

SOUTH AFRICA / JUDGMENT

## Information Regulator v Minister of Basic Education and Others (150121/2024) [2025] ZAGPPHC 2 (8 January 2025)

[2025] ZAGPPHC 2

COURT

North Gauteng High Court, Pretoria

BEFORE

Tolmay

CASE / FILE NUMBER

150121/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 150121/2024

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

8/1/2025

In

the matter between:

THE  
INFORMATION REGULATOR  
APPLICANT  
And  
MINISTER  
OF BASIC EDUCATION  
FIRST RESPONDENT  
DIRECTOR-GENERAL  
OF THE DEPARTMENT  
OF  
BASIC EDUCATION  
SECOND RESPONDENT  
ANLE  
SPIES  
THIRD RESPONDENT  
AFRIFORUM  
NPC  
FOURTH RESPONDENT  
MAROELA  
MEDIA LTD  
FIFTH RESPONDENT  
THE  
SA NATIONAL EDITORS' FORUM  
SIXTH RESPONDENT  
ARENA  
HOLDINGS (PTY) LTD  
SEVENTH RESPONDENT

## JUDGMENT

Tolmay J

1. The applicant brought an urgent application in which she seeks final interdictory relief on an urgent basis. The relief seeks to interdict the respondents from publishing or causing to publish the 2024 matric results other than to the schools or dedicated SMS platforms. And also, to refrain from publishing it in contravention of the enforcement notice issued by the applicant dated 6 November 2024. A declaratory order is also sought to order the Department to comply with the enforcement order.
2. At this point only the urgency of the matter is decided. In that context the background of the matter is of importance. The issue, i.e. the publishing of matric results is not a new issue. It is common cause that for generations the results have been published in the media, the advent of the Protection of Personal Information Act 4 of 2013(the POPI Act) brought about a change in the approach regarding the protection of personal information. This resulted in an application launched during January 2022 by the first and second respondents seeking certain declaratory relief as they were concerned about the lawfulness of the continued publication of the results. The applicant was cited in that application and indicated that she

would abide by the court's decision. The parties settled the matter and an order was made by agreement between the parties. The applicant participated and contributed to the order that was ultimately granted.

3. That order states that the matric results should be published, as was done in the past, but should not reflect the names and surnames of the learners as was done previously. The matric results were published in this manner in relation to the matric results for 2021, 2022, 2023 and 2024. The applicant started with an assessment of this practice during November 2021. Eventually the applicant took umbrage with the publishing of the results in the manner envisaged in the 2022 court order, in a draft report to which the Department responded during January 2024. The applicant was therefore aware of the view of

the first and second respondent since that date. Despite this the applicant took 10 months until 18 November 2024 to issue her

enforcement notice.

4. The Department decided to appeal against the enforcement order to the High Court in terms of s 97 of the POPI Act. This should be done within 30 days of receiving the notice. The appeal was filed in time but was served on the applicant 7 days out of time. The Department indicated that condonation for the late service of the appeal will be sought from the court hearing the appeal. This Court cannot merely ignore the fact that an appeal has been lodged, late or not. The dispute, including the question of condonation, will ultimately be decided by that Court.
5. It was argued on behalf of the applicant that insofar as the Information Regulator was not prohibited from conducting the assessment, the opposing respondents cannot rely on the January 2022 order to resist the enforcement of the outcome of the assessment. It was argued that the position would have been different if the January 2022 order prohibited the Information Regulator from conducting the assessment. The January 2022 order, the applicant says, could not have prohibited the Information Regulator from conducting the assessment which gave birth to the enforcement notice and the orders. Reliance was placed on Section 89(1) of the POPI Act and it was argued that it applies whenever there is "an instance of processing of personal information." It follows, the applicant says, that the Information Regulator was empowered to conduct "its own initiative" assessment, after the 2022 order. In this regard, applicant argued it is important to remember that the "own

initiative" assessment was triggered by the publication of matric results in January 2023. This is an important part of the

context of this application according to the applicant. It must be stressed that no persuasive reasons were provided for the delay in bringing the application. The argument is that the enforcement notice and the failure to comply with it triggered the urgency.

6. The urgency of this matter according to the first and second respondents was caused by the Information Regulator herself as she took more than 10 months before finalising the assessment and issuing an enforcement notice. Furthermore, the Information Regulator timed that enforcement notice for November 2024, which to her knowledge is the busiest time of the year for the Department as far as the matric examinations are concerned and just before the commencement of the traditional holiday season. Thus, the urgency is self-created.
7. The third to fifth respondents supported the arguments raised by the first two respondents and insisted that any urgency, if any, was self-created.
8. I intentionally refrain to venture into the merits. The POPI Act, the role of the applicant and the first two respondents in the execution of their respective duties, the balancing of the protection of personal information with public interest and freedom of the press are important and complex issues that should be properly canvassed and ventilated in a hearing. It will not be in anybody's interest to determine these issues within the constraints of an urgent court, unless there is good reason to do so.
9. The implementation and the application of the POPI Act in relation to the publication of matric results have been contentious from at least the beginning of 2022. Litigants, including state litigants, will be well advised to act expeditiously and not wait until the last moment to get certainty about contentious and complex legal issues. The urgent court should not be burdened with complex disputes that could easily have been resolved in the normal course, if the necessary steps were taken timeously. The assessment and compliance notice can, in the circumstances of this case, not be the trigger for urgency. The fact that section 97 provides for an appeal counters the argument that the mere existence of an assessment and compliance notice and subsequent non-compliance will render an application urgent. The urgency, if any, is self-created and should not be countenanced by the court.
10. The interests of the effected learners should have taken centre stage in this matter, it did not. There is nothing before me to indicate any prejudice to learners. The applicant should at least in her assessment or papers before this court have dealt with that. It is also important to note that no evidence of any complaints by learners were placed before me. The whole dispute at this point centres on the contradicting views of the parties. The parties will be well advised to determine what will ultimately be in the best interests of the learners. After all it is their rights, we are dealing with. The present manner of publication has been followed for at least three consecutive years, why should this year be treated differently?
11. I therefore conclude that the matter is not urgent and should be struck from the roll. The applicant should pay the costs of the respondents, including the costs of senior counsel on scale C.

The following order is made:

1. The application is struck from the roll due to lack of urgency.
2. The applicant is ordered to pay the costs of the First to Fifth Respondents, the costs to include costs of two counsel, where applicable, on scale C.

R TOLMAY

Judge of the High Court Gauteng Division,

Pretoria

Appearances:

Counsel for Applicant: Adv K Tsatsawane SC & Adv T Moretlwe instructed by Diale Mogashoa Attorneys.

Counsel for 1st to 2nd Respondent: Adv M Oosthuizen SC & Adv S Van Helsdingen instructed by State Attorney Office, Pretoria.

Counsel for 3rd to 5th Respondent: Adv Q Pelser SC instructed by Hurter Spies Incorporated.

Date of Hearing: 7 January 2024.

Date of Judgment: 8 January 2024.

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