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

Case Number: 2025-036069

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

_____ _____
DATE SIGNATURE

In the matter between:

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|---|---|
| **CUTHBERT KING CHANETSA** | First Applicant |
| **MIKE HENRY** | Second Applicant |
| and | |
| **ERROL PLAATJIES** | First Respondent |
| **THE CATHOLIC ORDER OF THE KNIGHTS OF DA GAMA** | Second Respondent |
| **ROBIN MERVYN BUYS VAN DER WALT** | Third Respondent |

*Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The judgment is deemed to have been handed down on 25 May 2026.*

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**JUDGMENT**

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**MENTZ AJ**

*Introduction*

[1] The second respondent, the Catholic Order of the Knights of Da Gama (the Order) is a voluntary association and registered non-profit organisation established as a Catholic brotherhood rooted in the Christian faith and values. The Order is governed by its Constitution, Laws and Code of Honour (CLC).

[2] This is an application for the review and setting aside of a decision taken on 2 October 2024 by the Order to expel the first and second applicants as members of the Order and dismiss them from the positions held within the Order (the impugned decision). The applicants respectively held the positions of Supreme Advocate and Supreme Treasurer with the Order prior to their expulsion.

[3] The first respondent, Mr Plaatjies, was at all material times the Supreme Knight of the Order, and the third respondent, Mr Van der Walt, served as Supreme Counsellor and general manager of the Alan Woodrow Park retirement homes (AWP), a property portfolio owned and operated by the Order.

[4] AWP comprises an extensive property portfolio of retirement homes and frail care facilities in Pretoria, Boksburg, Welkom and Brakpan. It is managed by a Board of Management comprising members and trustees of the Order. The first applicant was appointed vice chairman of the Board of Management, and the second applicant was later appointed to that Board.

[5] From approximately 2023, tensions arose between the applicants on the one hand and certain office-bearers and management personnel (particularly the third respondent and the chairman of the Board of Management, Mr Anthony Beale) on the other. The applicants raised concerns about governance failures at AWP, including inadequate provision of financial information to the Board and incomplete, vague financial reporting. They also complained of back-dated employment contracts for the third respondent and AWP's financial manager, substantial salary increases and a large vehicle loan to the third respondent

allegedly approved without proper Board oversight, and the failure to submit consolidated accounts to SARS since 2020.

[6] The respondents contend that these concerns were either unfounded or raised in bad faith after the first applicant developed a personal grievance against the third respondent following a disagreement over voting procedures at a Board meeting in 2023. According to the respondents, the applicants' conduct became increasingly disruptive, undermining the authority of the Supreme Knight, refusing to attend meetings unless on their own terms, and threatening not to reimburse legitimate expenses incurred by other officers.

[7] A trustee meeting scheduled for 26 September 2024 to address the escalating conflict proceeded without the applicants, who declined to attend on the basis that no agenda had been provided and that the meeting was premature. According to the applicants the meeting was converted, without notice to them, into a disciplinary enquiry. On 2 October 2024, the applicants received letters informing them that they had been expelled from the Order with immediate effect.

[8] The applicants were charged, found guilty, and expelled without prior knowledge of a disciplinary inquiry or the charges against them. It was conceded in argument by counsel for the respondents that the charges were only communicated to the applicants after the fact, and that they were not informed of the disciplinary proceedings in advance of it having taken place.

[9] The application was encumbered by three interlocutory applications brought in terms of Rules 30 and 30A, and by no fewer than ten points *in limine* raised by the respondents. In all, eighteen (18) affidavits were filed: nine in the main application, and a further nine in the three Rule 30 and/or 30A applications. This proliferation of procedural issues did little to advance the determination of the real dispute between the parties and resulted in a substantial increase in the volume of papers and costs. It further created the impression that procedural objections were being pursued at the expense of engaging with the substantive issues in dispute.

*The interlocutory Rule 30/30A applications*

[10] In summary, the interlocutory applications brought in terms of Rule 30/30A are:

a. An application by the applicants on 23 July 2025 to strike out supplementary affidavits filed by both the first and second respondents respectively, wherein the complaint was that the applicants did not apply for condonation of the late filing of their replying affidavits either in the filing notice or by way of a separate notice. The applicants then brought a Rule 30 application to set the first and second respondents' supplementary affidavits that complain about the late filing of the replying affidavit aside (the first Rule 30 application).

b. An application by the third respondent on 11 August 2025 to strike a notice in terms of Rule 6(15), filed by the applicants on 2 July 2025, where they seek to strike certain paragraphs from the third respondent's answering affidavit. According to the third respondent, this notice in terms of Rule 6(15) was not supported by a founding affidavit and did not comply with the Rules of Court (the second Rule 30 application)

c. An application by the first and second respondents on 3 September 2025 to set aside the first Rule 30/30A application brought by the applicants on 23 July 2025 (the third Rule 30 application).

[11] None of these interlocutory Rule 30/30A applications, if granted, would finally dispose of any material issue between the parties. On the contrary, they concern matters that do not advance the merits of either party and have required this court to expend considerable time and resources traversing a voluminous record in order to determine issues that did not advance the resolution of the substantive dispute or the orderly conduct of the proceedings.

*The first Rule 30 application*

[12] The two supplementary affidavits filed by the first and second respondents respectively, opposing condonation for the late filing of the applicants' replying affidavit, were deposed to by the same deponent and contained the same information. The Rules of Court do not make provision for further affidavits to be filed without the leave of the Court. In these circumstances the applicants

were entitled to bring the first Rule 30 application, although it did not contribute to the resolution of any material issue between the parties.

[13] From the timeline it appears that the applicants' replying affidavit in the main application was filed two days late. That minor delay resulted in the filing of eight additional affidavits: two supplementary affidavits by the first and second respondents opposing condonation, a full set of affidavits in the first Rule 30 application, and a further full set in the third Rule 30 application, which sought to set aside the first. This sequence of interlocutory steps was unnecessary and inconsistent with the efficient conduct of litigation.

[14] No prejudice has been alleged or shown by the respondents for the filing of the replying affidavits two days after it was due. Condonation for the late filing of the replying affidavit is accordingly granted.

*The second Rule 30 application*

[15] In the second Rule 30 application brought by the third respondent, the complaint is directed at a notice filed by the applicants in terms of Rule 6(15) to strike certain paragraphs from the third respondent's answering affidavit. The Rule 6(15) notice states that application will be made at the hearing for the striking out of certain paragraphs in the third respondent's answering affidavit. It then lists the paragraph numbers in prayer 1, and in prayer 2 states that the striking out is sought on the basis that the allegations are (a) vexatious; (b) scandalous; (c) defamatory; (d) irrelevant; or constitute new matter/evidence.

[16] The second Rule 30 application is based on the contention that the notice does not comply with the Rules of Court in that it is not supported by a founding affidavit, it does not provide for the filing of an answering affidavit that would allow for the third respondent to counter the allegations made, and that no basis is set out why the paragraphs referred to in the notice should be struck.

[17] Applications under Rule 6(15) are interlocutory in nature and governed by Rule 6(11). Such applications must be brought on notice and Rule 6(11) is clear that it may be supported by affidavits as the case may require. A supporting affidavit is therefore not an essential requirement for filing a notice under Rule 6(15).

[18] In the premises there is no merit in the second Rule 30 application brought by the third respondent and it is dismissed.

*The third Rule 30 application*

[19] I turn to deal with the third Rule 30 application brought by the first and second respondents on 11 August 2025 to strike out the first Rule 30 application brought by the applicants. The notice of motion is headed *'This Respondent's Notice in terms of Rule 30(2)(b)/Rule 30A – Irregular Step'.* The main complaint is that the notice is not in accordance with Form 2(a), and that the notice does not provide the respondents with an opportunity to oppose the application or file answering affidavits.

[20] Despite the alleged deficiencies in the notice, the first and second respondents nevertheless filed an answering affidavit to the applicants first Rule 30 application on 7 August 2025. Rule 30(2)(a) is clear: an application in terms of Rule 30 to set aside an irregular step can only be made if the applicant has not himself taken a further step in the cause with knowledge of the irregularity. In this case the first and second respondents had taken the further step of filing an answering affidavit in the first Rule 30 application.

[21] Further, given the finding that the applicants were entitled to file the first Rule 30 application, the third Rule 30 application stands to be dismissed.

*In limine points raised by the respondents*

[22] Counsel for the respondents handed up a new set of heads of argument on the morning of the hearing, with an apology that, due to an earlier oversight, the incorrect heads of argument had been provided to the court and to the applicants and uploaded onto Caselines. In the revised heads of argument, the respondents persisted with no less than ten (10) points *in limine,* most of which were, in my view, without substantive merit and served only to delay and complicate the proceedings. None of these is dispositive of the application as a whole or of any material aspect of the dispute. I deal briefly with each point.

(i) *Non-compliance with Rule 41A:* the notice of motion predates the commencement of the mandatory mediation protocol in this Division. The applicants did not initially file a Rule 41A notice but did so after the objection was raised. The respondents, while alleging prejudice, themselves did not comply with Rule 41A(2)(b). Nothing prevented them from filing the notice or inviting the applicants to mediation. This point is not dispositive of the action and is dismissed.

(ii) *Defective notice of motion (Form 2A)*: the applicants proceeded under Rule 53, affording the respondents more time to respond than under Rule 6. Despite claiming uncertainty about the procedural basis and the decision under challenge, the respondents filed three answering affidavits, each explaining the basis for the impugned decision. They also contended that the notice of motion was an irregular step but brought no application under Rule 30. There is no demonstrated prejudice. This point cannot be upheld.

(iii) *Misjoinder of the first respondent*: the complaint is that the first respondent is cited in his personal capacity, while he acted at all times in official capacity. The citations of the first and third respondent in the founding affidavit read as follows:

*'4. The first respondent is Errol Plaatjies, the Supreme Knight of the Catholic Order of the Knights of Da Gama, with his principal place of business located at 8[…] […] Street, E[…], Gauteng. The first respondent is cited herein as the person in control of the second respondent and responsible to review and affirm the decision of the third respondent.*

*6. The third respondent is Robin Mervyn Buys van der Walt, the Supreme Counsellor of the Catholic Order of the Knights of Da Gama, with his principal place of business located at 8[…] […] Street, E[…], Gauteng. The third respondent is cited herein in his capacity as the initial decision-maker responsible for the offending conduct.'*

a) In my view it is clear that the first and third respondents were both cited in their representative capacities as office-bearers of

the second respondent. Given their positions and involvement, they have a direct and substantial interest in the matter. There is no misjoinder and this point *in limine* is dismissed.

(iv) *Lack of jurisdiction over the first respondent:* the Order has its registered address within the jurisdictional area of this court. The cause of action has further arisen within this court's area of jurisdiction when the impugned decision was made at a meeting held within the jurisdictional area.

a) Clause 21(2) of the Superior Courts Act[1] provides that this court also has jurisdiction over other parties to the proceedings, as long as they reside or are within the area of jurisdiction of any other Division.

b) As the first respondent, who resides in Gqeberha in the Eastern Cape Province, is a party to these proceedings and resides within an area of jurisdiction of another Division of the High Court, this court has jurisdiction over him as well. Jurisdiction is accordingly established and this point *in limine* has no merit.

(v) *Incorrect legal framework: Promotion of Administrative Justice Act[2] (PAJA) versus contractual review:* the respondents contend that the applicants have brought a PAJA review. The papers do not support this. The applicants do not invoke PAJA but rely on the Constitution of the Order and the common-law principles of natural justice. References to procedural fairness, bias, a record and substitution do not of themselves transform the matter into a PAJA review. Nor is there a basis for the suggestion that a common-law review cannot make use of a record. This point *in limine* cannot be sustained.

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[1] Act 10 of 2013. Section 21(2) reads: *'A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such cause, if the said person resides or is within the area of jurisdiction of any other Division.'*

[2] Act 3 of 2000

(vi) *Failure to exhaust internal remedies:* the respondents argue that the applicants were obliged to exhaust internal remedies. That requirement arises in the context of PAJA and does not, without more, apply to a common-law review based on contract. The provision on which the respondents rely, section C.13 of the CLC, does not regulate disciplinary proceedings or establish an appeals process. In addition, the correspondence indicates that any appeal would almost certainly have resulted in the same outcome. There was no obligation on the applicants to exhaust an internal appeal before approaching this court.

(vii) *New matter in reply:* the respondents complain that new, personal allegations were introduced in reply. Whatever was said in reply does not alter the central question: whether the applicants were informed of the disciplinary hearing and the charges and afforded an opportunity to be heard before being found guilty and expelled. Allegations of a personal nature are not material to that enquiry and have been disregarded. The applicants have made out their case in the founding papers, on which the matter is decided. This point is not dispositive of any issue and does not justify dismissal of the application.

(viii) *Incompleteness and defectiveness of the founding papers:* the respondents contend the impugned decision is not clearly identified. The notice of motion identifies the decision of 2 October 2024, expelling and dismissing the applicants, as the decision to be reviewed. The founding affidavit specifies section I.2 of the CLC as the provision not followed and explains both the factual basis and the alleged breach of natural justice. Read as a whole, the founding papers set out a complete cause of action. This point is without merit.

(ix) *Absence of a Rule 53 record obligation:* the respondents contend that Rule 53 is inapplicable and that they were not obliged to file a record. Rule 53 is the rule governing review proceedings, and the applicants were entitled to invoke it. The respondents did not file a record; the applicants elected to proceed on the available material without

compelling further production. No prejudice to the respondents has been shown. This point in limine is dismissed.

(x) *The Plascon-Evans rule and alleged disputes of fact:* the respondents submit that extensive disputes of fact preclude relief. While there are differences in the parties' accounts on some peripheral matters, there is no material dispute on the central issue. It was conceded at the hearing that the applicants were only informed of the disciplinary hearing and the charges after the event. Neither the CLC nor the principles of natural justice permit the dismissal of members without affording them an opportunity to participate and to be heard. This point is accordingly without merit.

[23] The points *in limine* raised by the respondents accordingly fall to be dismissed.

*Merits*

[24] The nature of the relationship between a voluntary association and its members has been authoritatively settled in our law in *Theron en Andere v Ring van Wellington van die N.G. Sendingkerk in Suid-Afrika en Andere*[3] where the Appellate Division held that the relationship between a voluntary association and its members is contractual in nature.

[25] The Order is a voluntary association governed by its CLC, which constitutes the contract between the Order and its members and which regulates the rights and obligations of the members *inter se* and between members and the Order. The CLC is the contract that governs the relationship, and neither party may depart from it unilaterally.

[26] In *Turner v Jockey Club of South Africa*[4] the Appellate Division held that a domestic tribunal must adopt a procedure which would afford the person charged a proper hearing by the tribunal, an opportunity of producing his evidence and of correcting or contradicting any prejudicial statement or allegation made against him. The court further held:

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[3] 1976 (2) SA 1 (A)
[4] 1974 (3) SA 633 (A) at 646

*'The tribunal is required to listen fairly to both sides and to observe the "principles of fair play"…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…They require also the tribunal's finding of the fact on which the decision is to be based shall be "fair and bona fide". It is, in other words, "under an obligation to act honestly and in good faith."'*

[27] In *Klein v Dainfern College and Another*[5], in dealing with decisions of a domestic tribunal reviewable under common law, Claassen J referred to earlier authorities for purposes of establishing the grounds upon which a decision may be reviewed:

*'Where one deals with a domestic tribunal created by contract, the elementary principles of natural justice may still be applicable despite the advent of the constitutional era. It has been stated as far back as 1942 in Jockey Club of South Africa and Others v Feldman 1942 AD 340 at 351 that Courts can interfere in the decision of a domestic tribunal which has disregarded its own rules or the fundamental principles of fairness. What is to be regarded as 'principles of natural justice' was examined in Marlin v Durban Turf Club and Others 1942 AD 112 at 125 - 6 where Tindall JA concluded that the expression:*

> *'(W)hen applied to the procedure of tribunals such as those just mentioned, seems to me merely a compendious (but somewhat obscure) way of saying that such tribunals must observe certain fundamental principles of fairness which underlie our system of law as well as the English law. Some of these principles were stated, in relation to tribunals created by statute, by Innes CJ in Dabner v South African Railways 1920 AD 583 in these terms:*
>
> *"Certain elementary principles, speaking generally, they must observe: they must hear the parties concerned; these parties must have due and proper opportunity of producing their evidence and stating their contentions; and the statutory duties must be honestly and impartially discharged."'*

[28] From the above it is evident that a court can interfere where a voluntary association such as the Order has disregarded its own rules and the fundamental principles of fairness, which include: (a) hearing the parties concerned; (b) providing such parties with a due and proper opportunity of

[5] 2006 (3) SA 73 (T) para 14

producing their evidence and stating their contentions; and (c) discharging its duties honestly and impartially. The enquiry also encompasses whether the tribunal acted honestly and in good faith when discharging its duties.

[29] At the hearing it was conceded by counsel for the respondents that the applicants were not informed prior to the meeting that it would be a disciplinary hearing, and of the charges against them. They were under the impression that it would be a trustee meeting, which they declined to attend.

[30] Counsel for the respondents submitted that attendance at a disciplinary hearing cannot be compelled. In her heads of argument, she further contended that, in private disciplinary proceedings, the *audi* principle does not require a member to attend, but only that the member be afforded an opportunity to do so. I accept that attendance cannot be compelled. However, in order for a member to make an informed election whether to attend or not, he must first be notified that a disciplinary hearing will be held and of the charges preferred against him.

[31] To convene a disciplinary hearing under the guise of a trustee meeting and thereafter to contend that the applicants elected not to attend as the respondents have done, is an inaccurate characterisation of what in fact occurred. It follows that, where the applicants were not informed that the meeting would serve as a disciplinary hearing but were left under the misapprehension that they were merely absent from an ordinary trustee meeting, they were not afforded a genuine opportunity to attend and to be heard.

[32] In the founding affidavit the applicants rely on sections I.2, I.3, I.4, I.6 and I.9 of the CLC dealing with the process that has to be followed where there is an alleged breach of the Order's constitution. This includes the right of the alleged offender(s) to be notified of the date, time, and place of the investigation and the nature of the alleged offence, as well as the right to attend the entire investigation of the alleged offence. Section I.3 reads:

***'RIGHT OF PARTIES TO ATTEND INVESTIGATION***

*The executive shall notify the alleged offender and the complainant of the date, time and place, of the investigation and the nature of the alleged offence. The alleged offender and the complainant shall be entitled to attend the entire investigation of the alleged offence, or, if either one or other of them so desires, be represented by any other member of the Order thereat (provided that such a representative shall not be a member of a degree junior to that of the alleged offender and the complainant) or to make written representation relating to the alleged offence.'*

[33] Instead of engaging with whether the procedures prescribed in section I were followed, the respondents placed considerable reliance on section C.13 of the CLC, which regulates the duties of the Supreme Knight. In terms of section C.13, the Supreme Knight is under a contractual obligation to enforce and comply with the Laws of the Order, yet there is no explanation why section I.3, which requires due process in investigations of a disciplinary nature, was not observed. Although section C.13 appears to confer relatively broad investigative powers on the Supreme Knight, it is silent regarding disciplinary hearings and the procedure to be followed in disciplinary matters, and the respondents did not reconcile their invocation of section C.13 with the mandatory language of section I.3.

[34] In my view, nothing in section C.13 of the CLC can properly be construed as authorising the Supreme Knight to formulate charges against members, to convene disciplinary hearings, and to expel and/or dismiss them in their absence and without their knowledge. Put simply, section C.13 does not confer on the Supreme Knight a licence to disregard the basic principles of natural justice. In the result, the respondents' reliance on section C.13 of the CLC cannot be sustained, and there is, in any event, no *bona fide* dispute regarding the material procedural deficiencies.

[35] The respondents further placed reliance on a similar incident in 2019 where a member was suspended through the following of a similar process which, according to the respondents, was approved by the first applicant in his position of Supreme Advocate at the time. In my view, this incident several years earlier bears no relevance to the question before this court in determining whether a fair process was followed in the expulsion and dismissal of the applicants.

[36] In *De Lange v Presiding Bishop, Methodist Church of Southern Africa and Another*[6] the SCA took a cautious approach when it comes to interference by a court in matters that concern the internal rules adopted by a church, and held that a court should only become involved where it is strictly necessary, and should refrain from determining doctrinal issues to avoid entanglement.

[37] I am of the view that this is a matter in which judicial intervention is plainly warranted. The case does not raise complex doctrinal questions that might risk any form of improper entanglement, but turns instead on the elementary inquiry whether the most basic principles of natural justice were observed when the applicants were found guilty, expelled from the Order and dismissed from their positions.

[38] The answer to that inquiry is emphatically in the negative. The applicants were afforded no prior notice that a disciplinary hearing would be convened, they were found guilty without knowledge that a hearing was taking place, without being apprised of the charges preferred against them, and without any opportunity to make representations in their defence. In the circumstances I am unable to conclude on these facts that the process was conducted in an impartial and even-handed manner.

[39] The decision to expel the applicants from the Order, and dismiss them from the positions held within the Order, accordingly falls to be reviewed and set aside.

*Appropriate remedy*

[40] Having found that the impugned decision falls to be set aside, it becomes necessary to determine the appropriate remedy. Ordinarily, the proper course is to remit the matter to the original decision-maker for reconsideration in accordance with lawful and fair procedures.

[41] In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another*[7] the Constitutional Court considered the circumstances in which a court may, by way of substitution, replace an

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[6] 2015 (1) SA 106 (SCA)
[7] 2015 (5) SA 245 (CC)

administrative decision with its own. The Court accepted that the test of 'exceptional circumstances' is the appropriate one, but emphasised that, even where such circumstances are present, the ultimate enquiry remains whether a substitution order would be just and equitable.

[42] The Constitutional Court in *Trencon* cited with approval the guidelines in *Johannesburg City Council v Administrator, Transvaal and Another*[8], decided before the enactment of PAJA, and stated the following:

*'On a plain interpretation of Johannesburg City Council the factors under the exceptional circumstances enquiry – like foregone conclusion, bias or incompetence – are independent. That is, if any factor is established on its own, it would be sufficient to justify an order of substitution. Indeed, this interpretation is also supported by subsequent case law.'* [9]

[43] The Court in *Trencon* then reformulated the applicable test in the post-constitutional era as follows:

*'To my mind, given the doctrine of separation of powers, in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasise that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.'* [10]

[44] The enquiry is thus a fact-specific one, in which the factors identified in *Trencon* are considered against the background of what would be just and equitable in the particular case.

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[8] 1969 (2) SA 72 (T)
[9] *Trencon* para 39
[10] *Trencon* para 47

[45] In their original notice of motion the applicants sought, by way of substitution, an order dismissing the charges against them. During argument, however, their counsel submitted that an order for reinstatement, restoring the *status quo ante*, would be the more appropriate form of relief.

[46] The applicants submit that remittal would not be appropriate because the outcome, on the respondents' own version, would be a foregone conclusion. In this regard they rely on the letter dated 8 November 2024 from the respondents' attorney to their attorney, annexed to the founding affidavit, which records that:

> *'Given your clients' recent conduct our client is of the view that rescinding the decision would likely serve little purpose as this conduct coupled with the initial conduct would almost certainly result in your clients' expulsion in any event.'*

[47] The respondents, for their part, contend that no exceptional circumstances exist and that a substitution order would impermissibly intrude upon the autonomy of the Order by compelling it to retain as members individuals whose conduct, in its view, does not warrant continued membership.

[48] This contention overlooks that, before membership may be terminated, the Order is bound to follow its own rules and to act consistently with the principles of natural justice. A substitution order in the present matter does not compel the Order to accept or retain particular individuals irrespective of their conduct; it requires only that, in dealing with its members, it adheres to its Constitution and affords them a fair procedure where investigative and/or disciplinary steps are taken.

[49] Having regard to the affidavits filed by the respondents, read together with their attorney's letter of 8 November 2024, I am of the view that remittal would lead to a foregone conclusion. The material facts relevant to the fairness of the process are fully canvassed on the papers, and in these circumstances this court is in as good a position as the decision-makers to determine the appropriate outcome. Accordingly, in my view an order of substitution directing reinstatement is just and equitable.

[50] Such an order does no more than place the applicants in the position they would occupy if the impugned decisions were set aside and no further steps were taken, while at the same time underscoring that any future disciplinary action against them, or against other members of the Order, must be undertaken in compliance with the Order's own rules and with the basic requirements of procedural fairness.

*Costs*

[51] In the notice of motion a costs order is sought against the first and third respondents on an attorney-and-client scale. The respondents contend it would be inappropriate, as the first respondent is cited in his personal capacity, and a case for costs against him personally is not made out. As referred to above, it is in my view apparent from the way in which the respondents were cited, and from the manner in which they conducted the litigation, that they acted throughout in their official capacities as office-bearers of the second respondent. The dispute arises from decisions taken and defended on behalf of the Order, in the exercise of power alleged to derive from its Constitution.

[52] In these circumstances it would not be appropriate to hold the first and third respondents personally liable for costs. Any costs order should, in my view, follow the institutional responsibility for the impugned decisions and the manner in which the litigation was conducted, while recognising that the first and third respondents were cited and appeared in their representative capacities. The respondents' counsel submitted that, in the event of an adverse cost order against the respondents, such an order should be against the second respondent on a party-and-party scale.

[53] The applicants have succeeded on every material aspect of the case. In my view, the manner in which the litigation was conducted warrants a punitive costs order. Rather than acknowledging the serious procedural irregularities and taking steps to correct them, the respondents chose to oppose the application in its entirety. They further mischaracterised the nature of the meeting held on 26 September 2024 and persisted in attributing the applicants' non-attendance to a conscious election on their part, instead of recognising

from the outset that the applicants had not been afforded prior notice that a disciplinary meeting would be held or of the charges levelled against them.

[54] The respondents also raised ten points *in limine* and launched two applications in terms of Rules 30 and/or 30A, none of which was dispositive of any material issue, and advanced a defence on the merits which proceeded on the basis that the Order was entitled to expel its members without affording them any meaningful measure of due process.

[55] In these circumstances an award of costs on the scale as between attorney and client is, in my view, warranted.

[56] Given the nature of the Rule 30/30A applications brought by both sides, and the fact that they did not assist in addressing or resolving any material issue, it is appropriate that no order as to costs be made in relation to them, with the result that each party must bear its own costs in those applications.

[57] Having regard to the representative capacities in which the first and third respondents were cited, and to the institutional character of the decisions impugned, it is appropriate that the costs order operate against the second respondent, with the first and third respondents being held liable only in their official capacities.

*Order*

Accordingly, I make the following order:

1. The decision of 2 October 2024 whereby the first and second applicants were expelled from the second respondent and dismissed from their respective positions as Supreme Advocate and Supreme Treasurer of the second respondent, is reviewed and set aside.

2. The first and second applicants are reinstated as members of the second respondent and to the positions they held prior to the impugned decision of 2 October 2024.

3. No order as to costs is made in respect of the three interlocutory applications filed in terms of Rule 30 and/or Rule 30A.

4. The first and third respondents, in their official capacities as office-bearers of the second respondent, and the second respondent, are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the main review application on the scale as between attorney and client on scale C.

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**S MENTZ**
**ACTING JUDGE OF THE HIGH COURT**
**PRETORIA**

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|---|---|
| For the applicants: | Adv J de Beer SC<br>Adv J Delport |
| Instructed by: | Bester Rhoodie Attorneys |
| For the respondents: | Adv L Isparta |
| Instructed by: | Lloyd Kieser Inc |
| Date heard: | 25 February 2026 |