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

JUDGMENT

Not Reportable

Case No: 2025-238197

In the matter between:

DR T BASSIER

Applicant

And

THE MOSLEM CEMETERY BOARD

Respondent

Coram: **DA SILVA SALIE, J**

Heard on: **30 July 2026** (determined on the papers)

Delivered on: **4 August 2026**

Summary:

Supervisory jurisdiction by Court – Interlocutory application brought during implementation of prior judgment – Applicant seeking disclosure of respondent's bank statements to conduct independent forensic investigation before election of new governing body – Main judgment having reserved continuing supervisory jurisdiction and directed disclosure of financial records to newly elected governing body after assumption of office – Whether applicant entitled to variation of earlier order – Court holding applicant not entitled to copies of bank statements – Limited confidential judicial inspection of recent bank statements directed to Court alone to facilitate orderly implementation of election process and transition to newly elected governing body – Further directions issued concerning implementation of election – Respondent's procedural application against Independent Panel considered notwithstanding procedural irregularity because of Court's continuing supervisory jurisdiction – Variation of earlier order relating to remuneration and reasonable expenses of Panel warranted in light of its evolved implementation role – Respondent directed to bear Panel's remuneration and reasonable expenses – Each party to bear own costs of interlocutory application.

ORDER

1. The application is dismissed.
2. Each party shall bear its own costs.
3. The respondent shall, by 14h00 on Wednesday, 5 August 2026 deliver (both electronic and hard copies) to the Registrar of this Court, for the attention of Mrs. Gail Martin, copies of the respondent's bank statements in respect of the following accounts held with Standard Bank for the period of 1 March 2026 to 4 August 2026 in respect of:

- 3.1 Mowbray Cemetery Board account number: 0[...];
- 3.2 Mowbray Cemetery Bursary Fund account number: 1[...];
- 3.3 Any other bank accounts held with any other banking institution in the name and/or registration number of the respondent for the period 1 March 2026 to 4 August 2026;
4. The Registrar shall retain the bank statements as directed in this order as confidential documents pending further direction of this Court. The confidential documents shall be filed in a separate and confidential file;
5. The remuneration and expenses of the Panel members incurred in the discharge of their functions pursuant to the judgment of this Court and the Directives issued thereunder shall be borne by the Respondent.
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JUDGMENT

DA SILVA SALIE, J:

Introduction

[1] This is an interlocutory application brought in the main application under the above case number. The main application culminated in the judgment delivered by this Court on 24 March 2026 ("the main judgment"). In that judgment, the Court held that the cemetery land is dedicated to and may only be used for purposes directly associated with burial. It further found that the Respondent's governing body was invalidly constituted and required proper administration. To restore lawful governance, the Mowbray Cemetery Board ("MCB" or "respondent") the Court, both in its main judgment

and further directives granted extensive relief, including the appointment of an Independent Panel (“the Panel”) to supervise the implementation of its orders, facilitate the election of a duly constituted governing body, and expressly reserved judicial supervisory jurisdiction to ensure the effective implementation of its orders.

“Bank Statements Application”

[2] At the time this interlocutory application came before the Court for determination, commonly referred to as the “Bank Statements Application” the implementation of the main judgment had reached an advanced stage. The independent panel had substantially performed in terms of its mandate, the nomination process had commenced, and the election of a new governing body is imminent. The relief sought herein relates to the disclosure of the Respondent's bank statements (including the bursary fund account) for the period from May 2020 to 30 April 2026.

[3] This judgment has necessarily been prepared and delivered on an urgent basis. The election process directed in the main judgment is on **Sunday, 23 August 2026** and the Court has been required, within the exercise of its continuing supervisory jurisdiction, to determine the present application without delaying the implementation of its earlier orders or the election process. The reasons which follow are accordingly confined to those issues necessary for the proper determination of this application.

[4] Dr Bassier submits that the disclosure is sought to exercise his rights as a member of the MCB, to promote transparency and to protect the assets and interests of the MCB in the period of governance failures. Whilst this Court had ordered that the respondent deliver the financial records at least 48 hours before the SGM, Dr Bassier seeks access thereto now. He also submits that, in his view, the respondent is not permitted to operate a bursary fund given that its sole focus is that of burials. I understand his submissions to be his interpretation of the main judgment to the extent

that he understands it to limit the business of the board to burials only. I will deal with the correctness of this view later in this judgment.

[5] This application is opposed by the respondent. The respondent delivered an answering affidavit deposed to by Mr. Faizel Sayed, who had been acting as the chairperson of the board.

[6] Pursuant to the granting of the main judgment the Court has exercised the supervisory jurisdiction expressly reserved therein through a series of Judicial Case Management Directives (“the Directives”) issued by this Court to facilitate the orderly implementation of its orders. During that process, the Panel has submitted reports to the Court concerning the progress of its mandate and has, from time to time, sought further guidance on practical issues arising during the implementation process.

Background

[7] The main application arose against the backdrop of longstanding concerns by Dr Bassier regarding the composition of the respondent's governing body, the administration of its affairs, and concerns that the Mowbray Cemetery Board was not lawfully appointed. The application was opposed. The Court found that the respondent's governing body had been invalidly constituted. To restore lawful governance and ensure an orderly transition to a duly elected governing body, various orders were granted and the Court retained judicial oversight to oversee the implementation of its orders.

[8] In terms of further directives, the Court appointed the Panel tasked with supervising and facilitating the implementation of the Court's orders, convening a SGM and overseeing the election of a new governing body. The Panel was further directed to report to the Court from time to time concerning the implementation of its mandate and

that it may seek such further directions as might become necessary for the effective implementation of the Court's orders.

[9] The reports to the Court set out the progress and attendances by the Panel. It also addressed aspects relating to the attendances as directed by the Court as well as the costs of the five (5) members of the panel.

Founding affidavit

[10] In correspondence prior to the launch of this application, the respondent declined to furnish copies of the requested bank statements to Dr Bassier, although it indicated, that the financial records could be made available for inspection. Given that Dr. Bassier seeks copies the bank statements (not mere viewing thereof) so that he could arrange for an independent verification of the financial affairs of the respondent by means of a forensic audit prior to the elections, he declined the respondent's invitation. Dr Bassier submits that the application for the copies of the bank statements is not a "*fishing expedition*". The request, he contends, is narrowly tailored on matters already before the Court and directly relevant to the SGM, where members will elect a new Board. He submits that members cannot exercise informed voting rights without up-to-date and independent financial transparency. Furthermore, audited statements up to 29 February 2024 are materially outdated and do not address the period thereafter or the primary banking records.

[11] Dr Bassier is of the view that a verification process must be done by reference to the primary banking records. As such, access to the banking statements is both reasonable and necessary. In his view, a financial audit at his instance would place members in a position to assess financial implications when electing a new board. Insofar as the respondent had, during proceedings, submitted that the respondent is a registered Non-Profit Organisation ("NPO"), Dr Bassier obtained information from the

Western Cape NPO Helpdesk, pursuant to the granting of the main judgment, that the MCB is in fact not registered as an NPO. Dr Bassier asserts that this discrepancy is material as it raises serious concerns regarding the reliability of financial representations made to members and underscores the necessity to obtain copies of the bank statements of the MCB. This Court, he submits, is only asked to reconsider the timing of the order relating to disclosure of the MCB's bank statements so that it can be released to himself and the Panel by no later than 31 July 2026 instead of 48 hours before the elections.

[12] Whilst the auditors of the MCB confirmed in writing that it had performed the audit of the annual financial statements for the financial years ending from 28 February 2019 through to 28 February 2024, Dr Bassier nevertheless maintains that inspection of the bank statements only would serve the purposes of a necessary independent financial audit.

[13] Mr. Sayed opposed the relief for disclosure of the bank statements on the basis that it is unnecessary and that the respondent's annual financial statements have already been independently audited up to the financial year ending February 2024. Further to that he submitted that the audited financial statements constitute the proper verification of the respondent's financial affairs and that Dr Bassier's insistence upon copies of the underlying bank statements serves no legitimate purpose. In his view, the opportunity afforded to Dr Bassier to inspect the financial records at the offices of the respondent's auditors was sufficient. According to Mr. Sayed, the respondent was under no obligation to furnish copies of the bank statements and the invitation to Dr Bassier allowing him to inspect relevant records constituted sufficient compliance with the Court's earlier Directives requiring that the financial records be made available.

[14] Mr. Sayed also disputes that there exists any proper basis for requiring production of the bank statements for the purpose of an independent forensic audit. He

maintains that the present application constitutes an attempt to revisit matters already addressed in the main judgment, forms part of a broader scandalising campaign directed against himself and those presently administering the affairs of the cemetery. He submits that the relief sought is designed to fuel controversy rather than to ensure lawful compliance.

[15] Insofar as it relates to the Mowbray Cemetery Bursary Fund, Mr Sayed stated that it was independent from burial contributions and that no monies from the burial fund were ever diverted to the bursary initiative. The bursary fund was sourced entirely from private donors as well as tree and flower sales at the cemetery as a voluntary community-driven charitable effort directed towards educational support. The bursary initiative, he contends, did not prejudice the respondent's burial operations and does not constitute unlawful conduct. He submitted that the financial records of the bursary fund were recorded in the audited financial statements of the MCB up until the financial year ending February 2024. He did not dispute that there was in fact a discrepancy relating to the NPO registration of the MCB however indicated that same was administrative, not fraudulent, and that the NPO and PBO registration numbers would be provided to the Panel albeit same had not been done in accordance with the Directive dated 4 June 2026 (handed down electronically to the parties on 5 June 2026).

Replying affidavits

[16] In reply, Dr Bassier persisted in the relief sought and disputed the respondent's explanation for refusing to furnish copies of the bank statements. He maintained that inspection of the records did not constitute adequate disclosure for the purposes of independently assessing the respondent's financial affairs and reiterated that copies of the bank statements were necessary for his purposes to properly scrutinize the financial administration of the respondent as soon as possible prior to the elections.

Judicial Inquiry prior to the determination of this application

[17] Issues concerning the respondent's registration as a NPO and PBO, had been addressed by inquiries by this Court to the parties. On 27 July 2026, shortly before this application was to be considered, the Court enquired:

- “4. The respondent is requested to confirm whether it has furnished the panel with the respondent's correct NPO/PBO registration number. If not, the registration number is to be provided to the panel by 20h00 today.*
- 5. The respondent is requested to confirm whether the Standard Bank Account, Number 1[...] (styled as the Mowbray Cemetery Bursary Fund) was opened using the respondent's NPO/PBO registration number, of whether it is maintained on behalf of a separate legal entity and registration....”*

[18] The respondent's attorneys confirmed that the Moslem Cemetery Board is registered as an Association Not for Gain under registration number 1948/06/02, that its current Public Benefit Organisation (“PBO”) registration number is 930066436, and that the Mowbray Cemetery Bursary Fund account is a linked account to the respondent's main banking account.

[19] It is important to note that the respondent did not answer the Court's enquiry directly as to whether the bursary account had been opened using the respondent's Association Not for Gain or PBO registration numbers, nor whether it was maintained on behalf of a separate legal entity. Instead, the respondent stated that the bursary account was a linked account to the respondent's main banking account. This Court thus infers that the bursary account does not operate independently of the respondent's legal status and registration but forms part of its overall banking arrangements and furthermore falls under the administration of the respondent. In the result, the disclosure of banking records in terms of this Court's main judgment and Directives

would necessarily include that of the Mowbray Cemetery Bursary Fund and other bank accounts held under the name and/or registration number of the MCB.

Issues requiring determination

[20] Against the factual background set out above, the issues requiring determination have narrowed considerably. Several concerns initially raised by the applicant have either been clarified through the respondent's subsequent disclosures, addressed by the Panel through the implementation process, or overtaken by subsequent events under the Court's continuing supervisory jurisdiction and judicial inquiries.

[21] Only two discrete issues remain for consideration, that is:

[21.1] whether the applicant has established an entitlement to an order compelling the respondent to furnish copies to him (and/or the Panel) of its bank statements for the period May 2020 to April 2026.

[21.2] whether any additional directions concerning the respondent's banking arrangements are necessary to ensure that funds are available to cover the costs of the upcoming SGM and elections.

Evaluation

[22] The Court is required to strike an appropriate balance between ensuring sufficient financial transparency to maintain public confidence in the implementation process, whilst avoiding unnecessary procedural steps capable of delaying or

distracting from the primary objective of the main judgment, namely the election of a lawfully constituted governing body.

[23] In my view, the answer does not lie in adopting either of the extreme positions advanced by the parties. On the one hand, the Court is not persuaded that the applicant is entitled to be furnished with copies of the respondent's bank statements. On the other hand, the Court is equally not persuaded that the respondent's offer of mere inspection adequately addresses the Court's continuing supervisory obligation to ensure transparency, accountability and public confidence in the implementation of the main judgment. Dr Bassier misconstrues the Court's order and Directives to mean that he is entitled to the financial disclosure. For the reasons which follow, this interpretation is not correct.

[23.1] In paragraph 34 of the judgment the parties are granted leave to seek further ancillary relief necessary to implement this order, more particularly in the ***“assumption of control”*** over the respondent's affairs, bank accounts, financial books of account and financial records by the newly elected board. Whilst that would permit Dr Bassier, to bring such application as a party to the matter, it does not mean that he can obtain copies of the financial records for himself. The judgment specifically limits the access of financial records to the party who would assume control consequent to the SGM and elections. It follows that it is for the purposes of the newly elected board, who would be taking control of the MCB, to access and consider the financial records. Dr Bassier as a member could never have been the assumer of control of the MCB's bank accounts or financial records other than the newly elected Board.

[23.2] Whilst the parties were permitted to apply for further, varied or supplementary relief or directives relating to the disclosure of financial reports beyond those contained in the judgment and order as well as the directives, the

party seeking such relief must make out a case justifying the variation or further order on proper grounds. It is not merely for the asking. On the basis of a possible variation, I consider Dr Bassier's application so as to permit him to have access to the financial records as a member prior to the elections.

[24] The requirement that the respondent furnish the relevant bank statements within 48 hours before the election is not directed at facilitating a forensic investigation before the SGM and elections. The wording of the main judgment and order was specifically aimed to ensure a transition from the present board to the new elected board. Dr. Bassier had consistently expressed concern regarding the way the respondent's financial affairs have been administered by those who are presently exercising such control. However, those concerns are for the newly elected board to consider, investigate and take the necessary actions or pursue appropriate rights and remedies in law and before competent forums.

[25] The reasons advanced by Dr Bassier to justify a variation of the order to grant him access to the bank statements are not compelling. Firstly, the financial records were not ordered to be provided to Dr Bassier, other than for the newly elected board. Secondly, I cannot find a justifiable reason to deviate from the prevailing order for Dr Bassier to be given access to the bank statements. The consideration of the financial records and disclosure thereof was considered at the time of the main judgment, and no new issues had been placed before this Court warranting a departure of its findings. For these reasons the application for disclosure of bank statements to the applicant cannot succeed and accordingly must fail.

[26] Before turning to the further relief, it is necessary to address the applicant's submission that the main judgment precludes the respondent from undertaking charitable initiatives such as the bursary fund. That submission cannot be sustained. The main judgment was directed at the permissible use of the cemetery land, which this

Court held is restricted to purposes directly associated with burial. It did not determine, nor was it intended to determine, that the respondent, as an Association Not for Gain, is confined exclusively to burial-related activities. Subject always to its constitutional objects and applicable law, the respondent is not precluded from undertaking charitable or community-based initiatives. What remains restricted is the use of the cemetery land itself, which must remain dedicated to purposes incidental or directly related to burial. The funds raised through charitable objectives or including donations are lawful and forms part of the finances of the Mowbray Cemetery as an Association Not for Gain.

Further and alternative relief

[27] Although the applicant is not entitled to the relief as sought in the notice of motion, that does not conclude the matter. In the exercise of its continuing supervisory jurisdiction, this Court is entitled to make such further directions necessary to give practical effect to the main judgment and to secure its orderly implementation.

[28] In the present circumstances, I consider it appropriate to undertake a limited judicial inspection of the respondent's banking records, commonly referred to as a "*judicial peep*". The purpose of such inspection is not to conduct a forensic audit of the respondent's affairs, nor to determine the rights of the parties in relation to the contents of the bank statements. Its purpose is considerably limited and narrowed.

[29] The bank statements are to be delivered directly to the Court and will remain confidential. They will not be available to the parties. This enables the Court to satisfy itself that sufficient funds exist to facilitate the electoral process and the incidental costs thereof. Since the delivery of the main judgment, the member registration and electoral process has attracted substantial interest from the community, both in person and through digital participation. This in turn required additional attendances by the Panel including the consideration and consultation of a secured digital registration and voting

platform. The orderly conduct of the election necessarily requires appropriate logistical, administrative as well as technological arrangements, all of which entail financial expenditure. Those arrangements are directed solely at giving practical effect to the Court's judgment and facilitating the orderly assumption of office by the newly elected governing body to serve the interests of the MCB.

[30] The purpose of the judicial inspection is to enable the Court to determine whether a further Directive should be issued regulating the provision and safekeeping of funds required for the implementation of the election process. Such a Directive may include Directions requiring the respondent to pay into the trust account of a practising attorney member of the Panel such funds as may reasonably be required for the implementation of the election process, including the remuneration and reasonable expenses of the Panel. The nature and extent of any such Directive will be determined after the Court has considered the banking records.

Relief sought by Mr. Sayed against the Panel

[31] I now turn to consider the relief sought by the respondent under Part B of the answering affidavit. That relief is directed, not against the applicant, but against the Panel. It therefore raises considerations distinct from those arising in the interlocutory application for disclosure of the bank statements of the MCB.

[32] The respondent seeks an order directed at the Panel in relation to the discharge of its functions under the Court's previous orders. The respondent seeks various directions relating to the implementation of the election process. As a preliminary point, the relief sought is procedurally irregular. It was not brought before the Court by way of a substantive application, supported by an appropriate notice of motion and founding affidavit. Instead, it was introduced as part of the respondent's answering affidavit to the present interlocutory application. Ordinarily, relief of this nature would not properly

fall for determination. However, the Court has retained continuing supervisory jurisdiction over the implementation of its earlier judgment until the election has come into effect and in a manner that is free, fair and ensures broad participation of the community. In the result I would consider whether the relief sought by Mr. Sayed warrants further directives.

[33] The relief sought concerns various aspects of the membership registration, identity verification, nomination and election processes administered by the Panel.

[34] Prior to the determination of this matter, a second written report had been filed by the Panel setting out the steps taken since its first report. The date for the SGM had been set from 10h00 till 16h00 on **23 August 2026** at the Cape of Good Hope Castle, Cape Town, with an addition of a secured digital platform permitting registrations (including late registration), and voting by the casting of a digital ballot. All member registrations to date have been included on the voter's roll and entitled to vote, save as may be restricted subject to further authentication (where necessary). The in-person voters would be required to show identity verification at the time of voting and the online digital platform secures access verification as well.

[35] Furthermore, this Court had prior to this judgment issued a further directive on 29 July 2026 relating to the nomination and election process. In particular: (a) nominations were directed to be invited for eleven (11) board members; (b) the newly elected board is to determine its office bearers in accordance with the 1948 Constitution; (c) the requirements for nominations; (d) criterion for nominees; (e) the Panel has been directed to shortlist up to 22 (twenty-two) candidates for election to the Board. In preparation of the shortlist, the Panel may have regard to various skills, knowledge and experience.

[36] In order to ensure that the nomination and election process proceeds in an orderly and transparent manner, the Panel sought further directions from the Court as follows:

- (a) call for nominations published by the Panel on **Tuesday, 4 August 2026;**
- (b) closing date for nominations Tuesday, **11 August 2026;**
- (c) publication of the shortlist of candidates by the Panel as of **Tuesday, 18 August 2026;**
- (d) costs of the Panel arising from the additional responsibilities assigned to it by the Court;
- (e) directions regulating the transition of banking permissions and authority from those signatories or persons presently exercising control over the Board's banking account/affairs to the newly elected MCB; and
- (f) such further directives as the Court deem necessary to facilitate the orderly implementation of the election process and the assumption of the office by the newly elected governing body.

[37] Since the filing of the answering affidavit, the implementation process has continued under the Court's supervision through a series of Directives issued from time to time. These Directives, together with the measures implemented by the Panel pursuant thereto, promotes a free, fair and broad participation election. I am satisfied that the above substantially address the concerns raised to ensure the election process remains free, fair and transparent.

Costs of the application

[38] The Court notes that both Dr Bassier and Mr Sayed have made grave accusations against each other of mala fides, misconduct and conduct said to undermine the proper governance of the Board. Those are grave allegations. Mr. Sayed has also indicated his intention to institute action against Dr Bassier for allegations made against him. On the papers before me, and having regard to the nature of these proceedings, it is neither necessary nor appropriate to make definitive findings in relation thereto.

[39] Many of the issues raised in this application have been overtaken by subsequent events occurring during the Court's continuing supervision of the implementation process. Other issues have been resolved through the Court's Directives and the measures implemented by the Panel. In those circumstances, it cannot fairly be said that either party has emerged as the successful party for purposes of costs.

[40] In the exercise of my discretion, I consider that the interests of justice are best served by directing that each party bear his/its own costs.

Costs of the Panel including reasonable expenses:

[41] In the Directive: 04 June 2026, I directed that the costs of the Panel be borne equally by the parties. That order was made at a stage where the Panel's role was primarily investigative and facilitative. As the implementation process unfolded, however, the Panel's functions became directed primarily at giving practical effect to the Court's judgment by facilitating the nomination and election of a new governing body as well as the orderly assumption of office. In its first report, the Panel itself requested that the Court reconsider its earlier Directive relating to the reasonable cost of the Panel on the basis that its functions had become directed at facilitating the election of a newly constituted governing body in the interests of the respondent.

[42] Given the changed circumstances, I consider that a variation of the earlier directive in respect of the Panel's costs is warranted. The work undertaken by the Panel has been directed at implementing this Court's judgment for the benefit of the respondent and facilitating the orderly transition to a newly elected governing body. It is accordingly just and equitable that the remuneration and reasonable expenses of the Panel incurred in the discharge of their functions pursuant to this Court's directives, be borne by the MCB (respondent) and not between Dr Bassier and the respondent equally.

Order

[43] In these circumstances, I make the following order:

[43.1] The application is dismissed.

[43.2] Each party shall bear its own costs.

[43.3] The respondent shall, by 14h00 on Wednesday, 5 August 2026 deliver (both electronic and hard copies) to the Registrar of this Court, for the attention of Mrs. Gail Martin, copies of the respondent's bank statements in respect of the following accounts held with Standard Bank for the period of 1 March 2026 to 4 August 2026 in respect of:

[43.1.1] Mowbray Cemetery Board account number: 0[...];

[43.1.2] Mowbray Cemetery Bursary Fund account number: 1[...];

[43.1.3] Any other bank accounts held with any other banking institution in the name and/or registration number of the respondent for the period 1 March 2026 to 4 August 2026;

[43.4] The Registrar shall retain the bank statements as directed in this order as confidential documents pending further direction of this Court. The confidential documents shall be filed in a separate and confidential file.

[43.5] The remuneration and expenses of the Panel members incurred in the discharge of their functions pursuant to the judgment of this Court and the Directives issued thereunder shall be borne by the Respondent.

GAYAAT DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For Applicant:

Instructed by: Louw & Coetzee Attorneys

For Respondent:

Instructed by: OSP Inc.