



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE: 31 July 2026

SIGNATURE: [REDACTED]

Case No. 2026-156157

In the matter between:

TWAIN SIBONISO NGWENYA

ZOLANI MKIVA

JEWEL MASHAO

PAMELA EVIDENCE NDLOVU

HENRY VUSUMIZI LEEUW

LESIBA MOTHOA

CELENHLE THEMBAYENA DLAMINI

MICHAEL EDWIN WORSNIP

THEMBA NDULINI

THOBILE KOMAZI

QUEEN NEO MONONELA MOPELI

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

FOURTH APPLICANT

FIFTH APPLICANT

SIXTH APPLICANT

SEVENTH APPLICANT

EIGHTH APPLICANT

NINTH APPLICANT

TENTH APPLICANT

ELEVENTH APPLICANT

And

THE MINISTER OF SPORT, ARTS AND
CULTURE

EUGENE BOTHA

CLINT BRINK

SIMON CLARKE

DR LAURA DE HARDE

ZAK GORDON

HAROON GUNN-SAILE

TAU MASEMOLA

OMPHEMETSE MOKGOSI

SIPHOSETHU MTAMZELI

TRACY PERUMAL

BONGANI TEMBE

CHARNIE-LEE ADAMS-KRUGER

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

EIGHTH RESPONDENT

NINTH RESPONDENT

TENTH RESPONDENT

ELEVENTH RESPONDENT

TWELVETH RESPONDENT

THIRTEENTH RESPONDENT

Coram: Millar J

Heard on: 29 July 2026

Delivered: 31 July 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 31 July 2026.

JUDGMENT

MILLAR J

- [1] The applicants are members of the National Arts Council (NAC), established in terms of the National Arts Council Act¹ (the Act). The first respondent, the Minister of Sports, Arts and Culture (the Minister) is the Minister under whose aegis the NAC falls.
- [2] On 25 May 2006, the Minister purporting to act in terms of Section 5(5) of the Act, dissolved the NAC. Before this Court, is an urgent application brought in two parts. Part A with which this Court is seized is for an order temporarily setting aside the dissolution of NAC pending Part B which is for a review of the Minister's decision of 25 May 2026.
- [3] The application was brought on urgency. The case for the applicants is that because, the NAC was dissolved, it was only acting in their individual and personal capacities that they could bring the present application. The dissolution of the NAC deprived them of access to the resources of the NAC and unlike the Minister, who in that capacity, has no such restriction, it took them some time to make the necessary financial and other arrangements before the application was issued on 2 July 2026.
- [4] The explanation provided by the applicants demonstrates in my view, that they acted with the necessary expedition to bring these proceedings and that insofar as there was any delay, this was in direct consequence of the very action that they seek to challenge. It is for this reason that I am of the view, notwithstanding the Minister's assertion, that the urgency is self-created by the applicants, that the application is indeed urgent.
- [5] The view taken by me in this regard is not one sided. The Minister for his part,

¹ 56 of 1997.

failed to keep to the time periods stipulated by the applicants for the noting of his intention to oppose the matter as well as the filing of an answering affidavit. The Minister explained at some length the reason for the delays, brought about in the main by his being out of the country on official business. This included inter alia attendances at the recently held FIFA World Cup in North America as well as Commonwealth Games in the United Kingdom. The Minister applied for condonation for the late filing of his notice of intention to oppose as well as his answering affidavit. Given the view taken by me regarding the reasonableness of the conduct of the applicants, I also take the view that condonation should be granted.²

- [6] The factual background relating to this application is uncontentious. Its genesis is found in two letters addressed by the Minister to the NAC. The first letter was dated 22 April 2026 and the second 25 May 2026.

THE FIRST LETTER – 22 APRIL 2026

- [7] The letter of 22 April 2026 is headed “*MINISTERIAL REQUEST TO CONVENE URGENT SPECIAL COUNCIL MEETING FOR CONSIDERATION OF PROPOSED ONCE-OFF FULL AND FINAL SETTLEMENT OF ONGOING BONUS DISPUTE*”. The letter is 5 pages in length. I do not intend to quote it in full. The salient points that are recorded in the letter are the following:

- [7.1] The Minister addressed the letter to the NAC in his capacity as the Executive Authority of the NAC in the exercise of his oversight capacity and in terms of the PFMA.³

- [7.2] Recorded that the NAC has been engaged in a labour dispute relating to performance bonuses for the financial years 2019/20, 2020/21 and 2021/22.

- [7.3] That “*I understand that Council has determined that no contractual or statutory entitlement to those bonuses exists, as prior Councils at the time*

² *Pangbourne Properties Ltd v Pulse Moving CC and Another* 2013 (3) SA 140 (GSJ). *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC) at para [23].

³ Public Finance Management Act 1 of 1999.

made considered decisions not to approve them."

[7.4] That *"I have also been advised that Council has explored the possibility of settlement but has been uncertain whether it has the legal authority and financial management basis to conclude one. The purpose of this letter is to address that uncertainty and to offer formal support for an urgent settlement process."*

[8] The Minister pertinently recorded that *"Notwithstanding the legal position that no entitlement exists, I am satisfied, having considered the matter carefully, that the continued prosecution of this dispute is not in the public interest. The aggregate value of the dispute is modest. The legal costs already incurred by the NAC, and those likely to be incurred in the matter proceeds to the Labour Court, materially exceed the value of the underlying claim. The reputational harm to the institution, and the disruption to its core mandate of delivering funding to the arts sector, compound this assessment."*

[9] The Minister then requested that the NAC convene a special meeting of the council *"for the specific purpose of considering whether, if lawfully satisfied on the material before it, council should approve a once off full and final settlement of the bonus dispute."*

[10] Tellingly, the letter also records the Minister's recognition that the NAC retained full authority and responsibility as the responsible accounting authority and that *"Nothing in this letter overrides or replaces that authority."*

[11] The Minister then went on to set out what information and documentation ought to be considered at the special meeting and what steps should be taken if the NAC resolved to settle the dispute. Specifically, the Minister requested that he be notified of the outcome of the meeting within 2 days of the meeting and that he be furnished with a copy of any settlement that may have been authorised within 5 days.

[12] The NAC duly planned for the holding of the special meeting. This was scheduled for 29 May 2026. The Minister was informed accordingly and all things being equal, could have expected notification of the outcome of the meeting by 31 May 2026 and in the event of a settlement having been

approved, a copy of that settlement by 4 June 2026.

THE SECOND LETTER - 25 MAY 2026.

- [13] The second letter of 25 May 2026, was headed "*RE: DISSOLUTION OF THE NATIONAL ARTS COUNCIL IN TERMS OF SECTION 5(5) OF ACT 56 OF 1997 AS AMENDED.*"
- [14] In this letter, the Minister re-iterated that he had requested a special meeting and that he be notified within 2 days of the outcome of the meeting.
- [15] The Minister then stated "*Despite this, no settlement has been concluded. The Council has failed to provide my office with written notification of a resolution in the terms requested. The matter continues to cause financial distress to employees and attracts ongoing public and media scrutiny. I have been advised that the Council resolved to defer substantive consideration pending further internal audit reports, with a meeting scheduled only for 29 May 2026. I do not consider this timeline consistent with the urgency required.*"
- [16] The Minister then raised what was stated to be "*credible information*" which was received by him relating to certain procurement decisions and then somewhat inexplicably recorded that there had been a "*broader breakdown in institutional leadership and governance.*" The Minister then summarily invoked the provisions of Section 5(5) of the Act and dissolved the NAC.
- [17] It is inapposite in this judgment, to deal with the full contents of each of either the first or the second letter. Their contents and any other information or documentation which forms part of the record for the Minister's decision will serve before the Review Court in Part B. It suffices to state at this stage that Section 5(5) of the Act provides that "*The Minister may dissolve the Council on any reasonable grounds.*"
- [18] Since the NAC did not have the opportunity to consider the issue that had been referred to it by the Minister on 22 April 2026, and it had scheduled the special meeting it was requested to, it does not seem that this could reasonably have been the reason for the Minister's dissolution of the NAC. This is particularly so since the letter of 22 April 2026 did not prescribe by

when the meeting was to be convened. Similarly, the vague reference to credible information and procurement decisions without notifying the NAC which decisions were said to be questionable, could also not be a reasonable ground. I make no finding on whether there were in fact reasonable grounds or not.

- [19] However, the decision of the Minister has had the consequence that the NAC is now left rudderless. The NAC, absent the applicants in their capacity as members of the Council now finds itself under the stewardship of the Chief Executive Officer (CEO). In terms of Section 13(2) of the Act, the CEO is responsible for the management of the affairs of the NAC and is required to *"report on those affairs to the Council as often as may be required by the Council."*
- [20] In other words, the CEO has no independent authority to make any policy related decision. Section 13(2) makes him specifically subject to the Council.
- [21] One of the grounds of upon which the present application was brought, was that the Minister had indicated in the second letter that he was going to *"initiate the process for the appointment of a new Council."* This it was argued, would render the Part B review moot if a new Council were appointed before it was concluded.
- [22] The Minister for his part, in his answering affidavit, on this point, stated that *"When I dissolved the Council, the Chief Executive Officer, by law, became the Accounting Authority for the Council. All the functions of the National Arts Council will continue without disturbance."* While it is so that the CEO is the Accounting Officer, this is in terms of Section 14(1) of the Act. He does not replace, nor does he have the authority to exercise those functions of the NAC or to make any decisions in regard thereto without the specific authority of the Council.
- [23] The Minister's assertion in his answering affidavit that *"the process to elect and appoint the new Council has not yet commenced. In fact, no date has been set. The process is by its nature cumbersome and takes substantial time. I can estimate that the process will take more than six months before it can happen. There is no immediate prospect of a new Council being appointed. Therefore, the applicants have all the time to prosecute their review application. There is no need of this urgent interdict to freeze a process which has not yet commenced."* This was the position

as of 27 July 2026.

[24] What is not addressed by the Minister, is the urgent matter set out in the letter of 22 April 2026 and how the dissolution of the Council and at least a 6-month delay before any replacement Council could be appointed affects the issue to which the Minister had attached such urgency. On the papers before me, this issue, at least insofar as the Minister was concerned in his letter of 22 April 2026, was a matter falling within the remit of the Council and something that could only be decided by the Council. It is for this reason that the decision taken does not at this stage, at least insofar as the present interdict proceedings are concerned, withstand scrutiny.

[25] Before turning to deal with the interdict sought, the Minister raised several points *in limine*. None of these have any merit for the following reasons:

[25.1] Lack of urgency – this is dealt with above. The assertion by the Minister that lack of financial resources and time to make arrangements can never justify a delay in urgent proceedings is simply not correct. To adopt such an approach favours those with the means (financial or otherwise) and discriminates unjustifiably against those who do not have means. Urgency is determined regarding the circumstances of the matter and not the means of the parties.

[25.2] Lack of proper service - it was asserted on behalf of the Minister that service upon the second to fourteenth respondents by email was improper. There is nothing before this Court to gainsay the affidavit filed by the applicants' attorney confirming that he had dispatched by email to each of those respondents a copy of the papers. Given the circumstances of the matter, I regard service by email as having been entirely appropriate.

[26] Turning now to the requirements for an interim interdict.

INTERIM INTERDICT

[27] It is settled law⁴ that in respect of an interim interdict, an applicant must establish the following:

[27.1] A *prima facie* right, even if open to some doubt.

[27.2] A well-grounded apprehension of irreparable harm.

[27.3] A balance of convenience in favour of the granting of an interim order.

[27.4] The absence of any other satisfactory remedy.

PRIMA FACIE RIGHT, EVEN IF OPEN TO SOME DOUBT

[28] The crux of the right argued by the applicants was that they are entitled to complete their terms of office as members of the NAC, in the face of what is argued is an irrational and baseless decision to dissolve the NAC.⁵

[29] There is no Council. There needs to be a Council for the statutory scheme to operate.⁶

[30] The Minister argued that the applicants accepted that they had no right to remain in office. In this regard, the Minister referred to the applicants' founding affidavit where they stated "*the Applicants do not contend that the Respondent lacks statutory authority under Section 5(5) of the Act to dissolve the Council in appropriate circumstances. Neither do the Applicants contend that members of the Council enjoy an immutable right to remain in office for the duration of their appointments regardless of the circumstances.*" The Minister misconstrues this assertion on the part of the applicants. They accept that there may well be

⁴ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

⁵ See *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC) and also *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at paras [44] and [47].

⁶ *Simons NO v Air Operations of Europe AB and Another* 1999 (1) SA 217 (SCA) at 228G-H.

circumstances where the Council can be dissolved or where one or all of them can be removed but that this is circumstance specific and in the present case, the circumstances that merit the dissolution of the Council do not seem to me on the papers before me to be there. It is for this reason that I find that the applicants have a right to be reinstated pending the part B review.

APPREHENSION OF HARM

- [31] The harm in this matter is the displacement of a properly appointed Council in terms of the Act. The Act does not provide for a situation where the NAC is to function without a Council. In the present matter the statutory scheme has been subverted by the summary dissolution of the Council – a specific governance structure established by the legislature in terms of the Act. It seems to me self-evident that the subversion of an act of Parliament must reasonably permit of an apprehension of harm.⁷

BALANCE OF CONVENIENCE

- [32] It is without doubt that the NAC requires a Council to function. The CEO cannot properly manage the affairs of the NAC without a Council. The statutory scheme and in particular Section 13 make this abundantly clear. It is averred by the Minister that the appointment of a new Council will take at least 6 months, if not longer. Since the issue raised in the letter of 22 April 2026 was said to be urgent, requiring the attention of the Council, it is undesirable that this issue (which on the papers is still unresolved) remains so until a new Council is appointed many months hence.
- [33] On the facts of the present matter, in my view the balance of convenience favours the granting of the order sought.

⁷ *Janit and Another v Motor Industry Fund Administrators (Pty) Ltd and Another* 1995 (4) SA 293 (A) at 304H-I.

ABSENCE OF AN ALTERNATIVE REMEDY

- [34] In the present circumstances, there is no alternative remedy other than an order setting aside the dissolution of the NAC. If the Minister were to proceed to appoint a new Council, at least insofar as the applicants are concerned, the review of the Minister's decision would be academic and "after the fact" insofar as their completion of their terms of office as members of the NAC is concerned.
- [35] It was argued that only interim relief directed at preserving the *status quo* could prevent the progressive entrenchment of the consequences of the Minister's decision before the Part B review is heard. I am of the view that this must be so.

COSTS

- [36] Costs will follow the result. The applicants were represented by two counsel. Given the importance of this matter, the engagement of two counsel seems to me to have been a wise and reasonable precaution and it is for this reason that I intend to make the order that I do. While the costs order will be as between party and party, the costs of counsel in terms of Rule 67A are awarded on scale C.

ORDER

- [37] In the circumstances, pending the institution and final determination of the review proceedings referred to in Part B of the notice of motion, it is ordered:
- [36.1] The forms and service provided for in the Uniform Rules of Court be dispensed with and this application is heard as one of urgency in terms of Rule 6(12).
- [36.2] The late delivery of the answering affidavit of the First Respondent is condoned.

- [36.3] The decision of the First Respondent dated 25 May 2026 dissolving the Council of the National Arts Council of South Africa in terms of section 5(5) of the National Arts Council Act 56 of 1997 and terminating the appointments of the Applicants and the remaining members of the Council be and is hereby suspended together with the implementation thereof.
- [36.4] The Applicants and the remaining members of the Council of the National Arts Council of South Africa be reinstated to office pending the final determination of the review proceedings contemplated in Part B.
- [36.5] The First Respondent be interdicted and restrained from:
- [36.5.1] implementing the decision of 25 May 2026 dissolving the Council;
 - [36.5.2] taking any further steps pursuant to the dissolution of the Council; and
 - [36.5.3] commencing, continuing or finalising any process for the appointment of a replacement Council for the National Arts Council of South Africa.
- [36.4] Any appointment, nomination, designation or other step already taken pursuant to the impugned dissolution decision be suspended pending the final determination of the review proceedings.
- [36.5] The costs of Part A are to be paid by the First Respondent on the scale as between party and party which costs are to include the costs consequent upon the engagement of two counsel on Scale C.

HEARD ON: 29 JULY 2026

JUDGMENT DELIVERED ON: 31 JULY 2026

COUNSEL FOR THE APPLICANTS: ADV. M KGOMONGWE

ADV. MPHAHLELE

INSTRUCTED BY:

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REFERENCE:

MR. A RASEBOYE

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INSTRUCTED BY:

THE STATE ATTORNEY, PRETORIA

REFERENCE:

MS M MOLOTO

NO APPEARANCE FOR THE SECOND TO THIRTEENTH RESPONDENTS