REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no: 2024-071477

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 7 August 2024 [redacted]

In the matter between:

National Association of Democratic Lawyers	**First Applicant**
Mvuzo Notyesi	**Second Applicant**
The Black Lawyer's Association	**Third Applicant**
The Law Society of South Africa	**Fourth Applicant**

and

The South African Legal Practice Council	**First Respondent**
The Board of The Legal Practitioners' Fidelity Fund	**Second Respondent**

JUDGMENT

K STRYDOM, AJ

1. During October 2023, legal practitioners cast their votes in support of the candidates they wanted to be elected as board members of the Second Respondent ("the Board"). The elections were conducted per the procedures as determined by the First

Respondent (“the SALPC”). After the election closed, the SALPC took the position that the procedures and methodology it had followed, in conducting the election, were based on its own incorrect interpretation of Rule 46 of the Legal Practice Council Rules. As a result, on the 23rd of January 2024, it informed the legal fraternity that, because of this irregularity, it had decided to not tally the votes cast in the October 2023 election and would, instead, re-run the election.

2. Perturbed by the SALPC’s decision, the Applicants have brought an application (Part B) to have the SALPC’s decisions to not tally (and thereafter, release the outcome of the October 2023 votes) and to re-run the election, reviewed and set aside. Additionally, they seek an order directing the first Respondent to tally such votes, release the outcome and publish the names of the successful candidates in the government gazette.

3. In the interim, they, on an urgent basis, seek an order from this Court interdicting the SALPC from announcing a date, calling for nominations of candidates and/or conducting a re-run election (Part A).

THE PARTIES

4. The first Applicant (NADEL), a voluntary association made up of legal professionals, instituted these proceedings on behalf of its members.

5. The second Applicant is a legal practitioner, the current president of NADEL, member of the executive committee of the second Respondent and was also a candidate in the October 2023 election.

6. Despite being cited as the second Respondent, the Board of the Legal Practitioners' Fidelity Fund, (“the Board”) has aligned itself with the first and second Applicants.

7. Subsequent to the institution of the application, the Black Lawyers Association brought an application to be joined as the third Applicant. As with NADEL, its standing as a recognised stake holder in the legal profession in South Africa is not in dispute. The SALPC did not oppose the joinder application.

8. On the eve of the hearing of the application, the Law Society of South Africa (“the LSSA”) also sought leave to intervene as a further applicant. The SALPC objected to this application due to the extreme lateness thereof. The founding affidavit in the application to intervene, also serving as the founding affidavit for purposes of the

interim interdict, the potential prejudice to the SALPC's preparation was obvious. However, as the LSSA's members also have an undeniable interest in the outcome of the proceedings, I reserved my judgment on the intervention application. In order to gauge whether joining the LSSA as an Applicant would in reality prejudice the SALPC, I allowed counsel for the LSSA to address me following the arguments of NADEL, the Board and the BLA – but only to the extent that the LSSA could present argument that had not already been canvassed. The result, as conceded by counsel for the LSSA, was that the LSSA raised no new issues that the other parties had not already raised. The SALPC therefore was not prejudiced or ambushed by the late application to intervene. As a result, the LSSA was given leave to be joined as a fourth applicant. I will however countenance any procedural prejudice with an appropriate cost order.

9. To avoid confusion, I will, where applicable, refer to the parties by their acronyms. Any reference to "Applicants" should be understood to include the second Respondent.

URGENCY

10. As indicated *supra*, the SALPC, on the 23rd of January sent out a notice informing the legal profession that there had been an irregularity in the October 2023 election and that it had decided to re-run the election on a date to be announced. In the ensuing months, various interactions took place between NADEL, the BLA, the Board and the SALPC, the general gist of which was that the Applicants were of the view that the SALPC was acting unlawfully and that they implored the SALPC to tally the October 2023 election votes, publish the results and to refrain from re-running the election.

11. Matters came to a head on the 20th of June 2024, when the SALPC, in response to a letter of demand by NADEL, reiterated its intention to hold new elections and advised that it was in the process of "…*finalising the necessary steps to proceed with the rerun of the LPFF elections and will announce a new election date shortly.*" It therefore being evident that the engagements with SALPC had yielded no positive results and that the SALPC was now taking active steps to proceed in terms of the impugned decisions, NADEL set about finalising this application.

12. The SALPC has placed great reliance on the argument that the Applicants urgency was 'self-created' as they were aware, at the latest, by January 2024, that the SALPC intends to re-run the election at some future date. This reliance is misplaced. In the first place, "self-created urgency" is not an absolute bar to the hearing of urgent

applications.[1] Secondly, where the delay in launching proceedings was as a result of active engagements between the parties, the urgency would in any event not be construed as self-created.[2] The Applicants have demonstrated that there have been active engagements with the SALPC in respect of its impugned decisions. In the case of the BLA, for instance, the agenda for a scheduled meeting with the SALPC evinces that, as recent as the 25th of June 2024, the impugned decisions were still the subject of discussion.

13. With regards to the question of whether the Applicants would obtain substantial redress in due course, the SALPC argued that, should a court of review in due course set aside the impugned decisions the Applicants would in any event obtain the same relief sought as per the present application. Whilst a case may be made that the Applicants, at that time would obtain redress, it does not translate automatically into substantial redress. In *East Rock*,[3] the test for "substantial redress" was described as follows:

> *"It is important to note that the rules require absence of substantial redress. This is not equivalent to irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An Applicant must make out his case in this regard."*

14. The arguments in this regard largely overlap with those made in respect of the requirements for an interim interdict and will not be repeated here. It is sufficient to at this stage indicate that, for purposes of my finding on urgency, I am satisfied that the Applicants will not be afforded substantial redress in due course.

15. The death knell in respect of urgency lies with the course of action taken by the SALPC after the present application was served on the 2nd of July. When initially launched, the Applicants brought the urgent application on the imminent possibility of elections being

---

[1] See for instance *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 para 9. A more recent exposition of hereof is found in *Chung-Fung (Pty) Ltd and Another v Mayfair Residents Association and Others* (2023/080436) [2023] ZAGPJHC 1162 (13 October 2023)

[2] See for instance: *Transnet Ltd v Rubenstein* 2006 (1) SA 591 (SCA) at 603 B/C; South *African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC) at [37] and [38]

[3] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) paras 6 and 7

re-run. At that stage, despite informing the legal fraternity in January 2024 that it intended to re-run the elections, it had not yet set a date or called for nominations of candidates for the re-run.

16. However, after receiving this application, on the 8th of July 2024, the SALPC published a notice informing the legal fraternity that nominations for candidates for the re-run election would be open from the 10th of July 2024. In terms of its preliminary timetable for the new election, voting will close on the 20th of August 2024 and results will be announced by the 28th of August 2024.

17. Six days later, on the 14th of July 2024, the SALPC filed its answering affidavit to the application.

18. There is no small measure of irony in the fact that the SALPC's decision to call for nominations for the re-run election in the face of the interim relief sought has cemented the Applicants' arguments on the need for the urgent hearing of the application.

THE INTERIM INTERDICT

Legality of SALPC's decisions/actions

19. Before proceeding with an evaluation of whether the Applicants have satisfied the requirements for the granting of the interim relief sought, it would be prudent to provide a summary exposition and contextualization of the parties' respective positions *vis-à-vis* whether the SALPC was vested with the authority to have made the impugned decisions. A final determination on the legality of the decisions and actions of the SALPC in this regard, naturally, lies with the court of review. However, this issue lies central to the prima facie right alleged, the probability of success of the review application (Part B) and the imminence of the harm foreseen by the Applicants. As such, my findings in this regard constitute *prima facie* findings insofar as relevant to the determinations necessary for the present application.

20. The election of the board members for the LPFF is conducted in terms of Section 62 of the Legal Practice Act 26 of 2014, ("the Act"). The Act empowers the SALPC to make certain rules, ("the Rules"). Amongst others it is empowered to make the rules for the

election of legal practitioners to the LPFF board.[4] These rules are embodied in Rule 46.

21. It is not disputed that for purposes of the elections in 2020 as well as in October 2023, the SALPC's interpretation of Rule 46(1) was that four members are to be elected from among legal practitioners (one from each of the defined geographical areas) and, as required by section 62, one member is to be elected from among practicing trust account advocates. The only geographical restriction was that the candidate must be from a specified geographical area.

22. Furthermore, save for a bald, unsubstantiated allegation that some practitioners who voted in October 2023 might not have been in good standing at the time, the SALPC does not contend that any irregularities occurred during the voting process in the October 2023 election. By all accounts voting took place in terms of the guidelines and procedures set in place by the SALPC.

23. It was only after voting in the October 2023 election had closed, that the SALPC came to the conclusion[5] that it had incorrectly interpreted Rule 46(1). It contends that, correctly interpreted, Rule 46(1) provides a further geographical limitation to the effect that voters may only vote for candidates based in their (the voters') areas or regions of practice.

24. The correctness of this interpretation is not an issue this Court (or the court of review) is called to pronounce upon. Whether or not the SALPC's reason for making the impugned decision was legally sound, morally justifiable or in the interest of justice, is irrelevant. The pertinent issue is whether the SALPC was empowered to make the impugned decisions.

25. In its answering affidavit, the SALPC submitted that the decision was not unlawful and that *"… (i)t is unfortunate that the Applicants are misinterpreting the role of the LPC in tallying the votes. Before tallying the votes, the LPC must be satisfied that the correct candidates from the correct geographical areas were elected by the correct persons in*

[4] Section 95(1) (zJ) of the Act

[5] Initially the SALPC was of the view that is might have interpreted S46(1) incorrectly. It sought the legal opinion of counsel in this regard and, once such opinion confirmed their suspicion, they summarily decided that the election was irregular. If Courts were allowed to follow this procedure to determine the legal interpretation and effects of statutory provisions (and even issues such as the lawfulness of elections), the roll would be far less congested. On the other hand, it would also cause a significant decline in the SALPC's membership....

good standing from the correct geographical areas, The LPC cannot tally the votes and declare the results with knowledge of the fact that the election process contravened the law."

26. The SALPC's role (in the election of the Board) is governed by Rule 46, which, *inter alia,* prescribes that, following close of voting, the following shall occur:

> *"46.15 Upon the expiry of 21 days from the date of the notice referred to in rule 46.11, the Council shall, at a formal special meeting, tally all the votes received in writing by hand delivery, or by electronic mail, and all votes received by e-voting, in respect of each person duly nominated, and shall determine the names of the persons in favour of whom the most such votes have been cast in order to fill the number of vacancies on the Board which are required to the filled.*
>
> *46.16 Having made such a determination, the Council shall at such meeting declare such person or persons duly elected.*
>
> *46.17 The Council shall within 7 days of having made such a declaration, by notice in the Gazette, publish the name of the person or persons so elected".*

27. The Applicants submit that there is no interpretation of these provisions in terms of which the SALPC is bestowed with any investigatory or discretionary powers or obligated to make a declaration on the validity or lawfulness of the election. To the contrary, the repeated reference to what the SALPC "shall" do, negates any interpretation in terms of which the SALPC has a discretion to not comply with its obligations per Rules 46(15), 46(16) or 46(17).

28. The SALPC, despite repeated invitations from the Court during the hearing, could not refer the Court to the specific provision in Rule 46 (or elsewhere within its statutory framework) in terms of which it was empowered to, after the close of voting, declare an election to have been irregular or to decide to not comply with its obligations per Rules 46(15), 46(16) or 46(17). During argument, counsel for the SALPC had attempted to place reliance on the phrase: "..*having made such determination..*" in Rule 46(16) to argue that the SALPC was empowered to decide whether the election processes thus far had been irregular. He, however, could not seriously dispute that "*such determination*" refers to the determination of *"…the names of the persons in favour of whom the most such votes have been cast in order to fill the number of*

vacancies on the Board which are required to the filled referenced is the determination" per Rule 46(15).

29. The Applicants, correctly, submitted that, the SALPC's only legal recourse was to launch an application for self-review, on the basis that (in its view) it had applied Rule 46(1) incorrectly and that, as a result, the Court should make a finding that the October 2023 election be set aside. Instead, it resorted to impermissible self-help.

30. In an impressive display of clairvoyancy or, at least astute legal intuition, counsel for the SALPC, on the day of hearing, filed supplementary heads of argument which seemingly pre-empted the issues raises *supra*. It was now argued that:

> "*The LPC was entitled to abandon the election process on the principle of legality. The LPC has repeatedly stated that the election process contravened Rule 46.1 of the LPC Rules. The LPC is entitled to raise the principle of legality in proceedings that seek to enforce an illegality."*

31. In support hereof, the SALPC referenced the case of *Municipal Manager: Qaukeni and Others v F V General Trading CC*, in which the Court held that where a contract

> *"….with the respondent was unlawful, it is invalid and this is a case in which the appellants were duty bound not to submit to an unlawful contract but to oppose the respondent's attempt to enforce it. This it did by way of its opposition to the main application and by seeking a declaration of unlawfulness in the counter-application. In doing so it raised the question of the legality of the contract fairly and squarely, just as it would have done in a formal review. In these circumstances, substance must triumph over form*."

32. The SALPC's argument in this regard is as novel as it is incorrect. *Municipal Manager: Qaukeni,* at most, provides precedent for the launching of judicial self-review proceedings by an administrative body simultaneously with its opposition to a claim for enforcement of an unlawful contract/ administrative decision. As such, it, in fact, underscores the principle that an administrative body may not act *ultra vires* and should apply for self-review where it forms the view that it has, in making a decision, acted irregularly or unlawfully.

33. The submission that "*(t)he LPC was entitled to abandon the election process on the principle of legality,* firstly, flies in the face of the clear injunction against doing so, as

set out by Cameron J in *MEC for Health, Eastern Cape v Kirkland Investments (Pty) Ltd*[6]*:*

> *"By corollary, the Department's argument entails that administrators can, without recourse to legal proceedings, disregard administrative actions by their peers, subordinates or superiors if they consider them mistaken. This is a license to self-help. It invites officials to take the law into their own hands by ignoring administrative conduct they consider incorrect. That would spawn confusion and conflict, to the detriment of the administration and the public. And it would undermine the courts' supervision of the administration."* [Underlining my own]

34. Secondly, to contend that the doctrine of legality empowers an administrative body to act *ultra vires* or irrationally, is to contend the diametrical opposite of the very essence of the doctrine.

35. Unfortunately, the SALPC's submissions, to a large extent, were based on its erroneous view of itself as final arbiter of the correct interpretation of Rule 46(1) and that, having felled its final judgment in this regard, it had the power to declare the October 2023 election irregular or unlawful. This fundamentally fallacious foundation to the SALPC's opposition herein, is best evidenced by the following excerpt from the answering affidavit:

> *"The October 2023 election was nullity ab initio, for failure to comply with Rule 46.1 of the LPC Rules. There was no self-help that the LPC engaged in. Moreover, there was nothing to present to the court to review. A court cannot review a nullity."* [7]

36. Apart from the obvious conflation of legal principles, this submission is based on the assumption that the SALPC was empowered to decide whether the election was unlawful (or illegal or invalid or void *ab initio* – the SALPC's terminology varies throughout). The Applicants are not requesting the court of review to review the "nullity" (i.e the October 2023 elections). They seek an order setting aside decisions taken by the SALPC as a result of its finding that the elections were a "nullity", on the basis that the SALPC was not empowered to make such a finding or decision.

---

[6] *MEC for Health, Eastern Cape v Kirkland Investments (Pty) Ltd* 2014 (3) SA 481 CC
[7] Answering affidavit para 73.2

Prima facie right

37. In light of the findings in the preceding paragraphs it is evident that, in addition to their right to good governance and transparent, lawful and valid administrative action, the Applicants have also established their *prima facie* right by demonstrating a strong prospect of success in the review.[8]

38. In making the latter finding, I have duly considered the SALPC's contention that the prospects of success on review are poor as the application for review was brought outside of the 180-day period provided for in terms of Section 7 of the Promotion of Administrative Justice Act ("PAJA").

39. In its emphatic pursuance of this point, the SALPC relied on three dates from which this 180-day period should allegedly be calculated.

40. Firstly, in its supplementary heads of argument, the SALPC submitted that:
"The decision was made in November 2023. The period of 180 days has already elapsed by 26 May 2024. The review application is defective for lack of compliance with the provisions of PAJA because it was not instituted within 180 days of the LPC decision."

41. This submission is obviously based on a misreading of the provisions of Section 7(1)(b) of PAJA. In terms of Section 7(1)(b), the 180 days period shall commence from (a) the date that the affected party was informed of the administrative action, (b) the date the affected party became aware of the administrative action and reasons for it, or (c) the date on which the affected party might reasonably have been expected to have become aware of the administrative action and the reasons therefore. The date on which the administrative body made the decision is irrelevant for the purposes of calculating the 180 days.

42. Undoubtedly aware of the incorrect basis for its calculation *supra*, the SALPC secondly argued that the Applicants are deemed to have, by the 31st of October 2023, been aware of the SALPC's decision to not to comply with its duties in terms of Rules 46(15), 46(16) or 46(17). This submission is based on the fact that, in terms of Rule 46, the SALPC should have announced the outcome of the elections on that date but had

[8] SEE: *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* (CCT 173/13; CCT 174/14) [2014] ZACC 8; 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) (4 April 2014)

failed to. This submission demonstrates not only an unfamiliarity with the provisions of PAJA (again) but is also illogical. In the first place, the SALPC failed to have proper regard to the provisions of Section 7 of PAJA as, even if knowledge of the decision could have been ascribed to the Applicants on said date, knowledge of the reasons cannot. Secondly, in its answering affidavit, the SALPC confirms that, on the 2nd of November 2023, the special meeting (where the question of the validity of the October 2023 election was discussed), ended in an impasse. It was only on the 29th of November 2023 that the SALPC resolved to not tally the October 2023 results and to re-run the elections. It would be ludicrous to deem that the Applicants had had knowledge of the SALPC's decision, a month before the SALPC had even made it.

43. In a third desperate attempt to argue that the 180-day PAJA period had lapsed, Counsel for the SALPC, referred the Court to a communication which indicated that the second Applicant had been informed telephonically of the decision and reasons sometime during either November or December 2023. It was argued that, as he is a member of the second Respondent and president of the first Applicant, they are deemed to have had knowledge of the decision through him. It is not necessary to evaluate how bad this argument is in law. This tenuous argument fails on the facts: As proof of the telephonic conversation, the SALPC referred to the 24 January 2024 notice which included the following paragraph:

> "*As our Executive Officer advised Mr Molefe telephonically last year, the Council realised after the votes had been cast that Rule 46 of the Legal Practice Council Rules <u>may</u> have been applied incorrectly, which resulted in a procedural irregularity in allowing legal practitioners, some of whom were not in good standing, to vote for several candidates, including candidates outside their geographical areas, contrary to the provisions of Rule 46.1"*

44. I have underlined the word that countenances any possibility that a firm decision had been communicated to the second Applicant.

45. In addition to the aforementioned, this argument is in any event fundamentally flawed as it presumes that the review application is brought in terms of PAJA. None of the Applicants have pertinently cited PAJA. The Board, for instance, pertinently references the rationality and reasonableness of the decisions as basis for the review; thereby

invoking a review application within the realms of a so-called legality review, which is not subject to defined period for institution.

46. These issues are best left for determination by the court of review. For present purposes however, it suffices to indicate that the SALPC's submissions did not dissuade my finding that the Applicants have proven the existence of, at least, a *prima facie* right.

A reasonable apprehension of imminent and irreparable harm

47. In its founding affidavit, NADEL submits that re-running the election would result in irreparable harm to:

(i) the persons who were nominated as candidates and who received votes in the October 2023 elections as these candidates may not be nominated and/or voted for in the July 2024 elections, particularly given the anticipated changes in the LPC voting guidelines to reflect their new interpretation of rule 46.1.

(ii) the persons in whose favour the most votes were cast in the October 2023 elections as these persons were rightfully elected into office in 2023 in accordance with the prescribed rules. If the elections are held in July 2024 there is a real possibility that these persons will, unlawfully we submit, be replaced by the successful candidates in the July 2024 elections.

(iii) the legal practitioners who voted in the October 2023 election, who have the right to have their votes tallied and recorded and who have effectively been disenfranchised by having their votes disregarded; and

(iv) the rights of legal practitioners in general to good governance and to have the affairs of the regulatory bodies in charge of them conducted in a transparent, lawful and valid manner…."

48. It was further argued that the, as the SALPC has acted *ultra vires* (and/or unreasonably and irrationally) and, rather obtusely, persists in doing so, the broader reputational impact on the legal profession and public confidence in the profession, is at risk. Furthermore, the costs of re-running the election are estimated at approximately R700 000-00,[9] which expenditure the SALPC would not be able re-coup if on review,

[9] The SALPC submitted that it is closer to R800 00-00

the October 2023 election results were upheld. As the SALPC is partially funded by members of the Applicants (through membership fees), they would be directly affected.

49. The SALPC's arguments in this regard were squarely based on its overinflated, and ultimately erroneous, sense of its role and functions in deciding issues such as illegality, referred to *supra*.

50. It argued that substantial redress for candidates of the October 2023 election lies in the re-run election – as they could simply be nominated again. Not only does this submission completely disregard the ongoing harm inflicted to the Applicant's rights to fair administrative action, but it also fails to appreciate that the re-run election, on the SALPC's own version, will be conducted on a different basis than the October 2023 election.

51. Other submissions ranged from the vaguely patronising: that the legal practitioners should be thankful that the SALPC is taking corrective measures to undo injustices; to the bizarre: that because the votes were neither tallied nor released, the Applicants cannot seek an interdict, based on speculation that the Second Applicant might have won the elections.

52. In direct contradiction to the latter submission, during the hearing, Counsel for the SALPC bemoaned the fact that not one person who had been elected in October 2023 has joined issue with the Applicants. This submission seemingly sought to create an inference that the truly affected parties viewed the decision as legitimate. Having pertinently refused to tally the votes and release the results of the October 2023 election, the SALPC is disingenuous in raising this self-serving argument.

53. To my mind, a pertinent consideration in deciding whether the harm can be considered 'irreparable', is the effect the re-run election would have on the findings of the Court of review in future

54. A court of review has wide discretionary powers in determining whether or not to set aside administrative action. In *Moseme*,[10] the SCA, confirmed that there are categories of cases "…*where by reason of the effluxion of time (and intervening events) an invalid administrative act must be permitted to stand."* It held that *'considerations of*

[10] *Moseme Road Construction CC and Others v King Civil Engineering Contractors (Pty) Ltd and Another* (385/2009) [2010] ZASCA 13; 2010 (4) SA 359 (SCA) ; [2010] 3 All SA 549 (SCA) (15 March 2010)

pragmatism and practicality' were relevant in the exercise of the discretion…" of a Court of review in such instances.[11]

55. Applied to the present case, it is reasonably foreseeable that if a new board is appointed in terms the re-run election, the court of review could find that it would be impractical to order the SALPC announce and gazette the results of the October 2023 election. This relief effectively constitutes the final steps for the appointment of the board of the LPFF. As such, if the relief as sought for is granted, the candidates in the October 2023 election would be elected to the board. However, if the SALPC had been permitted to re-run the election in August 2024, granting the relief sought would result in two boards existing simultaneously. What would the legal effect of the decisions taken by the 2024 board in the interim be? Should the 2024 board's appointment be set aside, followed by applications to set aside every decision it has taken? The cacophony of confusion and litany of litigation that could ensue as a result is innumerable.

Balance of convenience

56. The Applicants' submissions regarding prejudice overlap with their submissions in respect of 'irreparable harm', set out *supr*a. To the extent that they overlap, they will not be repeated here.

57. The Applicants submitted that the SALPC itself would suffer no prejudice should the re-run election be interdicted. The current members of the Board would remain in place until a final decision is made regarding the October 2023 election. As such, the functioning of the LPFF would also not be jeopardized.

58. The SALPC has not pertinently addressed how it would be prejudiced should the interim interdict be granted. In its answering affidavit, the following submissions are made in response to the Applicant's contentions:

69.1 ….Had it not been for the delays occasioned by the non-cooperation of the LPFF with the rerun of the election process, the new Board would have been in office by now.

[11] *Moseme* (*supra*) at para 15

69.2 It is unlawful to prolong the term of office of the current Board for the convenience of the Board members.[12] There is no reason why the elections should not be held. As already stated, the nomination process is currently underway…

69.3 It is a trite principle of our law that administrative bodies can only exercise those powers bestowed upon them by the law and nothing else. A court is unlikely to sanction an illegality[13]

59. Insofar as the SALPC may have intended to argue that it will be prejudiced, due to the fact that the re-run election processes have already commenced, such prejudice would have been regarded as purposefully engineered: Despite this application having been served on it, the SALPC chose to initiate the new re-run election processes in the period between opposing this application and filing its answering affidavit. To its credit, this point was not argued or relied upon at the hearing of this application.

60. I am satisfied that the balance of convenience favours the Applicants.

Alternative remedy

61. My findings in relation to 'substantial redress' and 'irreparable harm' *supra* also support the finding that there is no alternative remedy available to the Applicants.

FINDING

62. I am satisfied that the Applicants are entitled to interim relief along the lines sought in the notice of motion. Naturally, given the SALPC's decision to, in the face of this application, call for nominations for candidates and to set out a timetable for such a re-run election, a portion of the relief, as worded in the notice of motion, could be ineffectual. However, it is important to note that the present application was aimed at interdicting the SALPC from initiating and concluding a re-run election pending the outcome of the review application. As such, despite the contrivances of the SALPC, an order as per the relief sought, with the appropriate amendments where necessary, remains competent.

---

[12] It would seem that the SALPC has again afforded itself judicial (and legislative) powers in terms of which it has created a ground for unlawfulness of the extension of the terms of the board members.

[13] It view of the stance adopted by the SALPC in persisting with implementing decisions it had made ultra vires, the sheer mind-boggling irony of this submission, cannot be overstressed

COSTS

63. During argument for the Applicants, it was submitted that, in light of the conduct of the SALPC, it should be ordered to pay costs of the application an attorney- own client scale.

64. For the SALPC it was argued that, as a general rule, in urgent application for interim relief pending an application for review, awarding punitive costs against a losing party is inappropriate and that such determinations are best left to the court of final relief. I disagree with this contention. In the first place, I agree with counsel for the Board that there is no such general rule. Secondly, also as per the counsel for the Board, the argument is ironic considering the fact that the SALPC in its answering affidavit asked for costs against the Applicants on a punitive scale. Thirdly, a court granting interim relief is best placed to consider costs and conduct in specific relation to the interim application itself. The mere fact that an applicant is necessitated to bring such an application may be indicative of blameworthy conduct on the part of the respondent.

65. In awarding costs, a Court has a discretion which should be exercised judicially. In doing so, as was stated in *Fripp v Gibbon & Co*:[14]

> *"A court should consider the circumstances of each case, weighing the issues in the case, the conduct of the parties and any other circumstance which may have a bearing on the issue of costs and then make such order as would be fair and just between the parties"*

66. The SALPC, before filing its answering affidavit, called for nominations for candidates and set out a timeline for the re-run election. It has been more than eight months since the SALPC decided that the election should be re-run. No explanation has been provided justifying why, after months of inaction, it was imperative for the SALPC to, two weeks before it could potentially be interdicted from re-running the election, swiftly initiate the very processes that were the subject matter of the interdict. Even if the date of the 8th of July 2024 (when nominations were called for) was determined as a result of steps taken prior to the service of the application and was in no way, shape or form related to the service of this application on the 2nd of July 2024, the SALPC's failure to suspend the call for nominations until after this application was heard, is inexplicable.

[14] 1913 AD 354 at 363

67. NADEL described this as a contemptuous ploy to "force the re-run election through" and to have the present application dismissed due to lack of urgency (the relief sought having become moot).

68. To add insult to injury, the SALPC afterwards files an answering affidavit in which it, rather obtusely, informs the Court tasked with deciding whether to interdict the call for nominations, setting of a date and re-run of the election, that the call for nomination is a *fait accompli* and that "*(t)he LPC is not going to change its decision on the impugned elections…* and that "*(t)here **will** be a rerun of the election process…".* [15] [Emphasis my own]

69. The sheer brazenness of this submission belies the paucity of legally or factually sound arguments raised by the SALPC in opposing this application.

70. The SALPC's overarching argument is that, because its interpretation of Rule 46(1) is correct, the October 2023 elections were invalid and as such it was entitled abandon that election in favour of a re-run election. It was therefore particularly disconcerting that the SALPC could not provide a clear and unambiguous answer to the very simple question: Where, within its statutory framework, is it granted powers to declare elections illegal and to decline to comply with its obligations in terms of Rules 46(15) (16) and (17)? Despite being pertinently questioned in this regard by the Court, no direct answer was provided. Instead, its submissions vacillated from vague generalised references to its role as overseer of the legal profession to a reliance on the doctrine of legality.

71. Whilst this issue will be finally decided on review, it is mentioned here as a pertinent example of the failure of the SALPC to provide cogent, consistent and legally and factually sound arguments in opposing the application. (Other examples include its blatant misconstruction of the provisions of Section 7 of PAJA, its insistence on "self-created urgency," despite being fully aware of the multiple engagements it had with the Applicants and arguing that the doctrine of legality authorises an administrative body to act outside of its statutory empowerment.)

72. Had the SALPC's only 'sin' been that it's opposition was largely meritless, it may have escaped a punitive cost order on the basis that *"(t)he awarding of party and party costs*

[15] Answering affidavit para 66.4

is usually considered to be sufficient to discourage meritless cases..."[16] or that "...*one should bear in mind that usually a wide latitude should be afforded a defendant in presenting his defence*.."[17] Similarly, had the only cause for complaint been actions taken after the Applicant launched the application, it could (perhaps) have been argued that it did not put *"...the other side to unnecessary trouble and expense which it ought not to bear*."[18]

73. However, when considered collectively, the end result is a undeniable conclusion that the SALPC *"..conducted itself in a clear and indubitably vexatious and reprehensible conduct*..." necessitating *"....extreme opprobrium*."[19]

74. The SALPC's conduct, both in calling for nominations and then in failing to present a cogent basis for opposition, is that of an organization which, regardless of legal scrutiny, will at all costs remain intransigent. Instead of properly assessing the basis of its opposition, the SALPC initiated costly election proceedings in what can only be reasoned as an attempt to frustrate the relief sought herein by the Applicants. The SALPC, in doing so, paid no regard to the fact that it is, as least partially, funded by the public (insofar as legal practitioners are considered 'the public'). The costs already incurred in a reckless, ultimately ill-fated attempt to force a re-run election, in light of my order, are wasted.

75. Fabricius J, in *Multi- Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd*.[20] held that:

> *"In my view an overall balanced view of the whole of the proceedings and the relevant facts ought to be taken. If a court is then left with that indefinable feeling, which feeling must, however be based on rational analysis of the facts and legal principles, that something is 'amiss·, if one can put it that way, it may justify that feeling by deciding that the opposing party ought not to be out of pocket as a result of the application having been launched."*

---

[16] *ADCORP Fulfilment Services (Pty) Ltd v Prodigy Human Capital Architects (Pty) Ltd* (2018/17932) [2023] ZAGPJHC 579 (26 May 2023) at para 92

[17] *Shatz Investments (Pty) Ltd v Kalovyrnas* 1976 (2) SA 545 (AD) at page 560 D-F, quoted with approval in *Mia v Verimark Holdings (Pty) Ltd* [2010] 1 All SA 280 (SCA) at page 289

[18] *Zuma v Office of the Public Protector and Others* (1447/2018) [2020] ZASCA 138 (30 October 2020) para 38

[19] *Plastic Converters Association of South Africa (PCASA) Obo Members v National Union of Metalworkers Union of South Africa and Others* (JA112/14) [2016] ZALAC 37 (6 July 2016), para. 46

[20] [2013] 4 All SA (GNP) par 38

76. On a conspectus of all the facts and arguments presented, I am left with such an indefinable feeling that something is “amiss.” I am satisfied that it is just and equitable to order the SALPC to pay costs of the first, second and third Applicants, as well as the second Respondent on an attorney-client scale.

70. As alluded to at the start of this judgment, whilst I have granted the LSSA’s application to join these proceedings as the fourth Applicant, I do not intend to grant it any costs. To oblige the SALPC to pay the costs of a party that entered the fray at such a late stage and whose submissions were a duplicate of those already made by the other Applicants would be inequitable.

71. As a result, the following order is made:

ORDER

1. The application is enrolled and determined as a matter of urgency pursuant to the provisions of uniform rule of Court 6(12) and any non-compliance with the ordinary rules and practices pertaining to forms, service and enrolment is hereby condoned.
2. The Black Lawyer’s Association is granted leave to intervene and is hereby joined as the third applicant to the proceedings in respect of Part A and Part B of the notice of motion.
3. The Law Society of South Africa is granted leave to intervene and is hereby joined as the fourth applicant to the proceedings in respect of Part A and Part B of the notice of motion.
4. Pending the finalisation of the review application brought by applicants in Part B hereof, First Respondent is interdicted and prohibited from:
    4.1. announcing an election date for the election of members to the second respondent;
    4.2. calling for the nomination of candidates for the aforesaid election;
    4.3. conducting elections for the appointment of members to second respondent.
5. To the extent that the First Respondent has, prior to this order, taken any steps in relation to 4.1 and/or 4.2 of this order, it shall:

5.1. within 24 hours of handing down of this order, using the same medium used in calling for nominations and/or announcing the date of the election, publish the terms of this order; and

5.2. immediately cease to call for or accept nominations of candidates for the aforesaid election.

6. The first Respondent shall pay the costs of the first and second Applicants on an attorney-own client scale.

7. The first Respondent shall pay the costs of the third Applicant on an attorney-own client scale.

8. The first Respondent shall pay the costs of the second Respondent on an attorney-own client scale.

K STRYDOM

ACTING JUDGE OF THE HIGH COURT, GAUTENG DIVISION, PRETORIA

Judgment reserved: 18 July 2024

Judgment handed down: 7 August 2024

Appearances:

For the first and second Applicants:

Adv M Ipser with Adv K Payi

Instructed by Wadee & Wadee Attorneys

For the third Applicant (intervening)

Adv Manyage SC with Adv MZ Makoti

Instructed by GM Tjiane Attorneys Inc

For the fourth Applicant (intervening)

Adv Maphuta

Instructed by GM Tjiane Attorneys Inc

For the first Respondent:

Adv. N Cassim SC with Adv T Tshavhungwa

Instructed by Damons Magardie Richardson Attorneys

For the second Respondent:

Adv T J Machaba SC with Adv A Louw

Instructed by J. S. Mathibela Attorneys