REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: **19121/2016**

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

_____ _____

Date: **WHG VAN DER LINDE**

In the matter between:

THE SCHOOL GOVERNING BODY, LEICESTER ROAD SCHOOL	**First Applicant**
LEICESTER ROAD SCHOOL	**Second Applicant**

And

THE MEMBER OF EXECUTIVE COUNCIL:	
EDUCATION GAUTENG	**First Respondent**
THE HEAD OF DEPARTMENT: EDUCATION, GAUTENG	**Second Respondent**
THE DISTRICT DIRECTOR JOHANNESBURG EAST M NDEVU	**Third Respondent**
GASPARI, MARIZABEL DA CONCEICOA	**Fourth Respondent**

Summary: Urgent application for review of failure to appoint principal to primary school from one of those recommended by School Governing Body – matter ripe for hearing, fully argued – appropriate to be dealt with as one of urgency – Head of Department delayed in taking decision because acting principal not shortlisted lodged complaint of bias of chairperson of SGB – District Director upholding complaint of bias – decision upholding complaint falling within objectionable conduct identified in several of sub-paragraphs of s.6 of PAJA – decision upholding complaint of bias accordingly reviewed and set aside – failure by Head of Department not reviewed since unreasonable delay under s.6(3)(a) of PAJA not shown.

Judgment

Van der Linde, J

Introduction and basic facts

[1] This is an urgent application for two reviews: the first, a review of a grievance procedure that led to a decision by the third respondent that the first applicant's shortlisting process for identifying recommendations for the appointment of a principal for a primary school in Kensington, Johannesburg, known as Leister Road Primary School ("the school"), was flawed and should be rerun; and the second, a review of the failure of the second respondent to appoint, in accordance with his statutory obligation, a principal for the school from the three recommendations put up by the School Governing Body (the "SGB"). The school has existed for 78 years and a measure of the stability that it has enjoyed over the years is reflected in the fact that it has had only four principals since inception.

[2] The immediate urgency is that the new school term starts next week, Monday, 18 July 2016. The previous principal resigned last year, 31 March 2015, and Ms Gaspari, the current

deputy principal, has since then been acting as principal, appointed to that position by the second respondent. The prescribed process for appointing a new principal was run last year, and in that process Ms Gaspari was shortlisted and interviewed for appointment.

[3] The relevant subcommittee was required to and did put up three names for possible appointment; Ms Gaspari was one of them, although the subcommittee did not regard her as suitable. In the event, Mr Ramafalo was appointed, but he resigned after a day to take up an appointment with the Gauteng Department of Education ("GDE"), and it was back to the drawing board.

[4] The process was then run again, with the SGB, established in terms of the South African Schools Act 84 of 1996 (the "SASA"), again putting together a selection committee. This committee was swelled by observers from organised labour, NAPTOSA and SADTU, and a representative of the GDE. On 30 November 2015 the SGB advised the school and the GDE of the detail of its management plan for the filling of the vacancy.

[5] This provided amongst others for interviews on 12 December 2015, grievances to be declared within 5 working days, grievance procedures to be engaged by 22 December 2015, District Grievance Committee ("DGC") Meetings to be held by 17 January 2016, and with the appointment date of the successful candidate aimed for 1 January 2016.

[6] The relevant detail of the process will be discussed below, but the Gauteng Department of Education ("GDE") put forward 47 names of applicants who were assumed to have met the guidelines laid down by the GDE itself in the Guidelines for Open Vacancy Circulars for Educators and Education Therapists Posts ("the Guidelines").

[7] The Guidelines explain that the GDE takes responsibility for the initial sifting process to eliminate candidates who do not comply with the minimum requirements. These requirements, set out at paragraph 3 of the Guidelines, explain that the minimum requirements for appointment as a principal are at least seven years' teaching (not necessary as a principal) experience. The Guidelines also incorporate the shortlisting and

interviewing procedures outlined in the Gauteng Provincial Chamber: Collective Agreement 2 of 2005.

[8] That document, annexed as LR28 to the supplementary founding affidavit, requires the shortlisting by the SGB of compliant applicants who meet post requirements with a view to interviewing them; and the constitution by the SGB of a selection committee to interview shortlisted candidates. Not less than five candidates are to be shortlisted, and at the conclusion of the interviews, the selection committee must rank the candidates in order of preference.

[9] The Grievance Procedure, to which I return below, is an annexure to the Collective Agreement.

[10] On 5 December 2015 the selection committee duly shortlisted eleven (more than five) of these 47 applicants for interviews. Ms Gaspari, the acting principal, was not shortlisted; she was ranked number 13. Her aggregate score among the committee members was 248; the first candidate scored 311.

[11] It was a central tenet of the respondents' submissions to the court that clearly Ms Gaspari had been discriminated against: she had been acting principal, she was shortlisted and recommended before, and yet she was not shortlisted on the second occasion.

[12] Unbeknown to the applicants at that stage, on 8 December 2015, the Tuesday after the shortlisting on the Saturday 5 December 2015, Ms Gaspari authored a letter of complaint in which she averred that the then chairperson of the selection committee, Ms Mileder, was biased against her, and that that was why she had not been shortlisted for interviews.

[13] After the interviews of the shortlisted candidates on 12 December 2015, the selection committee recommended for appointment, and the school passed this on to the third respondent on 14 December 2015, any one of three candidates, but in order of preference, Messrs Spaarwater, Naicker and Brijnath. This was in accordance with their scoring in the

interviews, although it must be added that the committee was lukewarm, to say the least, about Mr Brijnath.

[14]No response was received from the second respondent. Instead, after an invitation on 3 February 2016 by the GDE addressed to the chairperson of the selection panel, Ms Mileder, to discuss a grievance that had been received, she and the current chairperson of the SGB, Mr Sherman, attended a meeting. At the meeting, where Ms Gaspari was present, Ms Mileder was given the letter of complaint by Ms Gaspari on 8 December 2015. She was afforded an opportunity to read it there and then, but not given a copy.

[15]Discussions followed, as reflected in a transcript of the meeting made by Mr Sherman, bound into the papers at LR21, p 178 ff. The upshot of that part of the meeting attended to by Ms Mileder and Mr Sherman was that Ms Mileder handed all the documentation relating to the shortlisting and recommendations to the panel present, and she explained how the selection process that was followed had been in accordance with the GDE guidelines.

[16]Now since the minutes of the meeting kept by the GDE have been discovered, it is apparent that the meeting went on to deliberate and make findings after Ms Mileder and Mr Sherman had left. The minutes reflect that there were three members, Ms Tsubane as chairperson and department representative; Mr Mntungwa as DGC member and SADTU representative, and Mr Pieters, presumably also a DGC member, but NAPTOSA representative.

[17]According to the minutes the DGC recommended, after its deliberations and findings, that what was described as the "grievance of the school" be upheld, and that "a new independent panel be appointed to conduct the process". The third respondent then, according to the minute, "Approved" the recommendation on 10 March 2016.

[18]On 14 March 2016 a letter from the third respondent followed, saying that a substantial flaw had been discovered in the shortlisting process and accordingly the selection process for a principal had to start afresh. The third respondent deposed to the respondents' answering

affidavit and does not dispute either the minute or the letter; and, in fact, he describes the finding as one of a substantial flaw in the process of shortlisting.

Urgency

[19]The respondents argued that the matter was not urgent. The application was fully argued. No party requested more time either to prepare or to put up further evidence. The new school term starts next week. The school has been without a permanent principal since April 2015. The school has been on the receiving end of two unfortunate sequential events: the resignation of the first appointed principal, and then the grievance letter and DGC meeting.

[20]After the letter of March 2016 advising of the decision regarding the process, the SGB engaged the department in an attempt to find a solution. Emails dating from 8 March 2016 evidence what transpired. A letter by the applicants' attorneys of 21 April 2016set out contentions advanced by the applicants, and requested reasons again for the GDE's decision of March 2016. It contended that that decision was unreasonable and reviewable. It concluded by demanding a meeting to discuss remedial action. No response was received.[1]

[21]No further substantive reaction was forthcoming from the respondents, and thus the application was launched on 6 June 2016, enrolling the matter for 12 July 2016. Reasonable time was allowed for the delivery of the record of the decisions sought to be reviewed and for answering affidavits.

[22]The application was served on the government respondents on 7 June 2016. They gave notice of their intention to oppose on 17 June 2016, and delivered the record pertaining to

[1] Reference may be had here to the judgment of the Supreme Court of Appeal in Member of the Executive Council for Education, Gauteng v Federation of Governing Bodies for South African Schools 2015 JDR 2254 (SCA), where the following was said at [8]: *"The issues raised in this appeal arose against a history of a sustained power struggle between provincial education departments and school governing bodies over governance and management of public schools in this country. This contestation has come to court on a number of occasions. 5 At the centre of these disputes is the education of the children of the country. For that reason, courts have emphasized that it is paramount that those involved should do their best to resolve the disputes with the utmost sense of responsibility. 6 However, recent history shows a regrettable enduring power struggle over authority to provide access to schools between the provincial departments of education, Fedsas and some of its affiliates around the country."*

the decisions to be reviewed by email after hours on Friday, 1 July 2016, and in hard copy on Monday, 4 July 2016.

[23]The issue of urgency in motion proceedings is determined, at least notionally, by the question whether the applicant would be able to obtain substantive redress at a hearing in due course. In this matter, an opposed hearing in due course would have to find its place on the ordinary opposed roll, which could be some months away. In the meantime there is a situation of uncertainty if not instability at the school which cannot be satisfactory. There are cogent reasons why an acting principal may be appointed by the second respondent but why, when a permanent appointment is to be made, a comprehensive process must be followed. That distinction applies in other professions as well.

[24]Its precise effect on the learners cannot be assessed with any pretence at accuracy, but this very inability weighs in favour of an earlier rather than a delayed resolution. In my view the matter is therefore sufficiently urgent for it to be determined out of term.

The statutory framework

[25]The two immediately relevant statutes are the South African Schools Act ("the Schools Act") already referred to, and the Employment of Educators Act 76 of 1998 ("the Educators Act").[2] Of relevance too are the Guidelines referred to above, and the Grievance Procedure.

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[2]The relationship between the department, both at national and at provincial level, the head of the department, and the SGCs has been described in Head of Department, Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another, 2012 (2) SA 415 (CC) at [56]. It is of some significance that the court, per Moseneke, DCJ, said at [57]: *"It accords well with the design of the legislation that, in partnership with the State, parents and educators assume responsibility for the governance of schooling institutions. A governing body is democratically composed and is intended to function in a democratic manner.43 Its primary function is to look after the interest of the school and its learners.44 It is meant to be a beacon of grassroots democracy in the local affairs of the school. Ordinarily, the representatives of parents of learners and of the local community are better qualified to determine the medium best suited to impart education and all the formative, utilitarian and cultural goodness that comes with it."* It is also significant that SGBs are organs of state: "[141] The school governing bodies and HOD are organs of state. 132 In terms of s 41(1)*(h)* they have an unequivocal obligation to co-operate with each other in mutual trust and good faith by assisting and supporting one another, informing one another of, and consulting one another on, matters of common interest, co-ordinating their actions, and avoiding legal proceedings against one another.", per Froneman and Skweyiya, JJ. See further in this regard, MEC for Education, Gauteng Province, and Others v Governing Body, Rivonia Primary School and Others, 2013 (6) SA 582 (CC) at [36].

[26]The interrelationship between the two statutes was examined by Alkema, AJ (then) in High School Carnarvon and Another v MEC for Education, Training, Arts and Culture of the Northern Cape Provincial Government and Another.[3] The learned acting judge there held: that in terms of s.6(3)(a) of the Educators Act any appointment to a post on the educator establishment of a school has to be made on the recommendation of the SGB; the MEC for Education may only decline a recommendation if any of five stipulated sets of circumstances exist; the Schools Act acknowledges that a school cannot function without a principal; the facts and circumstances that the MEC may take into account are only those set out in s.6(3)(b) of the Educators Act; and the MEC had no power to sit in judgment on the recommendation of the SGB, and had no concern about the merits of the recommendation.

[27]It is as well then that s.6(3) of the Educators Act be quoted:

"(a) Subject to paragraph (m), any appointment, promotion or transfer to any post on the educator establishment of a public school may only be made on the recommendation of the governing body of the public school and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are in excess and suitable for the post concerned.

(b) In considering the applications, the governing body or the council, as the case may be must ensure that the principles of equity, redress and representivity are complied with and the governing body or council, as the case may be, must adhere to—

(i) the democratic values and principles referred to in section 7(1);

(ii) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators;

(iii) any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators which the candidate must meet;

[3] [1999] 4 All SA 590 (NC).

(iv) a procedure whereby it is established that the candidate is registered or qualifies for registration as an educator with the South African Council for Educators; and

(v) procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body.

(c) The governing body must submit, in order of preference to the Head of Department, a list of —

(i) at least three names of recommended candidates: or

(ii) fewer than three candidates in consultation with the Head of Department.

(d) When the Head of Department considers the recommendation contemplated in paragraph (c), he or she must, before making an appointment, ensure that the governing body has met the requirements in paragraph (b).

(e) If the governing body has not met the requirements in paragraph (b), the Head of Department must decline the recommendation.

(f) Despite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable candidate on the list.

(g) If the Head of Department declines a recommendation, he or she must —

(i) consider all the applications submitted for that post;

(ii) apply the requirements in paragraph (b)(i) to (iv); and

(iii) despite paragraph (a), appoint a suitable candidate temporarily or re-advertise the post.

(h) The governing body may appeal to the Member of the Executive Council against the decision of the Head of Department regarding the temporary appointment contemplated in paragraph (g).

(i) The appeal contemplated in paragraph (h) must be lodged within 14 days of receiving the notice of appointment.

(j) The appeal must be finalised by the Member of the Executive Council within 30 days.

(k) If no appeal is lodged within 14 days, the Head of Department may convert the temporary appointment into a permanent appointment as contemplated in section 6B.

(I) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body was requested to make a recommendation, failing which the Head of Department may, subject to paragraph (g), make an appointment without such recommendation.

(m) Until the relevant governing body is established, the appointment, promotion or transfer in a temporary capacity to any post on the educator establishment must be made by the Head of Department where a —

(i) new public school is established in terms of the South African Schools Act, 1996, and any applicable provincial law;

(ii) ...repealed

(iii) new public adult learning centre is established in terms of the Adult Basic Education and Training Act, 2000, and any applicable provincial law."

[28]In this case the GDE does not rely on the provisions of the Educators Act to decline to accept the recommendation of the SGB for the appointment of a principal. By letter of the third respondent it contended that the DGC met on 4 February 2016, deliberated on the submissions of Ms Gaspari and the responses of the SGB, and found that *"a substantive flaw was established in the process of shortlisting"*. The third respondent then continued: *"Based on the aforementioned fact, it is thus we upheld the grievance. A new process will be redone"*.

[29] The Grievance Procedure provides for the establishment of a DGC to deal with unfair labour practices as defined in the Labour Relations Act 66 of 1995. It provides too that *"Grievances based on dissatisfaction with the outcome of correctly applied procedures will not be entertained, except where the recommendation is grossly unreasonable."*

[30] The Grievance Procedure provides that the process for the handling of grievances requires that first the chairperson shall be responsible to see that all relevant documentation is available at the meeting.[4]Then the facts relating to the grievance will be established. Then discussion will take place with a view to reaching consensus about upholding the grievance or not.

[31]The procedure does not say what the available sanctions are, but the Grievance Procedure as a whole relates to *"the selection and appointment processes"*.

The proposed analysis

[32]As indicated, there does not appear to be any reliance by the GDE on the provisions of the Educators Act to justify its failure to have made a decision on the recommendation. Rather the GDE, through the third respondent, appears to adopt the position that since there was a *"substantive flaw in the process of shortlisting"*, that halted the subsequent process irrevocably, necessitating a redoing of the process.

[33]The point about this is that the grievance by Ms Gaspari set in motion a process which led to the recommendation by the DGC, approved by the third respondent, that the shortlisting process had been flawed, followed by the decision of the third respondent that a fresh shortlisting process would have to ensue. That necessarily implies a setting aside of the shortlisting process that was actually run.

[34]It seems clear that the failure of the second respondent to have taken a decision in early 2016 to appoint a principal was therefore a function of the engagement of the grievance procedure. The applicants would be hard-pressed to argue that his delay was unreasonable for the purposes of s.6(3)(a) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), because that would entail submitting that the second respondent should have ignored the pending grievance procedure. But this is an issue that arises only if the

[4] Paragraph 1.10 of Annexure B and ff.

applicants are successful in their review of the decision to set aside the shortlisting process, and so it is to that issue that attention must next be directed.

The grievance procedure

[35]The applicants accepted that the grievance procedure attached to their supplementary founding affidavit applied to the shortlisting process. The respondents' answering affidavit defends the outcome of the procedure, namely that the shortlisting process was flawed, but does not engage with the actual reasoning that led to that result. The reasoning is found in the record of proceedings made available by the respondents. I will accept for present purposes, despite the absence of an express assertion to that effect in the answering affidavit, that the third respondent supports that reasoning.

[36]The attack of the applicants on the process is both procedural and substantive and, although not spelt out in the founding affidavit in those terms, was said from the Bar to be reliant on the entitlement to review administrative action under PAJA. As part of the analysis of the substantive failures, the applicants submitted that there was no justiciable grievance to start off with, because there was no reliance on a deviation from the agreed procedures, as envisaged paragraph 1.5 of the grievance procedure. Further, the applicants also argued that there was in any event no substance in fact in the assertion by Ms Gaspari that Ms Mileder was biased.

[37]Given more time, the procedural failure arguments could have been investigated here. Rather, in view of the constraints it is more economical to focus on a central issue, being whether substantively the decision arrived at is subject to challenge under ss.6(2)(e)(i)(reason not authorised by empowering provision), 6(2)(e)(iii)(irrelevant considerations were taken into account or relevant considerations were not considered), 6(2)(e)(vi)(the decision was taken arbitrarily or capriciously), 6(2)(f)(i)(the decision is not authorised by the empowering provision), 6(2)(f)(ii)(the decision is not rational), or

6(2)(h)(the decision is so unreasonable that no reasonable person would have taken it). And in this context, it seems to me that the investigation must zoom in on the four bullet points listed under the "Deliberations and Findings" of the State respondents' minutes of the DGC meeting.

[38]The first bullet point records that the DGC considered that the selection committee misapplied the standard laid down by paragraph 3.3.2 of the Guidelines, because the selection committee minutes of the shortlisting process reflects that the committee set as the selection threshold a minimum of seven years as principal.

[39]That is wrong. The selection committee simply said that all candidates who were principals with seven years' experience as such should automatically qualify for an interview, meaning should be shortlisted. The selection committee was entitled to do that, and to lay down thresholds for shortlisting. The DGC erroneously had in mind the minima requirements for selection as applicants, an endeavour that the GDE undertakes: to select the applicants that are then sent through to the SGB for shortlisting. Ms Gaspari did not, on this threshold set by the selection committee, qualify automatically for an interview.

[40]This error alone renders the decision of the third respondent reviewable under s.6(2)(e)(iii).

[41]The second and third bullet points relate to the contention that members of the selection committee were biased against Ms Gaspari. The DGC considered that the members of the selection committee acted in a discriminatory fashion against her, because they discussed her participation in the first selection process; and because of the remarks attributed to Mr Sherman.[5]

[42]But the minutes of the selection committee do not bear out any discrimination, nor the assertions attributed to Mr Sherman (p.75). Those minutes cannot be and have not been disputed. The context in which Ms Gaspari's previous participation was raised was, if anything, sympathetic towards her.

[5] P.271 of the application papers.

[43]Importantly, the scoring by the various panel members of the 47 candidates was self-evidently done independently by the participating selection committee members. There is no suggestion that there was an undisclosed underhand agreement between the committee members to contrive the scoring results listed on p.72. That has the consequence that all that remains is that the committee may be criticised for selecting eleven, and not thirteen, interviewees.

[44]But the Guidelines leave the number of interviews entirely up to the selection committee, provided only that the number is not below five; paragraph 3.6.3 of annexure A to the Collective Agreement no.2 of 2005. The selection committee, to the contrary, transparently spelt out its shortlisting criteria (page 71, annexure LR8), and the members applied those criteria in arriving at their individual scores. Finally, both Mr Sherman (Richard) and Ms Mileder (Sharon) scored other applicants lower than they scored Ms Gaspari (see page 72, annexure LR9).

[45]These facts provide evidence that the reasoning under bullets two and three render the decision reviewable under ss.6(2)(e)(iii), 6(2)(e)(vi), 6(2)(f)(ii)(cc), and 6(2)(h).

[46]The last bullet reflects the conclusion of the DGC: that “based on the scores that are not clearly outlined,” and statements made by the panelist in the DGC meeting, “the panel was doing everything possible to exclude Ms Gaspari from the shortlisting.”

[47]The minute of the shortlisting committee’s deliberations do not bear out this conclusion. The discussion involving Ms Gaspari was in the nature of examining whether, despite the fact that she was excluded from the first eleven, she should not still be considered for inclusion on a somehow or other basis. The selection committee considered that she should not be, given that eleven interviews were enough already.

[48]It is suggested that the last bullet, signifying as it does the conclusion of the DGC, which was ultimately approved by the third respondent, fails at the rationality threshold in s.6(2)(f)(ii)(cc), as well as at the unreasonableness threshold in s.6(2)(h).

[49]The decision taken by the third respondent was to approve of the recommendation of the DGC. In turn, that recommendation was a function of the reasoning set out in the four bullets that preceded it. In his answering affidavit, the third respondent has not distanced himself from either the reasoning of the DGC or responsibility for having ultimately taken the decision concerned, that is to set aside the shortlisting process.

[50]One is therefore entitled to accept that his is the same as the reasoning of the DGC; and so that it suffers from the same defects listed above. On this basis then the decision of the third respondent is reviewable.

[51]But in any event, in my view the decision fails at the s.6(2)(e)(i) hurdle. A grievance, to be justiciable under the Grievance Procedure, must qualify under paragraph 1.5. The complaint of non-shortlisting Ms Gaspari does not qualify, first because it cannot be an unfair labour practice since the SGB does not employ Ms Gaspari.

[52]Second, no deviations from the agreed procedure have been asserted or illustrated. At best for the respondents, even if one accepts that the DGC intended to rely on lack of "fairness" in the way Ms Gaspari was treated (paragraph 3.9), again neither the minute of the shortlisting meeting nor the actual scoring endeavour, suggests any "unfairness." At this level, that is whether or not paragraph 1.5 is satisfied, the enquiry is simply whether, objectively, "unfairness" as a jurisdictional fact has been proved. The minute of the shortlisting meeting is destructive of such a conclusion.

[53]Finally, there is the consequential requirement in paragraph 1.5, namely that the respondents would have to show that had Ms Gaspari been treated differently, she would have been recommended for appointment as one of the three final candidates. Such a result is not contended for by the respondents.

[54]The arguments that were advanced by the respondents centered around the contention that someone who is good enough for acting principal must be good enough for permanent principal. But that submission does not factor into the reckoning that the body that shortlists

is not the same one that makes acting appointments. An acting appointment is, substantively, also very different from a permanent appointment; very different considerations are taken into account in the case of the latter.

[55]It follows that in my view the decision of 10 March 2016 of the third respondent must be reviewed and set aside. The consequence of that conclusion must next be considered.

[56]The second respondent has not yet made a decision on the three candidates put up to him for permanent appointment. Since "administrative action" includes a failure to take a decision, that conduct is, in principle, reviewable. But such a review would have to be under s.6(2)(g) of PAJA, read with s.6(3)(a), since there is no prescribed time within which the decision is to be taken. In turn, that implies that the applicants would have to show an unreasonable delay on the part of the second respondent.

[57]As long as the process has taken, having regard to the double impact of the short-lived first appointment and the ill-fated challenge the second time round, I do not believe a case has been made out for unreasonableness in delay on the part of the second respondent. Such an approach inevitably infuses hindsight into the perspective. At the time, the first half of 2016, the third respondent's decision stood, and it stood until it was set aside. That only happened now. While it stood, the second respondent could not take his decision.

[58] Of course, the passage of time might mean that what was a reasonable time in December 2015 is no longer a reasonable time in July 2016. But non constat that the non-decision of the second respondent has been unreasonably prolonged and is therefore reviewable.

Conclusion

[59]The respondents all, except the fourth respondent, made common cause in opposing all the relief claimed, and should therefore share the costs burden.

[60]In the result I make the following order:

(a) The decision of the third respondent of 10 March 2016 is reviewed and set aside.

(b) The first, second and third respondents are directed to pay the costs of the application jointly and severally, the one paying the other to be absolved.

WHG van der Linde
Judge, High Court
Johannesburg

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