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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2026-045352

In the matter between:

CLARE ESTATE RATEPAYERS ASSOCIATION

APPLICANT

and

THE SOUTH AFRICAN NATIONAL ROADS AGENCY

SOC LTD (SANRAL)

FIRST RESPONDENT

BASE MAJOR / CSCEC JOINT VENTURE

SECOND RESPONDENT

BASE MAJOR CONSTRUCTION (PTY) LTD

THIRD RESPONDENT

CHINA STATE CONSTRUCTION ENGINEERING

CORPORATION (SOUTH AFRICA) PTY LTD

FOURTH RESPONDENT

TRUSTEES FOR THE TIME BEING OF THE

MHJ ARBEE FAMILY TRUST

FIFTH RESPONDENT

ARBEE ARBEE

SIXTH RESPONDENT

ATOMIC DEMOLISHERS AND PLANT HIRE (PTY) LTD

SEVENTH RESPONDENT

ETHEKWINI MUNICIPALITY

EIGHTH RESPONDENT

HOD: KZN DEPARTMENT OF ECONOMIC

DEVELOPMENT, TOURISM AND ENVIRONMENTAL

AFFAIRS

NINTH RESPONDENT

**MEC: KZN DEPARTMENT OF ECONOMIC
DEVELOPMENT, TOURISM AND ENVIRONMENTAL
AFFAIRS**

TENTH RESPONDENT

**DIRECTOR-GENERAL: DEPARTMENT OF WATER
AND SANITATION**

ELEVENTH RESPONDENT

MINISTER: WATER AND SANITATION

TWELFTH RESPONDENT

ORDER

The following order is granted:

1. The *rule nisi* is confirmed.
2. Mr Kuben Samie is directed to pay the costs occasioned by the matter being struck off the roll for want of urgency in respect of those respondents who opposed the application *de bonis propriis*, inclusive of costs of counsel taxable on scale B.

JUDGMENT

Henriques J

Introduction

[1] ‘Uneasy lies the head that wears a crown’, a Shakespearean idiom meaning that people in positions of power, leadership and high responsibility face immense pressure, stress and burdens that make it hard to rest. These words resonated with me in this matter, given that I had the unenviable task of determining whether a legal practitioner ought to pay costs occasioned by an application being struck off the roll for want of urgency *de bonis propriis*.

[2] On 6 March 2026, an urgent application served before me, purportedly instituted by the applicant, the Clare Estate Ratepayers Association (CERA), represented by Mr Kuben Samie (Mr *Samie*), which was opposed by several respondents. After hearing argument, given the lack of urgency, the matter was struck off the roll and a rule *nisi* issued, returnable on 12 March 2026, directing Mr *Samie*, in his capacity as legal representative of the CERA to file an affidavit by midday on 10 March 2026, indicating why he ought not to pay the costs of the respondents who opposed the urgent application on 6 March 2026 *de bonis propriis*.

Background

[3] The CERA had instituted the two-pronged urgent application against the various respondents. It sought in Part A immediate interdictory relief, restraining the second, third and fourth respondents from disposing or depositing construction spoils or waste into the quarry and interdicting the first respondent from permitting its contractors to utilise the quarry for the disposal of waste or construction spoils.

[4] As part of the urgent relief, it, in addition, sought the following order:

‘The voluntary suspension of all site operations on ERF 4855 Reservoir Hills, as recorded in the fifth and sixth respondents’ correspondence dated 18 February 2026, be and is hereby made an order of court.’

[5] Part B of the relief, which contained a permanent interdict and various remedial remedies in terms of s 28 of the National Environmental Management Act 107 of 1998 (NEMA), was to be pursued on another date.

[6] The certificate of urgency signed by Mr *Samie* was dated 20 February 2026, and the notice of motion was similarly dated 20 February 2026. The founding affidavit, deposed to by Kavir Boodoo (Mr Boodoo), was signed and commissioned on 21 February 2026, the confirmatory affidavit of Mr Amith Authar was deposed to and commissioned on 20 February 2026 (prior to the deponent to the founding affidavit signing and commissioning his), the second confirmatory affidavit of Mr Kasaval

Subraya Gounden was signed and commissioned on 21 February 2026 and an expert affidavit by Mr Simon Bundy was signed and commissioned on 22 February 2026.

[7] A reading of the founding affidavit demonstrates that on or about 22 October 2024, the deponent observed a number of trucks on Clare Road, fully laden with waste, disposing of the waste on Erf 4[...], R[...] H[...]. Similarly, on 29 October 2025, the deponent accompanied Mr Amith Authar, where he piloted a drone to take video footage and photographs of the quarry where they observed three Atomic Demolishers trucks dumping waste into the quarry.

[8] From October 2025 to December 2025, Mr Boodoo indicates that the residents of Clare Estate engaged with officials of the eThekweni Municipality and the KwaZulu-Natal Department of Economic Development (the Department) concerning the dumping into the quarry.

[9] Subsequently, on 7 November 2025, a response was received from officials that enforcement action was underway and, similarly, on 17 December 2025, the CERA was informed that the Department had issued a compliance notice to the sixth respondent to cease and desist from further waste disposal on site and to prepare a rehabilitation plan. On 16 January 2026, once again trucks loaded with waste were observed entering the same erf. On 3 February 2026 and 10 February 2026, similar observations were made.

[10] In addition, on 3 February 2026, the deponent observed the second respondent dumping rock and spoil material on the eastern bank of the quarry. On 11 and 18 February 2026, the CERA issued formal demands to the fifth and sixth respondents requesting them to cease all illegal dumping. A response to such correspondence was provided on 18 February 2026.

[11] Urgency is dealt with in the founding affidavit from paragraphs 96 to 102. The deponent submits in summary the following:

- (a) The urgency is not self-created but has been as a consequence of the respondents' intensified and wilful illegal dumping activities over the past two weeks and their failure to cease unlawful activities despite the applicant's demand;
- (b) On a daily basis, truckloads of waste are deposited into the wetland and a D'MOSS protected area and although the environmental degradation is a historical context, a fresh and distinct phase of illegality commenced on 3 February 2026 and has continued unabated;
- (c) Should a hearing in the ordinary course proceed, the relief sought would be rendered academic as the quarry would have been entirely and irreversibly damaged. The biological integrity of the wetland is extinguished, and without the immediate intervention of the court, there is no environment left to protect.
- (d) The 'fresh' conduct observed between 3 and 17 February 2026 proves that only an urgent judicial order will halt the respondents.

[12] Interim answering affidavits were filed by certain respondents, in which the following points *in limine* were taken. I summarise some of the more pertinent oppositions placed before the court by the various respondents as follows.

[13] The first respondent, in its preliminary answering affidavit deposed to by Dudley Mbambo (Mr Mbambo), raises three grounds on which it sought to challenge the application, namely urgency or self-created urgency, the non-joinder of the National Department of Transport and the failure by the applicant to meet the requirements for an interdict. It is common cause that the project commenced in January 2023 and that the cause of complaint, being the disposal of materials in the quarry, was known to the applicant as early as 22 October 2024.

[14] The cause of complaint was evidenced in email correspondence dated July 2025, attached to the application papers as annexure 'O' and the complaint dated 14 July 2025, which culminated in the compliance notice issued on 11 November 2025, addressed to the sixth respondent. On the applicant's version, the sixth respondent did not comply with the compliance notice in 2025 and the material facts which led to the

harm complained of were at that stage within the knowledge of the applicant or had fully manifested. The applicant does not provide any explanation for its failure to approach the court at that point in time.

[15] Secondly, the challenge is made that an applicant must establish reasons why its claims would not be afforded substantial redress at the hearing in due course. The sixth respondent has indicated that the disposal of materials complained of has ceased. The applicant further had not alleged that the harm complained of is incapable of restoration. The applicant had been requesting an environmental rehabilitation plan, which indicates that any alleged harm is indeed capable of rehabilitation. Any party, if proven to be a guilty party, is able to rehabilitate the quarry in due course and this would afford the applicant substantial redress.

[16] The second to fourth respondents' interim affidavit, deposed to by Mr Ruan Swiegelaar, indicates that the project to expand the EB Cloete interchange was awarded to the joint venture in September 2022 and work commenced on 30 January 2023. The depositing of spoils has been taking place at the quarry since August 2024. Although the joint venture accepts that spoil is being deposited, it denies the allegations made by the applicant.

[17] The second to fourth respondents submit that works are executed within the demarcated road reserve, ensuring no encroachment onto private property and the disposal of spoil is proceeding in accordance with the permission and mandate granted by the first respondent, which is the registered owner of the land encompassing the eastern portion of the property. Such activities on the site are conducted pursuant to formal instructions and authorisations issued by the National Road Authority. The joint venture has also obtained the authorisation from the Department of Water and Sanitation to dispose of suitable material within the designated quarry. Such activities were approved by the project engineers.

[18] To ensure the ongoing environmental safety, it was submitted that the material

from the quarry was subjected to regular laboratory testing and the project's adherence to all regulatory standards is strictly monitored by an independent environment control officer. Consequently, the second to fourth respondents and the first respondent are not dumping anything on the western side of the quarry.

[19] A further challenge in opposition to the application relates to the *locus standi* of the applicant and its failure to have legal standing, given that it is not registered as a non-profit organisation, and secondly that it does not have standing, as it has failed to demonstrate any breach or threatened breach of any provision of NEMA and avers that s 32(1) of NEMA does not arise in this application.

[20] After the legal practitioners addressed me on urgency, the order alluded to in paragraph 2 was issued. In compliance with the *rule nisi*, Mr Samie filed an affidavit in which he, in summary, indicated the following:

- (a) he represents the applicant on a pro bono basis and his involvement is motivated by a commitment to environmental justice and constitutional rights and he receives no remuneration for his service. His mandate was recorded in a written agreement on 2 February 2026 with the CERA to act on a pro bono basis;
- (b) he had a bona fide belief that the matter was urgent and his assessment of urgency was informed by 'direct, primary evidence obtained during a site inspection conducted on 10 February 2026 where he was accompanied by representatives of the applicant and Simon Bundy';
- (c) his request for an immediate onsite meeting to resolve the matter of the environmental damage being caused was declined, as he was advised by the deponent to the joint venture answering affidavit, Mr Swiegelaar, that all necessary permissions had been granted;
- (d) he held the belief based on these observations that the dumping activity was a new discreet event occurring in February 2026, despite the joint venture assertions that they had the necessary permission;
- (e) on 17 February and 20 February 2026, he was awaiting the expert report of Mr Simon Bundy and proceeded with haste when he received the final report on 20 February 2026;

- (f) the application is concerned with the distinct and escalated dumping activities which commenced on 3 February 2026 and is distinguished from any previous activities which occurred on the site, justifying the urgent application;
- (g) he was guided by the principles established in the authorities of:
 - (i) *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*,¹ as he held the professional view that the CERA would not be afforded substantial redress in due course and the environmental degradation to the wetland would be irreversible; and
 - (ii) *South African Informal Traders Forum and Others v City of Johannesburg and Others*² that there was a breach of the fundamental environmental rights of the Clare Estate community;
- (h) the activity causing harm is continuous and ongoing, and therefore urgency was not defeated;
- (i) the first to fourth respondents' contention that the dumping had been ongoing since 2024 did not negate the urgency, as it underscored the persistent and unresolved continuing nature of the threat;
- (j) set out his efforts from 20 February 2026 to 26 February 2026, including a timeline and a chronology of the steps he took to have the application issued;
- (k) the administrative error which arose in relation to the incorrect dating of the certificate of urgency; and
- (l) that he is not grossly negligent or mala fide in his conduct as an advocate and is aware of the high standard expected of him, but given that he is a junior practitioner acting *pro bono* in the public interest, to hold him personally liable for costs would 'set a dangerous precedent' and 'would create a chilling effect', which would result in practitioners being fearful to assist communities in asserting the constitutional rights for fear of personal financial ruin.

[21] The response by Mr *Samie* needs to be weighed against the practice of this

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196.

² *South African Informal Traders Forum and Others v City of Johannesburg and Others* [2014] ZACC 8; 2014 (4) SA 371 (CC).

division, and the law relating to urgency and *de bonis propriis* costs generally.

[22] Practice directive 10 of the KwaZulu-Natal Division deals with urgent applications. Paragraph 10.1 reads as follows:

'10.1 Apart from a certificate of urgency (which practitioners are reminded is not a mere formality: in appropriate cases the signatories of such certificates may be ordered to pay costs *de bonis propriis*) which in specific terms records that the matter is of such a nature that relief has to be obtained forthwith and cannot await the ordinary motion court the following day, the following administrative requirements should be followed:

- (a) As soon as an urgent application is in the pipeline, the registrar should be notified and an indication given as to when it is contemplated the application will be moved.
- (b) This should be followed by a call every hour to keep the registrar and the duty judge apprised of the current position.
- (c) If the urgent application falls away, the registrar should be told forthwith.
- (d) If practitioners, in the absence of a duty registrar, go before a judge and do not obtain an order, they should immediately report this fact to the registrar.

10.2 In every urgent application (including the ordinary motion court) a draft order must be presented to the judge. If the draft is amended in chambers, practitioners must come to the assistance of the registrar's typist in order to ensure that the order is in a form where it can be issued forthwith.³

10.3 Where a rule nisi together with an interim interdict or other interim relief is sought as a matter of urgency the rule of practice in force is stated as follows:

"It is not permissible to grant interim interdicts without notice to the respondent unless there is a real danger that the giving of notice will defeat the object of the interdict or it is wholly impracticable to give such notice. (It is not the practice of this Division to grant orders over the telephone save in very exceptional circumstances)."⁴

10.4 Practitioners are referred to the judgment of Lopes J in *Square Root Logistics (Pty) Ltd v The Commissioner for the South African Revenue Services and others*,⁵ in particular, the comments made in paragraph 9 thereof on the question of urgency and the related certificates

³ Judge President's memorandum 29 January 2003.

⁴ Judge President's memorandum 15 December 1986.

⁵ *Square Root Logistics (Pty) Ltd v Commissioner for the South African Revenue Services and Others* [2022] ZAKZDHC 11 (*Square Root Logistics*).

of urgency. In addition it has always been so that in crafting a certificate of urgency the advocate or attorney who is to argue the matter is required to assess the degree of urgency so as to forecast when the matter is required to be set down – i.e. is it so urgent so as to warrant a hearing in chambers that very day, or is it appropriate for the matter to wait for the next motion court or the one thereafter and so on.’

[23] Paragraph 10.4 of the directives is of specific importance, given that it references *Square Root Logistics*, and also cautions practitioners in relation to the certificate of urgency and what is required. In *Square Root Logistics*, Lopes J had to deal with an urgent application of some 451 pages, which was delivered to him on the Friday morning and enrolled for 2 pm, on the day he was on motion court duty.

[24] Similarly, the respondents in that application had been given less than a day's notice of the application and had delivered a very brief answering affidavit. Several points in limine were raised by the respondents, specifically the non-compliance with the provisions of the relevant tax legislation. Lopes J's comments are apposite in this matter:⁶

‘A certificate of urgency, issued by an officer of the court, who will be able to argue the urgency, cuts through the normal waiting period for applications. The period of waiting, however, must be thoughtfully and appropriately calculated by the person issuing the certificate. An unfortunate practice has arisen in this division of matters being brought for reasons not as urgent as their certificates suggest.’

[25] He states further:⁷

‘Even though this matter is of a vindicatory nature, which may almost always be classified as urgent, this matter did not warrant the sort of urgency relied upon by the applicant. In my view it was an abuse of legal process. Life and death, or extreme prejudice warrants such urgency that a matter cannot wait for the next day or for a few days’. The cases in this regard are clear, and it would serve no purpose for me to repeat them. Divisions of the High Court would simply be unable to function efficiently if work is continually interrupted by unnecessarily urgent applications being brought. Our rules and practice directives anticipate and include urgent applications as part and parcel of the daily functioning of the High Court. They do not envisage

⁶ Ibid para 9.

⁷ Ibid para 10.

applications such as this one being heard on such short notice. The applicant's legal representatives are no doubt aware that a court would not easily have granted an order for the return of all the vehicles, when it was opposed, and SARS and the Minister would clearly require time to investigate, and to depose to answering affidavits. To deal with the application properly SARS and the Minister could not have been expected to do so in a day. The prejudice to the applicant– the possibility of used vehicles standing outside and potentially exposed to theft, could have been catered for by the hiring of a few security guards, the cost of which would have been insignificant given the values involved, and which could have been recovered in due course.'

[26] It is further an established principle that, when launching an urgent application, a person bringing an urgent application should afford the other side reasonable timeframes to reply.⁸ In my view, given the circumstances of this matter, at least as much time as they have taken to launch the application. This is a fundamental expression of the *audi alteram partem* principle.

[27] It is further established law that when launching an urgent application, the time periods for the delivery of any opposition should be compressed only insofar as the ascertainable harm necessitates.⁹ While the applicant alleges an ongoing harm, what is distinctly absent from any papers before the court is any allegation of imminent harm that necessitated a hearing within the daytime period afforded by Mr *Samie*.

[28] Even if the allegations of ongoing harm were to be interpreted in their most generous manner, there are no actual facts to substantiate the irreparable harm that would have been sustained by the applicant if the urgent application were not dealt with within a day. There are several pleaded conclusions, but no primary facts to support these conclusions.

[29] In explaining the difference between primary and secondary facts, and

⁸ *Economic Freedom Fighters and Others v Chairperson of the Powers and Privileges Committee NO and Others* [2024] ZAWCHC 16 para 19

⁹ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W), the oft-cited authority on urgency, deals extensively with this proportionality.

summarising what a court should expect from evidence presented on affidavit where a conclusion is sought to be accepted by the court, *Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others*¹⁰ is instructive. Van Reenen J stated as follows:

'It is trite law that the affidavits in motion proceedings serve to define not only the issues between the parties, but also to place the essential evidence before the Court (see *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (W) at 323G) for the benefit of not only the Court but also the parties. The affidavits in motion proceedings must contain factual averments that are sufficient to support the cause of action on which the relief that is being sought is based. Facts may be either primary or secondary. Primary facts are those capable of being used for the drawing of inferences as to the existence or non-existence of other facts. Such further facts, in relation to primary facts, are called secondary facts. (See *Willcox and Others v Commissioner for Inland Revenue* 1960 (4) SA 599 (A) at 602A; *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) at 78I.) Secondary facts, in the absence of the primary facts on which they are based, are nothing more than a deponent's own conclusions (see *Radebe and Others v Eastern Transvaal Development Board* 1988 (2) SA 785 (A) at 793C - E) and accordingly do not constitute evidential material capable of supporting a cause of action.'

[30] I agree with this summation. And, unfortunately, it is also an indictment of the founding affidavit in respect of urgency, where the court is asked to accept a series of conclusions, or secondary facts, without the primary facts to support them. There are no primary facts to support the allegations of urgency.

[31] I was invited by the respondents, considering the patent lack of urgency, relative to the urgency which was imposed upon the respondents, to consider granting the costs of the urgent hearing against Mr *Samie de bonis propriis*. This was as he was the signatory to the certificate of urgency, in accordance with the division's practice directive.

[32] In *Letsi v Mepha and Another*,¹¹ Opperman J provided a detailed summation of the principles relating to *de bonis propriis* costs:

¹⁰ *Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others* 2003 (4) SA 207 (C) para 28.

¹¹ *Letsi v Mepha and Another* [2022] ZAFSHC 122 para 7.

- 'a) Whether a person who acts in a representative capacity has acted *bona fide*, with due care and reasonably, must be decided in the light of the particular circumstances prevailing in the case with which the Court is concerned.
- b) Costs orders *de bonis propriis* must be supported by facts and cannot be granted in the abstract.
- c) Ill-advised and reckless litigation and egregious conduct is frowned upon. There must be "negligence in a serious degree".
- d) The general rule is that a person suing or defending in a representative capacity may be ordered to pay costs *de bonis propriis* if there is a want of *bona fides* on his part or he acted unreasonably.
- e) In *Public Protector v South African Reserve Bank* (CCT107/18) [2019] ZACC 29; 2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC) (22 July 2019) the Court ruled that: "They must not mislead or obfuscate. They must do right and they must do it properly. They are required to be candid and place a full and fair account of the facts before a Court."
- f) No order will be made where the representative has acted *bona fide*; a mere error of judgment does not warrant an order of costs *de bonis propriis*.
- g) The fact that the party has a substantial personal interest in the outcome of the matter constitutes an important factor in shaping such a decision.
- h) A person acting in a representative capacity who institutes an action in circumstances in which he can have no certainty that the action will be successful, and makes no provision for the defendant's costs, may be ordered to pay a successful defendant's costs *de bonis propriis*. In *Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd* 2014 (3) SA 265 (GP) it was stated that:
Costs — Costs *de bonis propriis* — When to be awarded — Against practitioner — Conduct so deviating from norm that it would be unfair to expect practitioner's clients to bear costs — Conduct earning displeasure of Court, such as dishonesty, obstruction of justice, irresponsibility, gross negligence, reckless litigation, misleading the Court, gross incompetence, and carelessness — Costs *de bonis propriis* would not always be indicated in case of errors of law and failure to comply with rules.
- i) In *South African Liquor Traders' Association and Others v Chairperson, Gauteng Liquor Board, and Others* 2009 (1) SA 565 (CC) at paragraph 54 the Constitutional Court considered circumstances where a *de bonis propriis* costs order was warranted and held that:

[54] An order of costs *de bonis propriis* is made against attorneys where a Court is satisfied that there has been negligence in a serious degree which warrants an order of

costs being made as a mark of the Court's displeasure. An attorney is an officer of the Court and owes a Court an appropriate level of professionalism and courtesy. Filing correspondence from the Constitutional Court without first reading it constitutes negligence of a severe degree. Nothing more need be added to the sorry tale already related to establish that this is an appropriate case for an order of costs *de bonis propriis* on the scale as between attorney and client.' (Footnotes omitted.)

[33] I agree completely with this summation, and it is against this prism that the urgent application must be weighed, particularly focusing on Mr *Samie's* conduct.

[34] The Constitutional Court has further opined that *de bonis propriis* costs should only be awarded where negligence is demonstrated 'in a serious degree which warrants an order of costs being made as a mark of the court's displeasure'.¹²

[35] From the summary already provided above, the application was launched over three years since the problem arose and approximately a year and a half after the complaints of dumping first arose. The complaints of ongoing harm in the context of this delay were not supported by any primary facts to suggest that some new and greater concern had arisen that did not previously exist. Instead, this court was invited to accept that the bald allegation of ongoing harm was sufficient to justify placing several respondents in a position where they had to respond to a complaint originating three years ago on a day's notice.

[36] I agree with the submission of Mr *Broster* that Mr *Samie's* affidavit is defective, and demonstrates a clear lack of understanding of the requirement of placing his signature on the certificate of urgency, his role in issuing and signing the certificate of urgency, and, most importantly, his failure to properly evaluate urgency, as a requirement in terms of Uniform rule 6(12) as well leading case authorities in this regard. More specifically, his unfamiliarity with the practice directives of this division and *Square Root Logistics*, a concession which he made during questioning by the court, is

¹² *South African Liquor Traders' Association and Others v Chairperson, Gauteng Liquor Board, and Others* [2006] ZACC 7; 2009 (1) SA 565 (CC) para 54.

most concerning.

[37] It is trite that counsel has an obligation to bring an independent mind to the facts in the founding affidavit and to determine whether, from those facts, a certificate of urgency is warranted and to apply an independent judgment as to the date that the matter ought to be appropriately enrolled. Mr *Samie*'s personal experiences and his personal assessment of what transpired in February 2026, specifically at the meeting on 10 February 2026, are not a relevant consideration in signing the certificate of urgency and determining urgency. His role as an advocate must be independent of his function as an attorney, and his role as an environmental specialist given his qualifications. Mr *Samie prima facie* does not appreciate and understand his obligation as counsel to carefully consider the time periods imposed in the certificate of urgency and his obligations to carefully consider the provisions of the practice directives of this division when determining urgency. In addition, it is evident that the prescription of the dates provided to the respondents to answer to the application was insufficient. Counsel, in inserting these dates, cannot merely pay lip service to the Uniform Rules of Court, the provisions of rule 6(12), and, more specifically, the *audi alteram partem* rule.

[38] When signing a certificate of urgency, counsel acknowledges that they have 'read the papers and is of the opinion that the facts justify urgency'. Such facts must be alleged in the founding affidavit and must demonstrate that an applicant will not obtain substantial redress in due course and must justify the truncated time periods provided in the notice of motion. Ironically, the applicant took some two weeks to prepare its papers and even after the certificate of urgency was signed, only issued them some six days later. The same courtesy was not extended to any of the respondents in consideration of the time period afforded to them to oppose the application. This much was clear from the interim answering affidavit, where the respondents who opposed the application sought time to file a detailed answering affidavit given the truncated time periods afforded to them, which, in my view, were less than sufficient.

[39] Mr *Samie* in his affidavit relies on his 'personal assessment' of facts, not facts

contained in the founding affidavit. The founding affidavit is replete with legal conclusions and not primary facts upon which a founding affidavit ought to be based.

[40] What is most demonstrative of his failure to properly assess urgency is the chronology in the founding affidavit, which he provided. It demonstrates that the applicant delayed in launching these proceedings since July 2025. Had the applicant launched proceedings immediately upon the perceived harm, the application could have been dealt with on the opposed roll applying the usual time periods of the rules and without any concerns of urgency. Instead, Mr *Samie* gave a day's notice to respond to these allegations.

[41] The conduct by Mr *Samie* is improper, and it is through his legal advice and failures to properly apply his functions as counsel that the urgent application was ill-advisedly brought.

[42] Furthermore, there is the additional consideration (a contention raised by the second to fourth respondents), namely, that the applicant has not established its *locus standi* as a voluntary association with standing to sue.

[43] Reliance is made by the applicant on s 32(1) of NEMA, which affords rights to various parties to intervene to stop or correct any breach under NEMA, as a basis for the applicant's *locus standi*. This reliance is, however, misplaced, as there is nothing in NEMA that suggests that a court should be more generous in determining whether an unregistered association has sufficient *locus standi* to institute legal proceedings in terms of NEMA.

[44] It grants broad standing to 'any person or group of persons'.¹³ There is no attempt in the founding affidavit to meet these requirements, and the fault is one of legal advice as Mr *Samie*, failed to conduct the necessary investigations required of a legal

¹³ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* 2022 (6) SA 589 (ECMk) paras 45-49

practitioner.

[45] There is certainly nothing in the affidavit filed by Mr *Samie* to explain this failure to evidence the applicant's standing, and it does give credence to the respondents' concern that granting a costs order against the applicant may be futile, considering it is unclear whether the applicant exists as a separate entity in law with the ability to institute proceedings. It is not necessary for me to delve further into this issue at this stage as it will presumably be canvassed when the main application is heard.

[46] Accordingly, and reluctantly, I must conclude that Mr *Samie* did not comply with his obligations to this court as counsel. The signing of the certificate of urgency providing the respondents a day to respond to a complaint that had existed for at least over a year was a patent abuse of the court's processes and a breach of the division's practice directive on urgency.

[47] Furthermore, Mr *Samie's* conduct is grossly negligent, ill-advised and beyond merely an error in judgment.

[48] It follows that an order that for costs *de bonis propriis* must properly follow. I am also of the view that counsel's fees ought to be taxable on scale B, given the circumstances under which the application was initiated and complexity of the issues involved.

Order

[49] The following order is issued:

1. The *rule nisi* is confirmed.
2. Mr Kuben Samie is directed to pay the costs occasioned by the matter being struck off the roll for want of urgency in respect of those respondents who opposed the application *de bonis propriis*, inclusive of costs of counsel taxable on scale B.

HENRIQUES J

Case Information

Dates of hearing:	6 March 2026 & 12 March 2026
Date of judgment:	02 September 2026
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This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand down is deemed to be 02 September 2026 at 14h30.