



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

Case No.: 2026-218509

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED NO
<u>11 SEPTEMBER 2026</u>	
DATE	SIGNATURE

In the matter between:

THE MABELANE CPA CONCERNED GROUP

APPLICANT

*(Represented by the individuals listed in
Schedule "CPA-001" hereto)*

And

**THE ERSTWHILE EXECUTIVE COMMITTEE FIRST RESPONDENT
OF THE MABELANE COMMUNAL PROPERTY
ASSOCIATION**

**THE REGISTRAR OF THE COMMUNAL
PROPERTY ASSOCIATIONS**

SECOND RESPONDENT

**THE DIRECTOR GENERAL:
DEPARTMENT OF LAND REFORM
AND RURAL DEVELOPMENT**

THIRD RESPONDENT

**THE MINISTER OF LAND REFORM
AND RURAL DEVELOPMENT**

FOURTH RESPONDENT

JUDGMENT

FOURIE AJ:

INTRODUCTION:

- [1] In the application at hand, the Applicant seeks, by way of hyper-urgent application, final interdictory relief against the First Respondent, which can only be described as a legality interdict seeking the First Respondent to refrain from certain illegal activities which can be summarised, for purposes of this Judgment, as the holding of an AGM and significant ancillary relief.
- [2] Ordinarily, this Court would have preferred more time to deal with the issues that present themselves specifically, as the current issues are technical in nature and impact the lives of many individuals. Given the timeframes available, however, this Court was requested to hand down

this Judgment within a few hours, and the Judgment that follows constitutes the most relevant portions highlighted for the purpose of determining the matter at this stage.

- [3] This Court was tasked firstly to determine whether the Applicant had sufficiently met the threshold for the matter to be dispensed with on the HYPER Urgent Motion Court roll of 11 September 2026, and if so, thereafter, whether the Applicant had sufficiently advanced facts that sustained the relief sought, being final interdictory relief.
- [4] Although the application was issued against several respondents, specifically as interested parties and as the relevant statutory bodies that deal with matters pertaining to CPA's, when the matter was heard, same was only opposed by the First Respondent and the so-called State Respondents.

URGENCY:

- [5] At the hearing of the matter, the Court already ordered the matter to be regarded as urgent and to be dealt with on the Urgent Court Roll of 11 September 2026 in respect of Prayer 3 in the NOM relating only to an interdict to stop the AGM of 12 September 2026. The reasons for same are incorporated in the current Judgment. The Court struck all other relief sought from the roll for want of urgency.
- [6] The principles relating to urgency are well known, and there is no justification for restating principles that our Courts apply daily, specifically in respect of urgency.

- [7] In so far as it is necessary, the manner in which the test in respect of urgency has evolved has been dealt with by this Court, and this Court shall merely confirm those principles as set out in the matter of *Witbank Taxi Association*¹.
- [8] In the current matter, the Respondent did not raise any real complaint about its ability to adequately present its opposition when the matter was ultimately heard.
- [9] Urgency is dealt with under the same principle as *points in limine* in that the Court, in evaluating urgency, needs to consider the submissions made by the Applicant, and evaluate same against the relief sought by the Applicant to see whether a matter can be accepted as urgent or not.
- [10] When dealing with matters in which illegal actions are alleged, the Court will evaluate the principles relevant to urgency as enunciated in *East Rock* and *Luna Meubelvervaardigers*,² but the Court needs similarly to evaluate the principles as stated by the Court in *Hotz*³ in which the Court stated that, once a Court has made a ruling pertaining to whether or not the actions of a Respondent are unlawful, the Court cannot grant legal recognition and enforcement of such unlawful conduct, and subsequently an application for interdict should stand. The dictum of *Hotz* rings true not only when the Court evaluates whether an interdict needs to be granted, but also when evaluating whether the matter ought to be dealt with on an urgent basis. If acts of illegality indeed exist, and a Court fails to deal with such acts and prohibit such actions at the earliest available opportunity, the essence of the same would be that, at least to some degree, the Court would be giving recognition and allowance for such illegal acts

¹ *Witbank Taxi Association v Local Taxi Association and Another* (2026-069702) [2026] ZAMPMHC 15 (9 April 2026).

² Incorporated in the reference for *Witbank Taxi Association supra*.

³ *Hotz v UCT* (230/20160) 2016 ZASCA 159.

to proceed. Similarly, where illegal actions are alleged against a Respondent, such a Respondent is deserving of their name being cleared without a sword of potential illegality hanging over their heads.

[11] The court simply cannot accept that substantial redress will be forthcoming if a court in more than a year's time is requested to interdict an AGM scheduled for tomorrow. The relief will have become moot

[12] Considering the relief sought, the timeframes relevant to the matter at hand and all ancillary facts presented to this Court, the Court was satisfied that the matter was sufficiently urgent to be dealt with as such.

APPLICABLE LEGAL PRINCIPLES:

[13] The Court has found in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Others*, where the SCA held that⁴:

“A real, genuine bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact set to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him, but even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to prove an answering (or counter-failing evidence) if they be not true or accurate, but instead of doing so rests his case on a bare or ambiguous denial, the Court would generally

⁴ *Wightman t/a JW Construction V Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at 13.

have difficulty in finding that the test is satisfied. I say (generally) because factual averments seldom stand apart from the broader matrix of circumstances, all of which need to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of the bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party, but when he signs the Answering Affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is a serious duty imposed upon a legal adviser who settles an Answering Affidavit to ascertain and engage the facts which his client disputes and to reflect such disputes fully and accurately in the Answering Affidavit. If that does not happen, it should come as no surprise that the Court takes a robust view of the matter.”

[14] In evaluating whether the defence raised by the Respondent is *bona fide* and real, a short evaluation on those terms is necessary.

[15] *Bona fide* refers to the Latin phrase “in good faith” or honestly.

[16] Whether the defence is real would be evident from the supporting evidence provided by a Respondent when alleging their defence. If a Respondent makes a vague or unsubstantiated claim, it would not pass the threshold of convincing the Court dealing with the matter that the defence has any substance and is to be regarded as real.

[17] It would only be in circumstances of a Court being convinced of the *bona fides* of a Respondent’s defence, substantiated sufficiently, for the Court to be able to accept the defence as real, that the general principles of *Plascon-Evans* with reference to *Stellenbosch Farmers Winery* would find

application, and rightly so, as the Court in those matters already expressed that vague denials or far-fetched or clearly untenable defences would justify a rejection of a purported defence.⁵

[18] This Court reiterates the dictum as per *Soffiantini*, *supra*, that a Respondent must provide enough evidence to the Court for the Court to be able to ascertain whether denials are not fictitious or aimed at delay.

[19] Where a party is in possession of facts that would aid the Court to ultimately come to a decision that is just under the circumstances, it ought to be expected of that party to convey all the material facts in respect of the matter to the Court. Not to do so is done at a party's own peril⁶.

[20] The Applicant approached the Court for a prohibitory final interdict. The granting of a final interdict requires three requisites, all of which must be present for such an order to be obtained⁷. Although the *locus classicus* on

⁵ The general rule when dealing with disputes of fact in motion proceedings is as set out in **PLASCON EVANS PAINTS LTD v VAN RIEBEECK PAINTS (PTY) LTD** [1984] ZASCA 51; 1984 (3) SA 623 (A), where the court referred to Stellenbosch Farmers' Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235 E-G, held as follows:

"..... Where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondent together with the admitted facts in the applicant's affidavits justify such an order In certain instances, the denial by the Respondent of a fact alleged by the Applicant may not be such as to raise a real, genuine or bona fide dispute of fact (*Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at pp 1163-5. If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under rule 6(5)(g) of the uniform rules of court and the court is satisfied as to the inherent credibility of the applications factual averments, it may proceed on the basis of the correctness thereof and include this fact amongst those upon which it determines whether the applicant is entitled to the final relief which it seeks More over, there may be exceptions to this general rule, as for example where the allegations or denials of the respondent are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers."

Our courts are required to robustly approach disputes of fact in *Soffiantini v Mould* 1956 (4) SA 160 (E), the court outlined this approach and stated as follows:

"In the case of *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 T at 1165 Murray, then AJP said: "A bare denial of the applicant's material averments cannot be regarded as sufficient to defeat the applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by respondents to enable the Court to conduct a preliminary examinationand to ascertain whether denials are not fictitious intended merely to delay the hearing. *Soffiantini v Mould*, at 154 E-H."

⁶ *Skosana v Road Accident Fund* (3257/23) [2026] ZAMPMHC 5; [2026] 1 All SA 588 (MM) (2 February 2026)

⁷ *Setlogelo v Setlogelo* 1914 AD 221.

the point of final interdicts dates back to 1914, the fact that principles as set out in *Setlogelo supra* have withstood the test of time is evident in the value it adds to the judicial certainty and well-reasoned premise on which final interdicts are to be obtained. In order to be successful, an Applicant needs to show:

[20.1] A clear right.

[20.2] An injury actually committed or reasonably apprehended; and

[20.3] The absence of any other satisfactory remedy available to the Applicant.

[21] The right of a party to approach the Court to seek protection against the actions of another which is prohibited by law is well-established⁸.

MATERIAL FACTS:

[22] The matter concerns the interplay between recognition as members of a CPA and the protection of interests in such CPA

[23] The Applicants and First Respondents have, for a considerable amount of time, been embroiled in disputes about who should serve as the executive council of the CPA and which members should be recognised as members and beneficiaries.

[24] The current executive committee's term of office seemingly ended on 10 June 2026.

[25] The Applicants complain that the First Respondent continues to act *ultra vires* in their positions thereafter.

⁸ Milestone Beverage CC and Others v The Scotch Whisky Association (1037/2019) [2020] ZASCA 105; 2021 (2) SA 413 (SCA).

- [26] This Court does not deal with the ultimate structures and arrangements to be put in place by the State Respondents, or the interim or long-term structures of the CPA; they are not hyper urgent, and they are extremely technical. The hyper urgent court is not designed to deal with those enquiries.
- [27] In any event, the court is comforted in that the State Respondents have sufficient structures and mechanisms in place to deal with the issues of the respective parties, absent which the parties can approach the court in an appropriate manner to ventilate those issues.
- [28] The State Respondents raise several concerns about the First Respondent's actions, both in its conduct and in the manner in which it compiled its member lists and took its decisions.
- [29] The question before this court is simply whether the AGM scheduled for 12 September 2026 has been validly constituted. If it has not, it cannot proceed.
- [30] The First Respondent has failed to adduce evidence or argument that grants them executive rights and authority after the expiry of their term.
- [31] The First Respondent has further failed to indicate to the Court that the AGM was constituted and arranged in line with the CPA's constitution.
- [32] In the event of a deviation from the CPA's constitution, proper authorisation and mandated resolutions were required. The same was not presented by the First Respondent.

- [33] Even if the same was indeed resolved by the First Respondent, the same would be the subject of scrutiny where the right to take such a resolution is being challenged since the expiry of the term of office.
- [34] The CPA constitutes more than 1500 members and no doubt many more whose membership is awaiting verification.
- [35] If the verification of membership has not been finalised and procedural compliance with the CPA constitution in respect of convening an AGM has not been proven, allowing the AGM to take place would not make any practical sense.
- [36] The State Respondents take issue with the beneficiary verification done by the 1st Respondent. This is crucial to the matter at hand.
- [37] It is inconceivable that the court will allow unidentified and unverified persons to vote and ultimately decide the fate of a CPA and its executive where the court is not satisfied that the meeting at which such vote is to occur has not been validly constituted.
- [38] To constitute a valid AGM, the court must be satisfied that the correct persons have been given notice in the correct form of the meeting and that the meeting was constituted by persons legally permitted to do so.
- [39] This court was simply not convinced that any of the aforesaid thresholds have been met by the First Respondent.
- [40] The Applicant prays that the AGM of 12 September 2026 and any other AGMS be interdicted. This relief is too wide. If the First Respondent is able, in the future, to convene a valid AGM and comply with the constitution of the CPA, then such AGM would need to be considered as valid.

[41] Only the AGM of 12 September 2026 suffers the fate the court ultimately orders.

[42] Irrespective of the legal principles a party requests the Court to apply or the Rules of principles under which a matter is brought to be tried by the Court, it ought to be known and accepted that no Order of Court could in any way afford recognition to acts of illegality.

[43] At its core, an application for interdict is a discretionary remedy available to a Court to intervene and preclude illegal acts. It is an inconceivable notion that a Court would apply its discretion in any way to give standing or recognition to any possible illegal actions.

[44] As such and for all the reasons as stated aforesaid, the attempted defence as raised by the First Respondent cannot be sustained, and the Applicant's application needs to succeed.

COSTS:

[45] Given the degree to which each party has been successful and applying the principles of *Biowatch*⁹ this court is satisfied that no cost order is warranted and each party must pay their own costs.

ORDER:

[46] For the aforesaid reasons, the following Order is made:

⁹ *Biowatch Trust v Registrar Genetic Resources and Others* (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) (3 June 2009).

[46.1] The application is enrolled and heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the Applicant's non-compliance with the ordinary forms, service requirements and time periods is condoned in respect of prayer 3 of the Applicant's notice of motion. All other relief is struck from the roll for want of urgency.

[46.2] The First Respondent is interdicted from organising, convening, conducting, holding or in any manner interfering with the purported Annual General Meeting and any elective processes scheduled for 12 September 2026.

[46.3] Each party shall pay their own costs.



HF FOURIE
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

Counsel for the Applicant: ADV NDLOVU
Instructed by: NTSIMANGO ATTORNEYS
Contact Number: 078 109 6614
Email: admin@ntsimangoattorneys.co.za

Counsel for the First Respondent: ADV MANABELA
Instructed by: MANABELE S ATTORNEYS INC
C/O N MALUKA ATTORNEYS
Cell: 071 317 7607
Email: info@nmatinc.co.za

Counsel for the Second Respondent: ADV LAMULA
Instructed by: STATE ATTORNEY

Date of hearing: 11 September 2026
Date of judgment: 11 September 2026