IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

Date: **31 MARCH 2022** Signature: _____

CASE NO: 43422/20

In the matter between:

K MALAO INC	First Applicant
KOTSOKOANE ATTORNEYS	Second Applicant
SENNE INC	Third Applicant
MABUSE ATTORNEYS	Fourth Applicant
MATUVHATSHINDI ATTORNEYS	Fifth Applicant
NDOU INC	Sixth Applicant

and

THE MINISTER OF TRANSPORT	First Respondent
THE CHAIRPERSON OF THE BOARD: ROAD ACCIDENT FUND	Second Respondent

THE ROAD ACCIDENT FUND Third Respondent

MR COLLINS LETSOALO Fourth Respondent

NEUKIRCHER J:

1] This is an application to set aside the appointment of the fourth respondent (Letsoalo) as the Chief Executive Officer (CEO) of the third respondent (the RAF). It is brought by various firms of attorneys[1] who state:

"10. The applicants specialise in motor Vehicle Accident litigation wherein they represent plaintiffs from various parts of the country in claims for compensation against the fourth respondent, the Road Accident Fund. Each applicant acts for a number of plaintiffs in pending and unresolved matters against the Road Accident Fund, for compensation.

11. The applicants act in these proceedings in their own interest to protect their constitutional right to obtain effective legal redress for victims of road accidents with valid claims against the Road Accident Fund. They assert their Section 22 right to act as attorneys for their clients in proceedings against the RAF. They also act in the interests of their clients who have a Section 34 constitutional right of access to the courts to determine legal disputes with the RAF."

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[1] Referred to herein as 'the applicants'

2] The applicants further state that in the majority of matters where they are the plaintiffs' attorneys of record, they have entered into Contingency Fee Agreements[2] with their clients who are often destitute and who require access to courts under s34 of the Constitution[3]. They state that they and their clients therefore have an interest in a RAF which is competently run and managed and that the appointment of Letsoalo by the first respondent (the Minister) *"poses a threat to the proper functioning of the Road Accident Fund and as a result, the resolution and payment of plaintiffs' claims."*

3] The applicants have thus, in argument before me, relied on s38 of the Constitution which provides:

"38. ***Enforcement of rights****.- Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-*

(a) anyone acting in their own interest;

(b) anyone acting on behalf of another person who cannot act in their own name;

(c) anyone acting as a member of, or in the interest of, a group or class of persons;

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2 In terms of the Contingency Fees Act no 66 of 1997

3 Section 34: "*Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."*

(d) anyone acting in the public interest; and

(e) an association acting in the interest of its members."[4]

4] In seeking their relief, the applicants then proceed to attack the grounds upon which Letsoalo was appointed by the Minister.

THE LOCUS STANDI ISSUE

5] Prior to the hearing, I notified that parties that I required submissions on the issue of the applicants' *locus standi*. In particular, the question posed by me was the following:

"An attorney's mandate to litigate is derived directly from the client's instruction. This would include any agreements re the payment of fees and the fee structure. The fact that an attorney "bankrolls" a client's litigation does not detract from this. The right to claim costs of litigation is that of the client and not the attorney. It is the plaintiff who is entitled to be reimbursed his/her costs of litigation when suing RAF (pursuant to our adversarial system where generally costs follow the result). If the RAF defaults on a costs payment, it is not the attorney who sues the RAF in his/her own name, but obo the successful plaintiff. And similarly, if the attorney is not paid, it/he does not sue the RAF but would sue the client pursuant to the fee agreement.

Pars 11,12 and 13 of the founding affidavit notwithstanding, the parties are invited to consider this issue. Should they wish to file further

[4] The relevant provisions being s38(a) and (c)

affidavits and heads of argument, same will be discussed at 09h30 on Friday 15 October 2021."

6] The applicants as well as the second, third[5] and fourth[6] respondents all filed further heads of argument[7] on the issue. On 15 November 2021 the applicants then emailed a copy of what they termed "relevant case law" to me - this being the matter of **The Trustees for the time being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Another (Bae Estates)**[8] - where a point of *locus standi* was taken for the first time on appeal.

7] In writing for a unanimous court, Makgoka JA stated:

"[35] *Significantly, this point*[9] *was not even pleaded. In paras 8-10 above, I have set out fairly comprehensively, the points in the trustees' answering affidavit upon which they rested their defence to the application. This was not one of them. The point was raised for the first time in the application for leave to appeal. Ordinarily, a point of lack of locus standi should have been pertinently raised in the answering affidavit to enable Bae Estates to meet it, and for the high court to pronounce on it.*

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5 They filed their supplementary heads of argument on 22 October 2021

6 He filed his further heads of argument on 22 October 2021

7 The applicants filed their second supplementary heads of argument on 10 October 2021 and further submissions on locus standi on 14 October 2021

8 (Case no 304/2020) [2021] ZASCA 157 (5 November 2021)

9 I.e the point of locus standi

[36] It is so that the mere fact that a point of law is raised for the first time on appeal is not in itself a sufficient reason for refusing to consider it. If the point is covered by the pleadings, and if its consideration on appeal involves no unfairness to the other party against whom it is directed, a court may in the exercise of its discretion consider the point. It would be unfair to the other party if the point of law and all its ramifications were not canvassed and investigated at trial. In this case, the point was neither covered in the affidavits, nor was it canvassed and investigated in the high court. It is, therefore, patently unfair to Bae Estates to have to be confronted with the point for the first time on appeal. For this reason alone, the locus standi point must be dismissed. But, in any event, as I show below, there is no merit to the point."

8] But this case is not apposite. In the matter to hand, I raised the issue of *locus standi* prior to the hearing; I gave the parties time to file heads of argument and, if they wished to do so, further affidavits on this point and I also gave them an opportunity to file further heads of argument after the hearing if they wished to do so.

9] The principle emphasized in **Bae Estates** is an age-old one and that is that no party should be ambushed at trial. However, where the point raised is covered by the pleadings and its consideration involves no unfairness to the party against whom it is raised, a court may in the exercise of its discretion consider the point. This does not only apply to appeals, but to all matters.

10] It is trite that the applicants are required to establish their locus standi in their founding papers[10]. The question is whether they have done so.

The s34, as read with s38(c) argument

11] In **Khorommbi Mabuli Incorporated v Road Accident Fund and Others**[11], Thlapi J dealt with a contempt of court application, brought by the applicant attorneys firm, on behalf of its client. She stated:

"[29] According to Mr Lazarus the applicants had demonstrated that they had a substantial interest in the order, hence the launch of the application on behalf of their clients. I do not find that such direct and substantial interest, in their capacity as attorneys for the judgement creditors had been established or properly articulated. Alternatively, a further complication is that no confirmatory affidavits from the judgement creditors have been obtained and annexed to the papers."

12] Not long after, and in the second contempt of court application in **Khorommbi Mabuli Incorporated v Road Accident Fund and Others**[12] Basson J stated:

"[10] This time the applicant argues that it had been authorised by the claimants (the judgment creditors) to bring the contempt application on

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10 United Methodist Church of South Africa v Sokufunumala 1989 (4) SA 1055 (O) at 1057D-I; Tavakoli and Another v Bantry Hills (Pty) Ltd 2019 (3) SA 163 (SCA) para 26

11 (6683/21) [2021] ZAGPPHC 162 (12 March 2021)

12 [2021] ZAGPPHC 386 (11 June 2021)

their behalf and referred the court to the confirmatory affidavits by the judgment creditors attached to the papers.

[11] I am in agreement with what Tlhapi, J held in her judgment: The applicant is a firm of attorneys and not a judgment creditor. It is the judgment creditor that has a direct and substantial interest in the application. A third party cannot bring an application for contempt of court…

[12] None of the individual claimants, who are all judgment creditors against the RAF, and who have a direct and substantial interest in the outcome of this application, have been joined in this contempt application. In this regard I am in agreement with the submission that the applicant does not have the necessary locus standi to bring the application on behalf of the judgment creditors and the application for contempt against the 1st, 2nd, 3rd and 4th respondents should be dismissed on this ground alone. "

13] In the matter before me, the applicants have not stated why their clients are not the applicants. They have failed to join any of their clients to these proceedings, and they have failed to attach any power of attorneys or confirmatory affidavits by any of their clients authorising them to act on their behalf in this particular matter. It must be borne in mind that the applicants are all attorneys firms. Whilst they profess to act in this matter on behalf of their clients in order to obtain effective legal redress for them, they cannot do so unless authorised. The applicants do not state that they have any mandate from their clients other than to

institute claims against the RAF – this is clear from the statement that *"[e]ach applicant acts for a number of plaintiffs in pending and unresolved matters against the Road Accident Fund for compensation."*. Thus it is clear that their mandate is limited to that.

14] In this regard it is important to note that the claim against the RAF remains that of the applicants' respective clients and it is this claim that must be adjudicated and finalised.

15] In **Road Accident Fund v Legal Practice Council and Others**[13] the following was said:

" [27] Most of the opposing respondents argue that the relief which the RAF seeks in this application is unconstitutional, essentially since it will infringe the successful claimants' constitutional rights to equal protection and benefit of the law and access to courts. The RAF, on the other hand, argues that the relief it seeks - either in terms of r 45A of the Uniform Rules of Court or the common law or s 173 of the Constitution of the Republic of South Africa, 1996 - is to prevent a constitutional crisis from occurring if it can no longer fulfil its constitutional obligations to provide social security and access to healthcare services.

[28] Section 9(1) of the Constitution provides that '[e]veryone is equal before the law and has the right to equal protection and benefit of the

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13 2021 (6) SA 230 (GP)

law'. Section 34 affords everyone 'the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court'. The right to execute an order is incidental to the rights afforded by s 34. As was said by Mokgoro J in Chief Lesapo v North West Agricultural Bank and another 2000 (1) SA 409 (CC) para 13:

'An important purpose of s 34 is to guarantee the protection of the judicial process to persons who have disputes that can be resolved by law. Execution is a means of enforcing a judgment or order of court and is incidental to the judicial process. It is regulated by statute and the Rules of Court and is subject to the supervision of the court which has an inherent jurisdiction to stay the execution if the interests of justice so require.'

(Footnotes omitted.)

And Jafta J put it as follows in Mieni v Minister of Health and Welfare, Eastern Cape 2000 (4) SA 446 (Tk) at 452G-H and 453C-D:

'The constitutional right of access to courts would remain an illusion unless orders made by courts are capable of being enforced by those in whose favour such orders were made. The process of adjudication and the resolution of disputes in courts of law is not an end in itself but only a means thereto; the end being the enforcement of rights or obligations defined in the court order.' "

16] The respondents have argued that even after the applicants filed a Rule 16A notice, no other party and no judgment creditor applied to be joined in this application to state that their rights have been impacted by Letsoalo's appointment. They argue that the only parties who wish to review the decision to appoint Letsoalo are the applicants.

17] As has already been stated, an attorney derives his mandate from his client. He obtains his instructions from his client. Most, if not all, attorneys have a fee agreement with their client and, in matters involving the RAF, many attorneys act on contingency. But this does not mean that the attorney derives an interest in the litigation – to the contrary, the right remains at all times that of the client. It is the client whose case is asserted in a court, it is the client who (if successful) obtains judgment in his name and becomes the 'judgment creditor'. The costs of the litigation are also payable to the client as part of his successful suit. If the judgment debt (and costs) are not paid, a warrant of execution and attachment may be issued – but this is in the name of the plaintiff. Our courts have also stated that contempt of court proceedings cannot be bought by attorneys as they have no direct or substantial interest in the application -they must be in the name of the judgment creditor/plaintiff.

18] In seeking to assert the s34 rights of their clients, the applicants' complaints do not go far enough to demonstrate that any of their clients have either been denied access to the court or access to justice – they have pointed to not one matter in which a claim has not been resolved, nor one matter in which payment has not been received.[14]

[14] A delay in payment is to be differentiated from a complete failure to pay

19] In fact, the complaint appears to be based on the following passages in the Founding Affidavit itself:

"14. The applicants bring this application because the appointment of the fourth respondent by the first respondent as the CEO of the Road Accident Fund poses a threat to the proper functioning of the Road Accident Fund and as a result, the resolution and payment of plaintiff's claims. This apprehension is not speculative but is based on empirical evidence.

15. The resolution of plaintiff's claims is jeopardised by the appointment of the CEO in the following respects:

15.1 He already has a track record of destabilising the RAF. This includes suspending senior officials, making new appointments who report directly to him despite being junior to middle and/or senior managers. He has forbidden claims handlers to communicate with panel attorneys despite matters being on trial. He has taken decisions on matters on which he has no powers since they fall within the Board's remit. This includes dispensing with panel attorneys and cancelling the tender for appointment of a new panel. Since June 2020 the legal representation of the RAF in Court proceedings in pending trials has been a perplexing mess that, due to the intransigence of Mr Letsoalo remains unresolved. He has shown no leadership in this regard and has been responsible for the largest litigation crisis in all divisions of the High Court;

15.2 He is taking steps aimed at entrenching delays in payment of road accident fund victims whose claims have been finalised either through settlement or litigation. He is instructing banks not to cooperate with sheriffs who wish to attach RAF assets for non-payment of judgment debts. He is seeking to interdict sheriffs in court proceedings in August 2020 from attaching Fund assets;

15.3 He has turned his back on the lawful system of procuring legal services from panel attorneys duly appointed after a public procurement process. No attorney representing the RAF in court proceedings since June can give the assurance to the Court that he has bene properly appointed by the RAF, on the one hand, or that he still holds instructions to represent the RAF, on the other hand. This affects the validity of legal representation of the RAF in Court proceedings and therefore affects the validity of the legal process for compensation of such plaintiffs;

15.4 He is vindictive and takes reprisals against attorneys who take him to Court. This is demonstrated by this conduct against those panel attorneys who challenged him in Court proceedings regarding the decision dispensing with panel attorneys from June 2020."

20] As is clear from the above, this application has more to do with the self-interests of the applicants than their professed duty towards their

clients. This is made more obvious by the fact that there has been much litigation on the subject of the termination of the panel of attorneys by the RAF. Whilst it is certainly so that, initially, there was much confusion and consternation caused by RAF's non-appearance at the civil trial roll call in these matters[15], that situation was remedied by the fact that judgment was granted in default of the RAF's appearance in terms of the Uniform Rules of Court and, later, with the guidance of Directives issued by the Judge President of the Gauteng Division[16].

21] Thus, at no stage were plaintiffs denied access to courts or access to justice. One must also never lose sight of the fact that there is no rule which would entitle a party, or a court for that matter, to force another party to come to court and defend a matter they did not wish to defend. That is precisely why a court is entitled to grant judgment against a party in default of an appearance.

22] The applicants allege that the interest of personal injury attorneys is self-evident. The submission is that a dysfunctional RAF adversely affects the rights of plaintiff attorneys in practising in the courts as non-appearance by the RAF or their attorneys at trial and non-payment of judgment debts adversely affects all role players.

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15 Dichabe v RAF (case no 18770/16 – Gauteng Division, Pretoria); judgment date 15 June 2020 – Neukircher J

16 Revised Directive 1 of 2021 re Civil Trials in the Gauteng Division of the High Court (issued on 11 June 2021); Revised Consolidated 18 September 2021 Directive re Court Operations in the Gauteng Division of the High Court

23] In my view the applicants' argument in this matter is artificial: firstly - as stated - the Rules of Court specifically cater for instances where the defendant is in default of appearance. The courts are not hamstrung by a non-appearance of the RAF at trial – the court may grant judgment in default of the RAF's appearance; secondly, the applicants have not pointed to any specific instances of non-payment by the RAF. At best their argument is that payment has been delayed. This is not novel and it is not unique to the RAF. As previously pointed out, this has been dealt with in several instances by our courts in the past year and, bearing in mind that the 6 month hiatus granted on warrants of execution in **RAF v LPC**[17] has passed, the applicants are entitled to utilise the mechanisms provided in the Rules to enforce payment – just as they would in any other matter against a defendant who fails to satisfy a judgment debt.

24] Thus, the section 34 rights upon which the plaintiffs rely on behalf of their clients are firstly not theirs to assert, secondly they have failed to join (or provide a mandate from) any party who alleges that their section 34 rights have been subverted, and thirdly, as they are not, and will not ever be, a judgment creditor in a claim instituted by a plaintiff against the RAF. They have therefore not demonstrated any direct and substantial interest on this leg of the argument.

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17 At paragraph 13 supra

The s22, as read with s38(a), argument

25] Section 22 of the Constitution states:

"*Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.*"

26] In **Giant Concert CC v Rinaldo Investments (Pty) Ltd**[18] the court held that:

"33. The separation of the merits from the question of standing has two implications for the own-interest litigant. First, it signals that the nature of the interest that confers standing on the own-interest litigant is insulated from the merits of the challenge he or she seeks to bring. An own-interest litigant does not acquire standing from the invalidity of the challenged decision or law, but from the effect it will have on his or her interests or potential interests. He or she has standing to bring the challenge even if the decision or law is in fact valid. But the interests that confer standing to bring the challenge, and the impact the decision or law has on them, must be demonstrated.

34. Second, it means that an own-interest litigant may be denied standing even though the result could be that an unlawful decision stands. This is not illogical. As the Supreme Court of Appeal pointed out, standing determines solely whether this particular

[18] [2012] ZACC 28 (29 November 2012) para 31

litigant is entitled to mount the challenge: a successful challenge to a public decision can be brought only if "the right remedy is sought by the right person in the right proceedings".[39] *To this observation one must add that the interests of justice under the Constitution may require courts to be hesitant to dispose of cases on standing alone where broader concerns of accountability and responsiveness may require investigation and determination of the merits. By corollary, there may be cases where the interests of justice or the public interest might compel a court to scrutinise action even if the applicant's standing is questionable. When the public interest cries out for relief, an applicant should not fail merely for acting in his or her own interest."*

27] But the **Giant Concerts** case is to be differed on the application of the facts – in that case, Giant Concerts sought to challenge the lawfulness of a contract under which the eThekwini Municipality sold land to the respondent, Rinaldo Investments. The aggrieved applicant had sought to purchase that land and had lodged an objection to the sale of the land to Rinaldo, but the agreement was concluded anyway. The Supreme Court of Appeal found that Giant Concerts did not have legal standing to challenge the lawfulness of the contract between eThekwini and Rinaldo Investments and this decision was upheld by the Constitutional Court which found the following:

"55. The inference that Giant was merely toying with process, or seeking to thwart a propitious public development because it had

been made available to someone else, is therefore one the Court is entitled to draw. The consequence is that Giant lacks standing, since its interest remains incipient and has never become direct or substantial.

56. Giant's mere participation in the notice and comment process by lodging an objection did not confer standing on it to challenge the transaction. The very point of that process is to identify objections, to afford them expression, and then to evaluate and consider them. It is not logical to assert that an own-interest standing qualification arises from participation in a process if the objection remains hypothetical and academic.

57. Section 217 of the Constitution, on which Giant relied, does not give stronger warrant to its claim to standing. This is because Giant never gave substance to its complaint that the process should have involved competitive tendering by even minimally showing in the review proceedings that it had the capacity to make a competitive alternative proposal. Ultimately this is why it should be denied standing."

28] Insofar as the applicants base their claim on section 22 of the Constitution, they must demonstrate on what basis they have been prevented from plying their trade and, in my view, this is where the applicants' argument stumbles. The appointment of Letsoalo does not detract from the applicants' choice to apply their chosen occupation – in fact, they apply their trade freely which is what the Constitution

allows them to do. But the applicants are enjoined to apply their trade within the confines of the applicable law, this being the Legal Practice Act[19] and all the Rules that apply to their trade, for example the Superior Courts Act[20] and Uniform Rules of Court, to name just two.

29] The fact is that this matter is about little more than the fact that the applicants are aggrieved by their termination from the RAF panel of attorneys and/or the fact that the parlous financial state of the RAF (which has existed for many years prior to Letsoalo's appointment) have resulted in delayed payment[21] of plaintiffs' claims[22].

30] Amongst others, this issue was raised in **FourieFismer Inc and Others v Road Accident Fund and related matters**[23] and when a section 18(3) application was heard by the Full Court, the following was noted:

"ii) Chaos in the civil rolls and the judicial system in disarray: The Court cited examples of cases being postponed, matters proceeding by default and a general state of uncertainty in the system as well as the Courts regarding RAF matters. In those examples Courts stood matters down to the next day where in one instance it appears finality was reached for the benefit of both the claimant and the RAF and in the other it was not clear what occurred. The RAF says that its inhouse staff including lawyers are making good progress in resolving matters and that the crisis

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19 28 of 2014
20 10 of 2013
21 Which is to be differentiated from non-payment
22 A fact which is also not new or unique to Lesoalo's appointment
23 2020 (5) SA 465 (GP)

that the respondents allude to are in the words of Davis J[24] *'more illusionary than real'.*

(iii) Of course any suggestion of a crisis in the civil rolls or of the juridical system being in disarray requires to be taken seriously. What emerges however is that there has been some disruption which one imagines would have been inevitable with the transition from an old established model to a new model whose fault lines are still to emerge. There has certainly been disruption and a level of uncertainty but given the volume of RAF matters that come before our Courts, even in those cases cited, the outcomes have generally not been prejudicial to claimants or the system as a whole. In this regard it must be recalled that claimants are generally represented by attorneys and counsel who will seek to ensure that the interests of claimants are not imperiled and courts at the same time will seek to ensure that those interests are also protected and that the judicial system does not fall into disarray. Some of the examples cited compellingly demonstrate how courts have been proactive in protecting the integrity of the system for the benefit of all and are duty bound to oversee settlement agreements when they are made orders of court.

(iv) Finally, and in passing, one is compelled to observe that some two and a half months after the grant of the review order and the ongoing suspension of its operation occasioned by both the application for leave to appeal as well as the automatic appeal in terms of Section 18(4), the

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[24] Davis J heard Part A of the application ie it was an application for interim relief. He dismissed it as he found that the applicants had not demonstrated a *prima facie* right even if open to some doubt. Part B was heard by Hughes J who granted certain relief

evidence of chaos, disruption and a judicial system in disarray remains scattered, anecdotal and relatively isolated if regard is had to the nature of the disruptions, how they have been managed as well as the volume of cases that are being dealt with. If anything, the crisis the respondents make reference to, would have exacerbated over time resulting in the possible implosion of the system or the emergence of more sustained harm but no further evidence of this has emerged."[25]

31] These allegations[26] have been raised several times before and have been raised once more before me, but in my view they do not found the applicants' *locus standi:* the applicants are all admitted legal practitioners who practice under the watchful eye of the Legal Practice Council (LPC)[27]. Thus, the practice of their trade is subject to, or limited, by the application of that law and the Rules and Codes published by the LPC. For as long as they remain on the roll of legal practitioners, they are entitled to represent a client from whom they derive their mandate to litigate and from whom they also receive payment for services rendered. The latter would be pursuant to either a fee arrangement or via an agreement concluded under the Contingency Fees Act 66 of 1997. At no stage does an attorney acquire any right qua his client to the litigation itself.

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25 Road Accident Fund and Others v Mabunda and Others (15876/2020; 17518/2020; 18239/2020) [2020] ZAGPPHC 386; [2021] 1 All SA 255 (GP) (18 August 2020) para 60

26 Of systemic chaos, threats to the proper functioning of the RAF, destabilisation of the RAF and the delayed resolution of plaintiffs' claims

27 Established by the Legal Practice Act 28 of 2014.

32] The appointment of Letsoalo as CEO of the RAF neither deprives the applicants of their right to practice their chosen trade under section 22 of the Constitution, nor of their entitlement to receive their remuneration from their clients.

Conclusion

33] Whilst the applicants assert the injunctive relief stipulated in s172(1)(a)[28] of the Constitution, I am of the view that there is no conduct inconsistent with the Constitution which requires that a declaration of invalidity be made. I am of the view that there is no triable issue[29] which confers upon the applicants the *locus standi* to bring this application.[30]

34] I am therefore of the view that the application must fail on that basis alone. Given this, it is unnecessary to consider the merits of the application.

Costs

35] As to the issue of costs: there is no reason to deprive any of the respondents of their costs. They have all been successful in their opposition. They all seek costs of two counsel and I am of the view that, given the complexities of the matter, costs of two counsel are warranted.

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28 "*172(1) When deciding a constitutional matter within its power, a court-*
(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency…"

29 Mukaddam v Pioneer Foods (Pty) Ltd and Others 2013 (5) SA 89 (CC) para 16

30 Moropa and Others v Chemical Industries National Providence Fund and Others 2021 (1) SA 499 (GJ) para 31 – the legal standing must be determined independently of the merits of the challenge

Order

36] The order I therefore make is the following:

The application is dismissed with costs, which costs shall include the costs of two counsel.

NEUKIRCHER J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 31 MARCH 2022.

For the applicant	:	EC Labuschagne SC, with him I Hlalethoa and V Mabuza
Instructed by	:	K Malao Inc
For the 1st respondent	:	J Motepe SC, with him MV Magagane
Instructed by	:	State Attorney, Pretoria
For the 2nd and 3rd respondents	:	NA Cassim SC, with him S Freese
Instructed by	:	Malatji & Co. Inc
For the 4th respondent	:	C Puckrin SC, with him R Schoeman and P Nyapholi-Motsie
Instructed by	:	Malatji & Co. Inc
Matter heard on	:	15 October 2021