

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No: **662/2024**

In the matter between:

ELIZABETH DIPUO PETERS

Applicant

versus

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**THE CO-CHAIRPERSONS OF THE NATIONAL
COUNCIL OF PROVINCES**

Second Respondent

**ACTING REGISTRAR OF MEMBERS INTERESTS
ADV A GORDON N.O.**

Third Respondent

**The CHAIRPERSON OF THE JOINT COMMITTEE
ON ETHICS AND MEMBERS INTERESTS**

Fourth Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

Fifth Respondent

#UNITEBEHIND NPC

Sixth Respondent

ABDURRAZACK "ZACKIE" ACHMAT

Seventh Respondent

ZUKISWA "VUKA" FOKAZI

Eighth Respondent

JUDGMENT DELIVERED ELECTRONICALLY ON 29 JANUARY 2024

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for the hand-down is deemed to be on 29 January 2024.

ADHIKARI, AJ

[1] This is an urgent application for an interdict, pending the outcome of judicial review proceedings instituted under Part B of the Notice of Motion ('Part B').

[2] The applicant is a member of parliament and the Deputy Minister of Small Business Development. In her capacity as the former Minister of Transport, the applicant was the executive authority responsible for Passenger Rail Agency of South Africa ('PRASA').

[3] In these proceedings, the applicant seeks an interim interdict, restraining the first respondent ('the Speaker') from implementing the sanction imposed on her by a resolution of the National Assembly which was adopted on 28 November 2023, in terms of which the applicant is suspended from her seat in all Parliamentary debates and sittings and from committee meetings and committee related functions, for one term of the 2024 Parliamentary program, which commences on 30 January 2024 ('the sanction').

[4] The genesis of this matter is a complaint ('the complaint') lodged against the applicant by #UniteBehind, on 12 September 2022 with the Joint Committee on Ethics and Members' Interests ('the Committee').¹

[5] The complaint sought to hold the applicant to account for what #UniteBehind terms "*serious cases of failing in her Parliamentary duties, maladministration, and taking [an] active role in inhibiting the work of ensuring that corruption and maladministration be arrested at PRASA*".

[6] In essence:

[6.1] The complaint alleges that the applicant was neglectful in her previous portfolio as Minister of Transport, by failing to appoint the Group Chief Executive Officer ('CEO') of PRASA.

[6.2] The complainant alleges that the applicant stated in her testimony before the State Capture Commission that she did not appoint a permanent CEO because PRASA was not ready for one, and that her failure to act on the recommendation of the PRASA board to appoint a CEO resulted in a loss of R1 767 000 that was paid by PRASA to a recruitment company.

[6.3] The complainant alleges that the applicant dismissed the PRASA board that was chaired by Mr Popo Molefe, because the PRASA board had uncovered R14 billion of irregular expenditure, and it had instituted investigations into corruption at PRASA.

¹ For convenience I refer to the sixth to eighth respondents collectively as '#UniteBehind'.

- [6.4] The complaint alleges that the High Court in *Molefe and Others v Minister of Transport and Others (17748/17)[2017]ZAGPPHC* ('*Molefe v Minister of Transport*') found that the applicant's conduct in dismissing the PRASA board was irrational, unreasonable and unlawful.
- [6.5] The complaint further alleges that the applicant failed to investigate an allegation that R79 billion of PRASA funds was paid to Swifambo and to other persons for distribution to the African National Congress ('the ANC') while she was under a duty to ensure that corruption was rooted out from public entities falling under the auspices of the Department of Transport.
- [6.6] The complaint alleges that between 2014 and 2015, the applicant utilised PRASA buses for ANC events without ensuring that there was a payment from the ANC.
- [6.7] The complaint further alleges that the applicant influenced procurement processes by pressuring the PRASA CEO and the PRASA board, based on the nationality of the tender applicant, and that she demanded a change of the procurement prescripts, despite a legal opinion which noted that such changes would be unlawful.
- [7] It is common cause that on receipt of the complaint, the third respondent ('the Registrar') on 15 September 2022, furnished the applicant with the complaint and afforded her an opportunity to make representations and to respond thereto.

[8] The applicant, through her attorneys, responded to the complaint on 29 September 2022 as follows:

[8.1] The applicant contended in her response that the complaint regurgitated the findings and recommendations of the State Capture Report;

[8.2] The applicant stated that she was taking legal advice on the possible remedies available to her and that she intended to take the State Capture Report on review judicial review to the extent that the report related to her;

[8.3] The applicant further stated that she was awaiting the President of the Republic of South Africa ('the President') taking steps to put in place an implementation plan on how the state capture matters would be dealt with by Parliament;

[8.4] The applicant further stated that she would deal with the complaint in a holistic manner and not in a piecemeal fashion, and that she therefore would await the President's implementation plan;

[8.5] The applicant requested that any further processes by the Committee be held in abeyance until the President's implementation plan was put in place;

[8.6] The applicant indicated in her response that she elected not to engage further with the conclusions in the State Capture Report at that stage; and

[8.7] The applicant further stated that she remained available and willing to engage with the office of the Registrar and the Committee.

[9] The Committee on 17 April 2023 deliberated on the complaint. The Speaker in her answering affidavit states that the Committee considered all relevant documents including the State Capture Report and the judgment of the High Court in *Molefe v Minister of Transport*.

[10] The Committee dealt with three aspects of the complaint. First, that the applicant had failed to appoint a CEO of PRASA which resulted in R1 767 000 of fruitless and wasteful expenditure for PRASA. Second, that the applicant had irrationally dismissed the PRASA board. Third, that the applicant had misused PRASA assets, in the form of bus services to the ANC, which services were not paid for by the ANC.

[11] Firstly, in respect of the failure to appoint a CEO, the Committee found that the applicant had breached clause 10.1.1.3 of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members ('the Code'), read with clauses 4.1.3 and 4.1.4 of the Code, in that:

[11.1] she had failed to act on all occasions in accordance with the public trust placed in her; and

[11.2] she had failed to discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests,

when she failed to appoint a CEO, after the PRASA board had commissioned a recruitment process, which resulted in a financial loss to PRASA of R1 767 000.

[12] Secondly, in respect of the dismissal of the PRASA board, the Committee found that the applicant had breached clause 10.1.1.3 of the Code, read with clauses 4.1.3, 4.1.4 and 4.1.5 of the Code, in that:

[12.1] she had failed to act on all occasions in accordance with the public trust placed in her;

[12.2] she had failed to discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests; and

[12.3] she had failed to maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution,

when she dismissed the PRASA board on the same day when Mr Molefe wrote to the Portfolio Committee on Transport, which dismissal was ruled by the High Court in *Molefe v Minister of Transport* to be irrational, unreasonable and unlawful.

[13] Thirdly, in respect of the misuse of PRASA assets, the Committee found that the applicant had breached clause 10.1.1.3 of the Code, read with clause 4.1.4 of the Code, in that she had failed to discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests, when she requested buses from PRASA to be used for the ANC 2015, January 8th celebrations, that were not paid for by the ANC.

[14] On 18 April 2023, the Committee informed the applicant that it had finalised its deliberations on the complaint. It does not appear to be in dispute that the applicant was invited to make written representations on the sanction to be imposed.

[15] On 18 May 2023, the applicant submitted written representations to the Committee in respect of sanction. In the applicant's representations, she requested that she be given the opportunity to make oral representations to the Committee. The Committee granted the applicant that opportunity, and the applicant duly made oral representations to the Committee on the issue of sanction on 28 September 2023.

[16] On 20 October 2023 the Committee met to finalise its deliberations on the complaint. On 24 October 2023 the Committee informed the applicant that it had finalised its deliberations, and that it had made recommendations to the National Assembly.

[17] The Committee recommended to the National Assembly, that in respect of each of the three breaches found, the applicant be suspended from her seat in all Parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the Parliamentary program. The Committee further recommended that the suspension in respect of all three breaches run concurrently during a term of the Parliamentary program as determined by the National Assembly.

[18] On 26 October 2023, the applicant received the report of the Committee in respect of the complaint.

[19] The National Assembly placed the matter on its agenda for 28 November 2023. It appears from a letter dated 28 November 2023, from the applicants' erstwhile attorneys, which is annexed to the Speaker's answering affidavit, that the applicant was notified of the 28 November 2023 sitting of the National Assembly and of the agenda.

[20] In that letter of the 28 November 2023 the applicant through her erstwhile attorneys, advised *inter alia*, the Speaker that she was of the view that the State Capture Commission process as well as the process of the Committee had "*violated her rights to a fair quasi judicial process*". The applicant's erstwhile attorneys state in the letter that they had been instructed to "*take the matter and in particular the Joint Committee on Ethics matter, to court to set aside the findings and sanction*" and that "*the court papers will be launched next week by 6 December 2023*".

[21] On 28 November 2023, the National Assembly adopted the report of the Committee with its findings and recommendations. The sanction recommended by the Committee was approved and adopted as a decision of the National Assembly. The National Assembly imposed the sanction for the first term of the 2024 Parliamentary session.

[22] On 6 December 2023, the applicant was notified in writing of the decision of the National Assembly and, in particular, the applicant was notified that the sanction had been imposed for the first term of the 2024 Parliamentary session.

[23] Both the Speaker and #UniteBehind contend that the application is not urgent, alternatively that any urgency that may exist is self-created and that the application should be struck from the roll with costs for this reason alone, and further that the applicant has failed to make out a case for interim relief in any event. Consequently

both the Speaker and #UniteBehind contend that if the application is not struck from the roll for lack of urgency, the application for interim relief should be dismissed on the merits.

[24] It is well settled that the question as to whether this application warrants this Court's urgent attention is to be determined on the facts.² Where an application lacks the requisite element or degree of urgency, the Court can for that reason decline to exercise its powers under Rule 6(12). The matter is then not properly on the Court's roll, and it declines to hear it. The appropriate order is generally to strike the application from the roll.³ An applicant may not create its own urgency⁴ and must bring an application at the first available opportunity, since the longer it takes to do so may have the effect of diminishing urgency.⁵ An application for an interdict *pendente lite*, from its very nature, requires the maximum expedition on the part of an applicant,⁶ and an unexplained delay has as its consequence a forfeiture of any right to temporary relief.⁷

[25] Both the Speaker and #UniteBehind in essence contend that if this Court were to grant the applicant the interim relief that she seeks, it would effectively render the sanction imposed on her nugatory because the sanction is time-bound, having been imposed only for the first term of 2024 Parliamentary session, which terminates on

² *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others* 2006 (4) SA 292 (SCA) at para [9].

³ *Id.*

⁴ *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2012] JOL 28244 (GSJ) at para [7].

⁵ *Collins t/a Waterkloof Farm v Bernickow NO and Another* [2001] ZALC 223 at para [8] and [9].

⁶ *Juta & Co. Limited v Legal & Financial Publishing Co, Limited* 1969 (4) SA 443 (C) at 445E-F.

⁷ *Id* at 445D-E.

28 March 2024, and that by the time the review is heard, the first term of 2024 Parliamentary session would have come and gone.

[26] The applicant contends that while the sanction was imposed on 28 November 2023, she only became aware, on 6 December 2023 of the fact that the sanction would commence on 30 January 2024.

[27] The applicant states in her founding affidavit that this application was ready to be launched on 17 December 2023 but that she was advised by the Registrar of this Court ('the Court Registrar') *"that if this application was launched during the December break..., the application would have had to be heard within a two weeks (sic) thus first week of January 2024"*.

[28] The applicant further states in her founding affidavit that the exigencies of the matter *"did not call for such super-urgency given that [she seeks] to suspend the sanction which effectively kicks in on 30 January 2024"* and that the applicant had *"sought to comply with the directive advised by the [Court] Registrar."* In her replying affidavit, the applicant states that because the sanction would only commence on 30 January 2024, and in light of the *"directive"* of the Court Registrar that urgent matters must be heard within two weeks of being instituted, she was compelled to launch this application in the second week of January 2024.

[29] I am not aware of any Practice Directive of this Court that required or requires urgent applications to be instituted and disposed of within two weeks. Counsel for the Speaker and #UniteBehind, both of whom practice in this Division, confirmed that they too are unaware of any such Practice Directive.

[30] In any event, the applicant makes it clear in her replying affidavit that she was not prevented from launching this application in December 2023, but that she chose not to do so because if she had launched the application on 17 December 2023, *“that would have meant that the matter would be heard in the first week of January 2024”*.

[31] #UniteBehind quite fairly asks why, despite the fact that the application was *“ready”* (in the applicant’s words) on 17 December 2023, the application was not brought to the attention of the respondents until it was served (on or about 10 January).⁸ In response, the applicant states in her replying affidavit that *“[t]here was no obligation on me or my legal team to advise the respondents that I had papers ready but could not launch them. It sufficed that I launched them at the correct time”*.

[32] The applicant’s stance in this regard is quite unfortunate. The applicant would have suffered no prejudice at all (and alleges none) if a copy of the unissued, yet finalised application had been provided to the respondents on 17 December 2023. The informal exchange of papers at the earliest possible opportunity in urgent proceedings of this nature, where the papers are voluminous and where issues of some degree of complexity are raised, is not uncommon in practice, and is to be encouraged.

[33] It is well settled that while the procedure set out in Rule 6(12) is not there for the taking, the question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in the application in due course, which is something less than the irreparable

⁸ There is a dispute as to when the application was served on the first to fourth respondents. I deal with the dispute in this regard later in the judgment.

harm that is required before the granting of an interim relief.⁹ Rule 6(12) confers a general discretion on a Court to hear a matter urgently - when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course.

[34] If the applicant cannot establish prejudice in this sense, the application cannot be urgent but once such prejudice is established, other factors come into consideration, including, *inter alia*, whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondents and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights (that is, self-created urgency).

[35] Both the Speaker and #UniteBehind raised legitimate concerns about the short period of time that that they have been afforded to respond to this application.

[36] #UniteBehind was served with the application on 10 January 2024. There is a dispute about when the first to fourth respondents ('the Parliamentary respondents') were served with the application. The Sheriff's returns of service on which the applicant seeks to rely are not a model of clarity. On the one hand the returns of service state that the application was served on the Parliamentary respondents on 10 January 2024, but at the same time states that service was done electronically due to restricted access to the Parliament precinct and that confirmation of receipt of service was only received on 17 January 2024. The Speaker in her answering affidavit states that the application papers were only served in Parliament on 15 January 2024.

⁹ *East Rock Trading* at para [6] and [7].

[37] In terms of the timetable set by the applicant, the respondents were expected to deliver notices of intention to oppose on 10 January 2024, the same date on which the applicant contends that #UniteBehind and the Parliamentary respondents were served, and to deliver their answering affidavits four court days later. There is no justification on the papers for such extremely truncated time periods. Bearing in mind the voluminous nature of the papers and the complexity of the issues involved, the unreasonableness of the timetable imposed by the applicant is made more stark, in particular if regard is had to the fact that the application papers were ready to be issued by 17 December 2023 and the applicant elected to hold off on providing the papers to the respondents until, on her version, almost a month later on 10 January 2024. There is no justification for the applicant's conduct in this regard.

[38] The respondents have not been able to engage in detail with the grounds on which the interim relief has been sought. In this regard it must be recalled that the well-established requisites for interim interdict, (being a *prima facie* right; a well-grounded apprehension of irreparable harm if the interim relief is not granted, and the ultimate relief is eventually granted; that the balance of convenience favours the granting of an interim interdict; and that the applicant has no other satisfactory remedy) must not be considered in isolation, but in conjunction with one another in order to determine whether the Court should exercise its discretion in favour of granting interim relief.¹⁰

[39] Prospects of success in the main application is a key factor in determining whether interim relief *pendente lite* should be granted, in that the stronger the prospects of success, the less the need for the balance of convenience to favour the applicant, and *vice versa*. Further where a Court is asked to grant a temporary

¹⁰ *Olympic Passenger Services (Pty) Ltd v Ramlaga* 1957 (2) SA 382 (D) at 383E-F.

restraining order against the exercise of statutory power (or as in this case a constitutional oversight function), it may only do so in exceptional cases and when a strong case for that relief has been made out.¹¹ It must be satisfied that the applicant for an interdict has good prospects of success in the main review, based on strong grounds which are likely to succeed.¹²

[40] It is thus imperative in matters where interdictory relief of the nature sought in this matter are at issue, that opposing parties are given a fair and reasonable opportunity to engage with the issues arising in the main review so that the Court has before it sufficiently comprehensive submissions on the relief sought for the purposes of determining whether interim relief falls to be granted, having regard to whether the interim interdict sought will impermissibly trench upon the constitutional tenet of separation of powers - what has been called the “*separation of powers harm*”.¹³

[41] In the circumstances, the respondents’ complaint that they have been prejudiced by the applicant’s failure to set a reasonable timetable is well made. The manifestly unreasonable timetable imposed on the parties by the applicant has prejudiced the respondents by depriving them of a proper opportunity to respond fully to the applicant’s case, in circumstances where there is no justification on the papers for any such prejudice.

[42] Further, it is apparent from the common cause facts that the applicant was aware of the Committee’s findings and the sanction recommended by the Committee

¹¹ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at paras [41] – [45].

¹² *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and* 2020 (6) SA 325 (CC) (29 May 2020) at para [42].

¹³ *OUTA* at para [47].

on 26 October 2023 when she says that she received the report of the Committee. Further, the applicant had by 28 November 2023 decided that she would seek to challenge the Committee's findings as well as the sanction recommended by the Committee, and she informed the Speaker that she would do so by 6 December 2023. Ultimately, the applicant was in a position to institute this application by 17 December 2023.

[43] Her explanation for failing to do so does not withstand scrutiny. The applicant states that she did not institute these proceedings in December 2023 because if she had done so the matter would have had to be heard within two weeks and the matter "*did not call for such super-urgency*", because the sanction will only commence on 30 January 2024. However, given that the applicant instituted these proceedings on 10 January 2024 to be heard on 26 January 2024, she effectively set the matter down to be down to heard within two weeks from when the application was instituted in any event, and chose to do so some four days before the sanction is due to commence. There is simply no reasonable explanation for the applicant's conduct in this regard.

[44] For these reasons I am not satisfied that the application warrants an urgent hearing. However, a further issue arises from the applicant's delay in instituting these proceedings.

[45] Having regard to the Notice of Motion, in Part B the applicant seeks to review and set aside:

[45.1] The decision of the National Assembly taken on 28 November 2023 to adopt the report and accept the recommendations of the Committee

and to impose the sanction that applicant be suspended for the first term of 2024 Parliamentary session ('the NA decision'); and

[45.2] To the extent necessary the decisions of the Committee:

[45.2.1] To consider the complaint;

[45.2.2] Not to conduct a further investigation into the complaint in terms of clause 10.4.3 of the Code;

[45.2.3] That the applicant had breached the Code in the three respects described above; and

[45.3] To the extent necessary, the report, recommendations and sanction of the Committee.

[46] It bears emphasis that the NA decision that the applicant seeks to review, is in effect a decision that she is suspended for first term of the 2024 Parliamentary session.

[47] The applicant is at pains to point out that if she does not get an order suspending the implementation of the sanction imposed by the National Assembly, before it commences on 30 January 2024, she will not be able to obtain substantial redress if the review application were to be heard in the ordinary course.

[48] What the applicant fails to appreciate, however, is that the NA decision that she seeks to review, is time-bound as Mr Solik for #UniteBehind correctly submitted. Consequently, if the applicant does not urgently obtain an order reviewing and setting aside the NA decision (that she is suspended for first term of the 2024 Parliamentary session), the review relief sought in respect of that decision will be

rendered moot, as the first term of the 2024 Parliamentary session will have run its course by the time the review is heard in the ordinary course.

[49] In this matter, the sanction was imposed by the National Assembly as contemplated by clause 10.7.7.2 of the Code, which provides that in the event of the Committee finding that a member is guilty of contravening, *inter alia*, clause 10.1.1.3 of the Code, the Committee shall not impose any of the sanctions in clause 10.7.7.1, but shall recommend any greater sanction it deems appropriate to the National Assembly, and the National Assembly shall decide on the appropriate sanction to be imposed, after consideration of the recommendation of the Committee. Consequently, the findings and recommendations of the Committee are not the operative decisions for the purposes of the review relief sought by the applicant in Part B. The operative decision in this case is the decision of the National Assembly to impose a particular sanction on the applicant (that is the NA decision).

[50] The applicant does not, in the application before me, seek an urgent review of the NA decision. Instead, the applicant seeks, at this stage, only to interdict the sanction from coming into operation.

[51] However, if I were to grant an interim interdict as sought by the applicant, by the time that the review is heard in the ordinary course, the time period within which the NA decision was to have run (30 January 2024 to 28 March 2024), would have expired, rendering the review moot. As High Courts are not vested with similar powers to those of the Supreme Court of Appeal or the Constitutional Court to decide a case notwithstanding that it has become moot,¹⁴ the review court would not be empowered to hear the Part B review relief in due course. Further, where the

¹⁴ *Minister of Justice and Others v Estate Stransham-Ford* 2017 (3) SA 152 (SCA) at para [24] – [25].

operative decision has been rendered moot, it is unclear on what basis a review court could nonetheless entertain a challenge to the underlying decisions of the Committee.¹⁵

[52] Thus, the effect of granting an interim interdict suspending the implementation of the sanction would be to render the sanction nugatory for all intents and purposes. I am in effect being asked to grant an order that would have the effect of setting aside the sanction imposed by the National Assembly, in circumstances where I am not seized with the review. There is no basis in law for me to grant such relief. Further, the effect of the interim relief sought by the applicant has serious implications for the separation of powers. A Court is effectively being asked to grant an order that would undermine and render nugatory a sanction imposed by another branch of government exercising its constitutionally mandated oversight powers, in the absence of any legal basis for such interference, given that the Court is not seized with the review application.

[53] As pointed out by #UniteBehind, the appropriate course of action would have been for the applicant to have approached this Court on an urgent basis to review and set aside the decisions which she seeks to review in Part B. She chose not to do so and must live with the consequences of her election.

[54] Where matters are not urgent, the appropriate order is generally to strike the application from the roll as this enables the applicant to set the matter down again, on proper notice and compliance.¹⁶ However, for the reasons already addressed,

¹⁵ In the remainder of the relief sought by the applicant in Part B, she challenges the jurisdiction of the Committee to consider the complaint, the procedure followed by the Committee in reaching its decisions, the substance of the Committee's findings against her, as well as the Committee's recommendations on sanction.

¹⁶ *Hawker Air Services*

the effect of the applicant's delay in instituting these proceedings is that by time the review is heard in due course, the review relief will have been rendered moot. Given that the review court would not be empowered to decide the Part B review relief notwithstanding that it has become moot, no purpose would be served in striking the matter from the roll and, in the circumstances of this matter the appropriate order is to dismiss the application in its entirety.

[55] As to costs, there is no reason why costs ought not to follow the result. Ms Samkange for the Speaker submitted that this is a matter which warrants the attention of two counsel. She further submitted that senior counsel had been briefed and had been involved in the preparation of the Speaker's papers, but due to the urgency of the matter was unable to appear at the hearing. In view of the complexity of the matter and the importance of the issues, I am satisfied that the costs of two counsel is warranted.

In the result I make the following order:

1. The application is dismissed.
2. The applicant is to pay the costs of the first to fourth and sixth to eighth respondents, such costs to include the costs of two counsel where so employed, on a party and party scale.