

"This Court will be circumspect in affording applicants standing by way of s 7(4)(b)(v) and will require an applicant to show that he or she is genuinely acting in the public interest. Factors relevant to determining whether a person is genuinely acting in the public interest will include considerations such as: whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective

⁶ See 1996 (1) SA 984 (CC) at paragraph 234

application; and the range of persons or groups who may be directly or indirectly affected by any order made by the Court and the opportunity that those persons or groups have had to present evidence and argument to the Court. These factors will need to be considered in the light of the facts and circumstances of each case."

- [27] In the three matters before the Court, the first applicant Saviour Association of School Governing Bodies, was identified as an association of School Governing Bodies within the Republic of South Africa, whose authority stemmed from the Constitution and the authority assigned to them by the second applicants. It was apparent that in respect of the second applicants, amidst being identified as the School Governing Body from the relevant documentation, their authority to institute these proceedings was in dispute considering the conflict pertaining to whether they were authorised to act on behalf of their members in respect of all three applications.
- [28] The first and second respondents highlighted that as the relevant members had not appended their signatures to the authorisation, and had expressed their disapproval of the conduct of the applicants, especially that of Mr Kubu Caiphas Mashutla having to depose to an affidavit, on behalf of the second applicants, in all three matters, whilst there was discord amongst the second applicants, concerning his role and representation on their behalf. The first and second respondents were of the view that the parties were not properly before the Court and had no standing to institute these proceedings. The applicants were silent in reply to these allegations but preferred for the Court to focus on the procedural defects in the manner in which the candidates were appointed, without consulting the applicants prior to the decision and implementation of same. The Court considered that where there were factual

disputes, the following principle applied, namely the onus-bearing party who elected not to lead oral evidence, to resolve conflicts of fact, must discharge the onus on an acceptance of the facts, alleged by him which were not disputed, together with the facts alleged by his opponent. In this instance, the applicants failed to discharge that *onus* on them concerning their *locus standi* as disputed by the first and second respondents. The circumstances as portrayed by the first and second respondent was most likely true, considering the applicant's silence on these very serious allegations of the manner in which these proceedings were instituted. On this aspect alone, the applicant's cases stood to fail.

[29] The Promotion of Administrative Justice Act 3 of 2000 was implemented as noted in the preamble *"to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996; and to provide for matters incidental thereto"*, was promulgated for the purpose of ensuring that when administrative decisions were made that the correct procedure was followed.

[30] The applicants sought review of the decision of the first respondent based on the non-compliance with Section 3 of PAJA. Reliance placed on Section 3(2)(b) of the said act.

Section 3 "Procedurally fair administrative action affecting any person"

Section 3(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

3(2)(a) A fair administrative procedure depends on the circumstances of each case.

3(2)(b) In order to give effect to the right to procedurally fair administrative action, an

administrator, subject to subsection (4), must give a person referred to in subsection (1)-

3(2)(b)(i) adequate notice of the nature and purpose of the proposed administrative action;

3(2)(b) (ii) a reasonable opportunity to make representations;

3(2)(b) (iii) a clear statement of the administrative action;

3(2)(b) (iv) adequate notice of any right of review or internal appeal, where applicable; and

3(2)(b) (v) adequate notice of the right to request reasons in terms of section 5.

3(3) In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to-

3(3)(a) obtain assistance and, in serious or complex cases, legal representation;

3(3)(b) present and dispute information and arguments; and

3(3)(c) appear in person.

3(4)(a) If it is reasonable and justifiable in the circumstances, an administrator may depart from any of the requirements referred to in subsection (2).

3(4)(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including-

3(4)(b) (i) the objects of the empowering provision;

3(4)(b) (ii) the nature and purpose of, and the need to take, the administrative action;

3(4)(b) (iii) the likely effect of the administrative action;

3(4)(b) (iv) the urgency of taking the administrative action or the urgency of the matter; and

3(4)(b) (v) the need to promote an efficient administration and good governance.

3(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.

[31] The applicants noted that the first respondent failed to inform the second applicant in all three cases that the recommendation of their first-choice candidate was not accepted and that the respondents had decided to appoint another candidate. The applicants took issue with the fact that there was no communication to the second applicants of this decision prior to it being announced. The second applicant was not afforded the right to make representations, object, or be given reasons for the impugned decision. This conduct by the first and second respondents was in contravention of Section 3(2) of PAJA and therefore the appointment of the third respondent in all three cases was destined to be reviewed and set aside.

[32] Section 6(3) of the Educators Act states:

“(a) Subject to paragraph (m), any appointment, promotion or transfer to any post on the educator establishment of a public school may only be made on the recommendation of the governing body of the public school and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are in excess and suitable for the post concerned.

(b) In considering the applications, the governing body or the council, as the case may be must ensure that the principles of equity, redress and representivity are complied with and the governing body or council, as the case may be, must adhere to—

- (i) the democratic values and principles referred to in section 7(1);*
- (ii) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators;*
- (iii) any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators which the candidate must meet;*
- (iv) a procedure whereby it is established that the candidate is registered or qualifies for registration as an educator with the South African Council for Educators; and*
- (v) procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body.*
- (c) The governing body must submit, in order of preference to the Head of Department, a list of —*
 - (i) at least three names of recommended candidates: or*
 - (ii) fewer than three candidates in consultation with the Head of Department.*
- (d) When the Head of Department considers the recommendation contemplated in paragraph (c), he or she must, before making an appointment, ensure that the governing body has met the requirements in paragraph (b).*
- (e) If the governing body has not met the requirements in paragraph (b), the Head of Department must decline the recommendation.*
- (f) Despite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable candidate on the list.*
- (g) If the Head of Department declines a recommendation, he or she must —*
 - (i) consider all the applications submitted for that post;*
 - (ii) apply the requirements in paragraph (b)(i) to (iv); and*
 - (iii) despite paragraph (a), appoint a suitable candidate temporarily or re-advertise the post.*

(h) The governing body may appeal to the Member of the Executive Council against the decision of the Head of Department regarding the temporary appointment contemplated in paragraph (g).

(i) The appeal contemplated in paragraph (h) must be lodged within 14 days of receiving the notice of appointment.

(j) The appeal must be finalised by the Member of the Executive Council within 30 days.

(k) If no appeal is lodged within 14 days, the Head of Department may convert the temporary appointment into a permanent appointment as contemplated in section 6B.

(l) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body was requested to make a recommendation, failing which the Head of Department may, subject to paragraph (g), make an appointment without such recommendation.

(m) Until the relevant governing body is established, the appointment, promotion or transfer in a temporary capacity to any post on the educator establishment must be made by the Head of Department where a —

*(i) new public school is established in terms of the **South African Schools Act, 1996**, and any applicable provincial law;*

(ii) ...repealed

[33] It was apparent that the School Governing Body in all three cases was actively involved in the identification shortlisting and interviewing of the candidates. They had also made the relevant recommendations of the candidates, for consideration to be appointed, to the first and second respondents, especially the first preferred candidate being the fourth respondent in all three matters.

[34] Section 6(3)(b) of the Educators Act required the following of the School Governing Body,

“(b) In considering the applications, the governing body or the council, as the case may be must ensure that the principles of equity, redress and representivity are complied with and the governing body or council, as the case may be, must adhere to—

- (i) the democratic values and principles referred to in section 7(1);*
- (ii) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators;*
- (iii) any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators which the candidate must meet;*
- (iv) a procedure whereby it is established that the candidate is registered or qualifies for registration as an educator with the South African Council for Educators; and*
- (v) procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body.*

[35] It was clear that the School Governing Body complied by submitting a list of recommended candidates in terms of section 6(3)(c)(i) of the Educators Act, but what was keenly noted was that the first choice candidate in all three matters whose details were submitted to the Head of Department, were all male candidates which was clearly in conflict with the mandate given to the School Governing Body to ensure that the principles of equity, redress and representivity were complied with, and to which all the schools had been conscientized about prior to the interview process. The applicants do not take issue with the appointment, amidst it not being the first candidate which was the second applicant's choice, in all three matters but their

complaint was based on the fact that they were not consulted, prior to that appointment.

[36] Section 6(3)(d) of the Educators Act notes, “*When the Head of Department considers the recommendation contemplated in paragraph (c), he or she must, before making an appointment, ensure that the governing body has met the requirements in paragraph (b)*”. Once that was ventilated the Head of Department was required to consider section 6(3)(f) which notes, “*Despite the order of preference in paragraph (c) and subject to paragraph (d), **the Head of Department may appoint any suitable candidate on the list.***” This was what was done in all three matters, which according to the first respondent, complied with the aforementioned legislation. The decisions to appoint the third respondents in all three cases were appropriate in the circumstances and the first and second respondents, could not be faulted. The nub of the matter raised by the applicants was the need to comply with PAJA in respect of the consultation prior to making the decision.

[37] Regard was had to the provisions of section 6(3)(f) of the Educators Act which provides for deviation from the first-choice candidate selected by the School Governing Body and afforded the Head of Department the authority to appoint any of the other shortlisted candidates, provided there was compliance with the provisions of the relevant legislation. There was no mention in section 6(3)(f) of the Educators Act of the need to consult with the School Governing Body, once a decision to select another of the recommended candidates, especially as those potential candidates were recommended by the School Governing Body, amidst not being the first preferred candidate.

[38] The applicants sought to rely on the provisions of section 3(2)(b)(i) through to section 3(2)(b)(v) of PAJA as motivation for why the decision by the first respondent was reviewable and to be set aside. The applicants unfortunately lost sight of the provisions of section 3(4) of PAJA which reads;

3(4)(a) If it is reasonable and justifiable in the circumstances, an administrator may depart from any of the requirements referred to in subsection (2).

3(4)(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including-

3(4)(b) (i) the objects of the empowering provision;

3(4)(b) (ii) the nature and purpose of, and the need to take, the administrative action;

3(4)(b) (iii) the likely effect of the administrative action;

3(4)(b) (iv) the urgency of taking the administrative action or the urgency of the matter;
and

3(4)(b) (v) the need to promote an efficient administration and good governance.

3(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.

[39] It was clear from papers placed before the Court in respect of all three cases that when the Head of Department considered the three appointments for Principals at the abovementioned three schools, there was clear compliance with the relevant legislation, and in terms of the recommendation made by the second applicants, in all three cases amidst it was not their first preferred candidate. There was no duty to have to revert to the School Governing Bodies as their recommendation was being followed. Moreover, section 6 of the Educators Act was clear concerning the process

to be followed. The decision made by the first respondent was in compliance with the Educators Act and was promoting efficient administration and good governance, which ultimately is the purpose of PAJA, this Court is satisfied that the review sought by the applicants was without basis and merit. There was no obligation on the First respondent to consult the second applicant prior to complying with the recommendation made by the second applicant in all three cases. It is for the abovementioned reasons that the three applications are dismissed.

COSTS:

- [40] The applicants sought costs in respect of the application and if unsuccessful that the Biowatch principle be applicable if unsuccessful as the matter was in the interest of the public. The first and second respondents sought costs on party and party scale B, if the applications were dismissed.

RULING:

- [41] The three applications for review sought by the Applicants in terms of PAJA are dismissed.

ORDER:

- [42] In the result the following order is made:-

[42.1] The review applications in the following cases;

CASE NO: 10455/2024;

CASE NO: 10456/2024; and

CASE NO: 10641/2024 are all dismissed

[42.2] Each party is to pay his or her own costs.


K.L. PILLAY J

JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT

: Adv. S.S. Tebeile; Adv T.A. Makola;
Adv K.A. Thutja

INSTRUCTED BY

: ML Shoba Attorneys

FOR THE RESPONDENT

: Adv. T Tshitereke

INSTRUCTED BY

: Office of the State Attorney, Limpopo
Polokwane