

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026/047627

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
14	14 May 2026
DATE	SIGNATURE

In the matter between:

THANDUXOLO TYUMERE

Applicant

and

THE UNIVERSITY OF THE WITWATERSRAND

Respondent

JUDGMENT

MYBURGH, AJ

Introduction

1. The applicant, Mr Tyumere was registered as a final year medical student with the respondent ("the university") during the 2025 academic year.

2. One of the course requirements required Mr Tyumere to submit an assignment, which he did early in July of that year. That assignment initially scored a mark of 48%. However, Mr Tyumere was later informed that the assignment had been reviewed and that the “objective” (which I understand to mean the subject of the assignment) had been rejected this for reasons that I do not consider necessary to canvass. Mr Tyumere was invited to re-submit. That was on 13 November.
3. Mr Tyumere re-submitted his assignment, which I understand to have been a revised version of his original submission, on 19 November. That resubmission was also rejected. In addition, it was considered non-compliant on account of his alleged failure to include a “Turnitin” report, which, according to the evidence, is an AI-generated report that is aimed at identifying instances of plagiarism.
4. On 20 November, Mr Tyumere had an in-person meeting with the course coordinator, Professor Saloojee, who maintained the position that the assignment had been rejected for the reason set out above – i.e. the objectives were rejected. The result or implication was that Mr Tyumere was considered to have failed the assignment. The further implications were that he would not, in terms of the rules applicable to the course, be permitted to write what was referred to in the papers as the “IPC” exam and would therefore not be able to graduate at the end of that year. Prof Saloojee confirmed his position in an email to Mr Tyumere the following day, although nothing turns on that.
5. Mr Tyumere responded by raising a formal grievance.
6. On 26 November, Mr Tyumere received an email from the assistant dean of the faculty in which he was informed that he would be permitted to sit the IPC exam but that his results would be withheld pending the outcome of a review of the “satisfactory performance” criterion by the academic misconduct committee.
7. Mr Tyumere duly sat the exam, and his marks were withheld per the communication referred to above.

8. On 4 December, Mr Tyumere met with the student academic misconduct committee. According to his evidence, the purpose of that meeting was to rebut the allegations of plagiarism and the citation of a non-existent source that had been made against him by Prof Saloojee.
9. On 21 December, Mr Tyumere addressed an email to the committee in which he enquired regarding the outcome of his grievance and requested the release of his exam results.
10. That communication prompted a response from a member of the committee, Prof Behrens in which he was informed that the committee had found numerous discrepancies between sources and the content of his assignment, and that the matter had consequently been referred to the university's legal office. That was also on 21 December.
11. On 9 January this year, Mr Tyumere's attorney addressed a letter to the university in which he demanded the reinstatement of the original assignment mark of 48% and the release of Mr Tyumere's exam mark.
12. On 13 January, the university's legal office addressed a letter to Mr Tyumere's attorney in which he was advised that a decision as to whether to charge Mr Tyumere with misconduct had not yet been made and that the matter was still under consideration.
13. That communication was followed by a further letter of 17 January in which the university essentially took issue with the contents of Mr Tyumere's attorney's letter and rejected the demands made therein.
14. Some further correspondence ensued. The contents are not of importance. Suffice it to say that the parties adhered to their respective positions.
15. Mr Tyumere and his attorney also met a representative or representatives of the university's legal office. It appears that Mr Tyumere complained about the delay in finalising the complaint against him and contended that he was being prejudiced. However, he did not insist on having the matter brought to a head without further delay, but instead persisted in his demands – namely, that his

original assignment mark be reinstated and that his examination mark be released. No resolution was reached. That was on or about 13 February.

16. On 15 January, Mr Tyumere's attorney addressed a further letter to the university in which he reiterated Mr Tyumere's previous demands.
17. That letter was responded to by way of a letter from the university's attorneys. The letter was quite lengthy, but it would serve no purpose to traverse its content on any detail. Suffice to say that Mr Tyumere's demands were rejected. That was on 20 February.
18. Mr Tyumere launched the present application on an urgent basis, on 27 February and sought the following substantive relief –
 - (a) that the respondent be compelled and directed to release the applicant's Integrated Primary Care examination results;
 - (b) that the respondent be interdicted from conducting any disciplinary proceedings in respect of the Evidence-Based Medicine ("EBM") assignment; and
 - (c) that the applicant's initial EBM assignment mark of 48% be reinstated.
19. The university was given until 4 March to deliver its answering papers, and the matter was enrolled for hearing in the week of 10 March.
20. I will deal with the contents of Mr Tyumere's founding affidavit at an appropriate juncture.
21. Following receipt of the application, the university commenced disciplinary proceedings against Mr Tyumere.
22. In its answering affidavit the university took issue both in relation to the alleged urgency of the matter and in relation to the merits.
23. I will deal with the issues in that order.

Urgency

24. Mr Tyumere's case rested on the fact that he had received an offer of employment that he was required to take up by 1 April this year, for which purpose he was required to have the necessary qualifications – i.e. a degree in medicine.
25. I find it difficult to understand how that fact could, in and of itself, serve to render the matter urgent. After all, one would think that Mr Tyumere's intention had at all relevant times been to obtain employment as an intern once he had completed his degree. Indeed, experience and common sense suggest that he would have been seeking opportunities and making applications in the course of his final year, and that he would, if sufficiently fortunate, have obtained such employment subject to him passing. Mr Tyumere also knew for several months prior to launching the application that his fate was in jeopardy and that his exam marks would not be released unless and until he was cleared of the allegations that had been levelled at him by Prof Saloojee.
26. To this I would add that if his true complaint was that the university was dragging its heels in reaching a decision as to whether or not to charge him, then the appropriate remedy would have been to have sought an order compelling the university to either proceed with the charge within a stipulated period or to regard the complaint as having been without merit. That he could have done in the latter part of last year.
27. I am accordingly of the view that Mr Tyumere failed to make out a case for the degree of urgency contended for. In my view, the urgency was, at least to a large extent, self-created.
28. That said, I permitted argument on the merits and have reached a view. That being the case, I believe that it would constitute a waste of judicial resources if I were, in the circumstances, to strike the matter from the roll, thereby leaving it open to Mr Tyumere to re-enrol the matter.

The merits

29. In its answering papers, the university contended that Mr Tyumere had failed to make out a case for the relief sought. In that regard, it contended that courts will only grant interdictory relief of the kind sought, in exceptional cases, and that Mr Tyumere had failed to allege or prove the existence of circumstances so exceptional as to warrant the court's intervention. The university also took issue with the proposition that the mark allocated was not susceptible of review once it had been published. In addition, it contended that the proceedings had not been properly brought in that Mr Tyumere's complaint ought properly to have been prosecuted by way of a review in terms of PAJA.¹
30. I think it appropriate, before embarking on an analysis of the merits, to say something about the law – an aspect in which I found Mr Tyumere's case to be lacking. I can do no better in this regard than to refer to the judgment of the Supreme Court of Appeal ("SCA") in *Dyantyi v Rhodes University and Others*.² The relevant portions of that judgment read as follows:

"[19] As a public higher education institution, the university is publicly funded for the purpose of achieving the obligation of the state under s 29(1)(a) of the Constitution to make the right to higher education progressively available and accessible. It follows that the university is an organ of state as defined in s 239 of the Constitution and thus in s 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). In terms of s 27(1) of the Higher Education Act, the university is governed by its council. Section 32(2)(d), inter alia, provides that the council may make institutional rules regarding disciplinary measures and disciplinary procedures relating to students. In terms of s 36, every student at a public higher education institution is subject to the disciplinary measures and disciplinary procedures determined by its institutional rules. The council of the university approved and the university applied the disciplinary code under these empowering provisions.

[20] Therefore, in subjecting Ms Dyantyi to a disciplinary inquiry, the university exercised a public power and/or performed a public function in terms of

¹ Promotion of Administrative Justice Act 3 of 2000.

² [2022] ZASCA 32;
2023 (1) SA 32 (SCA).

legislation, within the meaning of the definition of 'administrative action' in s 1 of PAJA. The decisions clearly affected Ms Dyantyi's rights adversely by direct external legal effect. It follows that PAJA was applicable and that Ms Dyantyi had the right to procedural fairness encapsulated in s 3 of PAJA."

31. On my understanding, it follows that Mr Tyumere's proper remedy, if he was dissatisfied with any decision made by the university, was to institute review proceedings in terms of PAJA. Why that was not considered appropriate was not addressed in his founding papers, which were silent on the issue. As PAJA was not relied upon, the only alternative, as I understand the position, would be a review based purely on legality – although that was not specifically alleged.
32. On either basis, I have to confess to having serious difficulty with the proposition that relief in the form of a review could be competent in respect of what was described as a "non-decision" – i.e., as to whether or not to charge Mr Tyumere with misconduct; however I will say no more in that regard and will instead proceed on the assumption that such a "non-decision" can validly form the subject of a review.
33. As appears from what I have already said, Mr Tyumere's case in that regard seemed to rest on the proposition that the university had unreasonably dragged its heels on that issue, thereby causing him prejudice. I have several difficulties with that thesis. In the first instance, it was not alleged that the university was required to make a decision on the issue within any stipulated period. Nor did Mr Tyumere allege what would have constituted a reasonable period, or when such period would have expired. The university was also never placed on terms. On the contrary, the issue was first raised by way of an assertion which, in reality, amounted to the contention that a reasonable time had passed and that the university was consequently barred from charging Mr Tyumere on account of alleged prejudice. Precisely what the alleged prejudice comprised was never addressed – neither in the correspondence nor in Mr Tyumere's papers. In particular, none of the usual

grounds associated with prejudice arising from delay were mentioned – for example, that witnesses had died or that evidence was no longer available.

34. Added to that, the issue had become moot by the time the matter came before me, given the university's decision to institute disciplinary proceedings against Mr Tyumere.
35. I am accordingly of the view that the review portion of the application must fail.
36. Turning to the prayer for interdictory relief, the starting point would be the establishment of a right – which, given the nature of the relief sought (i.e., a final interdict), would have to have been a clear right, as opposed to what is often referred to as a *prima facie* right. The authorities are so well known that it is not necessary to cite any of them.
37. I could not discern the nature of the right contended for. That said, the only right that could conceivably arise is the right to just and fair administrative action. Mr Tyumere would also, in the context of the disciplinary proceedings, enjoy the usual rights that apply to accused persons in the context of quasi-judicial proceedings. I will not say anything further in that regard, given that it was not asserted that the tribunal would not respect or afford him those rights.
38. In my view, Mr Tyumere's case in respect of his claim for interdictory relief also stumbles at another hurdle. That is that he does indeed have a satisfactory alternative remedy, viz. to put his case forward in the course of the enquiry. If he is dissatisfied with the outcome of those proceedings (which is not to be assumed), then his remedy will be to seek a review.
39. In closing, I believe it appropriate to mention that the jurisdiction of our courts in relation to matters of this nature is essentially that of review. Thus, our courts will not, by way of an interdict, direct an administrative or quasi-judicial body to exercise the powers vested in it in a particular way. An order of the kind sought by Mr Tyumere (i.e., prohibiting the holding of a disciplinary enquiry) will, by the same token, not be made save in very exceptional

circumstances³ – the existence of which were not even alleged, much less established.

40. I accordingly make the following order:

1. The application is dismissed with costs, costs of counsel to be taxable according to scale B.

G S Myburgh
Acting Judge of the High Court
Gauteng Division
Johannesburg

Appearances

For the Applicant: M. Mfeka

Instructed by: Mogashoa Attorneys

For the Respondent: M. Sibanda

Instructed by: Edward Nathan Sonnenbergs Inc.

Date of Hearing: 12 March 2026

Date of Delivery: 14 ~~14~~ May 2026

³ In this regard see *Nkhutha and others v University of Johannesburg* [2025] ZAGPJHC 1056.

