



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

JUDGMENT

Not Reportable

Case no: 24218/2024

In the matter between:

KEITH LESLIE HIGGINS

Applicant

and

**THE WAENHUISKRANS/ARNISTON RATEPAYERS
ASSOCIATION (“WARA”)**

First Respondent

PETER GIRD N.O.

Second Respondent

(in his capacity as Chairman of WARA)

THE EXECUTIVE COMMITTEE OF WARA

Third Respondent

Neutral citation: *Higgins v Waenhuiskrans / Arniston Ratepayers Association and Others* (Case No 2421 /24) [2026] ZAWCHC ____ (07/09/2026)

Coram: DAVIS J

Heard: 31 August 2026

Delivered: 7 September 2026

Summary: Mootness and the High Court’s discretion, as a court of first instance, to grant declaratory relief in terms of s 21(1)(c) of the Superior Courts Act 10 of 2013 – no inconsistency between the discretion conferred by s 21(1)(c) and the proposition that a High Court sitting as a court of first instance has no power to entertain a matter which has become moot before the case is heard in the sense that the subject matter of the litigation had been extinguished or the cause of action has fallen away – jurisdictional requirements for exercise of the discretion in s 21 (1)(c) not met as the applicant does not have sufficient interest in the declaratory relief and he does not have an existing, future or contingent right to enquire into.

Amendments – an application for an amended relief which is moot will not raise a triable issue and will be refused – appropriate for the court seized with the amendment application to enquire into whether the amended relief would be viable.

ORDER

1. The applicant's application for leave to admit a supplementary affidavit is refused, with costs.
2. The applicant's application for leave to amend the notice of motion is refused, with costs.
3. The respondents' application to strike out is dismissed on account of mootness.
4. The main application is dismissed on account of mootness, with costs (including the respondents' costs incurred in the application to strike out).
5. All costs referred to in paragraphs 1 to 4 above shall be paid on the attorney and client scale.

JUDGMENT

DAVIS, J:

Introduction

[1] I am seized with three opposed interlocutory applications relating to the application under case number 24218/2024, in which the applicant originally sought a declaration that his removal from the Executive Committee ('EXCO') of the Waenhuiskrans/Arniston Ratepayers' Association ('WARA') was unlawful, and ancillary relief aimed at reinstatement as a member of EXCO ('the main application'). The interlocutory applications are:

- a) an application brought by the applicant for leave to amend his notice of motion in terms of Rule 28(4) of the Uniform Rules of Court ('the amendment application');
- b) an application brought by the applicant for leave to admit a supplementary affidavit deposed to on 4 April 2025 ('the application to admit a further affidavit'); and
- c) an application brought by the respondents to strike out certain paragraphs in the applicant's replying affidavit and supplementary affidavit of 4 April 2025 ('the application to strike out').

[2] I am also seized with the main application.

[3] When the matter came before me on 31 August 2026, I first heard argument regarding the application to admit a further affidavit. I refused the application, and indicated that reasons would follow. I deal with those reasons later in this judgment.

[4] I then heard argument regarding the amendment application. The respondents indicated that, if I were inclined to grant leave to amend, they would require an opportunity to deliver a further affidavit dealing with the amended relief. In the circumstances, the main application could not proceed on 31 August 2026, and I reserved judgment in order to consider the amendment application.

The relevant facts

[5] The relevant facts, for purposes of this judgment, are common cause and may be stated briefly.

[6] The applicant is a former member of the EXCO of the WARA, who is aggrieved by his removal from EXCO in October 2024, which he alleges was not in accordance with the constitution of WARA, and, for that reason, was unlawful.

[7] On 12 November 2024 the applicant brought an application, not as a matter of urgency but on the long form notice of motion, citing WARA, the Chair and the EXCO of WARA as respondents, in which he sought an order in the following terms:

- “1. Declaring that the purported removal of the Applicant from the Executive Committee of the First Respondent is unlawful and void;
2. Declaring that the Applicant remains a duly appointed member of the Executive Committee of the First Respondent;
3. Directing the Respondents to:
 - 3.1 Recognize the Applicant as a member of the Executive Committee;
 - 3.2 Include the Applicant in all Executive Committee communications, meetings and activities;
 - 3.3 Provide the Applicant with copies of all Executive Committee communications, minutes and documents from which he has been excluded since May 2024;

4. Interdicting the Respondents from:
 - 4.1 Taking any steps to prevent the Applicant from participating as a member of the Executive Committee;
 - 4.2 Excluding the Applicant from Executive Committee activities;
5. Costs of this application on an attorney and client scale;
6. Further and/or alternative relief.'

[8] It is common cause that the applicant was elected to serve on EXCO at the 2023 WARA annual general meeting ('AGM') held on 27 December 2023, that he served as an EXCO member until 23 October 2024, when he was informed of the termination of his EXCO membership, and that he did not stand for re-election as a member of EXCO at the 2024 WARA AGM held on 27 December 2024, when a new EXCO was elected for 2025.

[9] There is a dispute on the papers as to whether or not the applicant's term of office was one or two years. The applicant maintains that, had he not been unlawfully removed from EXCO in October 2024, he would have continued to serve a second year on EXCO during 2025 without having to stand for re-election at that 2024 WARA AGM. The respondents, however, assert that, save for the outgoing Chair who becomes an *ex officio* member of the subsequent EXCO, all other members of EXCO have to be elected at the WARA AGM. While EXCO members are eligible for election for a second year, no EXCO member automatically serves a two year period of office.

- [10] On any version, the applicant could not have been a member of EXCO after 31 December 2025. At best for the respondent, his term of office would have expired when the 2026 EXCO was elected at the 2025 WARA AGM. This much is common cause.
- [11] Therefore, in January 2026, at the very latest, the declaratory relief sought in prayer 1 of the notice of motion could serve no practical purpose, and the reinstatement and ancillary relief sought in prayers 2 to 4 was no longer possible to grant. The relief as originally framed had been overtaken by events and had been rendered moot.
- [12] On the respondents' version, the relief sought in the original notice of motion became moot as soon as the 2025 EXCO was elected, i.e., with effect from January 2025.
- [13] On 7 April 2025, the applicant launched the application to admit a further affidavit. The respondents on 17 June 2026 delivered a notice of application to strike out paragraphs in the replying affidavit as well as certain paragraphs in the supplementary affidavit sought to be admitted by the applicant. In the alternative, the respondents sought leave to admit an affidavit dealing with the new matter contained in the applicant's supplementary affidavit. The applicant delivered an opposing affidavit in response to the application to strike out.
- [14] On 15 July 2025, the respondents' attorney addressed a letter to the applicant's attorney in which it was pointed out that the main application was moot, and that, in the circumstances, there rested a duty on the parties

and their legal representatives to make sensible proposals so as to avoid unnecessary costs and burdening of judicial resources. The respondents' attorney proposed that the matter be settled on the basis that the application be withdrawn. (It appears that what was contemplated was a withdrawal of the matter on the basis that the parties pay their own costs, as no mention was made of costs.) The respondents' attorney warned that, if the applicant persisted with the application, a punitive costs order would be sought against the applicant. This warning notwithstanding, the applicant persisted with the application.

[15] On 23 March 2026, the applicant, in order to address the mootness of the reinstatement relief in the original notice of motion, delivered a notice of intention to amend the notice of motion so as to seek an order in the following terms:

- '1. Declaring that the purported removal of the Applicant from the Executive Committee of the First Respondent on or about 23 October 2024 was unlawful and inconsistent with the Constitution of the First Respondent, insofar as such declaration is necessary to determine the Applicant's rights arising from his tenure and to give effect to the relief in prayers 2 and 3 below.
2. Directing the Respondents, jointly and severally, within five (5) days of this order, to provide the Applicant with full and unredacted copies of:
 - 2.1 all Executive Committee minutes;
 - 2.2 all formal correspondence; and
 - 2.3 all electronic communications (including, but not limited to, emails and WhatsApp messages),
 - 2.4 generated, circulated, or considered by the Executive Committee of the First Respondent during the period 20 May 2024 to 27 December 2024,

to which the Applicant would have had access in his capacity as a duly elected member of the Executive Committee during that period.

3. Declaring that the Applicant retains a continuing right, arising from his tenure as a member of the Executive Committee during the period referred to in prayer 2 above, to access the records and communications generated during that tenure, for purposes of:
 - 3.1 vindicating his rights;
 - 3.2 assessing the lawfulness of decisions taken in his absence; and
 - 3.3 determining whether further relief may be pursued.
4. Costs of this application, including the costs of this amendment, to be paid by the Respondents jointly and severally, the one paying the others to be absolved.
5. By the deletion of any inconsistent relief in the Notice of Motion.’

[16] The respondents objected to the proposed amendment, and the applicant launched the amendment application on 20 April 2026.

The grounds of opposition to the proposed amendment

[17] In their notice of objection to the proposed amendment, the respondents opposed the proposed amendment on the grounds that:

- a) the main application is moot, because a new EXCO was elected at the WARA 2024 AGM, and the applicant’s term of office would have ended when the 2025 EXCO was elected;
- b) the court has no jurisdiction to grant the declaratory relief sought, and the relief is incompetent, since s 21(1)(c) of the Superior Courts Act

10 of 2013 does not permit a court to pronounce on academic issues or past events;

- c) the proposed amendment is not *bona fide*, since the applicant was aware of the mootness of the original relief, but delayed for over a year before delivering the notice of intention to amend;
- d) the respondents are prejudiced by the proposed amendment because a) the application is moot, b) the declaratory relief is neither competent nor appropriate, c) no case for the amended relief is made out in the applicant's founding affidavit in the main application, and d) the proposed amendment is not *bona fide*.

The principles governing amendments

[18] The principles governing amendments are trite. The general rule is that leave to amend will be granted unless the amendment is *mala fide* or will cause injustice to the other party which cannot be cured by a postponement or an appropriate order as to costs (see *Moolman v Estate Moolman and Another* 1927 CPD at 29, *Commercial Union Assurance Co Ltd v Waymark NO 1995 (2) SA 73 (Tk)* at 76 D – I). This approach is founded on the policy consideration that courts should encourage a full and proper ventilation of the real dispute between the parties.

[19] An equally trite requirement is that the proposed amendment must raise a triable issue, something worthy of consideration, a matter of sufficient importance to justify putting the Court and the other party to the inconvenience of a postponement (see *Trans-Drakensberg Bank Ltd v*

Combined Engineering (Pty) Ltd and Another 1967 (3) SA 632 (D) at 640 H – 641 C; *Krogman v Van Reenen* 1932 OPD 191 at 195; *Caxton Ltd and Others v Reeva Forman (Pty) Ltd and Another* 1990 (3) SA 547 (A) at 565 G – J; see, too, *Vinpro NPC v President RSA* [2021] ZAWCHC 261 para 25.)

- [20] Whether or not the proposed amendment raises a triable issue in this case is inextricably bound up with the question of mootness. In the same way that a court will not permit an amendment which would be excipiable, or which would introduce a claim which has clearly prescribed, so too, a court will not allow an amendment to introduce a claim for relief which is moot. The reason is obvious: as Selikowitz J explained in *Benjamin Sobac v South African Building & Construction (Pty) Ltd* 1989 (4) SA 940 (C) at 958 A – C:

‘Where a proposed amendment will not contribute to the real issues between the parties being settled by the Court, it is, I think, clear that an amendment ought not to be granted. To grant such an amendment will simply prolong and complicate the proceedings for all concerned and must, in particular, cause prejudice to the opposing party who will have to devote his energy and expend both time and money in dealing with an issue, the resolution of which may satisfy the needs (or curiosity) of the party promoting it but which will not contribute towards the adjudication of the genuine dispute between the parties.’

- [21] The learned Judge went on to say, at 958 C – D, that:

‘It is, in my view, necessary in this application that I consider whether or not the claim for relief under s 32(2) is competent before I grant the amendment. If the claim is, in the circumstances of this case, not a viable claim I would be doing not only the respondent but also the applicant an injustice by granting the amendment. The applicant might then

find that he has amended himself into a situation which is hopeless in law and cannot sustain the relief he seeks. This approach equates by analogy to that of Van Winsen AJ in the well-known case of *Cross v Ferreira* 1950 (3) SA 443 (C) where it was held that the fact that the proposed amendment of a declaration would render it excipiable is a good ground for refusing the amendment.’ [Emphasis added]

[22] It is therefore appropriate that I determine whether or not the proposed amendment is viable, a question to which I now turn.

Is the proposed amendment moot?

- [23] It has been held that a matter is moot if the issues underlying the dispute have, in some way, been resolved. A case is moot, and therefore not justiciable, if it no longer presents an existing or live controversy, or the prejudice, or threat of prejudice, to a party no longer exists (see *Vinpro NPC v President RSA (supra)* para 33).
- [24] Mr Oosthuizen, who appeared for the respondents, referred me to a number of decisions of provincial divisions in which the High Court, sitting as a court of first instance, has declined to entertain matters where the relief sought has been overtaken by events and where the order sought would have no practical effect (see *Vinpro NPC v President RSA (supra)* paras 38 and 42; *SA Breweries Ltd v President, RSA* (2022) 3 All SA 514 para 36; *Habitat Council v The City of Cape Town* 2022 (6) SA 357 (WCC) paras 72 – 79; *Central University of Technology v Free State Provincial Commissioner of the SA Police Services* (2022) ZAFSHC 353 paras 6 - 9; *Sokomani & Others v African National Congress & Others* [2023] ZAECLLC 2 paras 30 and 31).
- [25] More pertinent, in my view, are the decisions of the Supreme Court of Appeal regarding the limit on the power of a High Court, sitting as a court of first instance, to entertain matters which have become moot in the sense that the subject matter of the litigation has ceased to exist before judgment.
- [26] In *Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others* 2017 (3) SA 152 (SCA), the appeal

concerned an order granted by the High Court to facilitate assisted suicide by Stransham-Ford when, unbeknown to the Judge, Stransham-Ford had already died some two hours before the order was granted. Wallis JA held (at paragraph 20) that the death of Stransham-Ford extinguished his cause of action and put an end to the application. As there was no longer a claim before it, there was nothing left for the court to pronounce on. He stated, at paragraphs 24 and 25, that:

‘... I do not accept that it is open to courts of first instance to make orders on causes of action that have been extinguished, merely because they think that their decision will have broader societal implications. There must be many areas of law of public interest where a judge may think that it would be helpful to have clarification but, unless the occasion arises in litigation that is properly before the court, it is not open to a judge to undertake that task. ...

The situation before Fabricius J was not comparable to the position where this court or the Constitutional Court decides to hear a case notwithstanding that it has become moot. When a court of appeal addresses issues that were properly determined by a first-instance court, and determines them afresh because they raise issues of public importance, it is always mindful that otherwise under our system of precedent the judgment at first instance will affect the conduct of officials and influence other courts when confronting similar issues. ... The appeal courts’ jurisdiction was exercised because ‘a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required.’ The High Court is not vested with similar powers. Its function is to determine cases that present live issues for determination. ’ [Emphasis added]

[27] Importantly, for present purposes, the learned Judge of Appeal went on to say the following at paragraph 26:

‘The jurisprudence in appellate courts speaks of the case having become moot so that it no longer presents a live issue for determination. I do not think that the extinguishing of a claim by death before judgment is an instance of mootness in the sense in which that expression is used in these cases. If a cause of action ceases to exist before judgment in the court of first instance, there is no longer a claim before the court for its adjudication. Mootness is the term used to describe the situation where events overtake matters after judgment has been delivered, so that further consideration of the case by way of an appeal will not produce a judgment having any practical effect. Here we are dealing with a logically anterior question, namely, whether there was any cause of action at all before the High Court at the time when it made its order? Was there anything on which it was entitled to pronounce?’

[28] In *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* (104/2022) [2023] ZASCA 35 (31 March 2023), the appeal court was concerned with an appeal against an order granted by the High Court dismissing a challenge to the legality of certain Covid 19 regulations on the grounds that the impugned regulations were no longer in force at the time when the matter was adjudicated in the High Court. The High Court’s order was upheld and the appeal dismissed. At paragraph 18 of the judgment Saldulker JA stated, with reference to *Stransham-Ford*, that:

‘It must be borne in mind that s 16(2)(a)(i) of the Superior Courts Act confers a discretion on a court of appeal to hear an appeal notwithstanding mootness. Therefore, when a court of first instance has determined that the subject matter of litigation has ceased to exist before judgment, it has no jurisdiction to entertain the merits of the matter. Only an appeal court has a discretion to hear an appeal notwithstanding mootness. [Emphasis added]

- [29] In *MEC for Health: Gauteng Province v Dr Regan Solomons* (1089/2023) [2024] ZASCA 184 (30 December 2024) (*'Regan Solomons'*) the court of first instance was seized with an application for a declaratory order that the respondent had no legal basis for claiming privilege over certain documents sought by way of a *subpoena duces tecum* (prayer 1) and an order directing the respondent to hand over the subpoenaed documents to the Registrar (prayer 2). The court of first instance held that the relief sought in prayer 2 was moot because the respondent's uncontested version was that he was not in possession of the subpoenaed documents. The respondent raised a contingent or secondary defence that he was prohibited from disclosing patients' information without consent or a court order, which, in the light of the finding that prayer 2 was moot, was relevant solely to the question of costs. The court of first instance upheld the secondary defence.
- [30] On appeal, the SCA raised the question whether there was a live dispute or *lis* between the parties at the time when the matter was heard by the court of first instance. It found (at para 27) that there was no live issue between the MEC and Dr Solomons when the matter served before the court of first instance, because, if prayer 2 (for the handing over of the documents) was moot, it followed that prayer 1 (the declarator concerning privilege) would also fail because it was not necessary to determine the question of privilege given that Dr Solomons was not in possession of the documents (para 24). Mabindla-Boqwana JA, as she then was, went on to say, at paragraph 28, that:

'This Court, in *Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others* (*Stransham-Ford*) made it clear that it was not open

to high courts sitting as courts of first instance to make orders on causes of action that have been extinguished merely because they think that their decision would have broader societal implications. The Court in *Stransham-Ford* said courts of first instance are not vested with the same power conferred upon a court of appeal, which may exercise its jurisdiction to determine a matter because ‘a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required.’

- [31] The learned Judge of Appeal went on to refer (at paragraph 30) to the distinction between cases which no longer present a live issue for determination on appeal and cases where the claim has been extinguished before judgment at first instance, and to say that:

‘The present case plainly falls into the latter category, as by the time the matter came before the court of first instance, it was common cause that Prof Solomons did not have possession of the information pertinent to the relief sought. Consequently, in the words of the above extract, there was no cause of action at all before the court at the time it made its order. This means that the high court has no jurisdiction to enter into the merits of the matter.’

[Emphasis added]

- [32] As I read the decisions in *Stransham-Ford*, *Solidariteit* and *Regan Solomons*, they establish that where the subject matter of the litigation has been extinguished before judgment because the relief has been overtaken by events and is incapable of having practical effect as between the parties, it means that there is no *lis* or live issue between the parties, and the high court has no jurisdiction to entertain the matter: it has no discretion in this regard.

- [33] In this case, the relief sought in the original notice of motion in my view became incapable of practical effect at the end of 2024, when the new EXCO for 2025 was elected. The subject matter of the litigation had been extinguished at that point. Or, to use the language of *Stransham-Ford*, the applicant's cause of action had ceased to exist.
- [34] Notwithstanding the jurisprudence of the Supreme Court of Appeal in the cases to which I have referred, Mr Tredoux, who appeared for the applicant, contended that the proposition that a court of first instance has no discretion to entertain a matter which has become moot cannot be reconciled with the wording of section 21(1)(c) of the Superior Courts Act 10 of 2013. That section confers on the High Court the power '*in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.*' Mr Tredoux placed much emphasis on the fact that the section entitles a court to make a declarator without granting any consequential relief.
- [35] In my view, Mr Tredoux's argument is misconceived on two scores. Firstly, the relevant question is whether or not the litigant has a sufficient interest in the matter to be enquired into, and this does not depend on the availability or otherwise of consequential relief. The case of *Ex Parte Nell* 1963 (1) SA 754 (A) is an example of a situation where a litigant sought a declaration of rights without consequential relief. A property owner sought a declaration of his rights under a deed of sale which embodied a condition limiting transfer of the property. Although no consequential relief was claimed, the

declaratory relief was of vital interest to the applicant: it served to determine his entitlement to transfer the property.

[36] Secondly, Mr Tredoux's argument ignores the essential jurisdictional requirements for the exercise of the discretionary power conferred in section 21(1)(c), which are hardwired against academic enquiries. The jurisdictional requirements for the power in section 21(1)(c) are a) an '*interested person*' and b) an '*existing, future or contingent right*'. These requirements serve to ensure that the Court does not engage in abstract, hypothetical enquiries serving no practical purpose.

- a) Firstly, to qualify as an '*interested person*' for purposes of the section, an applicant is required to show a real interest, a tangible and justifiable advantage, as opposed to an interest which is merely academic (see *Durban City Council v Association of Building Societies* 1942 AD 27 at 33; *Reinecke v Incorporated General Insurances Ltd* 1974 (2) SA 84 (A) 93 A – H; *Family Benefit Friendly Society v Commissioner for Inland Revenue* 1995 (4) SA 120 (T) 124 G – J).
- b) Secondly, there must be a right or obligation which is the object of enquiry, which can be existing, prospective or contingent (*Suid-Afrikaanse Onderlinge Brand-en Algemene Versekeringsmaatskappy Bpk v Ven den Berg en 'n Ander* 1976 (1) SA 602 (A)). The rights and obligations are either vested (present and future) or conditional (contingent) (*Family Benefit Friendly Society v Commissioner for Inland Revenue* (*supra*) 125 B). Significantly, the section does not

provide for enquiry into past rights, i.e. rights which once existed, but no longer exist.

[37] There is therefore no inconsistency, in my view, between the provisions of s 21(1)(c) of the Superior Courts Act and the proposition that a High Court, sitting as a court of first instance, has no discretion to grant declaratory orders in matters which have become moot in the sense that the subject matter of the litigation has ceased to exist before judgment. The jurisdictional requirements for the exercise of the discretion to grant declaratory relief under s 21(1)(c) would be absent in such a case: the requisite interest – a real and tangible benefit – would be lacking, and there would not be an existing, future or contingent right to enquire into.

[38] With that in mind, I turn now to analyze the proposed amended relief in the light of these principles.

Analysis of the proposed amended relief

[39] The applicant's proposed new prayer one seeks a declaratory order declaring that the applicant's removal from EXCO was unlawful and inconsistent with the WARA constitution '*insofar as such declaration is necessary to determine the Applicant's rights arising from his tenure and to give effect to the relief in prayers 2 and 3 below.*' Thus the stated purpose of the declaratory relief relating to the lawfulness of the applicant's removal from EXCO is to determine the applicant's entitlement to have access to the documents referred to in prayer 2. If, therefore, the applicant in fact has no

such entitlement, it follows that the declaratory relief in the amended prayer 1 serves no purpose.

[40] I pause to mention, in the latter regard, that Mr Tredoux sought to persuade me that the declaratory relief pertaining to the lawfulness of the applicant's removal from EXCO was not moot, because a judgment of this Court would provide guidance for how the WARA EXCO conducts itself in future. But an order of that nature is, *par excellence*, an example of an advisory opinion which is not the proper function of a court. It is clear from the remarks of Wallis JA in *Stransham-Ford*, quoted above, that a court of first instance cannot grant orders on matters which no longer present a live controversy merely because the decision may have implications for future conduct.

[41] In terms of the proposed new prayer 2, the applicant asks for access to all minutes, correspondence and electronic communications between EXCO members between 20 May 2024 and 27 December 2024 ('the EXCO records'), on the basis that he would have had access thereto in his capacity as a member of EXCO.¹

[42] In terms of the proposed new prayer 3, the applicant seeks a declaration that he has '*a continuing right*', arising from his tenure as a member of EXCO during the period 20 May 2024 to 27 December 2024, to access the EXCO records generated during that period for the purposes of '*vindicating his*

¹ Significantly, the applicant himself pegs the end of the period for the access relief at 27 December 2024, being the date when the 2025 EXCO was elected.

rights; assessing the lawfulness of decisions taken in his absence; and determining whether further relief may be pursued.'

[43] In a nutshell, the applicant's case is that he enjoyed an entitlement to access to the EXCO records in his capacity as a member of EXCO during his tenure and that, but for his unlawful removal from EXCO, he would have continued to have access thereto until 27 December 2024. Now, in 2026, he still seeks access to the EXCO records to which he would have had access but for his alleged unlawful removal, for the purposes referred to in the proposed new prayer 3.

[44] To my mind the pivotal questions are a) whether or not the applicant would have been entitled to access to the EXCO records during his tenure as a member of EXCO, and, if so, b) whether such right survives after the period of office comes to an end. It seems to me that, if the applicant had no such right of access, or, if any such right of access would have fallen away at the expiry of his term of office in the ordinary course (on the assumption that he had not been removed from EXCO), then it must follow that the applicant has no cause of action in respect of the relief sought in the proposed amended prayers 2 and 3 of the notice of motion.

[45] The answer to these questions depends on the proper interpretation of the WARA constitution.

[46] It is well-established that the constitution of a voluntary association constitutes an agreement between members and the voluntary association, which must be interpreted in accordance with the principles applicable to

contractual interpretation (see *Medupe and Others v African National Congress and Others* (003/2024) [2025] ZASCA 22 (20 March 2025)). The provisions of the WARA constitution must therefore be construed on the basis of the principles enunciated in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA). They must be given meaning and business-like efficacy (*Medupe (supra)* para 20).

[47] The WARA constitution is silent regarding the matter of access to EXCO records. To my mind, however, a right of access on the part of EXCO members to EXCO records must necessarily be implied – whether as a matter of law or as a tacit term – in order for the individual EXCO members, and the EXCO itself, to function as contemplated in the WARA constitution. Such right of access flows from an EXCO member’s office; the purpose of the right of access to EXCO records is to enable the members of EXCO, in their official capacities, to discharge their duties as such. In my view it must necessarily follow, therefore, that such right of access inheres in EXCO members only for the duration of their term of office, and that it ceases to exist when the EXCO member’s period of office comes to an end.

[48] If this interpretation of the WARA constitution is correct, as I believe it is, it puts paid to the relief in the proposed amended prayers 2 and 3. That is so because any right of access to EXCO records which the applicant may have had ceased to exist at the very latest in December 2025, when, on the applicant’s version, his two-year term of office would have expired. (On the respondents’ version, his term of office would have expired in December 2024.) Before the applicant gave notice of the proposed amendment, the subject matter of the amendment – the right of access to documents – had

already ceased to exist. That conclusion also disposes of the relief in the proposed amended prayer 1, which was sought only to give effect to the relief sought in the amended prayers 2 and 3.

[49] The conclusion that the applicant's right of access to EXCO records ceased to exist, either in December 2024 or December 2025, has the consequence that, to use language of *Stransham-Ford*, his cause of action in regard to access to documents has ceased to exist; he no longer has a claim in this regard, and there is nothing on which this court can pronounce. It follows that the amendment application cannot be granted.

[50] Even if I am wrong in this regard, I am of the view that the applicant lacks sufficient interest in accessing the EXCO records at this point in time, and, for that reason, the requirements in section 21 (1)(c) for the exercise of the discretion to grant the declaratory relief sought in the proposed amended prayer 3 are not met. I say that because it seems to me that the purpose for which the applicant requires the EXCO records amounts to nothing more than a fishing expedition. He clearly wants to trawl through the EXCO records, hoping to catch an irregularity to review – two years after the event, and without putting up any factual basis to suggest that an irregularity in fact occurred, let alone that he was prejudiced thereby.

[51] I therefore conclude, for all the reasons set out above, that the proposed amendment does not raise a triable issue and should not be granted.

Good faith and prejudice

[52] That conclusion renders it unnecessary for me to address the questions of good faith and prejudice. However, for the sake of completeness, I deal briefly therewith.

[53] Given that I have found that the proposed amendment is moot and does not raise a triable issue, and that the applicant does not have a sufficient interest in the relief sought in the amended prayer 3, it could be inferred, in the circumstance, that the amendment was not sought in good faith. However, the applicant was likely acting on legal advice, and it would not be fair to accuse him of bad faith for following misguided advice. I cannot go so far as to say that the amendment was sought in bad faith. But that does not alter the fact that the amendment does not raise a triable issue.

[54] As regards the question of prejudice, I consider that the prejudice to the respondents is manifest. They should not be put to the trouble and expenses of having to resist amended relief which does not raise a triable issue, and serves only to prolong the case and increase costs.

Reasons for ruling regarding admission of supplementary affidavit

[55] After the founding, answering and replying affidavits had been filed, the applicant applied for leave to admit a supplementary affidavit. The purpose of the supplementary affidavit was to inform the Court of the dismissal, on 6 March 2025, of the municipal appeal lodged by the WARA against the rezoning of Erf 5[...], D[...] Street, Waenhuiskrans/Arniston.

[56] The applicant claimed that the dismissal of the municipal appeal was relevant to the question of the lawfulness of his removal from the EXCO

because it vindicated his position with regard to the development of Erf 5[...], and exposed the respondents' justification for his removal from EXCO as unfounded.

[57] In argument before me, Mr Tredoux made much of the allegation in the respondents' answering affidavit that the applicant's removal from EXCO was because of his '*antithetical stance*' to a decision taken by a majority of WARA members regarding Erf 5[...], which created a conflict of interest. Mr Tredoux contended that it was implicit in the word '*antithetical*' that the respondents viewed the applicant's stance as '*unreasonable*', and that the evidence of the municipal appeal decision served to show that the applicant's stance was not unreasonable.

[58] It seems to me that Mr Tredoux misconstrued the respondents' case. The word '*antithetical*' refers to a state of being in complete opposition to or wholly incompatible with something else. The respondents' case is not that the applicant's stance with regard to Erf 5[...] was unreasonable: their case is that his stance differed from or was not in conformity with, the stance adopted by the majority of WARA members with regard to Erf 5[...], and that he therefore had a conflict of interest.

[59] In my view, the result of the municipal appeal is wholly irrelevant to the question of the lawfulness of the applicant's removal from EXCO. Moreover, other than the brief presentation of the fact regarding the municipal appeal, the applicant's supplementary affidavit consists largely of bald allegations of prejudice, accusations of bad faith on the part of EXCO, and is replete with argument which is of no assistance. I can discern nothing in the supplementary affidavit which would be remotely useful in

determining the main application. The supplementary affidavit merely served to swell the already prolix papers.

[60] For these reasons, I refused leave to admit the supplementary affidavit.

Conclusion and costs

[61] In the result, I intend to make the following orders:

- a) the application for leave to admit a further affidavit is dismissed, with costs;
- b) the amendment application is dismissed, with costs;
- c) the main application is dismissed, with costs (including the respondents' costs incurred in the striking out application, which has been rendered moot by the dismissal of the main application).

[62] The respondents urged me to grant a punitive costs order on the attorney and client scale. I am of the view that such an order is warranted in the circumstances of this case, for the following reasons.

[63] It should have been obvious that the relief sought in the main application became moot at the end of December 2024 when the new EXCO for 2025 was elected, the applicant himself having conceded that he would not have been re-elected onto EXCO if he has stood for re-election at the 2024 WARA AGM. The seeds of destruction lay in the manner in which the main application was brought: it was not brought as a matter of urgency, and, on

the ordinary timetable, the answering affidavit was only due in January 2025, by which time the relief sought was already moot.

[64] But instead of doing the sensible thing and calling a halt to the moribund application, the applicant persisted. He brought an application for leave to admit a supplementary affidavit which, leaving aside the mootness of the main application, could contribute nothing to the proper determination of the main application. The attempt to admit the supplementary affidavit was vexatious in the sense used in the case of *In re Alluvial Creek Ltd* 1929 CPD 532 at 533, namely that it had the effect of putting the respondents to unnecessary trouble and expenses which they should not have had to bear.

[65] In July 2025 the applicant was warned that the matter was moot and given the opportunity to withdraw the application. But he rejected the respondents' proposal and continued with the application, ramping up unnecessary costs when he brought the amendment application in April 2026.

[66] In my view the applicant's conduct of the litigation was unreasonable. From January 2025 the relief was moot and patently unsustainable. The application should have been withdrawn then and there. Instead, the respondents have been put to unnecessary trouble and expense in dealing with the application to admit the supplementary application and the amendment application, both of which were, in my view, manifestly ill-conceived.

[67] In the circumstances, I consider it appropriate to grant an order for payment of costs on the attorney and client scale, both as a mark of disapproval for

the manner in which the litigation has been conducted, and also in order to afford the respondents a greater indemnity for costs which they ought not to have had to incur. I shall therefore order that the applicant bear the respondents' costs on the scale as between attorney and client. For the benefit of the Taxing Master I record that, in my view, the respondents' employment of senior counsel was warranted.

D M DAVIS

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant	:	Adv Paul Tredoux
Instructed by	:	Francis Thompson Aspden Attorneys Mr Timothy Lister Maughan tim@ftalaw.co.za
Counsel for the Respondents	:	Adv Andre Oosthuizen (SC) adv611@capebar.co.za
Instructed by	:	Fairbridges Wertheim Becker Attorneys karol.m@fwblaw.co.za