

SOUTH AFRICA / JUDGMENT

Norkie v Public Protector and Another (18870/22) [2024] ZAWCHC 36 (13 February 2024) [2024] ZAWCHC 36

COURT

Western Cape High Court, Cape Town

BEFORE

Cockrell

CASE / FILE NUMBER

18870/22

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Source record**Republic****of South Africa****IN****THE HIGH COURT OF SOUTH AFRICA****(WESTERN****CAPE DIVISION, CAPE TOWN)****Before: Acting****Justice Cockrell****Date of hearing:**

12 February 2024

Date of judgment: 13

February 2024

Case No: 18870/22

NORKIE,

ANGUS WILLIAM DAVID

Applicant

and

PUBLIC

PROTECTOR

First

Respondent

INDUSTRIAL

DEVELOPMENT CORPORATION

Second

Respondent

JUDGMENT

Judgment

delivered by email to the parties' legal representatives and by release to SAFLII.

COCKRELL AJ:

Introduction

[1] On 7 November 2022, the applicant launched an application in which he sought the following relief:

“1. Reviewing and setting aside the report of the first respondent issued on or about 30 September 2022

2 Replacing the biased report of the first respondent with a lawful report

3. Declaring the actions of the Industrial Development Corporation as unlawful

4. Further and/or alternative relief.”

[2] The first respondent (“the Public Protector”) made available the record of her decision but indicated that she would abide the decision of the Court. Only the second respondent (“the IDC”) opposes the application.

[3] The applicant is a businessperson who owns 75% of the issued share capital in Nocks Oil (Pty) Ltd (“Nocks Oil”). Nocks Oil applied unsuccessfully to the IDC for funding. Disappointed with the decision of the IDC, the applicant laid a complaint with the Public Protector regarding the IDC’s failure to grant funding to Nocks Oil.

[4] The Public Protector released a closing report (“the Report”) in terms of section 182(1)(b) of the Constitution and section 8(1) of the Public Protector Act 23 of 1994 (“the Act”), in which she found that the conduct of the IDC did not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution or maladministration as envisaged in section 6(5) of the Act.

[5] The applicant is not a lawyer. He drafted the papers himself and he appeared in person at the hearing. He explained that he could not afford to engage a lawyer due to lack of funds.

[6] I have considerable sympathy for the applicant’s predicament. Although the applicant’s papers were not drafted with the precision that one might expect of a lawyer, I shall attempt to interpret those papers in a manner that is most favourable to the applicant.

[7] The IDC raised a series of points in limine. I deal with them at the outset and thereafter I address the merits of the application.

Locus standi

- [8] The IDC contends that the applicant has no locus standi to bring this application since it was Nocks Oil, rather than the applicant, that applied to the IDC for funding.
- [9] In *Giant Concerts*, the Constitutional Court held that an “own-interest litigant must ... demonstrate that his or her interests or potential interests are directly affected by the unlawfulness sought to be impugned”.^[1] The Constitutional Court added that “in determining a litigant’s standing, a court must, as a matter of logic, assume that the challenge the litigant seeks to bring is justified”.^[2]
- [10] Paragraph 2.1 of the Report records that the complaint was lodged with the Public Protector by the applicant, not by Nocks Oil. The Report refers to the applicant as “the Complainant”.
- [11] The applicant has locus standi to apply for a review of a decision that was made by the Public Protector in response to the applicant’s complaint. Since the Report must, for purposes of the enquiry regarding locus standi, be assumed to be unlawful, the applicant’s interests are directly affected by the Report. The situation is different to *Areva*^[3] because the applicant is not seeking in prayers 1 and 2 to set aside on review the decision of the IDC to refuse funding to Nocks Oil.
- [12] The applicant therefore has locus standi to seek the relief in prayers 1 and 2 of the notice of motion. Indeed, Mr Chauke accepted this in argument and said that the IDC’s objection was limited to the relief sought in prayer 3.
- [13] Prayer 3 seeks an order “declaring the actions of [the IDC] as unlawful”. Although this is by no means clear, it appears that this is relief that is sought pursuant to the review. The statement by the applicant that “this application was never to review the decision made by [the IDC], but it was always to review the Report of the [Public Protector]”^[4] would make no sense if prayer 3 were intended to operate independently of prayer 1.
- [14] In other words, prayer 3 appears to be consequential relief that is sought in terms of section 8 of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”). I shall assume in the applicant’s favour that this is the correct interpretation of prayer 3. This means that the applicant has locus standi to seek the relief in prayer 3 since it would be consequential on the setting aside of the Public Protector’s decision.

However, as will become apparent below, it would make no difference to the outcome even if the applicant were deprived of locus standi in relation to prayer 3.

Failure to exhaust internal remedies

- [15] The IDC contends that the applicant failed to exhaust his internal remedies in terms of section 7(2) of PAJA because the IDC’s Complaints Management Policy provides for an independent complaint assessor.

[16] There is no merit in this contention. The review seeks to set aside the decision of the Public Protector. Whatever internal remedies the applicant may have in relation to the decision of the IDC, this is not an “internal remedy” in relation to the decision of the Public Protector. (If PAJA does not apply to the review application, then section 7(2) of PAJA would in any event find no application. I shall address the application of PAJA below.)

Non-joinder

[17] The IDC contends that Nocks Oil has not been joined even though it has a material interest in the application.

[18] Joinder is necessary where a person has “a legal interest in the subject-matter of the action which could be prejudicially affected by the judgment of the Court”.^[5] The legal interests of Nocks Oil could not be “prejudicially affected” by any order of this Court. There

is therefore no merit in the non-joinder point.

Jurisdiction

[19] The applicant resides in Cape Town.^[6]

[20] The IDC contends that the Western Cape High Court has no jurisdiction to hear this application since the office of the Public Protector and the office of the IDC are situated in Pretoria.

[21] Section 6(1) of PAJA provides that any person “may institute proceedings in a court or tribunal for the judicial review of an administrative action”. The definition of “court” in section 1 of PAJA includes the High Court “within whose area of jurisdiction the administrative action occurred or the administrator has his or her or its principal place of business or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced”. Since the applicant is ordinarily resident in the jurisdiction of the Western Cape High Court and experienced the adverse effect of the decision in the Western Cape, this Court would have jurisdiction in relation to prayers 1 and 2 if the review were sourced in PAJA.^[7] The same would apply to prayer 3 since I have assumed that prayer 3 seeks consequential relief.

[22] In short, this Court would have had jurisdiction if the review application had been sourced in PAJA. When I suggested this to Mr Chauke in argument, he agreed.

[23] The difficulty is that, on the current state of the law, the decision of the Public Protector is not administrative action within the meaning of PAJA. It appears that the decision of the Public Protector must be reviewed in terms of the principle of legality rather than in terms of PAJA. I say so for the following reasons:

23.1. In *Minister of Home Affairs*, the SCA held that decisions of the Public Protector in terms of section 6 of the Act are subject to review in terms of the principle

of legality but not in terms of PAJA:[8]

[36] Administrative action concerns the taking of a decision. The type of decision envisaged is a decision “of an administrative nature” This is so because administrative action generally involves “the conduct of the bureaucracy (whoever the bureaucratic functionary might be) in carrying out the daily functions of the State”. While I accept that public administration in a modern State encompasses an extremely wide range of activities, including investigative functions and the exercise of powers of compunction, I am of the view that the factors listed below distinguish the decisions of the Public Protector from decisions of an administrative nature.

[37] First, the Office of the Public Protector is a unique institution designed to strengthen constitutional democracy. It does not fit into the institutions of public administration but stands apart from them. Secondly, it is a purpose-built watch-dog that is independent and answerable not to the executive branch of government but to the National Assembly. Thirdly, although the State Liability Act 20 of 1957 applies to the Office of the Public Protector to enable it to sue and be sued, it is not a department of State and is

functionally separate from the State administration: it is only an organ of State because it exercises constitutional powers and other statutory powers of a public nature. Fourthly, its function is not to administer but to investigate, report on and remedy

maladministration. Fifthly, the Public Protector is given broad discretionary powers as to what complaints to accept, what allegations of maladministration to investigate, how to investigate them and what remedial action to order – as close as one can get to a free hand to fulfil the mandate of the Constitution. These factors point away from decisions of the Public Protector being of an administrative nature, and hence constituting administrative action. That being so, the PAJA does not apply to the review of exercises of power by the Public Protector in terms of section 182 of the Constitution and section 6 of the Public Protector Act. That means that the principle of legality applies to the review of the decisions in issue in this case.’

23.2. A majority of the Constitutional Court referred to this reasoning in *President of the RSA*: [9]

[117] There has been uncertainty in court decisions on whether the Public Protector’s remedial action constitutes administrative action. In a number of matters, the High Court has held that it does. The implication of this was that PAJA applies to the decision making leading up to the remedial action in question. PAJA proclaims procedural fairness which is inclusive of the audi principle.

[118] But the Supreme Court of Appeal came to the opposite view in *Minister of Home Affairs*. Relying on certain factors that court concluded that decisions of the Public Protector are not administrative in nature. Those factors included that the Public Protector is not part of the Executive and that she exercises “constitutional powers and other statutory powers of a public nature”. I am not convinced that the factors on which the Supreme Court of Appeal relied support the view that those decisions do not constitute administrative action. The fact that a power is derived directly from the Constitution does not mean that its exercise

cannot be administrative. Indeed the Supreme Court of Appeal characterised that power as being of a public nature. It will be recalled that administrative action comes into existence from the exercise of public power.

[119] Evidently, the Supreme Court of Appeal, contrary to the jurisprudence of this Court, laid more emphasis on the identity of the functionary that exercised the power than the nature and impact of the power on those against whom it was exercised. This Court has ruled that the focus of the enquiry into whether the exercise of power amounts to administrative action should be on the nature of the power itself rather than the functionary who exercises it.

[120] Since the application of the audi principle does not depend on whether the exercise of power constitutes administrative action, a definitive conclusion by this Court on whether the Public Protector's remedial action is administrative action, is not essential. I prefer to leave this question open for now.[10]

[24] The judgment of the SCA in Minister of Home Affairs is binding on me since it was not overruled by the Constitutional Court, which preferred to "leave this question open". Until such time as the Constitutional Court were to find that Minister of Home Affairs is wrongly decided, I must proceed on the basis that the principle of legality applies to the decision of the Public Protector in the present case. This means that I must proceed on the basis that the provisions of PAJA dealing with jurisdiction do not apply.

[25] It follows that, if this Court were to have jurisdiction, it would have to be sourced in section 21(1) of the Superior Courts Act 10 of 2013 ("the Superior Courts Act"). Section 21(1) provides that a division of the High Court has jurisdiction over "all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance".

[26] It was held in Jasat that "every government or statutory body or quasi-statutory body may be said to 'reside' at the place where its

headquarters or principal place of administration is located".[11] That is the position here, according to the answering affidavit of the IDC. Does this necessarily mean that the Pretoria High Court has exclusive jurisdiction to review a decision of the Public Protector that is impugned in terms of the principle of legality?

26.1. In Jasat's case, a related question was answered in the affirmative because "the situs of the applicant's right to practise is where the register is kept by the Registrar of the respondent, ie Pretoria, and not where the applicant resides, ie Pietermaritzburg".[12]

26.2. In the present case, however, there is nothing in the Act that requires the Public Protector to have its place of administration in Pretoria.

26.3. In the leading case of *Lek*, the Board's place of business was in Pretoria but the Appellate Division held that the Cape Provincial Division nevertheless had jurisdiction on the basis that "the decision of the Board, taken in Johannesburg, adversely affected his legal capacity or right to practice in Cape Town as an estate agent".[13] In other words, "although the Board's decision was taken in Johannesburg, its inhibitory effect (wherever it was pronounced or communicated) hit respondent in Cape Town where he is resident and has his business".[14] The Appellate Division emphasised that "convenience and common sense are, inter alia, valid considerations in determining whether a particular Division has jurisdiction to hear and determine the particular cause".[15]

26.4. I accept that, unlike in *Lek*, the decision of the Public Protector did not have a direct impact on the applicant's right to trade. However, the applicant's case is that the decision had an impact on Nocks Oil's business and on the

applicant himself.[16] That impact was experienced in the Western Cape, which is where the applicant resides.

26.5. *Lek* was relied on in *Booyesen v Acting National Director of Public Prosecutions* [2014] 2 All SA 391 (KZD), where the applicant had sought to review and set aside certain decisions of the NDPP. In doing so, the applicant relied on the doctrine of legality rather than on PAJA.[17] The respondents contended that, since the impugned decisions were taken in Pretoria and since the respondents resided there, the High Court in KZN had no jurisdiction. Gorven J (as he then was) recorded that, during argument, the respondents conceded that the KZN Court had jurisdiction on the basis set out in *Lek* and that this concession was "appropriate".[18]

26.6. The recent judgment of the SCA in *TMT Services*[19] dealt with PAJA reviews, rather than reviews in terms of the principle of legality. The following remarks of Plasket JA regarding the implications of *Lek* are nevertheless apposite:[20]

"If one considers the origin of the ordinary residence or domicile, and location of the adverse effect, grounds for jurisdiction,

namely *Estate Agents Board v Lek*, they were expressly intended to give effect, through s 19 of the Supreme Court Act ironically, to effective access to court.

Trollip JA stated that as the 'inhibitory effect' of the board's decision 'hit respondent in Cape Town where he is resident and has his business' and because he was ordinarily resident within the area of jurisdiction of the Western Cape court, it had jurisdiction: it was, after all, the court 'immediately at hand and easily accessible to him and to which he would naturally turn for aid in seeking to have the diminution in his legal capacity or personality remedied'."

26.7. To this I would add two observations. The first is that it would give rise to difficulties if the correct position were that this Court has jurisdiction if PAJA applies but does not have jurisdiction if the principle of legality applies. It would mean that, in cases where an applicant relies on PAJA and in the alternative on the principle of legality (as is routinely done in practice), a Court may have jurisdiction in respect of one cause of action but not in respect of the other. The

second is that the Public Protector performs an important constitutional function and it would appear contrary to the interests of justice (“convenience and common sense”, in the language of Lek) to find that persons dissatisfied with her decisions have to bring review proceedings in Pretoria even if they experience the impact of her decisions elsewhere.

[27] I therefore find that this Court has jurisdiction to determine the applicant’s review of the decision of the Public Protector even if the review is sourced in the principle of legality. Once that is so, then this Court also has jurisdiction over the IDC in terms of section 21(2) of the Superior Courts Act.

The merits of the review

[28] That brings me to the merits of the review.

[29] As I have already indicated, the judgment of the SCA in Minister of Home Affairs is binding on me. It means that the principle of legality applies to the decision of the Public Protector that is impugned in this application.

[30] The founding affidavit did not refer to the principle of legality. I shall assume in the applicant’s favour that, since he is a layperson, this could be overlooked if the founding affidavit made out a case for review grounds in terms of the principle of legality.

[31] What could those review grounds be? In Minister of Home Affairs (supra), Plasket J answered that question as follows:[21]

“It does not matter in this case that the application for the review is based on the principle of legality rather than on the PAJA. No procedural differences arise and the grounds of review that apply in respect of both pathways to review derive ultimately from the same source – the common law – although, in the PAJA, those grounds have been codified.”

[32] Plasket JA elaborated on this as follows:[22]

“At present, in respect of the principle of legality, not every ground of review has been defined by the courts with the precision one finds in the PAJA. That said, however, broad grounds going to the lawfulness, procedural fairness and reasonableness of official decisions have been recognised. See for instance President of the Republic of South Africa & others v South African Rugby Football Union & others 2000

- (1) SA 1 (CC); [1999] ZACC 11 para 148; Pharmaceutical Manufacturers Association of SA & others: in re ex parte President of the Republic of South Africa & others [2000] ZACC 1; 2000
- (2) SA 674 (CC); [2000] ZACC 1 paras 82-86. The only difference in the grounds of review that I can discern at present is that those exercising executive power have been exempted from having to act fairly (Masethla v President of the Republic of South Africa & another [2007] ZACC 20; 2008
- (1) SA 566 (CC); [2007] ZACC 20 para

77) and disproportionality (as an aspect of unreasonableness) has not yet been recognised as a ground of review, except in a minority judgment in the Constitutional Court (Minister of Health & another NO v New Clicks South Africa (Pty) Ltd & another (Treatment Action Campaign & another as amici curiae) (note

11) paras 633-637).”

[33] Although this list of review grounds is capacious, the present application remains a review rather than an appeal. In other words, the relevant question is not whether the Public Protector made the correct decision. The question is rather whether the Public Protector misdirected herself on grounds that are availing to the applicant in terms of the principle of legality.

[34] The founding affidavit and the supplementary founding affidavit did not plead any review grounds. But even if this could be overlooked on the basis that the applicant is a layperson, I have read the record and there is in my view nothing to suggest that the Public Protector misdirected herself. I reach this conclusion for the following

reasons:

34.1. In essence, the applicant’s complaint was that the IDC had failed to grant funding to Nocks Oil even though Nocks Oil met all the requirements for funding to be approved. The applicant complained that the IDC’s decision was either unlawful or in violation of various government policies.

34.2. In the Report, the Public Protector found that “the decision taken by the IDC, on the strength of the information available to them at the time was reasonable and just, and complied with the IDC’s policies on grant funding”.^[23] She added that “the Public Protector does not have the powers to overturn a decision taken by the IDC, if it acted within its own policy and procedures”.^[24]

34.3. The Report summarised the findings of the Public Protector as follows:

“The allegation that there were any improprieties by the IDC not to grant Nocks funding is not substantiated.”^[25]

“The conduct of the IDC therefore does not constitute improper conduct as envisaged in section 182(1) (a) of the Constitution and

maladministration as envisaged in section 6(5) of the Public Protector Act.”^[26]

34.4. The relevant question is not whether the IDC misdirected itself in not awarding funding to Nocks Oil. The question is rather whether the Public Protector misdirected herself in finding that there was no evidence of improper conduct or maladministration on the part of the IDC. Indeed, the applicant makes this very point in his replying affidavit, when he points out that “this application was never to review the decision made by [the IDC], but it was always to review the Report of the [Public Protector]”.^[27]

34.5. In my view, there is no basis on the papers to conclude that the Public Protector misdirected herself when she found no evidence of improper conduct or maladministration on the part of the IDC.

[35] That brings me to the applicant’s complaint of bias:

35.1. In the case of a “reasonable apprehension of bias”, the test is objective rather than subjective.^[28] The Constitutional Court has summarised the test as follows:^[29]

“Whether an administrator was biased is a question of fact. On the other hand, a reasonable suspicion of bias is tested against the perception of a reasonable, objective and informed person. To substantiate, borrowing from S v Roberts:

- (a) There must be a suspicion that the administrator might – not would – be biased.
- (b) The suspicion must be that of a reasonable person in the position of the person affected.
- (c) The suspicion must be based on reasonable grounds.
- (d) The suspicion must be one which the reasonable person would – not might – have.”

35.2. The applicant says that “any legal person would have identified this as maladministration, for the first respondent not to have come to this finding leaves me to believe that the first respondent was biased”.^[30] I disagree. In my view, it cannot be said that this would have been the inference of a reasonable person, based on reasonable grounds.

[36] For the sake of completeness, I record that I would have reached the same conclusion regarding the merits of the review application even if the review were sourced in PAJA rather than the principle of legality.

Costs

[37] The Constitutional Court has held that the Biowatch rule^[31] applies to PAJA reviews.^[32] Harrielall appears to suggest that the Biowatch rule also applies where a review is sourced in the principle of legality.^[33]

[38] This means that, if the applicant had unsuccessfully sought to review the decision of the Public Protector (whether in terms of PAJA

or the principle of legality), he would generally speaking not have been liable for the costs of the Public Protector.

[39] The complication in the present case is that the application was not opposed by the decision-maker (i.e. the Public Protector). It

was only opposed by the IDC and it is the IDC that is asking for its costs.

[40] In ICPA, the Constitutional Court held that the Biowatch rule would not apply to an applicant in a review application as regards the costs incurred by an opposing respondent who is a private

party.[34]

[220] In respect of costs, ICPA asked that, even if they are unsuccessful in the appeal, the Supreme Court of Appeal's adverse costs order ought to be set aside. They rely on SMEC for this submission. That case does not assist them. There, the question of costs was considered in view of Biowatch in the context of a review application. The court held:

"The fact that a PAJA review is constitutional litigation does not mean that the applicant will always be insulated from costs, because

Biowatch is subject to exceptions, such as where the litigation is 'frivolous or vexatious, or in any other way manifestly

inappropriate'."

[221] The court, regarding itself as bound by this Court's decision in Harrielall, found that the applicant, SMEC, was entitled to Biowatch protection against costs. There, however, SMEC, a private party, was litigating against an organ of state, the City of Cape Town. This case is between two private parties. Costs must therefore, as usual, follow the outcome.

[41] It follows from ICPA that, if the IDC had been a private party, the Biowatch rule would not apply and the IDC would have been entitled to its costs in successfully opposing the review application directed at the decision of the Public Protector.

[42] However, it is common cause that the IDC is an organ of state rather than a private party.

[43] It is not clear whether the Biowatch rule applies in circumstances where the application is successfully opposed by an organ of state that did not take the impugned decision. If the Biowatch rule does apply in that situation, then it would generally shield the applicant from an adverse costs order. But even if the "rule" does not apply, I would exercise my discretion not to award costs against the applicant because all of the considerations articulated in Biowatch apply as a matter of principle. In other words, the over-arching principle of not discouraging the pursuit of constitutional claims means that the applicant should not be exposed to an adverse costs order even though the organ of state that successfully opposed the review in this case was the IDC rather than the decision-maker herself. An additional consideration is that, as I have already indicated, the IDC took a number of points in limine that were lacking in merit.

[44] In argument, Mr Chauke contended that the applicant should be deprived of the benefit of Biowatch protection because the application was an abuse of process or otherwise inappropriate. I do not agree. It is correct that the application lacked the precision that might be expected of papers drawn by lawyers, but in my view it raised issues of “genuine constitutional import”.^[35]

Order

[45] In the result, I make the following order:

1. The application is dismissed.
2. Each party shall bear their own costs.

A. COCKRELL

Acting Judge of the High Court

Cape Town

13 February 2024

APPEARANCES

Applicant: in person

Second respondent’s counsel: M Chauke.

Second respondent’s attorneys: Fareeaa Csikos Inc

- [1] Giant Concerts CC v Rinaldo Investments (Pty) Ltd 2013 (3) BCLR 251 (CC) para 43.
- [2] Giant Concerts (supra) para 32.
- [3] Areva NP incorporated in France v Eskom Holdings SOC Ltd 2017 6 SA 621 (CC).
- [4] Para 23.
- [5] United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd 1972 4 SA 409 (C) at 415 in fine.
- [6] Founding affidavit para 77 and supplementary founding affidavit para 4.
- [7] TMT Services & Supplies (Pty) Ltd t/a Traffic Management Technologies v MEC: Department of Transport, Province of KwaZulu-Natal and Others 2022 (4) SA 583 (SCA) para 35.
- [8] Minister of Home Affairs v Public Protector of the RSA 2018 3 SA 380 (SCA).
- [9] Public Protector v President of the Republic of South Africa (Freedom under Law as amicus curiae) 2021
- (9) BCLR 929 (CC),

- [10] In para 50 of the same judgment, Jafta J stated that the SCA judgment in Minister of Home Affairs “appears to be at variance with one taken by this Court in South African Reserve Bank [2019 6 SA 253 (CC)]. This Court implicitly endorsed the application of the Promotion of Administrative Justice Act (“PAJA”) in the decision-making process followed by the Public Protector when she takes remedial action.”
- [11] Jasat v Interim National Medical and Dental Council 1999 (1) SA 156 (N) at 160H-I.
- [12] At 161H.
- [13] Estate Agents Board v Lek 1979 (3) SA 1048 (A) at 1069D.
- [14] At 1067B-C.
- [15] At 1067E.
- [16] Nocks Oil is registered in Bellville: see replying affidavit para 3.
- [17] See para 2.
- [18] Para 6.
- [19] TMT Services & Supplies (Pty) Ltd t/a Traffic Management Technologies v MEC: Department of Transport, Province of KwaZulu-Natal and Others 2022 (4) SA 583 (SCA) para 35.
- [20] Para 27.
- [21] Para 38.
- [22] Footnote 25.
- [23] Para 6.1.53.
- [24] Para 6.1.56.
- [25] Para 7.1.1, emphasis in original.
- [26] Para 7.1.8.
- [27] Para 23.
- [28] President of the RSA v Sarfu [1999] ZACC 9; 1999 4 SA 147 (CC) para 45
- [29] Turnbull-Jackson v Hibiscus Coast Municipality 2014 6 SA 592 (CC) para 30.
- [30] Para 101.
- [31] Biowatch Trust v Registrar, Genetic Resources 2009 6 SA 232 (CC)
- [32] Harrielall v University of Kwazulu-Natal 2018 (1) BCLR 12 (CC) at paras 16-18.
- [33] Ibid.

[34] Independent Community Pharmacy Association v Clicks Group Ltd [2023] ZACC 10 (28 March 2023). Although this was the minority judgment, the majority endorsed the reasoning of the minority on costs: see para 306.

[35] Biowatch (supra) para 24.

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