THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: Yes
(2) OF INTEREST TO OTHER JUDGES: Yes
(3) REVISED: Yes

Date: 12 March 2025 *eduplessis*

Case no: 2023-091726

In the matter between:

YAHKE KWINANA	Applicant
and	
THE CHAIRPERSON OF THE DISCIPLINARY INQUIRY INSTITUTED BY THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS	First Respondent
THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS	Second Respondent

Summary:

Administrative Law – Review – Private regulatory body exercising public power – Whether disciplinary decision of South African Institute of Chartered Accountants (SAICA) constitutes administrative action – Held that SAICA exercises public power when enforcing professional standards, making its decisions reviewable under the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

Administrative Law – PAJA – Applicability – Review application brought under common law instead of PAJA – Court reaffirmed that where PAJA applies, an applicant cannot rely on common law review.

Administrative Law – Procedural fairness – Right to be heard – Applicant voluntarily withdrew from disciplinary hearing – Failure to challenge evidence or participate in proceedings undermined claims of procedural unfairness.

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an application to review the decision of the second respondent, the South African Institute of Chartered Accountants ("SAICA"), which found the applicant, Ms Kwinana, guilty of various charges of professional misconduct following a disciplinary hearing.

[2] The charges stemmed from Ms Kwinana's time as a non-executive board member of South African Airways SOC Ltd ("SAA") from 2009 to 2016 and chairperson of the board of South African Airways Technical SOC Ltd ("SAAT"), a subsidiary of SAA. She was also the chairperson of the audit and risk committee of SAA.

[3] SAICA is a voluntary, non-profit organisation and a prominent accountancy membership body in South Africa. Its main objectives are to act in the public interest, safeguard the values of the chartered accountancy profession and society, and contribute to economic and social advancement by upholding professional standards, integrity, and the pre-eminence of the chartered account designation.

[4] On 2,3 and 7 November 2020 Ms Kwinana appeared before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State ("the Zondo Commission"), to provide an

account of certain irregularities that occurred during her tenure at SAA and SAAT. The then Chief Justice Zondo,[1] in his report, recommended that:

> "The South African Institute of Chartered Accountants should investigate whether Ms Kwinana has the requisite knowledge and appreciation of her obligations as a Chartered Accountant and whether she is suitable to continue to practise the profession of a Chartered Accountant. The Commission believes that the answers she gave to certain questions during her evidence revealed either that she has no clue about some of the basic obligations that she should know as a Charted Accountant or she knew those obligations but dishonestly pretended that she did not know them because it was convenient for her to do so. In either case SAICA should be interested in investigating the matter because either explanation may mean she is not fit and proper to practise the profession of a Chartered Accountant."

[5] Since the findings made serious allegations, SAICA felt it was duty-bound to investigate Ms Kwinana's conduct as custodian of the accountancy profession. SAICA convened an inquiry into Ms Kwinana's fitness to remain a member of SAICA and accredited by them as a chartered accountant. This culminated in a disciplinary hearing before their disciplinary committee, chaired by the first respondent, Mr Mohammed Chohan SC.

[6] The chairperson delivered a comprehensive written decision. After hearing the testimony of various witnesses and considering the documents before it, Ms Kwinana was found guilty on all the charges. SAICA sanctioned her by excluding her from membership and imposed monetary fines of R6,1 million. They also made a cost order against her. A consequence of her exclusion from SAICA membership is that she can no longer use the designation "Chartered Accountant". In Ms Kwinana's own words, "[t]he sanction is a guillotine. I am struck off the roll incapable of earning a living".

[7] The decision was sent to the parties on 13 March 2023, finding her guilty of the thirteen charges based on the evidence led by SAICA that was left unchallenged by Ms Kwinana because she and her legal representative walked out of the disciplinary

[1] *Report of the Judicial Commission of Inquiry into State Capture: Part 1: vol 1:* at 445.

hearing on the first day and never returned. Ms Kwinana acknowledged receipt of the email with the findings and said she would fight this matter in court. She signed the notice of motion on 11 September 2023, 182 days later, and served this review application on 13 September 2023, 184 days later. Whichever way, the application was launched more than 180 days later.

[8] SAICA raises a point in limine, stating that this delay was unreasonable and that the review should be dismissed without the court entertaining the merits. This is based on their argument that Ms Kwinana should have bought the application under the Promotion of Administrative Justice Act[2] ("PAJA"). The point in limine is potentially dispositive of the matter since the Supreme Court of Appeal ("SCA")[3] stated clearly that:

> ". . . 'after the 180 day period the issue of unreasonableness is predetermined by the legislature; it is unreasonable per se.' The inevitable consequence of this is that absent an application in terms of s 9(2) of PAJA, the high court should have dismissed the review application for want of compliance with the prescripts of s 7(1) as it had no power to enter into the substantive merits of the review. Therefore, whether or not the impugned decision is unlawful 'no longer matters.' Rather, it became 'validated' by the unreasonable delay."

[9] There was neither an agreement sought in terms of section 9(1) nor an application in terms of section 9(2) of PAJA[4] since Ms Kwinana was of the opinion that PAJA is not applicable in this instance.

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[2] Act 3 of 2000.

[3] *Commissioner, South African Revenue Service v Sasol Chevron Holdings Limited* [2022] ZASCA 56; 2022 JDR 0978 (SCA) at para 42.

[4] Section 9 provides that: "(1) The period of—. . .

(b) 90 days or 180 days referred to in sections 5 and 7 may be extended for a fixed period, by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned. (2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require."

Point in limine: the applicability of PAJA

[10] There are two decisions, one from the Gauteng Division Johannesburg and one from the SCA, where PAJA was applied in the context of a decision by SAICA: *Sehoole NO v Chablal*[5] and *Beer v The South African Institute of Chartered Accountants*.[6] The difficulty faced by this court was that, in both cases, the court assumed that it applied without analysis of the question. Since this point was pertinently raised in limine and fiercely denied by Ms Kwinana, it is necessary to deal with this question in detail.

[11] SAICA submits that even though it is a voluntary association, some of its decisions, notably its disciplinary decisions, are "administrative actions" as defined in PAJA. As a juristic person, SAICA says it exercises a public power or performs a public function when exercising its disciplinary powers.

[12] To bolster this argument, they say that SIACA's decision to admit or exclude a person from membership determines, in terms of the Chartered Accountants Designation (Private) Act,[7] whether that person is permitted to use the designation "Chartered Accountant". Furthermore, SAICA took the decision in terms of their bylaws, which constitute an "empowering provision". This decision "adversely affected the rights" of Ms Kwinana and had a "direct, external legal effect". Thus, since the decision constitutes an administrative action in terms of section 1 of PAJA, Ms Kwinana had to institute proceedings for judicial review in terms of PAJA and is bound by the prescripts of section 7(1)(b) to do so without reasonable delay and no later than 180 days after the date on which she was informed of the administrative action and the reasons for it.

[13] Ms Kwinana denies that PAJA governs the review, stating that her review application is a common law review of a decision of a quasi-judicial body and not a state organ exercising government power. Unlike such organs of state, SAICA does not derive their power and authority from legislation but rather from contract (with its members). Ms Kwinana, as a Chartered Accountant, could be a member of another

[5] [2005] JOL 14042 (SCA).

[6] [2022] ZAGPJHC 710.

[7] 67 of 1993, section 1.

voluntary association (such as the South African Institute for Public Accountants). Not only members of SAICA may use the designation "Chartered Accountant"- members of other organisations may use it too.

[14] She refers to bylaw 24 of SAICA, which governs membership, and indicates that it is by application and payment of membership to SAICA that regulates the relationship. The Chartered Accountant Designation (Private) Act[8] merely protects the rights of members of SAICA and other recognised professional bodies to use the Chartered Accountant (South Africa) or CA(SA) designation. SAICA does not owe its existence to legislation; instead, "it remains within the rubric of private bodies and is not a public body". Thus, PAJA does not apply. Ms Kwinana relies on *National Horse Racing Authority of Southern Africa v Naidoo* (*National Horse Racing*)[9] for this contention.

[15] Ms Kwinana also relied on the *Turner v Jockey Club of South Africa*[10] to state that the relationship between voluntary associations and their members is governed by the association's rules and regulations, constituting the agreement between the parties and the common law. She then states that in common law, a court would intervene in the case of bias or where the association acted ultra vires. This common law position has not been altered but is infused with the constitutional principle under the concept of the rule of law.

[16] She turns to Hoexter and Penfold,[11] who explain that before 1994, courts often evaluated decisions made by private entities, like churches and clubs, based on the contracts with their members. This included examining decisions related to disciplinary matters and, at times, non-disciplinary issues. Such decisions were subject to review if they did not adhere to "fundamental principles of justice". These principles encompass compliance with the organisation's founding documents, natural justice, honesty, impartiality, good faith, and, in some instances, reasonableness.

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[8] 67 of 1993.

[9] [2009] ZAKZHC 7; ;2010 (3) 182 (N) at para 6.

[10] 1974 (3) SA 633 (A).

[11] Hoexter & Penfold *Administrative law in South Africa* (2021) at 163.

[17] Ms Kwinana then indicates that she is bringing this review under common law (ultra vires conduct of SAICA and bias of the chairperson, falling under the rule of law or legality). She cites Hoexter and Penfold[12] for the argument that the reviewability of private power in the post-1994 era arises from the established principles of our common law rather than from the direct application of section 33. Ms Kwinana relies on *Klein v Dainfern College*,[13] where the court articulated the situation as follows:

> "No rational reason exists to exclude individuals from the protection of judicial review in the case of coercive actions by private tribunals not exercising any public power. To my mind the Constitution makes no pronouncements in respect of this branch of private administrative law. Thus, continuing to apply the principles of natural justice to the coercive actions of private tribunals exercising no public powers will in no way be abhorrent to the spirit and purport of the Constitution."

[18] Ms Kwinana then further relies on Hoexter & Penfold, where the authors state that there, thus, remains the possibility of indirectly applying section 33 (or other rights) through section 39(2) of the Constitution to a judicial review of a private tribunal. Thus, through an indirect horizontal application of the Bill of Rights (section 8(2) of the Constitution), section 39(2) potentially provides a constitutional basis for reviewing private power in terms of the common law. She bolsters her argument by referring to an article by Prof Mathenjwa, where he, in the introduction, explains that:[14]

> "The nature of the relationship established between the voluntary association and its members constitutes an agreement in terms of which each member submits contractually to the decisions of the body administering the association on whom they have conferred the right and power to make binding decisions on matters that affect their relationship *inter se*."

[12] Hoexter & Penfold *Administrative law in South Africa* (2021) at 165 – 166.

[13] [2005] ZAGPHC 102; 2006 (3) SA 73 (T) at para 24.

[14] MJ Mathenjwa "Judicial review of decisions of disciplinary tribunals of voluntary association: the post-1994 interpretation" (2017) *Obiter* at 1 – 14.

[19] Lastly, she relies on *National Horse Racing*[15] where the majority expressed doubt that the Constitution's framers and the legislature intended for domestic tribunals to be included under PAJA.

[20] Ms Kwinana thus regards PAJA as applicable to only public administrators or functionaries implementing government policy and applying legal rules.[16] Since SAICA is not part of the state bureaucracy and does not apply state policy, its actions are not administrative per PAJA's definition.

[21] Ms Kwinana also submits that even if PAJA is applicable, she does not have to bring her application in terms of it. This is a practical matter serving before the court, and the "[a]pplicant is not interested in the intricacies of on what basis is her matter against SAICA reviewable. For her it is sufficient that the matter is reviewable".

[22] SAICA, in contrast, submits that when they take disciplinary action against a member, which results in the cancellation of membership (and thereby losing the designation "chartered accountant"), it performs a public function. SAICA, relying on *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council,*[17] says it regulates the accounting profession.[18] They also submit that Ms Kwinana's inability to use the "Chartered Accountant" designation affects her ability to serve in certain offices.

[23] SAICA points out that *National Horse Racing*[19] is distinguishable from this case in that legislation does not underpin the horse racing authority's powers. It deems the minority decision of Wallis to be more correct, where he pointed out that:[20]

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[15] [2009] ZAKZHC 7; 2010 (3) 182 (N) at para 6.

[16] *Greys Marine Hout Bay (Pty) Ltd v Minister of Public Works* [2005] ZASCA 43; 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA) referencing paras 22 – 24.

[17] [2006] ZACC 9; 2007 (1) SA 343 CC; 2006 (11) BCLR 1255 (CC).

[18] Ms Kwinana, however, disputes that SAICA regulates the whole accounting profession, as there are other bodies that one can join to practice as a chartered accountant. The case is also distinguishable, she says, because the issue in AAA was the rule-making of the Micro Finance Regulatory Council and the nature of the council. It was re-iterated in that case that the Council functions by ministerial notice, which is absent in this case. For that reason, Ms Kwinana states, AAA Investments is not good authority for SAICA's proposition that it fulfils a public function when disciplining its members.

[19] [2009] ZAKZHC 7; 2010 (3) 182 (N) at para 6.

[20] [2009] ZAKZHC 6; 2010 (3) 182 (N) at para 23.

"The statutory test is whether they are exercising a public power or performing a public function. It seems to me that when this question arises in relation to specific conduct by a sporting body it requires a close examination of the functions. of that sporting body. […] On the other hand larger sporting bodies operating in relation to major sports such as horseracing, football, cricket and rugby stand on an entirely different footing. They exercise a virtually monopolistic control over all aspects of those sports from junior to national levels and are active in the international sphere. Public interest in those sports is massive and the amounts of money generated by these sporting activities are very considerable. A person excluded by one of these sporting bodies from participation in their sport is effectively deprived of their livelihood. I can see no reason why Parliament should have overlooked such bodies in enacting the provisions of PAJA much less deliberately excluded them without saying as much."

[24] SAICA also point out that decisions of the Supreme Court of Appeal and the Constitutional Court overtook the majority decision. In *Ndoro v South African Football Association*[21] Unterhalter J, after discussing the long line of cases, including *National Horse Racing* [22] distilled the following principles:

"First, private entities may discharge public functions by recourse to powers that do not have a statutory source. Powers of this kind may be characterised as public powers. So characterised, actions that issue from their exercise may constitute administrative action. Second, a private entity may exercise public powers, but this does not entail that all its conduct issues from the exercise of a public power or the performing of a public function – all depends on the relevant power or function. Finally, while there are broad criteria for making an evaluation as to whether a competence enjoyed by a private entity is a public power or public function, there is no warrant to conclude that simply because a private entity is powerful and may do things that are of great interest to the public that it discharges a public power or function. Rather, it is the assumption of exclusive, compulsory, coercive regulatory competence to secure public goods that reach beyond mere private advancement that attract the supervisory disciplines of public law."

[21] [2018] ZAGPJHC 74, [2018] 3 All SA 277 (GJ); 2018 (5) SA 630 (GJ).

[22] [2009] ZAKZHC 7; 2010 (3) 182 (N) at para 6.

[25] This requirement for it to be "exclusive, comprehensive, compulsory and coercive" is echoed later in the *Ndoro* judgment, where it is found that there is no other way to conduct football other than to comply with FIFA and its progeny's regulatory schemes since compliance is not optional and coercive sanctions back the rules. Since football is widely enjoyed and the flourishing of the game is a public good often understood to be wound up in the nation's well-being, it is discharging a public function.

[26] SAICA further refers to *Advertising Regulatory Board NPC v Bliss Brands (Pty) Ltd,*[23] pointing out that SAICA's objectives are similar to those of the Advertising Regulatory Board[24] and that PAJA expressly contemplates that a juristic entity other than an organ of state may make decisions that constitute administrative action due to the definition of "empowering provision" not restricted to statutory sources.

[27] Even so, SAICA asserts that statutory provisions underpin its powers. The Chartered Accountant Designation (Private) Act[25] grants powers only to specific societies to regulate the use of the designation "Chartered Accountant (South Africa)".[26] SAICA is explicitly listed, and the other societies mentioned in section 1 are incorporated into SAICA. Furthermore, the statute has punitive provisions that have the state's backing. Not being a Chartered Accountant can exclude someone from certain statutory positions, such as serving on the Lottery Board. This is then the exclusion that the *Ndoro* decision refers to.

[28] In summary, SAICA accepts that PAJA applies[27] because it exercises public powers derived from a Code of Professional Conduct of the South African Institute of Chartered Accountants, based on an international code of ethics. It is a voluntary non-profit organisation that acts in the public interest by regulating the accounting profession. Their sanctions are coercive and can lead to a member being excluded

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[23] [2022] ZASCA 51; 2022 (4) SA 57 (SCA); [2022] 2 All SA 607 (SCA).

[24] Id at para 1.

[25] Act 67 of 1993.

[26] Section 1.

[27] Also evident from *Sehoole NO v Chablal* [2005] JOL 14042 (SCA) and *Beer v The South African Institute of Chartered Accountants* [2022] ZAGPJHC 710 where the review applications were brought in terms of PAJA and they did not object.

and precluded from being a chartered accountant. Furthermore, the nature of the decision taken by the disciplinary committee is to exclude Ms Kwinana from SAICA, and the effect of this is that she can no longer use the designation of "Chartered Accountant". The designation of "Chartered Accountant" is regulated by an Act of parliament; therefore, PAJA applies.

[29] Ms Kwinana denies that PAJA applies, and even if it does, she submits that the common law notion of natural justice as infused with the constitutional principles of review can be relied on.

[30] It is thus necessary to first deal with whether SAICA's decision was an administrative action and, if so, whether Ms Kwinana had a choice to bring it under the common law.

Discussion

[31] To assess the submissions, it is important to look at the requirements in terms of PAJA. For PAJA to be applicable, the "action" must be an "administrative action", within the definition of section 1 of PAJA. An "administrative action" is

> "administrative action" means any decision taken, or any failure to take a decision, by—
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> (a) an organ of state, when—
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> (i) exercising a power in terms of the Constitution or a provincial constitution; or
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> (ii) exercising a public power or performing a public function in terms of any legislation; or
>
> (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include—
>
> . . . . .”

[32] Empowering provision is defined as

"a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken. . . ."

[33] SAICA is not an organ of state; therefore, for the action to qualify as an administrative action, it must demonstrate that it exercised a public power or carried out a public function under an empowering provision and that this negatively impacted the rights of any individual in a manner that has a direct, external legal effect. In other words, it falls under the second part of the definition.

[34] It must thus firstly be determined whether SAICA exercises a public power or carry out a public function. What constitutes a "public power" was summarised by the Constitutional Court in *Association of Mineworkers and Construction Union v Chamber of Mines of South Africa*[28] as follows:

"The question is not so much, who exercises the power, nor even, where does the power come from: but what does the power look and feel like? What does it do? Pointers here include—

(a) the source of the power;
(b) the nature of the power;
(c) its subject matter; and
(d) whether it involves the exercise of a public duty."

What do "public function" and "public power" mean? Langa CJ illuminatingly noted in a minority judgment in *Chirwa:*[29]

"Determining whether a power or function is 'public' is a notoriously difficult exercise. There is no simple definition or clear test to be applied. Instead, it is a question that has to be answered with regard to all the relevant factors, including: (a) the relationship of coercion or power that the actor has in its capacity as a public institution; (b) the impact of the decision on the public; (c) the source of the power; and (d) whether there is a need for the decision to be exercised in the public interest. None of these factors will necessarily be

[28] [2017] ZACC 3; 2017 (3) SA 242 (CC); 2017 (6) BCLR 700 (CC) at para 74.

[29] *Chirwa v Transnet Limited* [2007] ZACC 23, 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC) at para 186.

determinative; instead, a court must exercise its discretion considering their relative weight in the context."

[35] The court further stated that

"[81] Features pointing to 'public' are: (a) the decision is rooted in legislation and its effects are circumscribed by the statute; (b) the effect of the decision is mandatory on non-parties and coercive on their constitutional entitlements; (c) the decision results in binding consequences without those parties' acquiescence; and (d) the rationale for extension is a plainly public goal, namely the improvement of workers' conditions through collectively agreed bargains."

[36] In *Greys Marine,*[30] the SCA correctly stated that "the exercise of public power generally occurs on a continuum with no bright line marking the transition from one form to another".

[37] In *AAA Investments*[31], the Micro Finance Regulatory Council, whose existence and functioning were recognised and approved by the Minister of Trade and Industry, played a regulatory role in supervising financial transactions. It took on many of the features of an organ of state. In a minority analysis, concurring in the majority's order, O'Regan J determined whether a private actor exercised public power by asking whether the decision is "coercive" in effect and whether the decision is related to a "clear legislative framework". Though the majority took a different path, nothing in its judgment disavows the more general significance of O'Regan J's analysis.

[38] In the same article that Ms Kwinana relied on by Prof Mathenjwa[32] he explains that although the nature of the conduct and the source of the power help determine whether an action qualifies as an administrative action, classifying the actions of private entities that are not governed by statutes as public powers remains complex.

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[30] *Greys Marine Hout Bay (Pty) Ltd v Minister of Public Works* [2005] ZASCA 43; 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA).

[31] AAA Investments (Proprietary) Limited v Micro Finance Regulatory Council [2006] ZACC 9; 2007 (1) SA 343 CC; 2006 (11) BCLR 1255 (CC).

[32] MJ Mathenjwa "Judicial review of decisions of disciplinary tribunals of voluntary association: the post-1994 interpretation" (2017) *Obiter* at paras 1 – 14 on 9.

While the definition appears to exclude private bodies—such as churches exercising disciplinary authority—there is still scope to argue that certain regulatory bodies perform public functions. Prof Mathenjwa concludes by saying:[33]

> "Furthermore, the entrenchment of the just administrative act in the Constitution entails that the private-sector disciplinary tribunal, exercising public power or performing a public function, is required to apply the just-administrative clause. . . . The Courts have applied PAJA in instances where the private body is not exercising powers in terms of any empowering legislation. Although the court decision in the SAFA case is welcomed in extending the application of PAJA to instances where the conduct of a private body is not based on any empowering legislation but on the public interest, the determination of a public function remains a challenge. This gives the courts broader discretion with regard to the determination of public function. A conclusion can be drawn that, although the disciplinary tribunals of voluntary associations are regulated by their constitutions, the court's adjudication of the decisions of these bodies is considerably transformed by the operation of the Constitution."

[39] This happened in *Ndoro,*[34] where the court found that private organisations can sometimes perform public functions, even if their power doesn't derive from legislation. When this happens, their actions might be treated as administrative action and subject to legal review. However, just because a private entity sometimes exercises public power does not mean that everything it does is a public function—it depends on the specific action or decision being made. The organisation must have exclusive control over a function that affects the public in a compulsory or regulatory way rather than simply serving its own private interests.

[40] It is important to note that public power or public function are flexible concepts that can change over time. However, the case law laid down some indicators to be considered holistically when assessing whether a private institution is exercising a public function.

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[33] Id at 14.

[34] [2018] ZAGPJHC 74; 2018 (5) SA 630 (GJ); [2018] 3 All SA 277 (GJ).

[41] The first is the source of the power, whether the power is derived from legislation or rooted in legislation. In this case (like in the *AAA Investments*[35] case), SAICA relied on their bylaws, meaning that its authority originates from a contractual relationship rather than deriving it directly from legislation. However, it does serve a public function of maintaining professional standards, which the state acknowledges regulatory role in terms of the Chartered Accountant Designation (Private) Act.[36]

[42] The nature of the disciplinary function is regulatory, enforcing compliance with ethical and professional standards in the accounting profession. The nature of the power is similar to other public authorities regulating and enforcing professional conduct (such as the Legal Practice Council). It resembles a state function and is public in character.

[43] Professional accountability likewise has public significance – it ensures that the public can trust that a person with the designation of "Chartered Accountant" complies with certain professional and ethical standards. This extends beyond a mere private contractual relationship and moves into the realm of public interest.[37] SAICA fulfils a public duty.[38]

[44] While SAICA's decisions only bind is members, the fact that many accountants are required to be SAICA members to use the designation of Chartered Accountant impacts access to professional opportunities and thus has a coercive effect. This is further reinforced by the possibility for members to be expelled, significantly affecting their livelihood, as with Ms Kwinana.

[45] Taking into account all these considerations, SAICA's disciplinary function is public in character. The next requirement is whether the decision was taken in terms of an empowering provision.

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[35] *AAA Investments (Proprietary) Limited v Micro Finance Regulatory Council* [2006] ZACC 9; 2007 (1) SA 343 CC; 2006 (11) BCLR 1255 (CC).

[36] Act 67 of 1993.

[37] *Chirwa v Transnet Ltd* [2007] ZACC 23, 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC).

[38] *Greys Marine Hout Bay (Pty) Ltd v Minister of Public Works* [2005] ZASCA 43; 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA).

[46] "Empowering provision" is broadly defined in section 1 of PAJA as set out above. This includes any document or instrument under which an administrative action is purportedly taken. Such empowering provisions may take various forms, including the constitution of a voluntary association or, in this case, the bylaws of SAICA. The decision was made under the bylaws, and thus in terms of an empowering provision.

[47] The requirement that the decision has to adversely affect the rights of Ms Kwinanae should be considered with the fourth requirement of "external legal effect". The SCA in *Greys Marine Hout Bay (Pty) Ltd v Minister of Public Works*[39] stated this requirement:

> "probably intended rather to convey that administrative action is action that has the capacity to affect legal rights, the two qualifications in tandem serving to emphasise that administrative action impacts directly and immediately on individuals."[40]

[48] SAICA's disciplinary findings resulted in certain sanctions that deprived Ms Kwinana of the designation "Chartered Accountant". This decision affected her rights because it impacted her ability to use the Chartered Accountant designation, which carries professional and financial consequences.

[49] The fourth requirement is whether it has an external legal effect. This element speaks to the requirement that the decision must be final before it can be reviewed. It must impact an individual directly and immediately. In this case, the decision had an external legal (understood broadly)[41] effect, precluding Ms Kwinana from holding certain offices. It thus has, in my view, an external legal effect.

[50] SAICA's disciplinary committee's decision, thus, complies with the definition of "administrative action" in terms of PAJA, and therefore PAJA applies to this review.

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[39] [2005] ZASCA 43; 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA).

[40] Id at para 23.

[41] *Joseph v City of Johannesburg* [2009] ZACC 30; 2010 (4) SA 55 (CC), 2010 (3) BCLR 212 (CC) at para 29.

Was Ms Kwinana obliged to bring her application in terms of PAJA?

[51] If PAJA is applicable, can Ms Kwinana bypass it and rely on common law? Ms Kwinana, appealing to the so-called "pathways of review," asserts yes. She further submits that if SAICA wishes for PAJA to apply, they must specify where she relies on it. To address this, it is necessary to outline the different pathways to review.

[52] The constitutionalisation of administrative justice and the enactment of PAJA have shaped the various pathways available for judicial review in South African law. These pathways reflect the evolving relationship between constitutional supremacy, statutory regulation, and common law principles in controlling public power.

[53] There are five primary routes for administrative law review: PAJA, Section 33 of the Constitution, special statutory review, the principle of legality, and the common law.[42] The first four paths relate to the review of an administrative action (as per section 1 of PAJA) even if exercised by a private entity, while the last route is available for the review of a private power that does not amount to an administrative action.

Pathways to review of public power

[54] Before the constitutional era, administrative law was governed entirely by the common law principles, with judicial review grounded in ultra vires and parliamentary sovereignty. However, since the adoption of constitutional supremacy, the courts have clarified that common law no longer provides an independent cause of action for reviewing public power.[43] Instead, it informs the interpretation of PAJA and applies directly only to exercises of private power.[44]

[55] The Constitutional Court has clarified that where PAJA applies (i.e. exercise of public power), litigants must bring their cases under PAJA rather than relying on

[42] A sixth route, derived from *Sidumo v Rustenburg Platinum Mines Ltd* [2007] ZACC 22, is often categorised under special statutory review.

[43] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) at para 22.

[44] Hoexter & Penfold *Administrative law in South Africa* (2021) at 150.

common-law grounds.[45] The principle of legality remains relevant only when the impugned action falls outside PAJA's definition of administrative action.[46]

[56] Where public power is exercised outside PAJA's definition of administrative action, it remains reviewable under the constitutional principle of legality. This principle, rooted in constitutional supremacy and the rule of law (section 1(c) of the Constitution), ensures that all exercises of public power must be lawful, rational, and not arbitrary.[47]

[57] In some instances, legislation other than PAJA provides for a special statutory review mechanism that takes precedence over PAJA,[48] such as rulings from the Commission for Conciliation, Mediation, and Arbitration (CCMA) that should be reviewed under the Labour Relations Act[49] (LRA) instead of PAJA. This means that PAJA does not apply universally and may be displaced where a specialised review framework exists.

[58] Lastly, while section 33 of the Constitution guarantees just administrative action, it is not a primary review pathway since PAJA was enacted to give effect to it. Courts have ruled that litigants cannot bypass PAJA by invoking section 33 unless they challenge PAJA's constitutionality. However, direct constitutional review remains possible in cases where PAJA does not app[50]ly or where PAJA itself is challenged for inconsistency with the Constitution.

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[45] *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* (CCT 59/2004) [2005] ZACC 14; 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC) para 96 and *inister of Home Affairs v Public Protector* [2018] ZASCA 15; [2018] 2 All SA 311 (SCA); 2018 (3) SA 380 (SCA) para 27.

[46] *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* [1998] ZASCA 14; 1998 (2) SA 1115 (SCA); [1998] 2 All SA 325 (A) and Klaaren & Penfold "Just administrative action" in Matthew Chaskalson et al *Constitutional Law of South Africa* (2002) at 15.

[47] This has mostly been applied where the executive exercise original constitutional powers rather than administrative functions, or where the President or Parliament exercises power not derived from legislation.

[48] Hoexter & Penfold *Administrative law in South Africa* (2021) at 155.

[49] Act 66 of 1995.

[50] Hoexter & Penfold *Administrative law in South Africa* (2021) at 152.

Pathway of review of private power

[59] These are, thus, the pathways to the review of *public* power. What is the position today concerning the review of private power?

[60] The pre-1994 position allowed courts to review decisions of private bodies, such as churches, sports clubs, and professional associations, based on fundamental principles of justice, natural fairness, and good faith. These reviews typically stemmed from contractual obligations between members and the organisation. However, the post-1994 legal framework, particularly the Constitution and PAJA, has also reshaped the basis for reviewing private power.[51]

[61] A key question in administrative law, and as pointed out in this case, is whether private bodies performing functions that affect the public should be subjected to the same review standards as public bodies. Courts have taken an expansive approach to public power, holding that private bodies with significant regulatory influence, such as sports governing bodies like SAFA,[52] may be reviewed under PAJA. This suggests that the scope of private administrative law is shrinking as more regulatory private bodies are brought under public law scrutiny.

[62] Purely private functions, such as disciplinary decisions of sports clubs, religious tribunals, or homeowners' associations, fall outside PAJA's scope and have traditionally been reviewed under contract law, as membership in voluntary associations creates contractual obligations. However, courts have explored alternative grounds for reviewing private power, including section 8(2) of the Constitution, which allows the Bill of Rights to apply to private actors in appropriate cases. Under section 39(2), courts can develop the common law in line with constitutional values, ensuring that fairness, rationality, and reasonableness remain relevant when assessing private power, even where PAJA does not apply.

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[51] Hoexter & Penfold *Administrative law in South Africa* (2021) at 163.

[52] *Ndoro v South African Football Association* [2018] ZAGPJHC 74, 2018 (5) SA 630 (GJ); [2018] 3 All SA 277 (GJ).

[63] This was confirmed in *Klein v Dainfern College*[53], where the court confirmed that judicial review is not limited to public power. Even when a private body does not exercise public functions, its coercive actions can still be subject to judicial scrutiny. However, such cases are reviewed under common law principles.[54]

[64] Ultimately, there is a dual approach to reviewing private power: Where private bodies exercise public functions, they may be subject to PAJA and administrative law principles, such as in this case. Where purely private decisions are involved, judicial review still applies via common law, contractual obligations, and constitutional influence under Section 39(2).

Conclusion on pathways

[65] Ms Kwinana's submission that a litigant has a choice between PAJA and the common law when the decision amounts to administrative action is incorrect. If a decision meets the definition of administrative action under section 1 of PAJA, an applicant must rely on PAJA, even if a voluntary association took the decision. There is no residual right to rely on the common law in such cases, as established in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism*.[55] Since PAJA is applicable, Ms Kwinana had to bring the case in terms of PAJA.

Conclusion on the point in limine

[66] Based on the reasoning above, I agree with SAICA that when the disciplinary tribunal made its decision, it did so as a private entity exercising a public power, namely regulating the accounting profession. It does not matter that other institutions have similar powers; what matters is that the power it exercises complies with the second part of the definition of "administrative action", as set out above.

[67] This situation has certain implications, as noted by SAICA and acknowledged by Ms Kwinana's legal representative during the hearing. Specifically, an application

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[53] [2005] ZAGPHC 102; 2006 (3) SA 73 (T).

[54] Hoexter & Penfold *Administrative law in South Africa* (2021) at 165.

[55] [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC).

must be submitted within 180 days. This application missed the deadline by two days, and there was no section 9 application for condonation from the court or an attempt to obtain an agreement from SAICA. This is because Ms Kwinana brought the application under the common law, maintaining that it was done within a reasonable time frame. Nonetheless, it appears that strict adherence to the 180-day rule in this instance, where the application was submitted two days late, may not warrant strict compliance since Ms Kwinana, albeit incorrectly, did not file the review under PAJA.

[68] However, even if the court does not hold Ms Kwinana to the exact 180-day requirement, this does not assist her case. On the merits, Ms Kwinana's application still fails for reasons that will be elaborated upon below. To understand Ms Kwinana's grounds for review, it is necessary first to provide a background of the procedure that was followed.

The disciplinary hearing

[69] As explained in the introduction, the Zondo Commission found that allegations of corruption and mismanagement characterised Ms Kwinana's tenure at SAA. Consequently, Ms Kwinana was summoned to testify at the Zondo Commission. Her appearance resulted in negative publicity for her and SAICA, owing to her membership in SAICA. Some of the Zondo Commission's findings indicated that Ms Kwinana, alongside Ms Dudu Myeni, inflicted damage on SAA, facilitated acts of fraud and corruption within SAA and SAAT, and engaged in corrupt activities that benefited their preferred suppliers. Ms Kwinana believes that the Zondo Commission addressed the evidence in a selective manner that aligns with the media's preconceived narrative and the political fervour of the time. On 3 November 2020, following the unfavourable media coverage, SAICA issued a notice under their bylaws to Ms Kwinana, indicating its intention to make a public statement.

[70] The findings also made serious allegations that SAICA felt duty-bound to investigate as the custodian of the accountancy profession. For this reason, SAICA issued a notice to Ms Kwinana to attend a Disciplinary Committee hearing, accompanied by a charge sheet, on 28 March 2022. Initially, this charge sheet contained 14 charges, but one was withdrawn later. The notice requested that she file

a response to the charges by 19 April 2022, but she did not. She only filed a plea of "not guilty" to all the charges without elaborating further.

[71] Instead, her attorney addressed a letter to SAICA on 19 April 2022, raising technical complaints against SAICA's procedures. SAICA responded to these complaints on 2 September 2022 and invited her again to respond to the charge sheet by 30 September 2022, which she did not do.

[72] On 26 August 2022, SAICA issued a further notice to Ms Kwinana, informing her that the disciplinary proceedings were scheduled for 26 and 27 October 2022 and 2 and 3 November 2022. Closer to the disciplinary hearing, the chairperson issued directions stating that if Ms Kwinana sought a postponement of the hearing, her legal representative must submit a formal postponement application by the end of the week, specifying the dates for an answer and a reply. Should no application be delivered by the end of the week, the Disciplinary Committee would assume that the parties were prepared to proceed on 26 October 2022. No postponement application was submitted.

[73] Instead, Ms Kwinana's legal representative issued an objection to the charge sheet and a formal objection against the hearing, including the argument that, since there was no proper complaint before SAICA, no proper referral had been made to the Disciplinary Committee.

[74] The Disciplinary Committee heard oral submissions regarding these objections on 26 October 2022. After considering them, the committee dismissed the objections, with the chairperson providing an ex tempore ruling on the objections. It was then that Ms Kwinana's legal representative requested a postponement, stating that she did not have sufficient time to review the documents that SAICA intended to use in the meeting, which were the same documents that formed the basis of her evidence in November 2020 before the Zondo Commission.

[75] The chairperson postponed the hearing for approximately four months to February 2023, imposing a cost order against Ms Kwinana for not adhering to the

chairperson's directives and for only applying for the postponement after the objections to the charge sheet had been dismissed.

[76] Some of the other procedural objections pertained to an application to compel further and better particulars regarding the provision of documents cited in the charge sheet.

[77] A week before the disciplinary hearing, a notice was sent to Ms Kwinana to remind her of the hearing and to inform her of a change of venue – from SAICA's own offices to those of SAICA's attorneys. On the day of the hearing, Ms Kwinana and her attorney arrived late, objecting to the venue, stating that it was not a neutral venue and that the new location would disadvantage her. After listening to her objection, the chairperson said they would proceed with the venue for the day. Ms Kwinana and her legal representative left despite the chairperson warning them of the consequences of leaving the disciplinary hearing.

[78] Despite the warning, Ms Kwinana did not return to the hearing, which proceeded in her absence. Over five days, oral evidence was presented without her. Consequently, Ms Kwinana did not testify, call witnesses, or cross-examine any of SAICA's witnesses. In summary, she did not present her version of the charges against her. After SAICA closed its case, the chairperson delivered a comprehensive written decision sent to the parties on 13 March 2023.

[79] Ms Kwinana asserts that her review application is founded on common-law principles, contending that the disciplinary proceedings were procedurally unfair, irrational, and marred by bias. She further submits that the decision was unlawful, as it was based on flawed evidence and improper charges. The application challenges the decision on multiple grounds, alleging procedural irregularities, duplication of charges, lack of jurisdiction, and disproportionate sanctions.

Appeal versus review

[80] Some of Ms Kwinana's complaints are appeals on merit rather than a review. A review of a disciplinary hearing is not an appeal on the merits. The court must ensure

that in reaching the decision or exercising the discretions granted, the decision-makers are kept within their mandate and exercise their functions in compliance with the law. The question is not whether the decision-maker made the correct decision, but rather whether the decision taken was a legal decision.

[81] Review is about "how" the decision was taken. Of course, the distinction is not clear cut, as assessing an administrative action based on reasonableness or mistake of fact or law inevitably requires delving into the merits of a case.[56] Still, Froneman J in *Carephone (Pty) Ltd v Marcus NO*[57] warned that the distinction between review and appeal remains. He continues:

> "In determining whether administrative action is justifiable in terms of the reasons given for it, value judgments will have to be made which will, almost inevitably, involve the consideration of the 'merits' of the matter in some way or another. As long as the judge determining this issue is aware that he or she enters the merits not in order to substitute his or her own opinion on the correctness thereof, but to determine whether the outcome is rationally justifiable, the process will be in order."

[82] Thus, the purpose for which the courts engage with the merits of an administrative action is limited to ascertaining whether the decision falls within what could legally be taken, not whether it is the correct or best decision. This poses considerable challenges for Ms Kwinana's review.

[83] The challenges stems from the fact that she chose not to attend the disciplinary hearings and place her objections on the record. In many instances, she uses the review grounds to raise her objections.

[84] Of course, Ms Kwinana was at liberty not to attend the disciplinary inquiry. However, this comes with the inevitable consequence she must bear when adverse findings are made against her. In the context of labour law, the Supreme Court of

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[56] See the remarks made in *Takata South Africa (Pty) Limited v Competition Commission of South Africa* [2025] ZACAC 1 at para 16 onwards.

[57] [1998] ZALAC 11 at para 36.

Appeal in *Old Mutual Life Assurance Co SA Ltd v Gumbi*[58] made it clear that if an employee does not take the opportunity offered to attend a hearing, the employer's decision cannot be challenged on the bases of procedural unfairness.

[85] Thus, this court of review is restricted to answering whether the disciplinary committee's decision is justifiable based on the reasons they gave (the how) based on the available evidence before it. If the only evidence and version before it is that of SAICA, then such a review is limited.

A PAJA review of the merits

[86] The difficulty that the court faces regarding reviewing the merits is that, having found in favour of SAICA on the point in limine that PAJA is applicable, on what basis must the court review the merits? In other words, the court cannot find on the point in limine that PAJA is applicable and then review the merits based on the common law because the applicant has wrongly relied on the common law. Case law also requires an application for review to set out the grounds relied upon. The *Bato Star* [59] matter is instructive in this regard, where the court stated:

> "Where a litigant relies upon a statutory provision, it is not necessary to specify it, but it must be clear from the facts alleged by the litigant that the section is relevant and operative. I am prepared to assume, in favour of the applicant, for the purposes of this case, that its failure to identify with any precision the provisions of PAJA upon which it relied is not fatal to its cause of action. However, it must be emphasised that it is desirable for litigants who seek to review administrative action to identify clearly both the facts upon which they base their cause of action, and the legal basis of their cause of action."

[87] Recently, the Constitutional Court in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd*[60] stated:

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[58] [2007] ZASCA 52; 2007 (5) SA 552 (SCA); [2007] 4 All SA 866 (SCA) at paras 16 and 21..

[59] [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) at para 27.

[60] [2022] ZACC 44; 2023 (4) SA 325 (CC); 2023 (5) BCLR 527 (CC) at paras 277-278.

"It matters not even if the Ngwathe residents have not specifically alleged that one of the grounds of review will be that Eskom took its decision for an ulterior purpose. Although ordinarily parties must be held to their pleadings, courts must not be dogmatic about this. Just under a century ago Innes CJ held in Robinson :

> 'The object of pleading is to define the issues; and parties will be kept strictly to their pleas where any departure would cause prejudice or would prevent full enquiry. But within those limits the Court has a wide discretion. For pleadings are made for the Court, not the Court for pleadings. And where a party has had every facility to place all the facts before the trial Court and the investigation into all the circumstances has been as thorough and as patient as in this instance, there is no justification for interference by an appellate tribunal, merely because the pleading of the opponent has not been as explicit as it might have been.'

The Lekwa residents characterise this as a rationality issue. They plead that it is irrational of Eskom to reduce the electricity supply in an attempt to force Lekwa Municipality to pay its debt. Based on this, they then say the means chosen by Eskom are not rationally connected to the purpose sought to be achieved. That is plainly a case founded on section 6(2)(f)(ii) of PAJA."

[88] Ms Kwinana does not always plead the grounds of review with sufficient particularity where specific issues are raised. It was indicated in the heads of argument that she relies on the concept of rationality to attack the decision of the disciplinary hearing, even though she relies on rationality in terms of common law – it being that the decision must be rational in relation to the evidence that was before the tribunal.[61] She also indicates what objections she has against the procedure. The review on the merits will subsequently be a PAJA review. I will show how the rules of natural justice are reflected in PAJA.[62]

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[61] *National Horse Racing Authority of Southern Africa v Naidoo* [2009] ZAKZHC 7; 2010 (3) SA 182 (N) at para 11.

[62] See Klaaren & Penfold “Just administrative action” in Matthew Chaskalson et al Constitutional Law of South Africa (2002) page 81.

[89] The rules of natural justice as articulated in *Turner v Jockey Club of South Africa*[63] and subsequent case law are fundamental principles of justice that govern decision-making by domestic tribunals, professional bodies, and other non-judicial forums. These principles ensure that decisions affecting individuals' rights, privileges, or professional standing are made fairly, honestly, and rationally.

[90] From *Turner v Jockey Club of South Africa*[64] and other authorities, it is clear that natural justice does not impose rigid, court-like procedures on domestic tribunals. Still, it does require minimum standards of fairness and rational decision-making. The scope of natural justice depends on the nature of the tribunal, the complexity of the issues, and the severity of the consequences for the affected individual.

[91] In *National Horseracing Authority*,[65] the court stated the following regarding natural justice:

> "[8] In Turner v Jockey Club of South Africa 1974 (3) SA 633 at 646 Botha JA dealt in detail with the concept of the fundamental principles of justice which are applicable and which arise from the express and implied terms of the agreement between the Jockey Club and those that are bound by that agreement. The learned judge of appeal observed : -
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> > "What the fundamental principles of justice are which underlie our system of law, and which are to be read as tacitly included in the respondent's rules, have never been exhaustively defined and are not altogether clear. In *Russell v Duke of Norfolk and Others*, (1949) 1 All E.R. 109, Lord TUCKER said at p. 118 that -
> >
> > > "The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever

[63] 1974 (3) SA 633 (A).

[64] 1974 (3) SA 633 (A).

[65] [2009] ZAKZHC 7, 2010 (3) SA 182 (N) paras 8 to 10.

> standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

The principles of natural justice do not require a domestic tribunal to follow the procedure and to apply the technical rules of evidence observed in a court of law, but they do require such a tribunal to adopt a procedure which would afford the person charged a proper hearing by the tribunal, and an opportunity of producing his evidence and of correcting or contradicting any prejudicial statement or allegation made against him […]. The tribunal is required to listen fairly to both sides and to observe "the principles of fair play" […]. In addition to what may be described as the procedural requirements, the fundamental principles of justice require a domestic tribunal to discharge its duties honestly and impartially […]. They require also that the tribunal's finding of the facts on which its decision is to be based shall be "fair and bona fide" […]. It is, in other words, "under an obligation to act honestly and in good faith […]"

[9] The learned judge dealt with an interesting submission which had been made by the appellant's counsel as follows : -

> "Counsel for the appellant contended that these requirements postulate more than honesty and good faith, and that no decision of a domestic tribunal should be sustained unless it is fair and reasonable in the sense that there was evidence on which a reasonable man, acting fairly and bona fide, could have arrived at that decision. Counsel for the respondent strenuously resisted this proposition. It is, however, in view of my conclusions on the other alleged grounds upon which the conviction and sentence are sought to be set aside, unnecessary to decide this point."

[10] As the learned judge of appeal observed the concept of the fundamental principles of justice as applicable to domestic tribunals is an elastic concept and I would hasten to say that this would depend upon the nature of the hearing, the complexity or otherwise of the matters in dispute before the particular tribunal."

[92] Part of the requirement that a person should have a reasonable opportunity to present their case implies that they should have access to the evidence against them, be allowed to challenge it, submit their own evidence, and call witnesses in their

defence. This enables the person to correct or contradict prejudicial statements made against them.[66]

[93] These principles or rules are subsumed in PAJA in section 3 and are grounds for review in section 6(2)(c). These sections set out in detail what fairness demands.

[94] Section 3(2)(b)[67] sets out specific requirements for a procedurally fair hearing. What is fair will depend on the circumstances of each case.[68] In general, when assessing fairness in procedures, it should be remembered that administrative decision-makers are not courts of law, and it is not necessary for them to adopt the strict rules of procedures as in courts.[69] Even in disciplinary tribunals, the technical rules of evidence do not need to be complied with.[70] Arguably, in cases where expert witnesses testify and credibility assessments are required, the expectation of procedural rigour is higher than in a simple disciplinary infraction hearing. A tribunal must allow the affected party to engage meaningfully with expert testimony and ensure that its credibility findings are explained and based on the available evidence.

[95] The first requirement in section 3(2)(b) is that adequate notice must be given for the intended action, with "adequate" being relative to the circumstances of the case. A person must also be given a reasonable opportunity to make representations before making a decision. Being allowed to make representations does not imply that all the representations will be accepted. However, as an essential ingredient to the audi

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[66] *Marlin v Durban Turf Club* 1942 AD 112 at 128.

[67] In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1) —

(i) adequate notice of the nature and purpose of the proposed administrative action;

(ii) a reasonable opportunity to make representations;

(iii) a clear statement of the administrative action;

(iv) adequate notice of any right of review or internal appeal, where applicable; and

(v) adequate notice of the right to request reasons in terms of section 5.

[68] Section 3(2)(a).

[69] *Dabner v South African Railways and Harbours* 1920 AD 583; *Heatherdale Farms (Pty) Ltd v Deputy Minister of Agriculture* 1980 (3) SA 476 (T) at 486D–E; *Bongoza v Minister of Correctional Services* 2002 (6) SA 330 (TkH) at paras 21–5, *Bekker v Western Province Sports Club (Inc)* 1972 (3) SA 803 (C) at 811.

[70] *Mose NO v Minister of Education, Western Cape* 2009 (2) SA 408 (C) at paras 14–15.

alterem partem principle, representations are made to influence the outcome of the decision since the decision-maker can hear and consider all points of view.

[96] Once the decision is taken, the next requirement is that there must be a clear statement of the administrative action that sets out what was decided, who the decision-makers were and on what legal and factual basis the decision was taken. This is to enable an affected person to launch an appeal or review.

[97] Another essential component of natural justice is the rule that no one should be a judge in their own cause. As set out in *President of the Republic of South Africa and Others v South African Rugby Football Union*,[71] the test for bias objective and that the apprehension of a reasonable person (of bias) must be assessed in the light of the true facts as they emerge. The court stated that "[t]he question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel".[72]

[98] In *Dabner v SA Railways and Harbours*,[73] the court affirmed that a tribunal must act honestly and impartially, ensuring its decisions are free from prejudgment or undue influence. *Turner v Jockey Club of South Africa*[74] further emphasises that a tribunal must "listen fairly to both sides and observe the principles of fair play". In *Jockey Club of SA v Transvaal Racing Club*,[75] the court held that a tribunal must base its findings on "fair and bona fide" facts.

[99] Bias may be actual (where the decision-maker has a direct interest in the outcome) or perceived (where circumstances create a reasonable apprehension of bias). A finding of bias may be based on the personal interest of the decision-maker

[71] [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725.

[72] At para 48.

[73] 1920 AD 583 at 589.

[74] 1974 (3) SA 633 (A) at 646G.

[75] 1959 (1) SA 441 (A) at 450D

in the outcome, a procedural irregularity that creates an appearance of unfairness or the tribunal's composition or manner of conducting proceedings that suggests partiality.

[100] The rule against bias is incorporated in section 6(2)(a)(iii) of PAJA. If an administrator prejudges a decision and thus fails to approach the decision with an open mind, the decision is reviewable. Likewise, if the administrator created the impression, perception, apprehension or suspicion in the eyes of a reasonable person, on reasonable grounds,[76] that they might be biased, the decision may be reviewed.

[101] The court in *Turner* [77] stated that a further ingredient in natural justice is that a decision must be reasonable and made in good faith. *National Horse Racing Authority* included the concept of "rationality".[78] The court found that a decision must be based on reasonable grounds rather than arbitrariness or personal preference and that it must be defensible when assessed against objective legal standards. A tribunal's decision must thus bear a rational connection to the evidence before it. This common law principle has been confirmed in *Trinity Broadcasting (Ciskei) v Independent Communications Authority of South Africa*,[79] post PAJA, and incorporated in PAJA.

[102] Rationality (as an element of reasonableness) is reviewable under PAJA section 6(2)(f)(ii) if:

> "the action itself is not rationally connected to –
>
> (aa) the purpose for which it was taken;
>
> (bb) the purpose of the empowering provision;
>
> (cc) the information before the administrator; or
>
> (dd) the reasons given for it by the administrator."

[76] *BTR Industries South Africa (Pty) Ltd v Metal and Allied Workers' Union* 1992 (3) SA 673 (A) at 688D–697.

[77] 1974 (3) SA 633 (A).

[78] National Horse Racing Authority of Southern Africa v Naidoo [2009] ZAKZHC 7; 2010 (3) SA 182 (N) at para 11.

[79] [2003] ZASCA 119; 2004 (3) SA 346 (SCA); [2003] 4 All SA 589 (SCA at para 21.

[103] The purpose of the decision should align with the objectives of the relevant legislation, and if it does not it may be set aside for ulterior purposes. Similarly, if a decision is made under an empowering provision but pursues a different, unauthorised objective, it would be irrational. The information before the decision-maker must support the decision, meaning the factual material and findings must logically lead to the conclusion reached. Finally, the reasons for the decision must also align with the actual decision, ensuring transparency and accountability in administrative action. The decision may be legally irrational and subject to review if any of these connections are missing.

A review of Ms Kwinana's complaints

[104] With this background, it is possible to turn to Ms Kwinana's objections.

Evidence disclosed late

[105] Ms Kwinana's first complaint regarding the process is that the evidence was only disclosed late. She submits that SAICA provided 3,670 pages of documents only seven working days before the hearing, significantly prejudicing her ability to prepare a defence. SAICA disputes this, stating that she had several months to respond to the allegations and was given an opportunity to seek a postponement, which she did not meaningfully pursue. SAICA also clarified that it relied on the same witnesses and the same documents that served before the Zondo commission, as well as Ms Kwinana's own evidence given under oath.

[106] Section 3(2)(b)(ii) of PAJA requires that the person affected by administrative action must be given a reasonable opportunity to make representation. For representations to be meaningful, the affected person must know what will inform the decision-making. What is fair, as explained above, is a contextual question. On the facts, Ms Kwinana received the charges well ahead of time and had ample time to prepare. She had knowledge of all documents that were to serve before the disciplinary hearing. She had an opportunity to ask for a postponement. In fact, when she did ask for a postponement the first time, albeit belatedly, it was granted.

Failure to subpoena witnesses and provide her with further particulars

[107] Ms Kwinana further submits that SAICA failed to subpoena key witnesses despite her requesting it. She also states that she was not provided with further particulars despite asking for it. SAICA contends that it has no power to subpoena witnesses and that she had the opportunity to call her own witnesses but failed to do so. SAICA also states that they are not obliged to provide further particulars in a disciplinary hearing. Despite not being obliged to, they provided her with the documents.

[108] Section 3 of PAJA governs procedural fairness in general, and seen in light of the whole of section 3, it should be reiterated that Ms Kwinana was not denied an opportunity to challenge the case against her. Section 3(3)(ii) gives persons affected the right to present and dispute information and arguments. Failure to subpoena witnesses and provide further particulars can be seen as restricting Ms Kwinana's ability to dispute SAICA's evidence and to present her case effectively but Ms Kwinana was not denied an opportunity to present and dispute information – she had a right to call witnesses and challenge evidence during the hearing and chose not to do so. SAICA is not obligated to provide further particulars due to the nature of the hearing, nor do they have the power to subpoena witnesses. Ms Kwinana's case falls on the fact that she could attend the hearing and raise the issues in the hearing, but also interrogate the evidence and call her own witnesses. Her failure to do so does not create grounds for review.

SAICA did not follow the procedures as set out in their bylaws

[109] Related to the above is the claim that SAICA did not provide an opportunity to respond to the allegations before formal charges were laid, thereby denying her the right to be heard. SAICA submits that their bylaws do not require a pre-charge hearing and that her right to a fair hearing was fully upheld in the disciplinary process – she chose to be absent.

[110] This links to a technical and long argument that Ms Kwinana made regarding the interpretation of the 2011 bylaws under which she was charged. She states that SAICA failed to conduct an independent investigation before charging her. She

contends that because *prima facie* evidence existed, SAICA was required to first refer the matter for further investigation rather than proceeding directly to a disciplinary hearing. SAICA, on the other hand, submits that prima facie evidence was sufficient to establish a prima facie case, justifying the initiation of disciplinary proceedings without a separate investigation.

[111] Central to this dispute is the distinction in the bylaws between "prima facie evidence" and a "prima facie case." Ms Kwinana contends that the presence of prima facie evidence meant that SAICA should have followed the procedural requirements in the 2011 Bylaws, which required the Professional Conduct Committee (PCC) to evaluate whether a prima facie case of misconduct existed before disciplinary charges could be laid. SAICA, however, asserts that the Designated Disciplinary Officer (DDO) had the discretion to determine whether the prima facie evidence was already sufficient to establish a case against the applicant, allowing SAICA to proceed directly to disciplinary action without an additional investigation.

[112] Ms Kwinana submits that SAICA failed to adhere to this process by not referring her case to the PCC for further assessment. Instead, SAICA relied solely on the findings of the Zondo Commission, treating them as conclusive rather than subjecting them to further scrutiny. If SAICA had complied with Bylaw 19.1, the PCC would have evaluated whether the evidence was strong enough to warrant formal charges before initiating disciplinary proceedings.

[113] SAICA maintains that it was not required to conduct an additional investigation where sufficient prima facie evidence already existed. SAICA relies on its disciplinary procedures, which allow the DDO to proceed with charges if satisfied that there is enough evidence to sustain them. In this case, SAICA determined that the Zondo Commission's findings provided sufficient grounds to move directly to a hearing.

[114] PAJA lawfulness section 6(2)(b) deals with the failure to comply with procedural requirements. In common law, this is referred to as jurisdictional facts, which are facts that must exist for the administrator to have jurisdiction to act. Ms Kwinana thus states that because there was no investigation as per the bylaws, the disciplinary committee could not hear the matter. However, procedural requirements in empowering

provisions should not be assessed formalistically. In *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency*,[80] the Constitutional Court stated that a two-step approach must be followed when reviewing an alleged irregularity. Firstly, to establish whether factually an irregularity occurred, and secondly, whether the irregularity is material regarded in terms of the purpose of the provision. This is a contextual question as to whether the purpose of the provision was met, rather than whether every procedural step has been followed to the letter. Thus, even if, per the bylaws, the PCC had to investigate (which I am not making a finding on), the purpose of such an investigation is overtaken by the seriousness of the allegations and the thoroughness with which the disciplinary hearing was conducted.

[115] The complaint is dwarfed even further when considering that under PAJA review principles, a court must assess whether the entire administrative process was fair, reasonable, and lawful rather than isolating specific procedural missteps. This impacts her submission in two ways. Firstly, PAJA does not permit courts to set aside administrative action for minor procedural errors unless they materially affected the fairness of the entire process. Thus, even if SAICA bypassed the PCC, the central question is whether this omission undermined the fairness of the disciplinary process as a whole. In this context, SAICA argues that the disciplinary hearing provided a fair opportunity for Ms Kwinana to contest the allegations. They are correct. Courts are generally reluctant to intervene where the final stage of the process—such as a hearing—remedied prior procedural defects. I agree. The lack of a PCC referral will not constitute a material procedural irregularity if the hearing was robust and procedurally sound.

Reliance on the Zondo commission report

[116] Ms Kwinana further persisted that SAICA relied too heavily on the findings of the Zondo Commission. She submits that the findings of the Zondo Commission are currently under review in the High Court,[81] and SAICA's decision improperly adopted these findings without independent verification. Her concern is further that public

[80] [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC). at para 40.

[81] Case No. 34178/2022.

perception, particularly following the findings of the Zondo Commission, had influenced the outcome of the proceedings. She suggested that media pressure and reputational concerns had shaped SAICA's approach, thereby undermining the fairness of the process.

[117] SAICA disagrees, stating that the pending review of the Zondo Commission's report does not render its findings void—they remain credible and valid unless and until set aside. There was a full disciplinary process independent of the Commission. They assert that Ms Kwinana had every opportunity to challenge the evidence during the disciplinary process but chose to withdraw from the hearing instead.

[118] SAICA repeat that the two processes are distinct. The two processes encompass different legal implications, each standing or falling on its own merits. In other words, even if the Commission's findings are overturned on review, the findings of the disciplinary hearing remain unaffected. The chairperson of the Disciplinary Committee dismissed this objection and provided reasons for such dismissal. SAICA, in any case, maintains that the findings of the Zondo commission are not reviewable under administrative action and are merely a precursor to further action.

[119] Section 6(2)(f)(ii)(cc) of PAJA requires that an administrative action must be rationally connected to the evidence before the decision-maker. For Ms Kwinana to succeed with her argument, she must show that SAICA adopted the Zondo Commission's findings without independently verifying them.

[120] Having considered the entire disciplinary process, including the hearing and the reasons for the decision, SAICA may have used the Zondo Commission report as an initial reference, but it conducted its own independent investigation and disciplinary proceedings. The disciplinary hearing was a comprehensive evidentiary process, standing on its own merits, and provided Ms Kwinana with a full opportunity to interrogate and challenge the evidence, which included findings of the Zondo report. However, she did not make use of this opportunity. Review proceedings cannot serve as a means to revisit opportunities that were available but not exercised.

Bias

[121] Ms Kwinana raises various issues that fall under the "bias" heading. Firstly, she submits that the disciplinary hearing was moved to the offices of SAICA's attorneys (ENS Africa), which she argues created a reasonable apprehension of bias, as the legal representatives prosecuting her controlled the venue. SAICA states that the venue change was administrative and did not compromise fairness or independence. She only raised this issue at the last minute before walking out of the proceedings.

[122] Suffice it to say, at this stage, that a change in venue per se does not indicate bias. While that might contribute to a perception of bias, Ms Kwinana would have to demonstrate why the venue change is biased, which she did not do.

[123] Secondly, Ms Kwinana also raised the issue of institutional independence, submitting that the chairperson of the disciplinary committee was not independent from SAICA. She claimed that the chairperson's appointment process and tenure renewal structure compromised impartiality. Specifically, she contended that the chairperson was a "tendered panellist" whose continued appointment depended on SAICA's Designated Disciplinary Officer (DDO) recommendations. She claimed this created a structural bias in favour of SAICA, as the chairperson would have a professional incentive to align with SAICA's prosecutorial position to secure reappointment.

[124] Additionally, Ms Kwinana asserted that the role of the DDO created an unfair conflation of functions, as the DDO was responsible for initiating disciplinary proceedings and recommending the composition of the disciplinary panel. She contended that this violated the *nemo iudex in sua causa* principle, as the prosecutor effectively influenced the selection of the adjudicating panel.

[125] Firslty, Ms Kwinana, by becoming a member of SAICA, accepted the bylaws, which include how the disciplinary committee will be composed. Of course, that does not take away her right to raise the issue of bias, it just indicates that the rules of SAICA have specific provisions for the composition of the disciplinary committee and the appointment of the chairperson, which is not per se bias.

[126] At common law, institutional bias occurs when a tribunal's structure or decision-making process inherently creates a reasonable apprehension of bias rather than bias stemming from an individual adjudicator's personal predisposition. The case law discussed by Hoexter[82] suggests that not all institutional influence amounts to disqualifying bias. For example, in *Dumbu v Commissioner of Prisons*,[83] the court found institutional bias where the presiding officer had actively suppressed the grievances of the disciplined employees. Similarly, in *Council of Review, South African Defence Force v Mönnig*,[84] the court recognised that military officers presiding over a trial concerning loyalty to the military institution created a structural conflict of interest. This is not such a case. There is no indication that the chairperson had any prior involvement in matters concerning Ms Kwinana nor that the tribunal's structure created a conflict of interest so pronounced as to compromise his impartiality.

[127] Section 6(2)(a)(iii) of PAJA incorporated the rule against bias. The common law test remains: a "real likelihood of bias" or a "reasonable suspicion of bias". What is required is that the affected individual must prove the appearance of partiality. Ms Kwinana did not cross this hurdle.

[128] SAICA's structure, as a self-regulating professional body, does not automatically render its disciplinary proceedings institutionally biased.[85] Regulatory bodies often oversee disciplinary matters concerning their members, and a predisposition to uphold professional integrity does not inherently indicate bias. A disciplinary hearing is not a criminal trial, and the issue of bias should be viewed in the framework of a self-regulatory body tasked with upholding the profession's integrity.[86]

[129] For Ms Kwinana's claim to succeed, she must demonstrate that the chairperson's dependence on SAICA for reappointment created a real or perceived

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[82] Hoexter & Penfold *Administrative law in South Africa* (2021) at 624 - 625

[83] 1992 (1) SA 58 (E) at 64D.

[84] 1992 (3) SA 482 (A).

[85] *Associated Portfolio Solutions (Pty) Ltd v Basson* [2020] ZASCA 64; 2021 (1) SA 341 (SCA).

[86] *Ngobeni v Prasa Cres* [2016] ZALCJHB 225; [2016] 8 BLLR 799 (LC) at para 11.

lack of impartiality or that the designated disciplinary official's dual role effectively resulted in prosecutorial influence over the adjudicative process. She did not convince the court that a reasonable, objective and informed person would not, on the correct facts, reasonably apprehend that the chairperson would not bring an impartial mind to the disciplinary hearing. Without concrete evidence of such (this was not raised in the founding affidavit, and no evidence was provided either), the claim of institutional bias fails.

SAICA does not have the jurisdiction to charge her on the grounds they charged her with

[130] Ms Kwinana contends that the charges against her are duplicative and artificially inflate the allegations' severity. She further argues that SAICA exceeded its jurisdiction, as several charges pertain to her role as an executive at SAA and SAAT rather than her professional conduct as a Chartered Accountant. It should be noted that this was not pleaded in her founding affidavit, and thus, a discussion of this point is in the interest of addressing all the points raised in argument. This does not detract from case law, which clearly states that it is not for the applicant to make out a case in reply or argument.[87]

[131] SAICA maintains that the charges are properly formulated, each addressing distinct instances of misconduct rather than duplicating allegations. It asserts that membership in SAICA binds individuals to professional and ethical standards, even in non-accounting roles, and that her actions at SAA and SAAT directly implicate her professional integrity. SAICA further submits that professional misconduct is not limited to technical accounting work and that ethical breaches in leadership positions fall within its jurisdiction.

[132] Firstly, the court notes that Ms Kwinana, by becoming a member of SAICA, agreed to the bylaws. Nowhere has she attacked the bylaws for being unlawful. She is thus bound by it. That includes being bound by the jurisdiction of the disciplinary committee. If she was of the opinion that SAICA did not have the jurisdiction to charge

[87] *Global Environmental Trust and Others v Tendele Coal Mining (Pty) Ltd* [2021] ZASCA 13; [2021] 2 All SA 1 (SCA) at para 94.

her with the offences, she was obliged to raise that in the proceedings.[88] The submission is, in any case, completely untenable.

[133] Moreover, the code of conduct includes punishable conduct for services rendered in any office of trust. Being a director is such an office of trust.[89]

Double jeopardy argument

[134] Ms Kwinana asserts that the Independent Regulatory Board for Auditors (IRBA) had already investigated the same allegations against her in 2017 and found no sufficient grounds for action. She contends that SAICA's disciplinary proceedings constitute double jeopardy, as they amount to a second prosecution for already assessed and dismissed conduct.

[135] This submission cannot succeed for two reasons. First, IRBA and SAICA are distinct regulatory bodies, with IRBA overseeing auditors and SAICA regulating chartered accountants. Second, double jeopardy presupposes a prior adjudication of guilt or innocence. Since IRBA did not lay charges against Ms. Kwinana, no such determination was ever made; thus, the double jeopardy principle does not apply.

Set aside policy

[136] Regarding her involvement in the Set-Aside Policy at SAAT, Ms Kwinana maintains that the policy was lawfully implemented to promote transformation and that SAICA misrepresented its legitimacy under South African procurement law. She further contends that no evidence connects her to any personal financial gain from procurement decisions. SAICA counters this defence, arguing that the Set-Aside Policy was misused to circumvent competitive bidding procedures, leading to irregular procurement practices. While it does not claim that she personally benefitted financially, SAICA asserts that she enabled systemic non-compliance with procurement regulations, thereby breaching professional and ethical obligations.

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[88] *Advertising Regulatory Board NPC and Others v Bliss Brands (Pty) Ltd* [2022] ZASCA 51; 2022 (4) SA 57 (SCA); [2022] 2 All SA 607 (SCA) at para 13.

[89] *De Bruyn v Steinhoff International Holdings N.V.* [2020] ZAGPJHC 145; 2022 (1) SA 442 (GJ).

[137] This is not grounds for review but an attempt at an appeal, as it raises the question of whether the chairperson's decision was correct.

Excessive sanctions

[138] Finally, Ms. Kwinana submits that the sanctions imposed by SAICA were excessive, highlighting her expulsion, the R6.1 million fine, and the costs order. She contends that these penalties were punitive rather than corrective. SAICA, however, defends the disciplinary outcome, stating that her actions undermined public trust in the profession, justifying her expulsion. It further argues that the fine was proportionate to the seriousness of the breaches and that the costs order was necessary to prevent members from delaying disciplinary proceedings with meritless challenges.

[139] This might be grounds for review under section 6(2)(h) because the action is so unreasonable that no reasonable person could have exercised their power that way. The sanctions must be proportionate to the conduct. There is, however, no evidence that the sanctions were excessively punitive compared to similar cases. Her conduct was serious, and there is nothing to suggest that the tribunal's conduct was so unreasonable that the court must interfere.

Conclusion

[140] Ms Kwinana’s review on the merits, thus, also fails.

Application to strike out

[141] Lastly, Ms Kwinana also seeks an order striking out portions of the respondents' answering affidavit and heads of argument because they contain inadmissible, irrelevant, or prejudicial material. The respondents oppose this application, submitting that the impugned portions are relevant to the issues before this court and form part of the factual and legal matrix necessary for determining the review application.

[142] It is trite that an application to strike out is an exceptional remedy, granted only where the material sought to be struck is scandalous, vexatious, or irrelevant and where its continued inclusion in the record would cause prejudice to the applicant. rule 6(15) provides that a court may strike out a matter which is "scandalous, vexatious or

irrelevant," but only if the court is satisfied that the applicant will be prejudiced if the material remains on record.

[143] The test for relevance is whether the material in question has a bearing on the issues in dispute. The applicant contends that certain references in the answering affidavit and heads of argument cast aspersions on her character and are prejudicial to her case. However, a review of the impugned portions reveals that they primarily concern the background of the disciplinary proceedings, the findings of the Zondo Commission, and the procedural history of the matter. These are all issues central to the court's determination of the review application and cannot be considered extraneous or prejudicial in the legal sense.

[144] Moreover, the applicant has not demonstrated how the continued presence of these passages in the record would cause her any actual prejudice in adjudicating the review. The fact that specific averments may be unfavourable to the applicant does not render them vexatious or inadmissible. To the extent that the applicant disputes the accuracy of any of the allegations, the proper course would have been to address these in reply rather than to seek their wholesale removal from the record.

[145] Having considered the application and the nature of the impugned material, the court is not satisfied that the applicant has met the threshold required for striking out. The application accordingly stands to be dismissed.

Conclusion

[146] This judgment has carefully and comprehensively considered Ms Kwinana's review application, ensuring a fair and thorough assessment. Ultimately, Ms Kwinana undermined her position by choosing to leave the disciplinary hearing. That was the appropriate forum to challenge SAICA's evidence and present her version of events. In the absence of her participation, the committee was left with credible and comprehensive evidence untested by any contrary account. As a result, her prospects of success in this review were significantly diminished from the outset—a consequence for which she must bear responsibility.

[147] The general principle in review proceedings is that costs follow the result, meaning an unsuccessful applicant is ordinarily required to pay the respondent's costs. While the court has considered that she raised concerns about limited resources for legal representation, this does not absolve her from the consequences of litigation she chose to pursue. The appropriate order is thus that costs should follow the result, and Ms Kwinana is to bear the costs of this application, including the costs of two counsel, where applicable. The matter was complex, and the papers voluminous, warranting costs on scale B.

Order

[148] The following order is made:

1. The application to strike out is dismissed.
2. The review application is dismissed.
3. The applicant is ordered to pay the costs, including the costs of two counsel, to be taxed on scale B.

WJ du Plessis

Judge of the High Court Gauteng Division, Pretoria

Heard on:	21 – 23 January 2025
Decided on:	12 March 2025
For the Applicants:	L Mbanjwa, attorney with right of appearance
For the Respondents:	D Smit and S Lindazwe instructed by Edward Nathan Sonnenbergs Inc