

SOUTH AFRICA / JUDGMENT

Deyer and Others v Platt SC N.O and Others (30343/2021) [2023] ZAGPPHC 2046 (20 December 2023)

[2023] ZAGPPHC 2046

COURT

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

30343/2021

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FLYNOTES:

ADMINISTRATIVE – Disciplinary proceedings – Recusal – Charges against auditors for work related to failed Sharemax property syndication schemes – Committee refusing recusal of two members – Auditors complaining of bias – Professionally prejudiced by negative press reports and contents of preamble of charge sheet – Irreparable harm and exemption from duty to exhaust internal remedy – Whether internal remedy and appellate mechanism provides practitioner with effective redress – Decision of IRBA disciplinary committee to refuse recusal of two of its members is set aside – Order for their recusal granted – Promotion of Administrative Justice Act 3 of 2000, s 7(2).

IN THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
CASE NO. 30343/2021
(1)
REPORTABLE: NO
(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED: NO
(4)
Date: 20 December 2023

Signature:

In the matter between: DANIE
DEYER
First
Applicant
JAQUES
ANDRE VAN DER MERWE
Second
Applicant
PETRUS
JOHANNES JACOBUS BEKKER Third
Applicant
And
ADV
ANTHEA L PLATT SC N.O.
First Respondent
(In her capacity as the
Chairperson of the Disciplinary
Committee of the
Independent Regulatory Board for Auditors)
SUREN
SOOKLAL
Second Respondent
HORTON
GRIFFITHS
Third Respondent
THE
INDEPENDENT REGULATORY BOARD
Fourth
Respondent
FOR AUDITORS (“IRBA”)
THE
PRO FORMA COMPLAINANT
Fifth
Respondent

JUDGMENT

Nyathi J

A.

INTRODUCTION

- [1] The Applicants who are registered auditors practicing as such, seeking an order setting aside the disciplinary proceedings initiated by IRBA against them. They allege that there has been a material infringement of their right under Section 34 of the Constitution to a fair hearing in front of an independent and impartial committee. This can be referred to as “the Constitutional relief”[1].
- [2] In the alternative, the Applicants seek a review and setting aside of the decision by the Committee to refuse the recusal of two of its members (Messrs. Sooklal and Griffiths) and for an order compelling their recusal. This is “the recusal relief”. [2]
- [3] The Applicants are the Respondents in the disciplinary proceedings aforesaid but are also herein interchangeably referred to as “the practitioners”.

B.

BACKGROUND

- [4] The Sharemax Group of Companies conducted various property syndication schemes whereby the public were, through prospectuses, invited to invest in completed and fully tenanted shopping centres.
- [5] The practitioners, as practicing and registered auditors, were engaged to perform reasonable assurance work (i.e., audits) in respect of financial statements of entities in the group of companies and limited assurance work in respect of the various prospectuses issued.
- [6] It is submitted on Applicants' behalf that some 56 of these syndications were over a number of years successfully completed in the sense that the investors all received the returns that they were contractually entitled to.
- [7] The last two syndications (also by far the biggest), known as Zambezi and the Villa respectively, involved the acquisition of as yet undeveloped property and the construction of a mega shopping centre on each. In terms of the contractual arrangement, the completed and fully tenanted shopping centre would in each case be acquired from a third-party developer at a price to be then determined based on the rental income stream at completion and a fixed capitalisation rate.
- [8] After a substantial sum had been obtained through several prospectuses and while the construction of the two shopping centres was still underway, the Registrar of Banks intervened and issued directives that because it considered that the schemes were in contravention of the Banks Act, all monies received from all of the syndication schemes had to be repaid. This step was taken notwithstanding the then existence of conflicting legal opinion in this regard.

- [9] As a result of this intervention and the inevitable subsequent adverse media coverage, these two schemes came to an abrupt halt.
- [10] As a result of a complaint lodged by a certain Mr. Kocks sometimes in 2010, the disciplinary proceedings that are subject of this application were initiated by the IRBA against the Applicants.
- [11] After several iterations of the charge sheet, the final amended charge sheet, comprising in excess of 340 charges, were presented to the practitioners during February of 2020, nearly ten years after the original complaint.
- [12] The charge sheet had a preamble named “Part A”. This served as a summary of the allegations.
- [13] On the day the hearing commenced, Adv. Hofmeyr (the pro forma complainant) made an opening statement. The proceedings were then interrupted and postponed with the onset of the Covid-19 pandemic.

C. THE APPLICANTS’ CASE

- [14] The Applicants have a major gripe with both “Part A” and the opening address by Ms. Hofmeyr. They allege that the charge sheet was based on or triggered by some wild, speculative and completely unfounded adverse allegations made in some media articles. They opine that the directives issued by the Registrar of Banks added tremendous impetus to such adverse media coverage during the course of which wild and completely unfounded allegations of a fraudulent Pyramid or Ponzi scheme were made.
- [15] IRBA, in Part A of the charge sheet, selected and compiled the most serious and most sensationalist of these wild, speculative and unfounded media allegations.
- [16] Part A was then presented as the relevant true and correct factual background to the charges against the practitioners.
- [17] The narrative presented in Part A was that the syndication schemes were fraudulent Pyramid or Ponzi schemes in which the practitioners did not perform an independent professional role, but in which they were an important cog in the Sharemax machinery.
- [18] Part A was presented as aforesaid by IRBA, although IRBA at the time had absolutely no evidence in support of such narrative.
- [19] The opening address was a continuation of the same false narrative and presented as the relevant background to the charges.....

- [20] The opening address predictably resulted in further adverse media articles and a continuation of the same narrative. The Applicants allege that during the hearing so far, two of the disciplinary panel members, to wit Messrs Sooklal and Griffiths have exhibited undisguised and unbridled hostility and bias towards them. They conclude that the latter were successfully influenced by Part A and the opening address of the pro forma complainant.
- [21] Mr Brian William Smith an expert witness who testified on behalf of IRBA was highly compromised due to his previous association with the IRBA, which ties were not disclosed.
- [22] Mr Griffiths is a member of the Disciplinary Committee. The Applicants allege that it has become apparent that he has a longstanding involvement in IRBA's committees. Furthermore, he and Smith served on the same investigating committee for at least 3 years while he was Chairman thereof. Griffiths failed to disclose all this.
- [23] The objection against Sooklal centres on his conduct. The practitioners complain that adverse body language, the voice intonation conveyed, hostility, irritation, disrespect, discourtesy and a dismissive attitude on his part, betrayed Sooklal's innate hostility and bias complained about already.
- [24] When the hearings resumed, the Applicants made an application for the recusal of two of the seven members of the disciplinary panel. The Applicants based their application on alleged bias due to conduct, body language, utterances etc.
- [25] The Applicants sought the recusal of panel members Mr. Griffiths and Mr. Sooklal due to their alleged hostility to the Applicants and for being dismissive and disrespectful.
- [26] The recusal application was refused.

D. THE 4TH RESPONDENT'S CASE

- [27] IRBA bears a statutory responsibility to take disciplinary action against registered auditors where this is warranted, so as to protect the public from practitioners' Improper conduct.
- [28] Registered auditors, such as the applicants in this case, are required to conduct their work in accordance with the applicable professional standards and to comply with IRBA's Code of Professional Conduct, as well as any other applicable laws. A registered auditor who is alleged to have fallen short of the required standards may be subject to IRBA disciplinary proceedings and sanctions under the Act.
- [29] The High Court has already held^[3] that IRBA disciplinary hearings are administrative processes. This means that IRBA disciplinary hearings must comply with the requirements for lawful, reasonable and procedurally fair administrative action. If, at the end of those proceedings, it can be

shown that the proceedings did not meet those requirements, then the affected practitioners have their full rights under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) to approach a court to review and set aside those proceedings.

[30] The disciplinary hearing is currently mid-stream, and the Applicants are seeking to stop the disciplinary process in its tracks, rendering 4 weeks of hearing a nullity in essence.

[31] The disciplinary hearing, contends the 4th Respondent, is not completed. So far, the Committee has made only one decision: that is, to dismiss the practitioners' recusal

application. The Committee has not made any decision concerning the guilt or innocence of the practitioners. It is not yet able to do so.

[32] IRBA contends that it is far-reaching relief that if it is granted, will mean that the disciplinary proceedings will be stymied and almost four weeks of hearing that have passed will be scrapped, and the IRBD will have to begin afresh.

[33] It is submitted on behalf of IRBA that the courts are generally loath to entertain midstream reviews of this nature since piecemeal litigation ought to be avoided. It is only in exceptional circumstances that a court will intervene and stop proceedings before they are completed.

[34] IRBA submits that from a legal perspective the Applicants primarily seek an order declaring that their rights under section 34 of the Constitution have been infringed, coupled with an order declaring that the proceedings thus far are a nullity, and setting them and the charge sheet aside. This Constitutional relief, argues IRBA, should not be granted for 3 main reasons, namely:

34.1 Firstly, it is incompetent. The practitioners' complaint is that an administrative process to which they are subject, is unfair. Their remedy, if they are correct that the process has been unfair, or that the decision-maker is biased, is a review in terms of PAJA. Instead, the practitioners have grounded their case in the wrong right. They contend that their rights under section 34 of the Constitution have been violated, but that right does not apply to administrative processes. Administrative processes are governed by section 33 of the Constitution, and complaints about them must be brought before the courts in terms of the legislation specifically promulgated by Parliament to vindicate that right: PAJA. The practitioners cannot side-step PAJA and seek to rely directly on section 34 of the Constitution to litigate what is, in effect, a challenge to an administrative process. Crisply put, the Applicants are in breach of the "subsidiarity principle", it was contended on behalf of the Respondents.

34.2 Secondly, the application is premature in two respects, namely:

34.2.1

The disciplinary hearing is midstream, and

34.2.2

While the Applicants contend that the entire committee is biased against them, they never sought the entire committee's recusal but have cherry-picked Mr. Griffiths and Mr. Sooklal

34.3 Thirdly, and in any event, there is no infringement of the Applicants' rights under Section 34 of the Constitution.

[35] In the alternative, to the constitutional relief, the practitioners seek an order reviewing and setting aside the Committee's recusal decision and substituting that decision with one recusing Mr Sooklal and Mr Griffiths. This relief is based on the only decision the Committee has taken. It relates to the decision whether Mr Sooklal and Mr Griffiths should recuse themselves ("the recusal relief").

The status of the matter so far:

[36] The pro forma complainant has made its opening statement and presented its case. The pro forma complainant presented the evidence of three witnesses, all of whom were cross-examined by the practitioners. After these three

witnesses, the pro forma complainant closed its case.

[37] The practitioners then presented the evidence of two witnesses, Mr Le Roux and Prof Wainer, both of whom were cross-examined by the pro forma complainant.

[38] The practitioners had indicated that they intended to call further witnesses before closing their case: Mr Heymans (another expert) and, potentially, the practitioners themselves. However, at the end of Prof Wainer's evidence, the practitioners sought the recusal of two Committee members: Mr Sooklal and Mr Griffiths.

[39] The recusal application was argued on 15 and 17 February 2021. The Committee then postponed the disciplinary hearing sine die to determine the recusal application. On 18 March 2021, the Committee made a ruling refusing the practitioners' recusal application.

[40] The practitioners are now asking this Court to declare the proceedings, in their entirety, a nullity, on the basis that their "fair

trial" rights, in terms of section 34 of the Constitution, have been infringed. In the alternative, the practitioners ask- this Court to order the recusal of Messrs. Sooklal and Griffiths.

E. THE APPLICABLE LEGAL PROVISIONS

[41] IRBA is the auditing regulator, established in terms of the Auditing Profession Act 26 of 2005. IRBA is required, in terms of section 4 of the Act, to take steps to promote the integrity of the auditing profession by, amongst others, investigating improper conduct, conducting disciplinary hearings and imposing sanctions for improper conduct. IRBA is also required to take steps it considers necessary to protect the public in their dealings with registered auditors.

- [42] It is trite that IRBA disciplinary hearings are administrative processes[4]. It follows that such hearings must comply with the requirements for lawful, reasonable and procedurally fair administrative hearings. If at the conclusion of those hearings, it can be shown that they fell short of these standards, then the affected practitioners have their full rights under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) to approach a court to review and set aside those proceedings.
- [43] IRBA's disciplinary process begins with an investigation, conducted by IRBA's Investigating Committee. The members of the Investigating Committee are required to bring their independent professional judgment to bear on the cases they are investigating. The Investigating Committee is tasked with determining whether there is a basis on which to charge an auditor with improper conduct, and if so, what charges should be preferred. The Investigating Committee does not decide whether a practitioner is guilty but rather whether there are grounds to charge the practitioner concerned. It is the Disciplinary Committee that decides whether the practitioner is guilty or innocent.
- [44] The Investigating Committee then makes a recommendation to the Disciplinary Advisory Committee (DAC) — a sub-committee of the IRBA board. The DAC then decides whether to charge an auditor formally. If the DAC decides to charge the auditor, the DAC must furnish the auditor with a charge sheet, as envisaged in section 49 of the Act. The auditor must then plead to the charges. If he or she denies guilt, the matter proceeds to a disciplinary hearing before a panel comprising members of IRBA's Disciplinary Committee. The Disciplinary Committee comprises both registered auditors and other suitably qualified persons, including lawyers.
- [45] Section 50 of the Act and the Rules promulgated under the Act sets out the order of procedure in which the hearing is conducted.
- [46] Before dealing with the Constitutional relief and the recusal relief, I propose to deal with the issue of the timing of the review application. This has been referred to as “the midstream review problem” in the heads of argument.

The midstream review problem:

- [47] Generally, the High Court should be approached with review applications only after the conclusion of the disciplinary process or trial in the lower courts. This is also the case with arbitration proceedings in labour disputes at the CCMA or Bargaining Councils.
- [48] The High Court will not in general entertain an application such as this one and interfere with uncompleted proceedings. This is because piecemeal litigation is undesirable. The court will intervene only in exceptional circumstances where grave injustice would otherwise result. In *Matshikwe v M* [2003] 3 All SA 11 (SCA) para 14 the Court said that “the power to intervene in unconcluded proceedings in lower courts will be exercised only in cases of great rarity”.

[49] Courts are hesitant to entertain review of ongoing proceedings, including of recusal decisions, which are brought in medias res – It is only in rare cases where grave injustice might otherwise result or where justice might not by other means be attained that a court will entertain a review before the conclusion of proceedings.[5]

[50] In considering whether to permit such a challenge in medias res, relevant considerations include the nature of the matter, the nature of the objection to the composition of the court, the prospects of success in the recusal and the length of the record in the proceedings. It is only in rare cases where grave injustice might

otherwise result or where justice might not by other means be attained that a court will entertain a review before the conclusion

of proceedings. Such judicial intervention in medias res has been said to be warranted only where there is a gross irregularity in the proceedings and in a rare case, because the perpetrators perpetuating the irregularities are those that have been entrusted with safeguarding constitutional rights. In the absence of exceptional circumstances, reviews should ordinarily be brought at the end of proceedings in order not to threaten the effectiveness of all tribunals and courts.[6]

[51] The full court in Public Protector (supra) referred with approval to the SCA decision in *Take & Save Trading CC and others v The Standard Bank of SA Ltd*[7] where it was held that:

“... an appeal in medias res in the event of a refusal to recuse, although legally permissible, is not available as a matter of right and it is usually not the route to follow because the balance of convenience more often than not requires that the case be brought to a conclusion at the first level and the whole case then be appealed.”

The doctrine of subsidiarity

[52] Adv. Hofmeyr submitted that the applicants have relied on section 34 of the Constitution; and the latter does not apply to disciplinary hearings, the cause of action is thus not competent. The applicants should have relied on PAJA being the application promulgated pursuant to the provisions of section 33. In terms of the subsidiarity principle therefore, the applicants cannot rely directly on the Constitution.

[53] In *Pretorius and Another v Transport Pension Fund and others*,[8] the Constitutional Court held that the general rule that claimants may not rely directly on the Constitution when a right is regulated by specific legislation is not inflexible. The Constitutional Court then quoted the majority judgment in *My Vote Counts NPC v Speaker of the National Assembly*[9] where the court expressly disavowed that subsidiarity was a hard rule. The court cautioned that:

“We should not be understood to suggest that the principle of constitutional subsidiarity applies as a hard and fast rule. There

are decisions in which this Court has said that the principle may not apply. This Court is yet to develop the principle to a point where the inner and outer contours of its reach are clearly delineated. It is not necessary to do that in this case.”

The law on recusal:

[54] The SCA in *Basson v Hugo & Others*[10] considered the law governing recusals and referred to its earlier decision in *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A), ([1996] ZASCA 2) at 8J – 9B, where it had rejected the notion that a refusal by a judge (in this case an administrator) to recuse himself from

proceedings in respect of which he is reasonably suspected of bias, renders that decision voidable; and held that the consequence

of a failure to recuse renders the proceedings a nullity. Hefer JA observed:

“The effect of a refusal to do so is clear. Unlike the seemingly controversial status In English administrative law of the decisions

of biased officials (cf. Craig Administrative Law 3 ed at 467 - 5; Wade 'Unlawful Administrative Action: void or voidable'(1968) 84 LQR 95), firm and authoritative views have been expressed In South Africa regarding the effect on judicial proceedings of a judge's refusal to withdraw from the matter from which he should have recused himself. Without spelling out its actual effect, Centlivres CJ observed In *R v Milne and Erleigh* (6) (supra at 6 in Fin) that 1 a biased judge who continues to try a matter after refusing an application for his recusal thereby- "commits... an irregularity in the proceedings every minute he remains on the bench during the trial of the accused.”[11]

[55] The SCA in *Basson* held that the failure of 2 panel members (Profs Hugo and Mhlanga) to recuse themselves rendered the proceedings of the disciplinary

hearing a nullity.

[56] On the question of the appellant’s obligation to exhaust all internal remedies, it held that the court a quo should have found that there were exceptional circumstances as contemplated in s 7(2)(c) of PAJA, which required the immediate

intervention of the court rather than resort to the internal remedy provided for by the enabling legislation, to wit section 10(3) of the HPCSA Act. The internal remedy was found to be ineffective and inadequate. It did not offer a prospect of success and could not redress the appellant’s complaint.[12]

[57] The SCA held that an impartial judge (or other presiding officer) is a fundamental prerequisite for a fair trial and a presiding officer should not hesitate to recuse herself or himself where a litigant has reasonable grounds to apprehend that the presiding officer, for whatever reason, was not or will not be impartial. Impartiality,

[58] The Constitutional Court has also said that impartiality 'is the keystone of a civilised system of adjudication', and an absolute requirement in every judicial proceeding and proceedings before other tribunals.[13]

[59] Shongwe J referred with approval to *President of the RSA v SARFU* [1999] ZACC 9; 1999 (4) SA 147 (CC) para 35, and *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd* 2000 (3) 5A 705 (CC) para 13. He restated that:

'A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before courts and other tribunals.... Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes.'

[60] It is accepted that the rule against bias is firmly etched in section 34 of the Constitution.[14]

The law on the duty to exhaust an internal remedy.

[61] In cases where the impugned decision constitutes administrative action as defined in PAJA, internal remedy must be exhausted prior to judicial review, unless the appellant can show exceptional circumstances to exempt him or her from this requirement.[15] Exemption from the duty may be granted only in exceptional circumstances where it is in the interests of justice to do so.[16]

[62] Mokgoro J stated in *Koyabe*, that the duty to exhaust available internal remedies should not be rigidly imposed, and nor should it be used by administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny.[17] The learned Justice emphasized that a remedy would have to be available, effective and adequate in order to count as an existing

internal remedy.

[63] What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action in issue.[18] An Internal remedy is effective if it offers a prospect of success, and can be 'objectively implemented, taking into account relevant principles and values of administrative justice present in the Constitution and our law'; and available if it can be pursued 'without any obstruction, whether systemic or arising from unwarranted administrative conduct'.[19]

[64] In *Basson*, it was concluded that an internal remedy is adequate if it can redress the complaint.[20]

F. DISCUSSION

[65] Whilst there are substantial pages in the file devoted to the practitioners' objections against Mr. Smith and his status as an expert witness in the disciplinary hearing, I am minded not to delve further into that aspect seeing that the application for recusal does not relate to him. This does not detract from any perception of bias on his part though.[21]

[66] During the entire period in which the Investigating Committee of the IRBA investigated the complaint or charges against the practitioners, Mr. Smith served on the Investigating Committee and chaired it even.[22]

[67] Mr. Sooklal's conduct, attitude, remarks, utterances and visible disrespect towards the practitioners and to some extent towards Prof. Wainer who testified on behalf of the practitioners has not been denied in any discernible way. The Committee afforded both Sooklal and Griffiths an opportunity to explain themselves as regards these complaints. Without denying same, Sooklal apologizes and said that he had made the utterances "in jest". [23]

G.

CONCLUSION

[68] A conspectus of the SCA judgment in Basson highlights many similarities of facts and applicable legal provisions with the current review application.

[69] I proceed to briskly set out some of the salient similarities dealt with in both matters:

69.1 The applicants' duty to exhaust internal remedy before instituting proceedings for judicial review. Applicable in both cases.

69.2 Exceptional circumstances exempting from duty. A requirement in both cases. This touches also on the issue of irreparable harm that stands to befall the practitioner(s) in both matters. In the instant case, the applicants set out the extent to which they are being professionally prejudiced by the negative press reports and the contents of Part A of the charge sheet.

69.3 Ineffective internal remedy. The internal remedy and the appellate mechanism provided does not provide the practitioner with effective redress for his/her complaint. This is so because the appeal committee is not competent to adjudicate the issue of bias because it lacks the necessary authority to grant the type of relief requested, namely, setting aside the proceedings on the ground that they are a nullity.[24]

69.4 Practitioner(s) asking members of professional conduct committee to recuse themselves for bias but they refused. A similar complaint with a similar outcome.

69.5 Whether practitioner(s) obliged to appeal refusal to appellate committee before instituting review thereof. Similar in both matters.

69.6 Professional statute: In Basson it was the Health Professions Act 56 of 1974 section 10 (3), in casu, it is the Auditing Professions Act 26 of 2005.

69.7 PAJA 3 of 2000 section 7 (2). Similar in both instances.

H. COSTS

[70] The normal rule that costs must follow the cause is trite. My attention was drawn on behalf of the applicants to consider the Biowatch principle in the event that the court finds against them.

I. ORDER

In consideration of the aforementioned considerations, the following order is made:

- i. The decision of the IRBA disciplinary committee to refuse the recusal of two of its members Messrs. Sooklal and Griffiths because of bias is reviewed and set aside. An order for their recusal is hereby granted.
- ii. The 4th respondents are ordered to pay the applicants' costs including the costs of two counsel where so employed.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 23 & 24 February 2023

Date of Judgment: 20 December 2023

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 20 December 2023.

[1] Nomenclature borrowed from Respondents heads of argument.

- [2] Ibid.
- [3] Du Plessis v The Independent Regulatory Board for Auditors 2017 JDR 0902 (WCC) at paras 6 to 18.
- [4] Du Plessis v The Independent Regulatory Board for Auditors 2017 JDR 0902 (WCC) at paras 6 to 18.
- [5] Public Protector of South Africa v Chairperson: Section 194(1) Committee and others
[2023] 2 All SA 818 (WCC)
- [5] Public Protector of South Africa v Chairperson: Section 194(1) Committee and others
[2023] 2 All SA 818 (WCC)
- [6] Supra Para [40] – [41] of Public Protector of South Africa v Chairperson: Section 194(1) Committee and others [2023] 2 All SA 818.
- [7] Take & Save Trading CC and Others v The Standard Bank of SA Ltd 2004
(4) SA 1 (SCA), 2004 ZASCA 1.
- [8] Pretorius and Another v Transport Pension Fund and Others 2019 (2) SA 37 (CC),
[2018] ZACC 10 (CC).
- [9] My Vote Counts NPC v Speaker of the National Assembly [2015] ZACC 31 (CC), 2015 (1) SA 132 (CC).
- [10] Basson v Hugo & Others 2018 (3) SA 46 (SCA).
- [11] Basson v Hugo & Others para [17] to [21].
- [12] Basson Para [22].
- [13] Basson Para [25], President of the RSA v SARFU
[1999] ZACC 9; 1999 (4) SA 147 (CC) para 35, and South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd 2000
(3) 5A 705 (CC) para 13.
- [14] Bernert v Absa Bank Ltd 2011 (3) SA 92 (CC) (2011 (4) BCLR 329; 9 [2010] ZACC 28) paras 28 and 31.
- [15] Section 7 (2) of PAJA; Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae) 2010 (4) SA 327 (CC) (2009 (12) BCLR 1192;
[2009] ZACC 23 Para 34.
- [16] Hoexter & Penfold – Administrative law in South Africa 3ed p746 note 365.

[17] Koyabe para 38.

[18] Ibid para 39.

[19] Ibid para 44.

[20] Basson (supra) para 12.

[21] Mr. Maritz's analogy of 3 elephants as recorded in Caselines volume 18 of 028 (Transcript).

[22] Paragraph 11 at Caselines 002-76 inter alia.

[23] Caselines 002-251 at para 4.2.

[24] Basson Para [61].

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