IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE: 09/11/2026 SIGNATURE:

CASE NO: 2023-132918

In the interlocutory application of:

SAKELIGA NPC	Applicant
and	
VELENKOSINI HLABISA	First Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	Third Respondent
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	Fourth Respondent
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE	Fifth Respondent
THEMBI NKADIMENG	Sixth Respondent
MBULELO TSHANGANA	Seventh Respondent

THINAVHUYO SKOSANA	Eighth Respondent
NKOSAZANA CLARICE DLAMINI ZUMA	Ninth Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Tenth Respondent

In re: the main application between:

SAKELIGA NPC	Applicant
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
AND EIGHT OTHERS	Second to Ninth Respondents

JUDGMENT

This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties or their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date of hand-down is deemed to be 9 November 2026.

S MARITZ AJ

A. INTRODUCTION

1. This is an opposed interlocutory application in which the applicant seeks an order that the first respondent, Mr Velenkosini Hlabisa, the current Minister of Cooperative Governance and Traditional Affairs ("the Minister"), be joined, in his personal capacity, as the tenth respondent to the contempt application pending before this court under the same case number ("the main application"). Only the first respondent opposes the application.

2. The application raises the following question: where contempt of court relief, including an order of committal to prison, is sought in consequence of alleged non-compliance with a court order directed at a public office, must the individual who presently occupies that office, and who may in due course be called upon to answer the charge of contempt, be joined to the contempt proceedings in his personal capacity?

3. This application is *not* about whether:

   3.1. the first respondent is in contempt of the order of this court dated 9 November 2022;

   3.2. the order was complied with;

   3.3. the first respondent bears responsibility for any non-compliance; and

   3.4. any such non-compliance was wilful and *mala fide*.

4. These are questions reserved for the court that hears the main application. Nothing in this judgment expresses any view on those questions. This court is concerned only with the antecedent, procedural question of who must be before the court when those questions are answered.

B. BACKGROUND

5. On 15 December 2020, the applicant, a non-profit company, submitted a request in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA") to the Department of Cooperative Governance and Traditional Affairs. The request sought all records, reasons, reports, findings, deliberations,

communications and memoranda relied upon by the then Minister in declaring the national state of disaster in March 2020, in extending it on seven subsequent occasions, and in making and amending the Covid-19 lockdown regulations under the Disaster Management Act 57 of 2002 ("the Disaster Management Act").

6. The request was refused, as was the applicant's internal appeal. On 9 November 2022, under case number 39370/2021, this court (per Lukhaimane AJ) granted an unopposed order reviewing and setting aside those refusals. The court further directed the first to fourth respondents in that application, cited as the Minister, the Department, and the officials responsible for the information function, together with the President, to comply with the PAIA request within 30 days and to provide the applicant with all of the requested documents and information in their possession or under their control ("the 2022 order").

7. At the time, Dr Nkosazana Clarice Dlamini Zuma held the office of Minister. She is cited in the present application as the ninth respondent.

8. Documents were thereafter delivered in three tranches:

    8.1. On 22 December 2022, 41 documents (approximately 626 pages) were uploaded to CaseLines;

    8.2. On 6 January 2023, approximately 3 860 pages were delivered; and

    8.3. On 11 January 2023, a further 444 pages were emailed.

9. The applicant considered the record, approximately 5,100 pages, wholly inadequate. It complained that the bulk related to the tobacco sales ban, that little or nothing addressed the other 2020 regulations, and that categories of documentation expressly requested had been omitted.

10. The respondents, for their part, contended, from 23 February 2023, that they had fully complied with the 2022 order, an assertion maintained by Minister Dlamini Zuma's successor, Ms Thembi Nkadimeng, after her appointment in March 2023. Whether the parties have complied with the 2022 order is therefore an extant and genuine dispute between them. It is not a dispute that this court can, or should, resolve.

11. On 13 December 2023, the applicant issued the main application. It cited the respondents as follows:

    11.1. Minister, the Department, the Director-General and the Information Officer in their official capacities as the first to fourth respondents;

    11.2. Ms Nkadimeng, Mr Mbulelo Tshangana and Mr Thinavhuyo Skosana, the erstwhile holders of the offices of Minister, Director-General and Information Officer, in their personal capacities as the fifth to seventh respondents;

    11.3. Dr Dlamini Zuma as the eighth respondent; and

    11.4. The President as the ninth respondent.

12. The relief sought in the main application has two distinct components:

12.1. The first is civil and structural in character.

12.1.1. Prayer 2 seeks an order that the first to fourth respondents comply with paragraph 3 of the 2022 order within 20 days.

12.1.2. Prayer 3 seeks an order that, in doing so:

a) they ensure that all documents provided are properly sorted and collated;

b) the documents clearly indicate to which paragraph or sub-paragraph of the PAIA request they relate; and

c) an affidavit thereafter be delivered to the court and the applicant confirming that no further documents falling within the ambit of the request are in the first to fourth respondents' possession or under their control.

12.2. The second component is punitive.

12.2.1. Prayer 4 seeks an order that the fifth to seventh respondents be sentenced to imprisonment for 60 days, alternatively such period of imprisonment, sentence, penalty or fine as the court deems appropriate.

12.2.2. Prayer 5 asks that the sentence be suspended on condition that the first to fourth respondents comply with prayers 2 and 3, failing which the South African Police Service is to take all steps necessary to ensure that the sentence is served.

12.2.3. Prayer 6, in the alternative, invites the court to make any order that is just, equitable and necessary to address the respondents' contempt and to vindicate the court's honour.

13. In their answering affidavit in the main application, delivered on 22 July 2024, the second to ninth respondents contended, *inter alia*, that the applicant is not entitled to the relief sought because the correct parties are not before the court. By that time the political landscape had shifted: following the 2024 general election, the first respondent was appointed Minister at the beginning of July 2024. He was not cited in the main application, which had been issued during his predecessor's tenure.

14. Against that backdrop, the applicant launched the present application on 13 August 2025. The applicant's stated position is that the joinder is sought out of an *abundance of caution*. It maintains that an order granted against a Minister in his or her official capacity binds the office and therefore whoever holds it from time to time. The applicant nevertheless seeks to place beyond doubt that all persons against whom the relief in the main application may operate are before the court. The first respondent delivered an answering affidavit on 17 September 2025; the applicant replied on 2 October 2025.

C. THE PARTIES' CONTENTIONS

15. The applicant advances three bases for the joinder, namely:

15.1. First, that the first respondent has a direct and substantial interest in the subject matter of the main application, so that his joinder is one of necessity.

15.2. Second, and in the alternative, that joinder is justified under the common law on grounds of convenience, equity, the saving of costs and the avoidance of a multiplicity of proceedings.

15.3. Third, that the application was precipitated by the second to ninth respondents' own contention in the main application that the correct parties are not before the court.

16. Mr Bester, for the applicant, placed particular reliance on the decisions in *Matjhabeng*[1] and *Mashinini*[2], to which I return below, for the proposition that where committal is contemplated, the person concerned must be cited personally. He submitted that the threshold for joinder is lower than, and distinct from, the threshold for an eventual committal order, the merits of which must be determined on the hearing of the main application.

17. The first respondent's opposition, advanced by Mr Moerane SC, rests on the following propositions:

17.1. He was not a party to the 2022 order, which was granted and (on the respondents' version) implemented during Dr Dlamini Zuma's tenure, before he took office.

17.2. The order imposed no obligations on him personally.

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1 *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others; Mkhonto and Others v Compensation Solutions (Pty) Ltd* [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) ("Matjhabeng") paras 102 to 103.

2 *Mashinini v Minister of Correctional Services and Another (Ex Tempore)* (2023-098939) [2025] ZAGPPHC 772 (30 July 2025) ("Mashinini") paras 4 to 5.

17.3. He made no decisions concerning the declaration or extension of the state of disaster, the regulations, or the compilation of the PAIA record, and has no personal knowledge of those matters. There is accordingly no *lis* between him, in his personal capacity, and the applicant, and no direct and substantial legal interest on his part in the enforcement of the 2022 order.

17.4. Finally, the joinder is sought for the sole purpose of exposing him to committal. This, so the argument goes, is a stalking-horse and an abuse of the process of this court deserving of a punitive costs order.

17.5. Reliance was placed on *Zuma v Downer* for the principle that proceedings instituted for an ulterior purpose, or which are obviously unsustainable, constitute an abuse of process.[3]

D. THE LEGAL FRAMEWORK: JOINDER

18. The applicant invokes rule 10(3) of the Uniform Rules of Court. The rule permits several defendants to be sued in one action "w*henever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action*".

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3 *Zuma v Downer and Another* [2023] ZASCA 132; [2023] 4 All SA 644 (SCA); 2024 (2) SA 356 (SCA) ("Zuma v Downer") para 11.

19. The rule does not, however, deal with, nor do its provisions affect, the common-law rules relating to the obligatory joinder of parties.[4] It is those common-law principles, settled since *Amalgamated Engineering Union v Minister of Labour*, that govern the question of necessary joinder.[5]

20. The test is trite. A person is a necessary party, and must be joined, if he or she has a direct and substantial interest in any order the court might make in the proceedings. The same applies where such an order cannot be sustained or carried into effect without prejudicing that person, unless the court is satisfied that the person has waived the right to be joined.[6] A "*direct and substantial interest*" is a legal interest in the subject matter of the litigation which may be prejudicially affected by the judgment of the court; a mere financial or indirect interest in the outcome does not suffice. In *Judicial Service Commission v Cape Bar Council* the Supreme Court of Appeal put the matter thus:[7]

> "*It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court*

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4 The provisions of rule 10 are applicable to applications by virtue of rule 6(14). The rule does not deal with, nor do its provisions affect, the common-law rules relating to the obligatory joinder of parties: Erasmus Superior Court Practice (2 ed, RS 35, 2024) Vol 2 at D1 Rule 10-2.

5 *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 659 to 661.

6 Erasmus Superior Court Practice (2 ed, RS 30, 2026) Vol 2 at D1 Rule 10-4 to 10-5, and the authorities there collected. See also *Bowring NO v Vrededorp Properties CC and Another* 2007 (5) SA 391 (SCA) para 21; *Gordon v Department of Health, KwaZulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA) para 9; *Absa Bank Ltd v Naude NO and Others* [2015] ZASCA 97; 2016 (6) SA 540 (SCA) para 10.

7 *Judicial Service Commission and Another v Cape Bar Council and Another* [2012] ZASCA 115; 2013 (1) SA 170 (SCA) para 12.

in the proceedings concerned . . . The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea."

21. Two related considerations underlie the rule.

21.1. The first is the *audi alteram partem* principle. As the Constitutional Court observed in *Matjhabeng*: "*The law on joinder is well settled. No court can make findings adverse to any person's interests, without that person first being a party to the proceedings before it*."[8]

21.1.1. In SA *Riding for the Disabled Association* the same court held that it is a basic principle of our law "*that no order should be granted against a party without affording such party a pre-decision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation*."[9]

21.2. The second consideration is the protection of the administration of justice itself: the rules on obligatory joinder seek to prevent a third party who has not been joined, and against whom the order would not be *res judicata*, from later approaching the courts in respect of the

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8 *Matjhabeng* para 92 (2018 (1) SA 1 (CC) at 33E–F).

9 *SA Riding for the Disabled Association v Regional Land Claims Commissioner and Others* [2017] ZACC 4; 2017 (5) SA 1 (CC) ("SA Riding") paras 9 to 11. Although SA Riding concerned intervention, the learned authors of Erasmus submit that the position there set out applies equally to the obligatory joinder of a party who has a direct and substantial interest in the subject matter of the litigation: Erasmus at D1 Rule 10-9.

same subject matter and possibly obtaining an order irreconcilable with the first.[10]

22. Two further points about the threshold bear emphasis:

22.1. First, the inquiry is directed at potentiality, not certainty: it suffices that the order sought *may* prejudicially affect the interest concerned.

22.2. Second, the joinder court does not adjudicate the merits of the claim against the party to be joined. What is required is that the relief claimed, if granted, would engage that party's legal interests — not proof that it will be granted.[11]

23. Distinct from joinder of necessity is joinder of convenience, permissible under the common law on grounds of convenience, equity, the saving of costs and the avoidance of a multiplicity of actions, where a *lis* exists between the applicant and the party sought to be joined.[12]

E. JOINDER WHERE COMMITTAL FOR CONTEMPT IS SOUGHT

24. The requisites of civil contempt are equally settled. They are: the existence of the order; service of the order on, or notice of it to, the alleged contemnor; non-compliance with its terms; and wilfulness and *mala fides*. Once the applicant establishes the first three requisites, the respondent bears an

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10 Erasmus Superior Court Practice (2 ed, RS 30, 2026) Vol 2 at D1 Rule 10-5.

11 *SA Riding* para 9: an applicant for intervention "*does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief*."

12 *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd and Another* 1980 (3) SA 415 (W) at 419E; *Ronnie Dennison Agencies (Pty) Ltd t/a Water Africa SA v SABS Commercial Soc Ltd* [2014] ZAGPPHC 998 paras 14–15.

evidential burden in relation to wilfulness and *mala fides*.[13] Where committal to prison is sought, the requisites must be established beyond reasonable doubt, precisely because the liberty of the individual, protected by section 12(1) of the Constitution, is at stake.[14]

25. It is the involvement of personal liberty that gives the joinder question its particular complexion in contempt proceedings. In *Matjhabeng* the Constitutional Court dealt with contempt proceedings in which committal orders had been made against a municipal manager and a compensation commissioner who had been cited only in their nominal, official capacities. The court held:[15]

> "*Bearing in mind, that the persons targeted were the officials concerned - the Municipal Manager and Commissioner in their official capacities - the non-joinder in the circumstances of these cases, is thus fatal. Both Messrs Lepheana and Mkhonto should thus have been cited in their personal capacities - by name - and not in their nominal capacities. They were not informed, in their personal capacities, of the cases they were to face, especially when their committal to prison was in the offing*."

26. This division has recently applied the principle. In *Mashinini v Minister of Correctional Services,* Van der Schyff J held that *Matjhabeng* "*confirmed that*

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13 *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) ("Fakie") paras 9 and 42; *Matjhabeng* paras 63 and 73.

14 *Fakie* para 42; *Matjhabeng* paras 64 to 67 and 73. Where committal is sought, the criminal standard of proof applies; remedies not directed at committal may be established on a balance of probabilities.

15 *Matjhabeng* para 103.

respondents against whom a contempt of court order that could result in their committal was sought had to be cited in their personal, and not nominal, capacities", the Constitutional Court having found it "*inconceivable how they could have been committed to prison when they were not informed in their personal capacities of the cases they were to face*".[16]

27. It follows therefore that where contempt relief is pursued in respect of an order directed at a public office, and the relief sought includes, or may culminate in, the committal of the individual who holds that office, the individual concerned must be before the court in his or her personal capacity. Personal citation is a prerequisite for a competent committal order; its absence is fatal to that relief. A person who faces even the possibility of imprisonment at the end of the proceedings has a direct and substantial interest in those proceedings; no interest is more direct or more substantial than an interest in one's own liberty. Conversely, the joinder of such a person is not a hostile act but a protective one: it is the procedural mechanism by which the *audi* principle is observed before any adverse finding can be contemplated.

F. ANALYSIS

28. Applying these principles, the starting point is the relief actually sought in the main application, for it is against that relief that the first respondent's interest falls to be measured. Prayers 2 and 3 are directed at the first to fourth respondents in the main application, that is, at the offices of Minister, Department, Director-General and Information Officer. Should that relief be

16 *Mashinini* paras 4 to 5.

granted, those who presently hold those offices will be required to comply with the 2022 order, sort, collate and cross-reference the record, and cause an affidavit to be delivered confirming that nothing further is held. The first respondent is the incumbent of the first of those offices. The obligations which prayers 2 and 3 contemplate would, as a matter of practical and legal reality, fall to be discharged under his direction.

29. Prayer 5 completes the picture. The suspension of any committal order is to be conditional upon compliance by the first to fourth respondents with prayers 2 and 3, failing which the sentence is to be carried into effect. Prayer 6 seeks, in the alternative, any order the court considers just, equitable and necessary to address the contempt. The punitive and coercive machinery of the main application is thus conditional upon the future compliance by the offices, including the office the first respondent now holds. An order along those lines could not be sustained, nor carried into effect, without engaging the first respondent's interests: his official duties in the first instance and, at least potentially, his personal liberty in the second. On the authority of *Matjhabeng*, if committal is to remain available against the holder of the office for the time being, the applicant was not merely entitled *but obliged* to seek his joinder in his personal capacity.[17]

30. Notably, the joinder application arose from the stance of the first respondent's own co-respondents. In the main application, the second to ninth respondents contended that the relief cannot be granted because the correct parties are not before the court. The applicant, faced with that objection, did what would

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17 *Matjhabeng* para 103; *Mashinini* paras 4 to 5.

be expected of a *bona fide* prudent litigant. It sought, in this application, to cure the alleged defect. The first respondent now opposes the relief being sought. The respondents cannot have it both ways. Where a litigant is faced with an objection that a necessary party has not been joined, seeking to join that party is the appropriate course of action. Had the applicant failed to do so, it risked having aspects of the relief sought in the main application dismissed solely on the ground of non-joinder.

31. The grounds on which the first respondent resists joinder do not, on analysis, engage the joinder question at all, namely:

31.1. He was not in office when the 2022 order was granted;

31.2. He made none of the underlying decisions;

31.3. He has no personal knowledge of the record or its compilation;

31.4. The order was, on the respondents' version, already implemented.

32. These grounds are defences on the merits of the contempt claim. They deal with whether there was non-compliance, wilfulness, and *mala fides,* and whether non-compliance, wilfulness, and *mala fides* can be established against him beyond reasonable doubt.

33. They may well prove weighty in that forum. However, the court hearing the main application will consider these factors, where it will protect the first respondent's substantive and procedural rights.[18]

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18 *Fakie* para 42; *Matjhabeng* paras 61 to 67 and 73.

34. The question at this stage is simply whether the relief sought, if granted, may prejudicially affect the party concerned. For the reasons given, it plainly may. Indeed, the very defences raised by the first respondent underscore why he must be before the court hearing the main application. Joinder is the vehicle through which he acquires the right to be heard, to answer the allegations, to place his personal position before the court, and to address the appropriateness of each component of the relief.

35. Nor does it avail the first respondent to say that the office of Minister is already before the court in the main application by citing the second respondent. That submission runs directly counter to *Matjhabeng*, which highlights the distinction between nominal citation of an office and personal citation of the individual whose committal may be contemplated. Citation in an official capacity does not give the individual notice, in his personal capacity, of the case he is to meet.[19]

36. I have considered whether the claim against the first respondent is so plainly unsustainable that joinder would serve no purpose. Had I been persuaded that no competent order could issue against him in the main application, that might have justified refusing joinder. That is not the case here. Compliance with the 2022 order remains genuinely disputed, particularly regarding the record delivered, the State Attorney's acknowledgement that further documents existed, and a contemplated variation application that never materialised.

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19 *Matjhabeng* para 103.

37. Moreover, the relief sought includes civil remedies directed at the offices concerned, recognised as alternatives to committal in contempt proceedings. The nature and terms of any relief, and against whom it should operate, are matters for the court hearing the main application. It would be inappropriate to prejudge those issues by effectively excluding the incumbent Minister at this interlocutory stage.

38. I am cognisant of the concern raised in argument that changes in office-bearers could result in successive joinder applications. However, that concern arises from the particular relief sought, which combines official compliance obligations with committal-backed enforcement. In those circumstances, *Matjhabeng* dictates the approach. The effect of joinder should not be overstated: it merely affords the first respondent an opportunity to be heard, without presuming liability. Whether a case can be established against him personally remains for determination in the main application.

G. ABUSE OF PROCESS

39. There remains the first respondent's contention that the application is an abuse of process, that it is a stalking-horse designed to threaten and harass him with imprisonment for extraneous, publicity-driven ends. In *Zuma v Downer* the Supreme Court of Appeal confirmed that proceedings instituted for an ulterior purpose, or which are obviously unsustainable, may be struck down as abusive.[20] The principle is not in doubt; its application to these facts is.

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20 *Zuma v Downer* para 11.

40. The purpose of this application appears from its own chronology. It was brought after, and expressly in response to, the objection raised by the second to ninth respondents that the correct parties were not before the court; and it seeks to do no more than place before the court the individual against whom the relief in the main application may ultimately operate. That is not an ulterior purpose. It is the purpose the law itself assigns to joinder. The underlying claim cannot be characterised as obviously unsustainable at this stage. The charge of harassment inverts the true position: it is the refusal of joinder, followed by the pursuit of committal-backed relief affecting an absent party, that our law will not countenance. The abuse of process contention must fail.

H. CONVENIENCE

41. Though the question of convenience is not relevant here as this is a joinder of necessity, it bears mentioning that refusing joinder now, only for the question of the incumbent Minister's position to be litigated separately later, would fragment proceedings that have already been delayed.

I. COSTS

42. The applicant asked, in its notice of motion, that the costs of the application be costs in the main application unless the application was opposed. In that event, it sought costs against the opposing party.

43. The first respondent has unsuccessfully opposed the application. I can find no reason to depart from the ordinary rule that costs follow the result.

J. ORDER

44. In the result, the following order is made:

1. The first respondent, Mr Velenkosini Hlabisa, is joined, in his personal capacity, as the tenth respondent in the main (contempt) application pending under case number 2023-132918.

2. The applicant shall, within 10 (ten) days of the date of this order, serve this order, together with the notice of motion and all affidavits filed of record in the main application, on the tenth respondent.

3. The tenth respondent may, within 15 (fifteen) days of such service, deliver an answering affidavit in the main application, whereafter the further exchange of affidavits shall be governed by the Uniform Rules of Court.

4. The first respondent is ordered to pay the costs of this application, including the costs of counsel on Scale B.



S Maritz[21]
Acting Judge of the
High Court of South Africa
Gauteng Division, Pretoria

Date of hearing: 20 April 2026
Date of judgment: 9 November 2026
For the applicant: Adv B C Bester

[21] Sophia Maritz

Instructed by:	Kriek Wassenaar & Venter Inc, Pretoria
For the respondents:	Adv M T K Moerane SC, Adv A Nacerodien and Adv R Tulk
Instructed by:	The State Attorney, Pretoria