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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case No.: 2026-033390

In the matter between:

JAN COETZEE

(Identity Number: 6[...])

Applicant

And

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Respondent

Coram: Francis J et Barendse J

Heard: 12 June 2026

Delivered: 19 June 2026

ORDER

1. The application for leave to amend the notice of motion is dismissed with costs, such costs to be paid on the attorney-and-client scale.
 2. The application to compel discovery is dismissed.
 3. The main application is dismissed.
 4. Save as provided in paragraph 1, each party is to bear their own costs, including the costs of the urgent enrolment which were ordered to stand over on 17 February 2026.
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JUDGMENT

FRANCIS, J:

Introduction

[1] This matter comes before this Court after having been removed from the urgent roll on 17 February 2026. Its procedural history is unusually tangled. Before I can deal with the substance of the dispute between Mr Coetzee and the Legal Practice Council, I must dispose of two interlocutory applications that arose

during the course of the litigation. The first is an application for leave to amend the notice of motion. The second is an application to compel discovery. I deal with those applications, and with what remains of the main application, in that order.

[2] The applicant, Mr Jan Coetzee, appears in person. He is a former detective who served in the South African Police Service for some thirty-two years before retiring and pursuing an LLB degree. He now wishes to enter the attorney's profession. There is something to be said for a man who, after a long career in public service, sets out in later life to qualify for a new calling, and I have remained conscious throughout of what is at stake for him. His working years are limited, and he has invested much study in reaching the threshold of the profession. The respondent is the Legal Practice Council ("the Council"), the statutory body established under the Legal Practice Act 28 of 2014 ("the LPA") to regulate the legal profession and to determine, among other things, whether those who seek to enter it are fit and proper to do so.

[3] The respondent is represented by Mr Hangone of Hangone Attorneys Inc. I record that Mr Hangone conducted the proceedings on behalf of the Council with courtesy and economy, notwithstanding the procedural difficulties that attended the prosecution of the application. I am mindful, too, that Mr Coetzee is a lay litigant, and I have approached his papers and argument with the latitude that this Court ordinarily extends to those who appear without legal representation.

The background facts

[4] On 30 January 2025, the applicant applied to the respondent to register a practical vocational training contract, commonly called a PVT contract, with his chosen principal, Mr Wildre Fourie. Registration of such a contract is a necessary step before a candidate attorney may serve his period of vocational training and, in due course, write the competency-based examinations that precede admission.

- [5] On 5 February 2025, the applicant disclosed to the respondent that he had two previous convictions for assault, both arising from events in 2001, more than two decades before his application. He furnished a police clearance certificate and maintained that he made full disclosure at that time. It is common cause that, by February 2026, those convictions had been formally expunged under the Criminal Procedure Act 51 of 1977.
- [6] What followed over the next ten months was a protracted exchange between the applicant and the Council. It is not necessary to recount every step. In broad outline, the Council raised queries, and the applicant answered them. The Council then called for an outstanding letter from his principal, which the applicant disputed but re-submitted. In June 2025, the Council informed him that its Professional Affairs Committee required from him a full personal account of the circumstances of his convictions, an explanation of his rehabilitation, a psychological assessment, further court and police records, and confirmation that there had been no further incidents of domestic or gender-based violence.
- [7] The applicant's position is that he had already furnished much of what was asked. He initially objected to obtaining a psychological report, which he regarded as an unnecessary expense and an affront, but he ultimately submitted to the assessment. The report was furnished to the respondent on 23 October 2025. It concluded that he was a fit and proper person who presented a low risk of any recurrence of the conduct underlying his convictions. It is common cause that this report was placed before the respondent.
- [8] On 7 October 2025, before the psychological report was delivered, the Council asked the applicant to consent to it approaching the South African Police Service to verify the information he had given, including by way of a criminal record check. On 11 November 2025, a meeting was held between the applicant and representatives of the Council, including Adv Moodley. The request for consent to a criminal check was discussed, and the applicant declined to give it. He says he did so on principle. He had by then lost confidence in the Council's handling of his application, which he characterised as a "kick-the-can-down-the-road"

approach, and he regarded the request as unnecessary in the light of the clearance certificate and disclosure he had already provided.

[9] On 24 November 2025, the Council wrote to the applicant to inform him that his application to register the PVT contract would be held in abeyance pending his consent to the criminal check. It is that decision, which I shall call the abeyance decision, that lies at the heart of the application.

[10] The applicant took no steps to challenge the abeyance decision until 13 February 2026, when he filed this application as an urgent application. That was a delay of some two and a half months. The relief he then sought was twofold. He requested an order compelling the Council to register his PVT contract within seven days, and to admit him to the competency-based examinations scheduled for 4 and 5 March 2026. The closing date for registration for those examinations had been 2 February 2026, a date that had already passed by the time the application was served.

The procedural history of the litigation

[11] The applicant enrolled the urgent application for hearing on 17 February 2026, leaving the respondent only a few days to respond. The Council objected to the urgency and proposed a more orderly timetable, which the applicant declined to take up. On 17 February 2026, following a telephonic discussion by Wille J with both parties, the matter was removed from the urgent roll, with costs to stand over, and the parties were directed to approach the Registrar of the Judge President to fix a date for a full-bench hearing. It is by reason of that directive that the matter is before this Court.

[12] After the matter was removed from the urgent roll, the applicant filed a notice of intention to amend his notice of motion dated 28 March 2026, and, on 31 March 2026, served that notice, together with a notice to discover, on the respondent. The respondent objected to the proposed amendment and delivered a notice in

terms of Rule 30(2)(b) directed at the notice to discover, on the basis that this procedure was not open to the applicant, and he withdrew the notice to discover on 22 April 2026.

- [13] On 23 and 24 April 2026, the applicant brought two formal interlocutory applications: one for leave to amend his notice of motion and one to compel discovery under Rule 35(13). Both are opposed. Those two applications, together with the question of what survives of the main application, are what this Court must decide.

The relief sought in the interlocutory applications

- [14] The amendment application seeks to delete the original substantive prayer of the notice of motion in its entirety and to substitute a fresh set of prayers. At the hearing, the applicant persisted with the amendment in the form set out in his notice to amend dated 23 April 2026 (annexure “A” to that notice), rather than in the terms of his earlier notice of intention to amend dated 28 March 2026. The proposed new prayers are several. They seek a declarator that the Council’s conduct, in both its delay and the abeyance decision, was unlawful, unreasonable, and procedurally unfair under the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”). They seek a just and equitable order under section 8 of PAJA and section 172(1)(b) of the Constitution, including compensation for loss of income. They seek a declarator that the applicant is a fit and proper person to enter the legal profession, together with a declarator as to his rights under the practical vocational training contract, having regard to his completion of a 400 notional-hour course, to shorten the prescribed training period. And they seek directions on how any admission examinations are conducted.

- [15] The discovery application seeks to compel the Council to produce a wide range of material. The applicant requests the internal communications between the Council’s Western Cape and national offices, the minutes and resolutions of the

Professional Affairs Committee, the audio recording of the meeting of 11 November 2025, and the internal rules governing the Council's decision-making.

[16] The respondent opposes both applications and asks that they be dismissed. It seeks the costs of both applications on the attorney-and-client scale, a request it made at the outset and has not abandoned.

The application for leave to amend

The applicable principles

[17] The power to grant leave to amend is governed by Rule 28 of the Uniform Rules of Court. The discretion it confers is a wide one, and it is well settled that an amendment will ordinarily be allowed to obtain a proper ventilation of the dispute, unless the application to amend is *mala fide* or unless the amendment would cause the other party a prejudice or injustice that cannot be cured by an appropriate order as to costs. That principle is an old one,¹ and it has been repeated many times since.

[18] But the discretion is a judicial one, to be exercised on established principle. An amendment that introduces an entirely new cause of action at a late stage, after the opposing party has prepared and pleaded its case, may be refused where the resulting prejudice is substantial and cannot be cured by a cost order. An amendment sought not to clarify the real issues between the parties but to escape the consequences of a case that has failed may be refused on the ground that it is not *bona fide*.

Application to the present matter

[19] I have come to the clear view that the proposed amendment cannot be allowed. My reasons are these.

[20] First, the timing is exceptionally late. The application was launched in February 2026. The answering affidavit has been filed. Both parties have delivered heads

¹ *Moolman v Estate Moolman and Another* 1927 CPD 27 at 29; see also *Trans-Drakensberg Bank Ltd (under judicial management) v Combined Engineering (Pty) Ltd and Another* 1967 (3) SA 632 (D) at 640H–641.

of argument, and the respondent has filed supplementary heads. The matter was set down for hearing before this Court. Allowing the amendment now would oblige the respondent to deliver a supplementary answering affidavit directed at an entirely new claim, invite a further round of replying papers, and call for fresh heads of argument from both sides. The hearing date would be lost, and the matter would be postponed, at significant cost to both parties and to the administration of justice.

[21] Second, the amendment does not refine an existing cause of action or correct a technical defect. It abandons the applicant's case and substitutes another. The application launched was a judicial review seeking to set aside a specific administrative decision and compel performance. The proposed amendment deletes that review relief and, in its place, adds claims for declaratory relief and, most significantly, for compensation.

[22] A claim for compensation is, in substance, a claim for damages. Such a claim is ordinarily unsuited to determination on motion, because it requires the leading of oral evidence to establish liability and to quantify the loss. In motion proceedings, the founding affidavit serves as both pleading and evidence, and the applicant's founding affidavit lays no foundation for a damages claim. It contains no proper averment of wrongfulness or fault, no averment of causation, and no attempt to quantify any loss. To permit the amendment would be to compel the respondent to meet a damages claim in proceedings never designed to accommodate one.

[23] Third, and most troubling, the amendment does not appear to be *bona fide*. The applicant himself supplies the reason for it. In his replying affidavit in the interlocutory application, he states that he "realised that the order initially sought was moot", and that the substance of his complaint, being the apparent bias and the alleged breach of PAJA, "although not pleaded, [was] mentioned in the founding affidavit". That is a candid admission that the foundation of the case he now wishes to advance was not pleaded, and that the amendment is sought because the original relief has become moot, not because it is needed to ventilate the issues as originally framed. He goes further, recording that his

object in launching the urgent application had been to obtain an order after which he “will not have to deal with Respondent again”.

- [24] These are not the words of a litigant seeking to place the real dispute properly before the Court. They are the words of a litigant seeking to keep a moot matter alive by recasting it. A party who has allowed his own case to become moot is not entitled to reinvent it at the eleventh hour merely to avoid its dismissal. That is not a legitimate use of the amendment procedure. It is, in my view, an abuse of it.
- [25] Fourth, the amendment goes against a recent and binding statement of principle by the Supreme Court of Appeal. In *Msunduzi Municipality v Capital City Housing NPC and Others*,² the Supreme Court of Appeal reaffirmed, following *Fischer v Ramahlele*,³ that it is for the parties to define the nature of their dispute, and for the court to adjudicate upon the issues so defined. A court does not decide a case on a basis the parties have not pleaded. The applicant, having admitted that the core of the case he now seeks to bring was not pleaded, asks this Court to do precisely what *Msunduzi* holds it should not do.
- [26] Fifth, a portion of the proposed relief is, in any event, incompetent. The applicant asks the Court to declare that he is a fit and proper person to enter the legal profession, to declare his rights under the practical vocational training contract, to truncate the prescribed period of training, and to give directions on the conduct of admission examinations. Each of these prayers cuts across the scheme of the LPA. The registration of the contract, and the Council’s satisfaction that the applicant is fit and proper to serve under it, are committed to the Council by section 27 and the rules made under it. Admission as a legal practitioner, and the fit-and-proper finding that admission requires, are reserved to this Court under section 24, on a properly constituted application for admission, which this is not. The prescribed period of training, and the competency assessment that follows it, are governed by sections 26 and 28 and the Council’s rules. To declare the applicant fit and proper at large, to truncate his training, or to direct how the

² *Msunduzi Municipality v Capital City Housing NPC and Others* [2026] ZASCA 83 (4 June 2026) paras 17–19.

³ *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA) para 13.

examinations are conducted would be to decide, in a review of an abeyance decision, questions the Act commits elsewhere and that are not before me. In a review the Court tests the lawfulness, rationality and procedural fairness of the decision-maker's process. It does not substitute its own decision for that of the regulator. The same separation-of-functions concern that animated *Msunduzi* applies here. An amendment that introduces an incompetent prayer ought not to be allowed.

[27] For these reasons, the application for leave to amend must be dismissed.

The application to compel discovery

[28] The principles governing discovery in motion proceedings are settled.⁴ Rule 35 does not apply as a matter of course to application proceedings. A litigant who seeks discovery in motion proceedings must bring a substantive application under Rule 35(13) and must satisfy the court that there are exceptional circumstances justifying a departure from the ordinary position. That is what the applicant has attempted.

[29] Rule 35(13) is not, however, a warrant for a fishing expedition. The applicant must show that the documents sought are necessary for the fair and just determination of the issues, and that the circumstances are truly exceptional. The threshold is high, and deliberately so. Motion proceedings are designed to be decided on affidavits, and if discovery were to be permitted as a matter of course, the efficiency that justifies these proceedings would be compromised.

⁴ *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and Another* 1979 (2) SA 457 (W) at 470D–E.

- [30] At the hearing, the applicant abandoned the greater part of the discovery he had sought, persisting in only one respect: his request for the voice recording of the meeting of 11 November 2025. That narrowing was sensible since the issue in the main application is discrete. It is whether the Council's decision of 24 November 2025 to hold the application in abeyance, pending the applicant's consent to a criminal check, was lawful, rational and procedurally fair. The facts that bear on this question are largely common cause and appear from the documents already before the Court.
- [31] The greater part of what the applicant had sought was the internal record of the Council's own deliberations, namely the minutes and resolutions of the Professional Affairs Committee, the internal correspondence between the Council's offices, and its internal rules. Where a decision is challenged on review, the ordinary route to material of that kind is the record that Rule 53 obliges the decision-maker to produce. It is not Rule 35(13), which is a different and more exacting remedy. A decision-maker is, as a rule, judged by the decision it took and the reasons it gave, and its internal deliberations are not produced for the asking save where something such as bias or improper purpose has been properly raised and made out on the papers. The applicant laid no such foundation and was right not to persist in this part of his request.
- [32] That leaves the one item the applicant continues to insist upon: discovery of the recording of the 11 November 2025 meeting. What occurred at that meeting is not in genuine dispute. The Council requested the applicant's consent to a criminal check; the applicant refused, and the abeyance decision followed. The applicant's own account and the Council's coincide on those essentials. The applicant did not contend that the manner in which the request was made, as distinct from the fact of it, bore on the fairness of the decision or disclosed any improper purpose, and nothing on the papers suggests that a recording would assist on any such question. A recording would add nothing of value to the determination of the legal questions before me, and the applicant has shown no

exceptional circumstance of the kind that Rule 35(13) demands before production will be ordered.

[33] The applicant was, to his credit, candid. He accepted in his replying affidavit that the discovery he had sought was, as the respondent put it, “a fishing expedition”.⁵ His abandonment of all but the recording was the natural consequence of that candour, and the recording, for the reasons given, takes the matter no further. The application to compel discovery must accordingly be dismissed.

What remains of the main application

[34] With the amendment refused, the main application falls to be decided on the original notice of motion. That notice sought two substantive orders, an order compelling registration of the PVT contract within seven days, and an order compelling the Council to admit the applicant to the March 2026 examinations.

[35] The second of those prayers is moot. The March 2026 examinations were written on 4 and 5 March 2026. The closing date for registration had been 2 February 2026, before the application was even served. The applicant cannot now be registered for examinations long since written. That relief has been overtaken by events, and the respondent fairly conceded as much.

[36] I should say a word about mootness, because the respondent drew the Court’s attention to *Tilisa Projects (Pty) Ltd v Department of Public Works*.⁶ As that judgment makes clear, a court of first instance has no discretion to pronounce upon a dispute that has become moot. The discretion to entertain a matter notwithstanding its mootness, conferred by section 16(2)(a)(i) of the Superior Courts Act 10 of 2013, is one the statute confers in terms upon a court of appeal. Whether a court of first instance enjoys any comparable latitude is a question on which the last word has perhaps not been spoken, but it is not one I need decide. The second prayer is moot in any sense of the word, and nothing I could say of it

⁵ Applicant’s replying affidavit in the interlocutory application, para [...].

⁶ *Tilisa Projects (Pty) Ltd v Department of Public Works and Infrastructure and Others* (9756/21P) [2025] ZAKZPHC 85 (15 September 2025) paras 21–24.

would have the least practical effect, so I say no more about it. The lawfulness of the abeyance decision, by contrast, is not moot. The first prayer is live and turns on it, and the applicant is, in any event, entitled to know where he stands. I therefore address that question, not as the exercise of a discretion I may not have, but because the live dispute between the parties obliges the Court to do so.

[37] The first prayer, the order compelling registration of the PVT contract, is not moot, but it is misconceived. The Council has not refused to register the contract. It has held the application in abeyance pending the applicant's consent to a criminal check. It was said against this that the LPA provides for registration, refusal, and appeal, but not for abeyance, so the Council assumed a power it does not possess. The argument deserves to be met directly rather than brushed aside.

[38] Silence in a statute is not always prohibition. A power that is not expressly conferred may nonetheless be implied where it is reasonably necessary to the effective exercise of a power that is conferred. The LPA entrusts the Council with the task of satisfying itself that an applicant is fit and proper. A body tasked with this responsibility must be able to keep its assessment open while it gathers the information it requires, or it risks driving it into one of two unsatisfactory courses. It must either register on material it knows to be incomplete or refuse for want of material it has been given no opportunity to obtain. Neither serves the statutory purpose of protecting the public and the profession's standing. The power to assess, therefore, carries with it the power to defer completion of the assessment when the information needed to complete it is lacking. That power is not unbounded. A deferral that hardened into an indefinite or open-ended suspension, leaving an applicant in permanent uncertainty, would be another matter, and might well exceed what the Act permits. The implied power is a power to defer for a purpose and for a time, not a licence to hold an application in suspense without end. Even where an applicant withholds his cooperation, there will come a point at which the Council must either complete its assessment or

decide the application on the material before it. But the abeyance here is not of that kind. It is neither a final refusal nor a closed door. It endures only as long as the applicant withholds the consent that would allow the enquiry to be completed, and it lies in his hands to bring it to an end. A court will not compel a regulator to register a contract before the regulator has completed the assessment the statute commits it to, for to do so would be to pre-empt and usurp the very function the legislature has entrusted to the Council.

[39] I turn to the applicant's constitutional argument, which I have not overlooked. The applicant invokes his right, under section 22 of the Constitution of the Republic of South Africa, 1996, to choose his trade, occupation or profession freely. That right is substantive and is directly implicated here. The applicant has worked long and honourably, has obtained the qualification the profession demands, and seeks no more than to be permitted to earn his living in it. A regulator charged with controlling entry to a profession must keep that right steadily in view and must not place obstacles in the path of an aspirant legal professional beyond its statutory mandate.

[40] But section 22 itself provides that "[t]he practice of a trade, occupation or profession may be regulated by law". The right is the right to choose a profession within the framework of lawful regulation governing its practice. The LPA is such a law. The requirement that an applicant for entry be a fit and proper person, and the enquiry the Council must undertake to satisfy itself on that score, are a legitimate and constitutionally permissible regulation of the practice of the profession. Because that regulation governs the manner of entry, and does not, viewed objectively, deter the applicant from the profession he has chosen, it falls to be tested for rationality and lawfulness, and not against the proportionality standard of section 36, which is engaged only where the regulation bears negatively upon the choice of a profession itself.⁷ That the standard is rationality does not, however, make the enquiry an abstract one. It is not enough that a fit-and-proper assessment is rational in general. What must be rational is the

⁷ *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC) para 80.

Council's insistence on this requirement in the circumstances of this applicant, a man whose criminal convictions are old and expunged, who has furnished a clearance certificate and a favourable psychological report, and whose working years are limited. Whether the Council's conduct meets that standard, applied to these facts, is the question to which I now turn.

The lawfulness of the abeyance decision

[41] The applicant's first complaint is that the Council unreasonably delayed, between May and November 2025, to the point of a refusal to decide, in contravention of section 6(2)(g) of PAJA. The complaint is not without force, but in the end, it cannot be sustained on the papers. Throughout that period the Council was engaged in the enquiry. It sought a personal account, evidence of rehabilitation, a psychological assessment, and ultimately consent to verification. There is a difference between an enquiry that unfolds step by step, with each step prompted by what the last has disclosed, and one that is strung out because the decision-maker has failed to delineate at the outset what it will need. The first is legitimate, the second is not. The Council's enquiry here bears some marks of the second, and it is fair to ask why a single, comprehensive request could not have been formulated earlier. But it does not, on the papers, cross into a refusal to decide, the more so where the applicant himself contributed to the lapse of time by his initial objection to the psychological assessment. I hold only that the delay was not unlawful. I do not hold that the Council's handling of the matter was beyond criticism. Ten months is a long time in the working life of an applicant of Mr Coetzee's age, and a regulator alert to the right described above would take care that its processes do not impose on aspirant legal professionals a burden of waiting the statutory purpose does not require. As a ground of review, however, this complaint is not made out.

[42] The second complaint is that the abeyance decision was procedurally unfair, in that it was taken without notice and without affording the applicant an opportunity to make representations, contrary to section 3 of PAJA. Section 3(2)(b) requires adequate notice of the nature and purpose of the proposed administrative action

and a reasonable opportunity to make representations. The applicant says that, while the question of consent was canvassed with him, he was never told in terms that a refusal would see his application held in abeyance rather than decided on the existing record, and that the abeyance was first communicated to him only by the letter of 24 November 2025, two weeks after the meeting of 11 November. I have weighed the point carefully, for the distinction between notice of a question and notice of its consequence is real. But it does not avail the applicant here. The consequence was neither concealed nor surprising. An enquiry cannot be completed while the applicant withholds the cooperation it requires, and the holding of the application in abeyance was the natural and foreseeable result of his refusal. It was not a fresh decision sprung upon him, but the working out of the position he had himself adopted at the meeting. He was heard on the question that produced the abeyance, for the request for consent was put to him at the meeting and he refused it. Section 3 did not require, the request having been canvassed and refused, a separate hearing on the consequence that the refusal necessarily entailed. The letter of 24 November did no more than record that consequence. The fairness of the process does not turn on the applicant's experience as a litigant. It turns on the fact that the abeyance added nothing to his refusal beyond its inevitable effect, a matter on which he had already been heard. I am not persuaded that any procedural unfairness has been shown.

[43] The third and central complaint is that the requirement for a criminal check was irrational because the applicant had already furnished a police clearance certificate and made full disclosure, and because a favourable psychological report was before the Council. I have considered this complaint with care, in the light of the expungement of the convictions and the contents of the report, neither of which I discount.

[44] The applicant is not wrong that a clearance certificate and a further criminal check draw, in part, on the same source, and a regulator that multiplies requirements for their own sake acts neither lawfully nor reasonably. But a

clearance certificate and a targeted verification are not the same enquiry. A clearance certificate is, in substance, a snapshot. It reflects the convictions extant and unexpunged on the police record as at its date. It is not directed at confirming the particular history the applicant had disclosed, still less at establishing whether there had been any further incidents of the kind that underlay his convictions, which is what the Council said it wished to confirm. The expungement of the 2001 convictions, which would by then have removed them from such a certificate, only sharpens the point. It is precisely because expungement erases the record that the Council might legitimately wish to satisfy itself, at source, of a history an ordinary certificate would no longer reveal. I have not overlooked that the Council asked for consent to the check on 7 October 2025, before the psychological report was delivered on 23 October, and that this suggests the Council had closed its mind to the report before reading it. I do not draw that inference. Verification of a disclosed criminal history and a psychological assessment of risk are distinct enquiries directed at distinct questions, and the Council's setting one in motion before the other was complete shows it was pursuing them in parallel, not that it had predetermined the outcome. The report, favourable as it is, speaks to the risk of recurrence. It does not confirm the historical record, nor does it displace the Council's entitlement to do so. A regulator charged with safeguarding the public and the standing of the profession is entitled to undertake such verification. The expungement of a conviction removes its legal disabilities, but it does not erase the historical fact of the conduct, nor does it relieve the Council of its duty to satisfy itself, on proper enquiry, that the applicant is fit and proper. The means chosen, a request for consent to a criminal check, is a measured one and a single outstanding step. Tested against these facts, and not merely in the abstract, the requirement retains a rational connection to the Council's legitimate purpose. I cannot say it falls outside the range of what a reasonable regulator, acting within its statutory mandate, might require.

[45] It follows that the applicant has not shown that the abeyance decision is unlawful, irrational, or procedurally unfair. The decision stands. The applicant remains free

to consent to the check, whereupon the Council must complete its assessment, and if, having done so, the Council were to take a decision adverse to him, that decision would itself be susceptible to review in the ordinary course. I bind the Council to nothing as to time, for its decision has been upheld and it is not for this Court, having declined to usurp the Council's function, to now supervise it. I express only the expectation that, consent being given, the assessment will be completed with reasonable expedition, the more so given the time that has already passed and the applicant's circumstances. What the applicant may not do is to compel registration while withholding the very cooperation the lawful process requires.

[46] The main application, with its time-bound part being moot and the remainder misconceived and without merit, must be dismissed.

Urgency

[47] Although the matter is no longer on the urgent roll, I should record my view on the urgency with which it was originally brought. The applicant received the abeyance decision on 24 November 2025 and did nothing to challenge it for some two and a half months, launching his application only on 13 February 2026, by which time the registration deadline of 2 February 2026 had already passed. The urgency, such as it was, was of the applicant's own making. Self-created urgency is not a ground for urgent relief. Had the matter not been removed from the urgent roll by agreement and direction of the court, it would have been liable to be struck for want of urgency.

Costs

[48] Costs ordinarily follow the result, and the respondent has succeeded in resisting both the interlocutory applications and the main application. The respondent asks that its costs be paid on the attorney-and-client scale, a request it has maintained throughout. The applicant asks that each party bear its own costs, relying on his impecuniosity. The award of costs lies in the discretion of the Court, and the parties' submissions do not bind it. That the respondent seeks attorney-and-client

costs does not oblige me to grant them across the board, and the applicant's impecuniosity does not, of itself, shield him from an adverse order where his conduct of the litigation has called for one.

[49] The ordinary rule is not, in any event, the only consideration. The substance of the applicant's case was a complaint that an organ of state, exercising public power under the LPA, had dealt with him unlawfully and in breach of PAJA, and he invoked his right under section 22 of the Constitution. Where a private litigant brings proceedings of that character against the state and fails, the general rule is that each party bears its own costs, so that the assertion of constitutional and administrative-justice rights is not deterred by the risk of an adverse award.⁸ That protection is not unqualified. It falls away where the litigation, or a discrete part of it, is frivolous, vexatious or an abuse of the Court's process.

[50] Measured against that standard, the main and discovery applications do not warrant an adverse costs order against the applicant, and I decline the respondent's request for one in respect of them. These applications were misconceived, and the discovery application was ultimately all but abandoned. But they were a genuine, if clumsy, attempt to place a real grievance before the Court, and not an abuse of it. The misconceived examination prayer, submitted after its deadline had passed, was part of that genuine attempt rather than a separate abuse, and does not alter the position. The applicant's impecuniosity supports that conclusion without serving as its foundation. In respect of those two matters, and of the urgent enrolment of 17 February 2026 whose costs were reserved, each party will bear its own costs.

[51] The amendment application stands differently. For the reasons already given, it was not a *bona fide* attempt to ventilate the dispute, but an attempt to keep a moot matter alive by substituting an unpleaded and incompetent claim for the case that had failed. Litigation of that character forfeits the protection of the general rule. The respondent seeks its costs of the amendment on the attorney-and-client scale, and, in respect of that application, the request is well-founded.

⁸ *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) paras 22–25.

An order on that scale is reserved for cases in which a litigant's conduct deserves the Court's censure, and the manner in which the amendment was pursued meets that description. I accordingly direct that the applicant pay the respondent's costs of the amendment application, and of that application alone, on the attorney-and-client scale.

Order

In the result, the following order is made:

1. The application for leave to amend the notice of motion is dismissed with costs, such costs to be paid on the attorney-and-client scale.
2. The application to compel discovery is dismissed.
3. The main application is dismissed.
4. Save as provided in paragraph 1, each party is to bear their own costs, including the costs of the urgent enrolment which were ordered to stand over on 17 February 2026.

M FRANCIS

Judge of the High Court

R D BARENDSE

Judge of the High Court

Appearances:

For Applicant:	In person
For Respondent:	Mr Shaun Hangone
Instructed by	Hangone Attorneys Inc.