IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION- EAST LONDON CIRCUIT COURT

CASE NO: 2025-211127

In the matter between:

CHRISTOPHER MULLER **APPLICANT**

And

BUFFALO CITY METROPOLITAN MUNICIPALITY **1ST RESPONDENT**

THE MUNICIPAL MANAGER:

BUFFALO CITY METROPOLITAN MUNICIPALITY **2ND RESPONDENT**

JUDGMENT

Nkele AJ:

INTRODUCTION

[1] As a prelude, the principle of locus standi is a corner stone of South African law that ensures that only those with genuine interest in the outcome of a case can participate in legal proceedings. The courts have adopted a flexible and context-specific approach to locus standi, recognising that the nature of the interest can vary depending on the circumstances of the case[1]. The apex court in **Van Rooyen and Others v The State and Others** extended the reasoning in **Ferreira** to support the proposition that section 38 confers practically unlimited standing and that no limit is placed on the manner in which persons may approach the court[2].

[2] It is also apposite to mention that pre-notification is the practical heartbeat of the Audi alteram partem rule. This is so because pre-notification ensures effective preparation on the part of the person whose rights, interests and legitimate expectations are to be adversely affected and serves to prevent arbitrary action[3].

[3] The consensus is that courts view pre-notification as not a bureaucratic hurdle, but as a normative commitment to dignity and the rule of law. This salient principle of law was authoritatively propounded by the Constitutional Court in ***Joseph***, when it held "*the spectre of administrative paralysis advised by the respondent is a legitimate concern. Administrative efficiency is an important goal in a democracy, and Courts must remain vigilant not to impose unduly onerous administrative burdens on the state bureaucratically. In my view, however, the issue of administrative efficiency primarily informs the contents of the duties imposed under administrative Law rather than the scope of the application of administrative law. The latter is fundamentally determined by the relationship that exists between state and citizens and should not be strictly determined"*.[4]

[4] The genesis of this matter is that the applicant approached this court on an urgent basis, seeking an order effectively directing the respondents to show

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[1] Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others 1996 (1) SA 984 (CC) at para [165].
[2] Van Rooyen and Others v The State and Others, 2001 (4) SA 396 (T) 232G-I.
[3] Administrator of Transvaal and Others v Traub and Others (4/88) [1989] ZASCA 90; [1989] 4 All SA 924 (AD); 1989 (4) SA 731 (A); (1989) 10 ILJ 823 (A) (24 August 1989) para 13.
[4] Joseph and Others v City of Johannesburg and Others CCT 43/09 [2009] ZA CC 30 para [29].

cause why their conduct of disconnecting or blocking the electricity supply to the applicant's premises, without prior written notice should not be declared unlawful; directing the respondents to reconnect the electricity supply and/or uplift the blockade to purchase electricity for No. [...] B[...] Crescent, Buffalo Flats with electricity number 0[...] immediately upon service of the order; interdicting and restraining the respondents from unlawfully disconnecting the supply to the premises registered under meter no 0[...]; and interdicting and restraining the respondents from charging the applicant a re-connection fee as a direct or indirect result of unlawful termination/disconnection of electricity on 22 October 2025. A rule nisi as well as interim order to that effect was granted on the 11th of November 2025.

[5] Formal opposition has been filed by the respondents and an answering affidavit, accompanied by a service affidavit, has also been filed. Both parties have filed heads of argument as well as supplementary ones. The matter was thereafter set down for hearing, and it was argued before me on the 8th of May 2025.

APPLICANT'S CASE

[6] In support of his case, the applicant asserts in the founding affidavit that on 22 October 2025 he was unable to purchase electricity tokens at a local Shell Garage, which is a registered electricity vendor. He then approached a nearby Super Spar, which is also an authorised vendor, for that purpose but was also unable to buy electricity. At the Super Spar, he was told that his electricity account had been blocked because of an outstanding payment of an amount of R17 805-44. The applicant further states that it was for the first time to know of such alleged arrears, as there was no written prior notice, demand or intention to disconnect the electricity supply was ever served upon him as is

required by section 14(2), read with section 15(1), of the Buffalo City Metropolitan Municipality Electricity By-Laws published in 2023[5].

[7] The applicant further contends that the respondents were duty bound to serve him with a notice of intention to disconnect the electricity supply to the premises, in compliance with the peremptory provisions of the By-Laws, prior to the termination of the electricity supply. He further states, the fact that the respondents decided to terminate the electricity supply, without having given the applicant prior written notification of the intended termination, constituted a flagrant contravention of the provisions of the applicable By-Laws and is unlawful. In this regard he contends vehemently that all organs of the state are required by section 33 of the Constitution to act lawfully, reasonably and in a procedurally fair manner and therefore the failure by the respondents to give him prior written notification of the intended electricity disconnection was unlawful and violated his right to a fair hearing[6].

[8] He further contends that such an abrupt deprivation of the electricity supply, which is a basic municipal service, without prior notification, as provided for in the Electricity By-Laws, is arbitrary, unlawful and constitutionally indefensible. Such a disconnection is prejudicial to him and his family, with which he lives, and it causes irreparable harm.

[9] Deeply aggrieved by the conduct of the respondents, he approached his legal representatives of record for assistance and advice on a proper course, who wrote a letter dated 30 October 2025 to the respondents, demanding the electricity supply be restored at the premises., failing which he will approach the court for relief. In the letter, the respondents were given up to Friday the 31st of October 2025 at 10h00 to re-connect the electricity supply. The respondents failed to comply with the demand. Consequently, the applicant launched an urgent application and obtained an interim order.

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[5] Buffalo City Metropolitan Municipality Electricity By-Laws published in 2023. Provincial Gazette No. 5016 of 24 November 2023; section 14(2), read with section 15(1).
[6] *Constitution of the Republic of South Africa, 1996*. Act No 108 of 1996; section 33.

RESPONDENTS' CASE

[10] As already stated, the respondents are opposing the application. The basis of their opposition is that the applicant has no locus standi to institute the present application. In the founding affidavit, the respondents assert; the applicant states that he is the occupant of the premises but does not demonstrate the extent of his occupation and if he is claiming direct interest, he must demonstrate the extent of that interest, which he failed to do. It is not sufficient to merely state that he occupied the premises, without demonstrating the extent of occupation as well as the obligation he has in respect of payment of the municipal services. In a nutshell he has not stated why the registered owner of the property has not himself or herself launched this application, nor is there an averment to the effect he has been duly authorised by the owner to do so. In this regard the respondents aver that as a contractual relationship exist between them and the owner, it is the owner as the consumer who has a right to launch proceedings of this nature, and not the applicant.

[11] As a further ground for opposing the application, the respondents state that they complied with the By-Laws that regulate prior notification of the applicant before termination. In this regard they contend that such a pre-termination notification was delivered by its authorised agent, Yande Engineering & Projects, on 25 April 2025. In the answering affidavit the respondents explain how service was effected as follows:

> "*In compliance with the above, on 25 April 2025 the 1st respondent, through its agent duly authorised accordingly, served a pre-termination notice upon the Applicant and upon denied access to the gate and when no one came to accept the document, the pre-termination notice was left at the post-box at the gate of the premises situated at No. [...] B[...] Crescent, Buffalo Flats, East London, as no one came to accept the notice. Attached herewith is the copy reflecting a pin location where the pre-termination notice was served, marked BCMM1*".

[12] The respondents also attached a service affidavit deposed to by Phumlani Mtliyane who described himself as the employee of Yande Engineering & Projects, the authorised agent, who effected the service of the pre-termination notice. In the affidavit he states that "*On 25 April 2025 I delivered the 14-day*

pre termination letter to, [...] B[...] CRES, BUFFALO FLATS, EAST LONDON. The customer did not come out so I left the letter at the post-box and took a photo of evidence that I was at the correct property".

[13] On that basis the respondents contend vehemently that the service of the pre-termination notice was fully compliant with the provisions of the By-Laws and the Municipal Systems Act which regulates the service of a pre-termination notice[7]. The manner of service is consonant and compliant with the provisions of section 14(4)(d), read with section 13(1)(d), of the Buffalo City Metropolitan By-Laws which states that "*if delivery is by hand, the pre-termination notice shall be deemed to have been effectively served on the customer when it cannot be delivered as contemplated in paragraphs (a) and (b), if it is placed in the conspicuous place on the immovable property to which it relates*"[8].

[14] Furthermore, the respondents aver that the electricity supply was validly terminated after a prior written notice was duly served upon the applicant in compliance with the By-Laws. However, instead of the rightful owner of the property approaching the offices of the respondents, as he or she was invited to do so in the pre-termination notice, to make valid written representation as to how the arrears are to be settled, the applicant instructed legal representatives to launch the present application. As the customer is in arrears, the termination of electricity supply was because of an outstanding amount due to the respondents, which had attracted interest. Such termination was done in compliance with the applicable By-laws, empowering the respondents to terminate the electricity supply, and after the requisite pre-termination notice has been duly delivered. Therefore, as everything was done above board, the termination is not unlawful.

ISSUE FOR DETERMINATION

[15] Having regard to the parties' contrasting contentions, I am of the view that there are two narrow issues that need to be considered and determined in this

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[7] Local Government: Municipal Systems Act 32 of 2000.
[8] Buffalo City Metropolitan By-Laws; section 14(4)(d), read with section 13(1)(d).

application. The first one is whether the applicant has the necessary locus standi to institute the present legal proceedings. The second is whether the electricity pre-termination notice was duly and properly served upon the applicant in compliance with the applicable provision of the By-Laws.

[16] If it is found that the applicant lacks locus standi, there will be no need to deal with the second issue relating to the service of the electricity pre-termination notice as the application will be dismissed on that ground alone. Similarly, if it transpires that the pre-termination notice was duly served in the prescribed manner, the application will fall to be dismissed. Conversely, if I conclude that the applicant has the necessary locus standi, and the service of the pre-termination notice was not properly delivered and placed in the manner prescribed by the applicable By-Laws, the applicant will succeed and the rule nisi and interim order issued on 11 November 2025 will be confirmed and made final.

THE APPLICABLE LEGAL PRINCIPLES

[17] In the monumental decision of ***Joseph and Others v City of Johannesburg and Others*** the apex court held that a lawful occupier or tenant generally has locus standi to sue a municipality for the unlawful or procedurally unfair termination of electricity supply without notice. The court also established that tenants and occupiers have a right to procedural fairness when a municipality terminates basic services, even if there is no direct contractual relationship between the tenant and the municipality. This is so, it was held, because electricity is an essential basic municipal service intertwined with constitutional rights to dignity and housing and therefore municipalities have a public law obligation to provide reasonable notice and an opportunity to be heard before cutting off electricity supply[9].

[18] Section 115(1) of the Local Government: Municipal Systems Act provides for service of pre-termination notices as follows:

[9] Joseph and Others v City of Johannesburg and Others CCT 43/09[2009] ZACC 30) paras [34] to [40].

"*Any notice or other document that is served on a person in terms of this Act is regarded as having been served:*

(a) When it has been delivered to that person personally;

(b) When it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;

(c) When it has been posted by registered or certified mail to that person's last known residential or business address and an acknowledgement of the posting thereof from the postal services is obtained;

(d) If that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) (c) or;

(e) *If that person's address and agent or representative in the Republic is unknown, when it has been posted in the conspicuous place on the property or premises, if any, to which it relates.*[10]"

[19] Section 14(2) of the Buffalo City Metropolitan Municipality By-Laws is of similar effect, and it provides that:

"(1) The electricity supply may be terminated for outstanding payment.

(2) A consumer against whom the municipality intends to terminate the electricity supply shall be served with a written notice of intended termination by the sheriff, by hand or registered certified mail.

(3) the sheriff must serve the consumer with the written notice of termination within ten (10) working days of having been put in possession of such written notice and submit a return of service to the municipality within four (4) municipal days of such notice.

(4) if delivered by hand, the pre-termination notice shall be deemed to have been effectively and sufficiently served on the consumer-

(a) when it has been delivered to them personally;

(b) when it has been left at their place of residence or business with a person apparently above the age of sixteen (16) years old; or

(c) when it cannot be delivered as contemplated in (a) and (b) above, if it is placed in a conspicuous place in the immovable property to which it relates…[11]"

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[10] Local Government: Municipal Systems Act 32 of 2000); Section 115(1).
[11] *Ibid* Buffalo City Electricity By-Laws 2023; Section 14(2).

[20] Section 15(1) of the Buffalo City Electricity By-Laws makes provision for the right of the municipality to disconnect the electricity supply in the following instances:

> *"(1) The municipality has the right to disconnect the supply of electricity to any premises after fourteen (14) days of written notice, if:*
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> *(a) The person liable to do so fails to pay any charge due to the municipality in connection with any supply of electricity which such person has received from the municipality in respect of such premises; or*
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> (b) *If any of the provisions of this By-Law and/or Regulations are being contravened and the person responsible has failed to remedy the default after such notice has been given"*[12].

APPLICATION OF LAW TO THE FACTS

[21] As already stated, the first contentious issue is whether the applicant has the locus standi to institute the present application proceedings. In their answering affidavit, the respondents strongly contend that the applicant lacks the necessary locus standi to institute the present application. In substantiation, the respondents state that nowhere in the founding affidavit does the applicant state that he is duly authorised by the owner to launch the application, nor does he state the extent of his occupation of the property and the obligation he has for the payment of the municipal services.

[22] On the other hand, the applicant vehemently disputes that he has no locus standi to institute this application or that he needed to explain the extent of his occupation of the property and his obligations to pay municipal services to establish his locus standi. In the founding affidavit, the applicant explains his standing by stating that he is a lawful resident and/or occupier of the premises with the corresponding meter number 0[...], where he stays together with his wife, father and minor children, and he is also a paying electricity consumer.

[23] While the respondents dispute that the applicant has locus standi, the fact that he is a resident and/or occupier of the premises has not been placed in issue in any manner whatsoever. During argument, Mr Mdzanga was adamant that

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[12] Ibid Buffalo City Municipal Electricity By-Laws 2023; Section 15(1).

the applicant needed to be authorised by the owner and state the extent of occupation of the premises as well as his obligation to pay the municipal services to establish his locus standi. I beg to differ and I am of the view that the argument is based on a misunderstanding of the applicable legal principles. As already stated, the Constitutional Court settled the law in this regard when it stated in ***Joseph and Others v City of Johannesburg and Others*** that tenants and occupiers have a right to procedural fairness when the municipality terminates the services it provides to them, irrespective of whether they have any contractual relationship with it. Quite recently, the **Supreme Court of Appeal** has restated that principle when it said:

> "*In Joseph, the Constitutional Court settled the law regarding the relationship between a local government body as a service provider and the end user of the service, even when a direct contractual relationship does not exist. The Constitutional Court explicitly rejected the argument that lack of contractual privity between tenants and service providers eliminates the rights of tenants to procedural fairness. The decision established a crucial precedent, affirming that the constitutional rights to dignity and access to services create a legal relationship that obliges a municipality to provide notice and an opportunity to be heard before disconnecting a service, regardless of who the property owner is*"[13]

[24] In the circumstances, and in the light of the authorities from the highest courts in the land, I conclude that the applicant has the necessary locus standi to institute the present legal proceedings and therefore the respondents' point in limine in this regard has no merit at all. It is dismissed accordingly.

[25] Regarding the issue of whether a notice was delivered to the applicant, prior to the termination of the electricity supply, the applicant strenuously argued that the respondents' failure to serve him with a pre-termination notice, before it terminated the electricity supply, was unlawful as it contravened the provisions of section 14 of the Buffalo City Municipal Electricity Supply By-Laws. The respondents, on the other, vigorously and vehemently argue that there was proper service of the pre-termination notice at the premises situated at No. [...] B[...] Crescent, Buffalo Flats, East London, and the notice was delivered by placing it at the post box at the gate, which is a conspicuous

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[13] Mafilika and Others v Elundini Local Municipality and Others (620/2024) [2025] ZASCA 142 (1 October 2025) para [24].

place. The relevant averments regarding how service of the pre-termination notice was effected at the premises are to the following effect "*On 25 April 2025 the 1st respondent through its agent duly authorised accordingly, served a pre-termination notice to, [...] B[...] Crescent, Buffalo Flats, East London …..., and where upon no one came to receive the notice it was then left at the gate and when no one came to accept he document, the pre-termination notice was left at the post box at the gate of the premises situated at No.[...] B[...] Crescent, Buffalo Flats, East London, as no one came to accept the notice*". These averments are corroborated by similar allegations made in a service affidavit deposed to by Phumlani Mtliyane an employee of Yande Engineering & Projects as follows "*I delivered the 14-day pre-termination letter on 23 April 2025 at No. [...] B[...] Crescent, Buffalo Flats, East London. When the customer did not come, I left the letter at the gate…*"

[26] With that in mind, the question that this court must decide is whether the manner in which the pre-termination notice was served at the premises is the one envisaged in section 14(2)(c) of the By-Law. Put differently, whether putting the pre-termination notice in a post-box can properly and appropriately be interpreted as delivery at a '***conspicuous place'*** , as contemplated in section 14(2)(c).

[27] In an endeavour to persuade me that service of the Notice was in compliance with section 24(2)(c) of the By-Law, Mr Mdzanga who appeared for the respondents argued, with much vigour and determination, that there was no other way that the notice could have been served in the circumstances, as no one came to accept it. So, placing it in the post box was the only available option and by doing so the notice was placed in a conspicuous place, in compliance with and as envisaged in the applicable By-Law. The effect of the argument is that the notice was served properly.

[28] To determine whether service by delivery of the notice at the post box, it is necessary, in my view, to first ascertain the meaning of the word '***conspicuous'***, found in section 14(2)(c) of the By-Laws and section 115(1)(e) of the Municipal Systems Act. a definition in the Reader's Digest Oxford Complete Word Finder is to the effect that '***conspicuous'*** means something

that is "***clearly visible; striking to the eye; attracting notice***"[14]. The definition in Oxford Concise Dictionary 2nd Edition describes '*conspicuous'* to mean something that is "***clearly visible; attracting notice***"[15].

[29] What then becomes of utmost importance, for purposes of this case, is the interpretation and the determination of the meaning of the word '***conspicuous'***. The only way is to seek guidance from our jurisprudence as to how the meaning of a word should be ascertained. The Supreme Court of Appeal in its monumental judgment in the case of Endumeni Municipality Wallis JA gave a clear guideline on how to interpret words when he said the following:

> "… *interpretation is a process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax, the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all the factors. The process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike for the words used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable' departure is the language of the provision and the background to the preparation and production of the document*"[16].

[30] In my view, when something is put in a post box, as the respondents' agent did in this matter, it cannot be said that it is attracting notice, striking to the eye or clearly visible. Something in a post box is hidden, and to know of its presence or notice it, one has to put a hand and take it out. That, in my considered view, cannot fit the description of something that is conspicuous or clearly visible. Something that is conspicuous is the one that is clearly visible

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[14] Reader's Digest Oxford Complete Word Finder.
[15] Oxford Concise Dictionary 2nd Edition.
[16] **Natal Joint Municipal Fund v Endumeni Municipality** 2012 (4) SA 593 (SCA) para [18].

without one having to try and look for it, nor even try to make an effort to take it out of the post box. It could never have been the intention of the legislature that the intended recipient of the pre-termination notice will have to winkle and extract it from a post-box. To do so would be stretching the meaning of '***conspicuous***' far beyond its literal and grammatical meaning. In ***Durban's Water Wonderland (Pty) Ltd v Botha and Another*** it was held that the answer is whether the appellant gave the patrons '*reasonable sufficient*' notice of the disclaimer and that the test is an objective one, based on the reasonableness of the steps taken by the proferens to bring the terms to the attention of the customer or patron.[17] Similarly in the present matter, the respondents failed to take reasonable sufficient steps to place the pre-termination notice in a clearly visible place and in that way taking it to the attention of the applicant. In that way they failed to comply with the peremptory provisions of the section 14(2)(c) of their Electricity By-Laws.

[31] In the eloquent words of Innes C.J in ***Central South African Railways v McLaren*** "*when, did the defendants do what was reasonably sufficient to give the plaintiff notice of the conditions? In my opinion they did not do that*…"[18]. In the circumstances I conclude that the applicant was not properly served with that notice in the manner contemplated by the governing By-Law.

[32] In any event, the respondents, as the organs of the state, have a constitutional and legal obligation to scrupulous obey the law. Moreover, as the primary custodians of the Constitution and as state entities, they are expected to lead by example. This salient statement of law was neatly explained in Mohamed in the following terms:

> "*South Africa is a young democracy still finding its way to full compliance with the values and ideals enshrined in the Constitution*"[19]. *The principle cannot be put better than in the celebrated words of* ***Justice Brandeis in Olmstead et al v United States*** when he said:

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[17] **Durban's Water Wonderland (Pty) Ltd v Botha and Another** (168/97) [19898] ZASCA 115; [1999] 1 All SA 411 (A); 1999 (1) SA 982 (SCA) at para [17] and [18].
[18] **Central South African Railways v McLaren** 1904 T.S. 728 at 735.
[19] **Mohamed and Another v President of the Republic of South Africa and Others** (CCT 17/01) [2001] ZACC 18; 2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC); 001 (2) SACR 66 (CC) (28 May 2001), **Njongi v MEC, Department of Welfare, Eastern Cape** 2008 (6) SA 237 (CC).

> '*In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously… Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example… If the government becomes the law breaker, it breeds contempt of law; it invites everyman to become law unto himself; it invites anarchy.*[20]'

This lucid statement of our law applies equally to the respondents in the present matter. They are organs of the state, and they have failed beyond measure to follow their own By-Laws to the letter. This is clearly demonstrated by the evidence presented in the answering and service affidavits, which clearly shows that there was no compliance with the provisions of section 14(2)(c), regarding how service of the notice was effected.

[33] In my view, a proper case has been made for the order sought. In the circumstances I will confirm the rule nisi and the interim order granted on 25 November 2025 and make it final. This is because the respondents have dismally failed to demonstrate how they have complied with the By-Laws that compel them to serve notice prior to the termination of the electricity supply. No clear evidence has been presented showing how service of the notice and how compliance with the By-Law has been done. It has not been demonstrated that the pre-termination notice was brought to the attention of the applicant in the manner envisaged by the regulatory By-Laws. Therefore, the following order will issue:

ORDER

[34] Accordingly the following order shall issue:

1. **The rule nisi issued and the interim order granted on 25 November 2025 is hereby confirmed and made a final order.**

2. **The respondents are ordered to pay costs of this application.**

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[20] **Olmstead et al v. United States** | 277 U.S. 438 (1928).

T.A NKELE

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

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Matter heard on	:	**07 MAY 2026**
Judgment delivered on	:	**09 JUNE 2026**