

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2020-02375

- | | |
|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |

5 August 2026

DATE

A black rectangular box redacting the signature of the judge.

SIGNATURE

In the matter between:

IHEANACHO, HENRY EMEKA

Applicant

And

**THE REGISTRAR, UNIVERSITY OF
JOHANNESBURG**

First respondent

PROFESSOR MICHELLE VAN DER BANK

Second respondent

MR RONNY KABONGO

Third Respondent

PROFESSOR STEPHAN BOATWRIGHT

Fourth respondent

DR ANTHONY MAGEE

Fifth respondent

THE UNIVERSITY OF JOHANNESBURG

Sixth respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 5 August 2026.

J U D G M E N T : L E A V E T O A P P E A L

CORAM: LIEBENBERG AJ:

[1] Dissatisfied with my judgment and order of 2 April 2026, the applicant seeks leave to appeal raising six grounds. I am satisfied that leave to appeal should be refused for the reasons hereunder.

Mootness/Jurisdiction

[2] The applicant contends that the exclusion decision and re-registration decision form one continuous impugned process. I am satisfied that given the different times of the decisions and differing identities of the decision makers concerned, the decisions are distinct and separate from each other.

[3] As appears from the main judgment, impugning the exclusion decision leaves intact the re-registration decision which results in the applicant being unable to further his studies. Similarly, setting aside the re-registration decision leaves

intact the exclusion decision with the same result. In both scenarios the practical effect is the same: the result is moot.

- [4] Another court would not come to a different conclusion.

PAJA 180 day period/knowledge/section 9

- [5] The applicant did not seek condonation for the late bringing of the application for review. On any construction, the application was brought beyond the 180 days allowed for from the date of the exclusion decision as well as the date upon which he learnt of the exclusion decision. The application was also launched beyond 180 days from the date of the re-registration decision and the reasons provided for that decision.

- [6] Absent a substantive application for condonation a section 9 enquiry was not triggered and no argument was presented for condonation.

- [7] In the result, the review was not justiciable and another court would not come to a different conclusion.

Pleadings/ "New case"

- [8] The applicant contends that this court adopted an overly rigid approach in finding that the case advanced at the hearing was a new case not pleaded in the affidavits. As appears from the main judgment, the main aim of attack in the affidavits was the exclusion decision and not the re-registration decision. The new case presented at the hearing of the matter was simply not supported by the affidavits filed.

- [9] I am satisfied that the approach was not rigid but consonant with the authorities

including NDPP v Zuma¹.

[10] Another court would not come to a different conclusion.

Failure to engage the merits

[11] The review faltered on three preliminary points and the merits of the application was not entered into. Absent a rational basis for leave to appeal being advanced in respect of each of these points, this application is doomed to failure.

Joinder and interconnected relief

[12] As already stated, the attack in the applicant's affidavits was at the exclusion decision and not the re-registration decision. The two decisions are distinct. The exclusion decision was taken by the Department of Botany and the re-registration decision by a quai-appeal body, the Senate Higher Degrees Committee some two and half years later. The affidavits filed do not evidence the interconnected roles the applicant contends for.

[13] The attack on the re-registration decision at the hearing was not supported by the affidavits and another court would not come to a different conclusion.

Costs

[14] It is only in exceptional circumstances that leave to appeal is granted in respect of a costs order. The applicant did not advance any exceptional circumstances in either his notice of application for leave to appeal or during argument. Nor was any argument advanced on the court's alleged misdirection.

¹ National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA) 2009 (2) SA 277 (SCA)

[15] The first to fifth respondents were not cited in their official capacities but as privately named litigants. Nothing in the affidavits indicated that these respondents were cited in official capacities nor was the abandoned relief sought against them in their official capacities. The third, fourth and fifth respondents are not even employed by the University. Accordingly, the Biowatch principle did not find application to these respondents.

[16] There is no reasonable prospect of another court coming to a different conclusion.

Conclusion

[17] In the result, the application is dismissed and the applicant is ordered to pay the costs of the first to fifth respondents including counsel's fees on scale B.



SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

For the applicant:

Adv Ndlovane (Ms)

Instructed by Masewawatla Attorneys

For the respondents:

Adv Molver

Instructed by Lawton Africa

Heard on 7 July 2026

Judgment on 5 August 2026