



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

JUDGMENT

Not Reportable

Case No: **2026-214642**

In the matter between:

CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

Applicant

and

PETER OWEN N.O.

First Respondent

PERTUNIA NKUNA

Second Respondent

SOUTH AFRICAN DENTAL TECHNICIANS COUNCIL

Third Respondent

THE MINISTER OF HEALTH

Fourth Respondent

Neutral Citation : *CPUT v Peter Owen N.O. and Others Case No 2026-214642
[2026] ZAWCHC (15-09-2026)*

Coram : **MAPOMA, AJ**

Date heard : 10 September 2026

Date of Judgment : 15 September 2026

***Summary:** Urgent application for interim interdict - the Cape Peninsula University of Technology (CPUT) seeking to interdict and restrain the South African Dental Technicians Council from requesting consent from the Minister of Health, and the latter from granting consent for the suspension of the CPUT's Bachelor of Health Science (BHSc) in Dental Technology programme pending a review in the Gauteng Division - Council invited to CPUT to make representations why the programme should not be suspended pending fulfilment of the conditions of accreditation – CPUT refusing to make representation insisting that the Council has already made up its mind to suspend the programme - Whether the application is urgent – whether the CPUT would not receive substantial redress at a hearing in due course – interim interdict against public power also considered.- whether the requirements for interim relief have been met.*

ORDER

1. The application for interim interdict in Part A of the application is dismissed.
2. The applicant is liable for costs on a party and party scale in Part A of the application, which costs include costs attendant to the employment of two counsel.

JUDGMENT

MAPOMA, AJ

[1] This is an application brought on an urgent basis in terms of rule 6 (12) (a) of the Uniform Rules of Court. The Cape Peninsula University of Technology (“*the CPUT*”

or “*the applicant*”), seeks in Part A an interim interdict restraining the South African Dental Technicians Council (“*the Council*” or “*the third respondent*”) from making a request to the Minister of Health (“*the Minister*” or “*the fourth respondent*”) for approval of suspension of the CPUT’s Bachelor of Health Science (BHSc) in Dental Technology programme (“*the programme*”), pending the final determination of the university’s review application in the Gauteng Division, Pretoria and final determination of Part B of this application. The CPUT also seeks interim relief restraining the Minister from approving the suspension of the programme pending the outcome of the said review proceedings.

[2] In Part B of this application, the CPUT seeks a declarator that the Special Meeting of the Council on 6 August 2026 and its decision to notify the CPUT of its intention to request a ministerial consent for the suspension of the programme is unlawful and unconstitutional, and that the decision be reviewed and set aside. In the pending review application that is serving at the Gauteng Division, the CPUT and its two sister universities of technology, Tshwane University of Technology (TUT) and the Durban University of Technology (DUT) seek to review the accreditation criteria of the Council for the programme in question. These review applications are not before Court for determination, but only Part A is, that is, the interim interdict for the *status quo* to prevail pending the finalisation of both review applications.

[3] The application is opposed by the respondents on the basis of lack of urgency of the matter, as well as absence of merits that justify the relief sought. On the merits, the respondents contend that this Court lacks the jurisdiction to entertain the matter on the basis that it is essentially an interlocutory application in a pending application in another division, Gauteng. It is argued that this matter is justifiable only in the Gauteng division unless there are compelling reasons to deviate. According to the respondents, no such reasons have been advanced by the applicant.

[4] Another point taken by the respondents, which cuts through the urgency and merits of this application, is the contention that the applicant seeks this Court to interdict a procedural process of a public regulatory body that is underway and not finalised. To fortify their argument, the respondents contend that no decision has been or is about to be taken to suspend the programme because the Council intends requesting the Minister to consent to the suspension.

[5] Further contention is that the applicants have failed to take reasonable steps as required by section 40 of the Inter-Governmental Relations Framework Act 13 of 2005, which enjoins all organs of state to make efforts to avoid inter-governmental disputes without resorting to judicial proceedings. The last contention that the applicant has failed to satisfy is the standard requirements for the granting of the interim interdict. The thrust of this argument finds reliance on the aforementioned contention of the prematurity of this application. What follows are the brief relevant background facts leading up to these proceedings.

Relevant background facts

[6] The CPUT is one of the three universities of technology¹ that offer the BHSc degree programme in Dental Technology. The Council is the regulatory body established in terms of the Dental Technicians Act 19 of 1979 (*“the Act”*) to regulate the professions of dental technicians and dental technologists in the country, and to protect the interests of the public. The programme is offered upon the accreditation and approval of the Council in terms of the Act.

¹ The other two Universities of Technology that offer the programme are the Tshwane University of Technology (the TUT) and the Durban University of Technology (the DUT).

[7] The CPUT would operate the dental technology laboratory located at the Sarleh Dollie Building, Tygerberg Hospital at Parow, under lease with the Provincial Department of Health. For the laboratory to operate lawfully, it has to be accredited and registered by the Council in terms of the Act.

[8] On 11 December 2020, the CPUT was granted by the Council conditional accreditation for the first year of the programme subject to CPUT submitting the remainder of the required documentation by the end of the first quarter of 2021.

[9] During May 2025, upon the expiry of its lease at the Tygerberg Hospital, the CPUT relocated its Department of Dental Science and dental laboratory facilities from the Tygerberg Campus to the newly acquired building at the Tyger Valley Campus. This relocation process required occupancy certifications and due inspection, accreditation and registration of the new laboratory by the Council to comply with the requirements for accreditation. It would appear that delays occurred in the acquisition of all the requisite certificates from various authorities, that include the City of Cape Town for the laboratory to meet the compliance requirements, resulting in disagreement between the CPUT and the Council on temporary measures that would ensure continuous learning of the students.

[10] On 26 March 2026, the Council issued a media statement to the effect that the CPUT dental technology programme was suspended based on its reasons, without indicating whether the minister had consented to the suspension. Subsequently, it turned out that the minister had consented to the suspension of the programme. This led to student instability at the CPUT, which necessitated an urgent application by the CPUT to suspend the ministerial consent to the suspension of the programme.

[11] On 5 June 2026, the Honourable Justice Sher granted the CPUT an interim order suspending the minister's consent to the suspension of the programme pending the final determination of the review of the ministerial consent in Part B of that application. This was followed by a letter dated 21 July 2026 from the State Attorney proposing the withdrawal of the review application on the basis that the minister had since withdrawn his consent to the suspension of the programme.

[12] On 11 August 2026, the CPUT received a notice from the Council, informing it of the Council's intention to request the minister to give consent for the Council's suspension of its approval of the programme to the CPUT until the latter meets the conditions of accreditation that had been prescribed by the Council. This is what gave rise to the CPUT's concern, which caused it to approach the Court for the relief it seeks.

[13] In the suspension notice, the Council alleged that the CPUT had failed to comply with the conditions of accreditation of 2020, so much so that the requisite documentation was largely approved only in 2023. The cited reasons for the intended request for the Minister's consent to the suspension of the programme are the alleged CPUT's failure to meet the conditions of accreditation.

[14] The stated accreditation conditions were that the CPUT's new laboratories were to be approved by the Council, and that the CPUT should no longer graduate students who could not be simultaneously registered with the Council. The university was given 30 days to make representations to the Council as to why its temporary accreditation of the programme should not be suspended. In the notice, the Council informed the university that the Council would consider the reasons advanced by the CPUT 'with an open mind' before making a request to the minister for the suspension.

[15] On 14 August 2026, the CPUT attorneys responded to the Council's suspension notice by requesting the Council's October 2025 accreditation report and resolution of 14 August 2026. In its request for information, the CPUT contended that it would be prejudiced in its ability to respond to the Council's suspension notice if it was not provided with that information. The Council subsequently availed the requested information to the CPUT on 18 August 2026. This was followed by a letter from the CPUT's attorneys demanding the Council's retraction of the suspension notice by no later than 21 August 2026, failing that, the CPUT would pursue this application. The Council refused to accede to the CPUT demand, hence this application.

Jurisdictional Challenge

[16] While the respondents have taken a point challenging the jurisdiction of this Court to entertain the matter based on the above stated grounds, I do not consider this point to be enjoying merit for jurisdictional bar. In *National Gambling Board v Premier of KwaZulu Natal and Others*,² the Constitutional Court held that at common law the court's jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the *status quo* and does not depend on whether it has jurisdiction to decide on the main dispute. The court went on to state that a court that does not have jurisdiction in the main dispute will simply determine whether the applicant has a *prima facie* right to the relief which is to be sought in the court having jurisdiction to deal with it.

[17] The applicant seeks an interim relief for the preservation of the *status quo* in this division pending the final determination of the review application at another court. I am therefore satisfied that this Court has the necessary jurisdiction to determine the application at hand, which for interim relief for preservation of the *status quo* in Part A

² (CCT32/01) [2001] ZACC 8; 2002 (2) BCLR 156; 2002 920 SA 715 (21 December 2001) at para 50 to 53

of the application. The main dispute remains a matter for determination at the Gauteng Division.

Issues

[18] In light of the above background facts, the issues for determination by this Court are two-fold. The first is whether this application for interim interdict is urgent. If the answer is in the negative, that is the end of the matter, for the application will fall to be struck off the roll, unless the Court exercises its discretion otherwise. If, however, the answer is in the affirmative, the second issue will arise, namely, whether the applicant has made out a case for the interim relief sought.

Urgency

[19] The test for urgency is whether the applicant cannot be able to obtain substantial redress at the hearing in due course. In deciding this question, the court is required to consider the nature of the harm to be averted, the circumstances in which it arises and whether a hearing in the ordinary course would afford an effective remedy.³

[20] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*,⁴ the court stated as follows:

“The question of whether a matter is sufficiently urgent... is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress. The rules require absence of substantial redress.”

[21] The CPUT submits that it will not have substantial redress at a hearing in due course, in that it will not be afforded effective relief in the form of an interdict *pendente*

³ Luna Meubel Vervaardigers (Edm) Bpk v Makin 1977 (4) SA 135 (W)

⁴ (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paragraph [6]

lite as it would have to wait for a hearing some months to come to get relief, for that will be too late. This submission is fortified by the CPUT's view that, based on its previous experience, the Council has already made up its mind to suspend the programme. It is argued that the *status quo* must be preserved through the interim interdict until this issue is determined in the pending review application in the Gauteng Division.

[22] Essentially, CPUT's contention is that the process the Council is pursuing by the notice is simply to take them through the motions. To buttress its view that the Council has made up its mind to suspend the programme, the CPUT submits that there is clear and indisputable evidence to that effect. This, according to the CPUT is based on the media statement of 26 March 2026, where the Council announced that the programme had been suspended for the same reasons that it is advancing in the suspension.

[23] The respondents argue the contrary, contending that the matter is not sufficiently urgent to warrant its enrolment as an urgent application in terms of rule 6(12)(a) of the Uniform Rules of Court. In this regard, the respondent takes issue with the fact that the CPUT was given 30 days' notice on 11 August 2026 to make representations to the Council, subsequent to which it required an accreditation report to prepare for representation, which it was provided with. But it instead waited until the last day of the notice to launch this application on 9 September 2026. On this basis, the respondents argued that the urgency is self-created.

[24] In essence, the applicant's claimed source of urgency is the apprehended suspension of the programme and the impact of that eventuality on the students and the reputation of the institution. In my view, this apprehension is misplaced. On the facts, the Council has not made any decision to suspend the programme. What the Council has done is to invite the CPUT to make representations, which it stated it will consider fairly with an open mind before deciding to approach the minister for consent for the

suspension of the programme. Even if the Council were to decide to suspend the programme, the Council would first request consent of the minister. The CPUT would have its audience with the Minister.

[25] It is trite that an application that is said to be urgent must be brought as soon as possible; failing that, a cogent explanation must be advanced to the court for any delay in bringing the application.⁵ On the facts, the delay in approaching this Court only on 9 September 2026 is not explained at all. On its own version, the CPUT's concern arose on 11 August 2026 when they received the Council's notice of its intention to seek ministerial permission, and giving CPUT an opportunity to make representations as to why that should be done. The CPUT did not take that opportunity despite having been supplied on 18 August 2026 with information it requested to enable it to respond to the notice. Instead of making representations to the Council as invited, on 19 August 2026, the CPUT demanded retraction of the suspension notice by 21 August 2026, which was subsequently refused.

[26] In *Stock v and Another v Minister of Housing and Another*,⁶ it was held that where an applicant seeks compliance from the respondent before launching an application, it cannot be said that the applicant had been delayed in bringing the application or that the agency is self-created. On the facts of this case, given that the stance of the Council regarding its suspension notice was clearly articulated, I am not persuaded that it was reasonably expected that this position would change. Thus, the letter demanding retraction of the notice was simply a formality and dilatory in the circumstances.

[27] In this case, I find that the delay is attributable to some attempts by the CPUT to resolve the matter and ameliorate the legal proceedings. Instead, what is clear is that the

⁵ *Shivambu v Chairperson for the Joint Committee of Ethics and Members Interests* (unreported, WCC Case No 22223/23 dated 1 February 2024) at paragraph [33]

⁶ 2007 (2) SA 9 (C) 12I-13A

CPUT spent the notice period gathering information to litigate instead of complying with the lawful regulatory process of a statutory body. As such, the delay cannot be justified by the sudden urgency of the matter. In my view, the conduct bears the attributes of a self-created urgency.

[28] In the circumstances, I am not persuaded that the application meets the threshold of urgency, and ordinarily the matter should be struck from the roll. However, it is a well-established principle that in pronouncing on the issue of urgency, the court exercises a wide discretion.⁷ This matter was fully ventilated by the parties, and it is in the interests of justice that I deal with the merits of the application so as to reach finality.

The Test for Interim Interdict

[29] The test for the granting of interim interdict is trite. It is whether the four requirements, which are well established *Setlogelo v Setlogelo*,⁸ are met. These requirements, all of which must be met, are: *a)* a *prima facie* right, even if open to some doubt, *b)* a well-grounded apprehension of irreparable harm if the interim relief is not granted and ultimate relief is eventually granted; *c)* that the balance of convenience favours the granting of the interim relief; and, *d)* that the applicant has no other adequate or satisfactory remedy. The above requirements were refined in *Webster v Mitchell*.⁹

[30] In *International Trade Administration Commission v SCAW South Africa (Pty) Ltd*,¹⁰ the Constitutional Court held that where the court is seized with an application for interim interdict that would restrain the exercise of public power, the court can only grant such in the clearest of cases. The court, per Moseneke DJP, remarked:

⁷ Cornerstone Logistics (Pty) Ltd v Zampak Cape Town Depot (Pty) Ltd [2022] 2 All SA 13 (SCA) at paragraph [19]

⁸ 1914 AD 221

⁹ 1948 (1) SA 1186 (W) at 1189

¹⁰ *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at paragraph [101]

“When a court is invited to intrude into the terrain of the executive, especially when the executive decision-making process is still uncompleted, it must do so only in the clearest of cases and only when irreparable harm is likely to ensue if interdictory relief is not granted...”

[31] The statutory powers of the Council are derived from section 4 of the Act, which gives the Council powers to, with the consent of the Minister, suspend any programme if it does not meet the conditions of approval it has imposed. Section 4(e) of the Act provides:

“4 The Council may:

- (e) Approve training institutions in accordance with the prescribed conditions, inspect such institutions, and withdraw or suspend the approval of any such institution if the education or training provided at such institution is, in the opinion of the council, not satisfactory, or if any condition imposed in respect of the approval of such institution is not complied with: Provided that the council shall not without the consent of the Minister refuse to approve any such institution, or withdraw or suspend the approval thereof”

Prima facie right

[32] In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others (OUTA)*,¹¹ the Constitutional Court held that *prima facie* right for the purpose of the grant of interim relief is a right to which, if not protected by an interdict, irreparable harm would ensue.¹² The court made it clear that a mere right to administrative action that is lawful, reasonable and procedurally fair as provided for in section 33 of the Constitution, read with PAJA, is not enough to satisfy the requirement of a *prima facie* right to interim interdict pending review of the impugned decision.

[33] The CPUT avers that it has a *prima facie* right of access to courts and a fair hearing of the review applications. It claims that those rights are undermined and threatened by the Council’s suspension notice, which has been issued for alleged non-compliance with

¹¹ 2012 (6) SA 223 (CC) at paragraph [45]

¹² 2012 (6) SA 223 (CC at paragraph [50]

conditions of accreditation whose legality it challenges in the review. In light of the OUTA principle mentioned above.

[34] The suspension notice is initiating a regulatory consultative process in terms of the statute. In this regard, the Council, in exercise of its statutory powers, simply notified of its intention to request the consent of the Minister and invited the CPUT to engage. The CPUT has no *prima facie* right to refuse to participate in a statutory process of the Council, in performance of its regulatory functions.

[35] Moreover, the suspension notice does not cause any irreparable harm to the CPUT's right to be heard in the pending review at the Gauteng Division, nor does it in any way undermine the review proceedings. This is so because the Council is not suspending the programme, nor is the minister consenting to the suspension. Thus, even if the review application succeeds, no irreversible harm will be suffered by the CPUT, for the regulatory process of engagement to find solutions for the accreditation of the programme will still be required.

Irreparable harm

[36] In this case, the CPUT's apprehended harm is the suspension of the programme, based on the suspension notice the CPUT received from Council. It avers that it will suffer irreparable harm if the interim relief interdict is not granted and it ultimately succeeds in the review application.

[37] On the facts before the Court, the suspension notice is not *per se* does not mean that suspension shall occur. The apprehended harm can only arise, if at all it does, after the minister consents to the suspension. That apprehended eventuality is neither certain nor imminent, for it can only occur at the tail end of the two-staged process and once the minister consents to the suspension of the programme. Essentially, the Council is initiating a process of engagement with the CPUT.

[38] I find no harm to the CPUT for participating in the statutory process, for its participation by making representations to the Council will not mean that it is complicit to what it challenges in the review proceedings. If anything, it will help enrich the perspective of the Council, by providing reasonable alternatives to the suspension of the programme. The CPUT will be afforded an opportunity to be heard in both Council's and later the Ministers' decision-making stages. The outcome of these stages will depend largely on the representations made by the CPUT.

[39] That process, which might not even result in the need for the ministerial consent, let alone the consent itself, has just started and is far from being finalised for it to cause alarm requiring this Court's urgent intervention. The first stage is the consideration of the CPUT representations against the suspension. The second, which depends largely on the outcome of the Council's consideration of the CPUT representations, is the ultimate consent by the Minister which, in my view, is far from imminent.

[40] In my view, one has to be mindful that the Council's previous approach in March 2026 was flawed, in that it did not give audience to the CPUT before suspending the programme and announcing the decision to the media. This time, the Council is making amends by following the due process; hence it invites the CPUT to make representations to it before it decides to request the consent of the Minister for the suspension of the programme.

[41] Thus, the argument that the Council has made up its mind to suspend the programme is not sustainable. It is not backed by facts. It is simply based on suspicion against the regulatory body of professionals and cannot be countenanced. It cannot be, that just because the Council has in the past failed to follow the process before making

its decision, therefore it is disqualified from executing its regulatory functions, following the correct process.

Balance of Convenience

[42] For the applicant to succeed, the balance of convenience must be in favour of the grant of the interim relief. The court must weigh the prejudice the applicant will suffer if the interim order is not granted against the harm the respondent will suffer if it is granted, bearing in mind the wider public interest and the underlying principles of the democratic society.

[43] Based on the above findings, the Court has to balance the irreparable harm to be suffered by the applicant against the restraint of public power. In terms of the OUTA principle, the court can interfere only in the clearest of cases. In my view, for reasons stated above, this case does not meet the threshold of the clearest of cases to justify the Court's intervention, more so on an urgent basis. The balance of convenience is therefore not in favour of granting the interdictory relief.

No alternative adequate

[44] In light of the Court's finding above, the Court's view is that the CPUT's alternative remedy to the relief sought is clear. It lies in the CPUT's participation in the Council's statutory process, by making representations against the suspension of the programme and proposing plausible alternative solutions.

Conclusion

[45] In conclusion, having considered all the relevant facts and the law in this matter, my view is that the requirements for granting the interim relief sought have not been met. It follows that the application must fail.

Costs

[46] Regarding costs, the Court finds no grounds to deviate from the general rule that costs follow the result. The respondents are therefore entitled to costs on the party and party scale, including costs attendant to the employment of two counsel.

[47] In the result, the following order is made.

1. The application for interim relief in Part A of the application is dismissed.
2. The applicant is liable for costs of Part A of the application on party and party scale, which costs include costs attendant to the employment of two counsel.

ZL MAPOMA
ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant : Adv S Magardie
Instructed by : Cheadle Thompson and Haysom Inc,
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Counsel for the Respondents : Adv V Notshe SC
Adv N Loopoo
Instructed by : State Attorney, Pretoria, c/o Ward Brink
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