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

Case No.: **20698/2023**

In the matter between:

THE CAPE ORGANISATION FOR THE DEMOCRATIC TAXI ASSOCIATION: GEORGE BRANCH	Applicant

and

GEORGE MUNICIPALITY	First Respondent
GEORGE MUNICIPAL MANAGER	Second Respondent
GEORGE TRAFFIC MANAGER	Third Respondent
GEORGE PROVINCIAL TRAFFIC DEPARTMENT	Fourth Respondent
CHIEF PROVINCIAL TRAFFIC OFFICER	Fifth Respondent
MINISTER OF POLICE	Sixth Respondent
PROVINCIAL COMMISSIONER OF POLICE WESTERN CAPE	Seventh Respondent
STATION COMMANDER CONVILLE POLICE STATION	Eighth Respondent

STATION COMMANDER GEORGE POLICE STATION Ninth Respondent

DIRECTOR OF PUBLIC PROSECUTIONS Tenth Respondent

SENIOR PUBLIC PROSECUTOR: GEORGE MAGISTRATES COURT Eleventh Respondent

SENIOR PUBLIC PROSECUTOR: THEMBALETHU MAGISTRATES COURT Twelfth Respondent

Hearing date: 30 August 2024

JUDGMENT DELIVERED ON 5 NOVEMBER 2024

GORDON-TURNER, AJ:

Introduction

1. The George branch of the Cape Organisation for the Democratic Taxi Association ("**CODETA George**") brought this application on behalf of its members whose vehicles were seized by the George Municipality ("**the municipality**") over the period from December 2021 to August 2023. The merits of this application were overtaken by events pending the hearing. The applicant, acknowledging that the matter was resolved, contends that the substantive relief sought in the notice of motion is now moot. The applicant persists, however, in order to recover its costs.

2. The applicant prayed in this application for orders:

   2.1 Condoning its non-compliance and dispensing with the rules in regard to forms, service and timeframes and granting leave to proceed urgently under Rule 6(12);

2.2 Declaring the respondents' continuous retention of the applicant's members' motor vehicles, listed on an annexure to the founding affidavit (**the annexure**), as unconstitutional and unlawful;

2.3 Compelling the respondents to return the vehicles (as listed in the annexure) to their registered owners with immediate effect – the cause of action for this relief being the *rei vindicatio* alternatively section 31 of the Criminal Procedure Act, 51 of 1977 ("**CPA**"); and

2.4 Directing that the respondents pay the costs of the proceedings on an attorney and client scale, one paying, the other to be absolved.

3. When requested at the hearing to clarify whether the applicant was withdrawing its claim for declaratory relief, counsel for the applicant advised that he was instructed that if the Court was inclined to entertain that prayer, the applicant would accept this.

4. Our courts ought not to decide matters of academic interest only.[1] The discretion to grant declaratory orders ought not to be exercised in favour of answering any question once it has become *"merely abstract, academic or hypothetical"*.[2]

---

[1] *Public Protector of South Africa v Chairperson of the Section 194(1) Committee and Others* (627/2023) [2024] ZASCA 131 (1 October 2024) at para [30]

Clear Enterprises (Pty) Ltd v Commissioner for South African Revenue Services and Others [2011] ZASCA 164 para 12.

[2] *President of the Republic of South Africa and Another v Hugo* 1997 (4) SA 1 (CC) at para [54], quoting from *JT Publishing (Pty) Ltd v Minister of Safety and Security and Others* 1997 (3) SA 514 (CC) at para [15].

5. That being said, the Court enjoys a discretionary power to entertain even admittedly moot issues, and can take into account various factors in order to decide whether it is in the interests of justice to hear a moot matter.[3] These factors include whether any order which the Court may make will have some practical effect either on the parties or on others, the nature and extent of such practical effect of any possible order, the importance of the issue, the complexity of the issue, the fullness or otherwise of the arguments advanced and the resolution of disputes between different courts.

6. For reasons that are apparent from the background to and history of this application, none of the above factors apply in this particular case.

7. Accordingly, the only issue to be determined is that of costs. A decision on costs necessarily requires an examination of the merits of the disputes.

Litigation history

8. When the proceedings were instituted, the respondents were the George Municipality, the George Municipal Manager and the George Traffic **Manager** (collectively referred to as **"the municipal respondents**"), and the George Provincial Traffic Department and Chief Provincial Traffic Officer as the fourth and fifth respondents (collectively referred to as "**the provincial respondents**").

9. The proceedings commenced as urgent in the Third Division of this Court

---

[3] *MEC for Education, Kwazulu-Natal v Pillay* [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) at paragraph [32].

with several appearance during the course of December 2023. On 29 January 2024 the matter was referred to the opposed urgent court roll for hearing on 23 February 2024, with the respondents' right to contest the urgency of the matter reserved. At that hearing, without any opposition, the Court granted the applicant's application in terms of Rule 10 launched on 8 December 2023 for the joinder of further respondents.

10. Following thereon, the Minister of Police, the Provincial Commissioner of Police in the Western Cape, the Station Commander of Conville Police Station, and the Station Commander of George Police Station were joined as the sixth to ninth respondents (hereafter referred to as "**the police respondents**"). The Director of Public Prosecutions, the Senior Public Prosecutor in the George Magistrates Court, and the Senior Public Prosecutor in the Thembalethu Magistrates Court were joined as tenth to twelfth respondents (hereafter referred to as "**the prosecution respondents**").

11. The prosecution respondents filed a notice to abide, and the police respondents have not responded or participated in the litigation.

12. On 5 June 2024, the application was set down for hearing on 30 August 2024 on the opposed semi-urgent roll.

Background

13. During the period May to December 2021, taxi operators, including members of the applicant, had unlawfully used the facilities of the George

Municipality ("**the municipality**") and had refused to hand over their vehicles and accept fines when approached by law enforcement to fine the drivers and impound vehicles found to be operating unlawfully.

14. The municipality applied for and was granted an order against the applicant and its members on 20 December 2021 under a rule *nisi* restraining and interdicting them, among other things, from:

    14.1 undertaking road-based public transport in any manner whatsoever pending the grant of valid permits entitling them to do so;

    14.2 assaulting, threatening, intimidating and/or using abusive or derogatory language to the municipality, its staff or officials in any manner whatsoever;

    14.3 interfering in the municipality's activities in law enforcement in any manner whatsoever;

    14.4 using the municipality's facilities, routes, taxi ranks and platforms until they are issued with valid permits entitling them to use them; and

    14.5 disrupting the flow of traffic into and out of the George area, using and/or blocking any roads within the George Metropole and/or blocking any roads within the George Metropole.

15. The order also authorised and directed the applicant and the Sheriff, assisted in so far as needs be by members of the South African Police Services, to give effect to the order by immediately removing and/or

arresting any person found to be in contravention of the order and by immediately impounding any vehicle operated in contravention of the order.

16. The rule *nisi* was made final on 31 May 2022, from which time a permanent interdict was in place prohibiting any person whether affiliated to any organisation or not from operating a vehicle without a permit and using the municipality's facilities without a permit (**the interdict**).

17. From December 2021 vehicles of the applicant's members were seized and/or impounded. There is no dispute that the vehicles in question were being operated as taxis for public transport.

18. On 1 June 2022 the applicant sent a letter to the third respondent in which it was alleged that the municipality had "*unleashed an operation to intimidate our members by arresting them and impounding their vehicles for alleged transgressions that are not explained*". The letter further alleged that members of the applicant had been assaulted, that vehicles are kept in custody without any reasons given, that members are not sure if the municipality is taking the vehicles indefinitely or what the requirements are to have the vehicles released.

19. On 6 June 2022, the attorneys for the municipality responded to the applicant's 1 June 2022 letter. Reference was made to the Interdict granted to the municipality. The letter went on to record the following:

    19.1 The police are entitled in terms of section 20 of the CPA to seize an article, including a vehicle, which is concerned in or is on reasonable

grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere. This is in addition to the municipality's powers to impound vehicles in terms of section 87[4] of the National Land Transport Act, 5 of 2009 ("**NLTA**"). In the latter instance, the vehicle is released to the offender in the circumstances described in section 87(2). However in the former instance, the vehicle remains in the police's custody until the grant of any of the orders contemplated in sections 30 to 36 of the CPA, which may include an order that the vehicle be forfeited to the State in terms of section 35 of the CPA.

19.2 The municipality therefore denied that it was punishing the applicant's organisation or trying to abolish it.

19.3 The applicant's letter under reply had made very vague references to arrests and charges and impoundments made and therefore it was not possible to comment on them without the detail of each and every member referred to.

---

[4] That section provides:

"***87 Impoundment of vehicles***

(1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions thereof, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 90 (1) (a) or (b).

(2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only-

(a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or

(b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC, which is an impoundment fee.

..."

19.4 The municipality had a full list of arrests made by law enforcement as well as the police and a full list of vehicles impounded in terms of the NLTA and seized in terms of the CPA.

19.5 Vehicles impounded in terms of the NLTA would be released to their owners once fines had been paid.

19.6 Vehicles seized under the CPA where criminal cases were pending for contempt of court fall under the custody of the SAPS and their release would be in the discretion of the NPA and the Department of Justice, and as such the municipality had no involvement therein.

20. The applicant alleges that impoundment notices were not provided by the traffic officers at the time of seizure and that the vehicles were continuously retained and not released to the applicant's members "*for reasons unknown to them*" up to August 2023. This generalised statement cannot be fully reconciled with the allegation in the founding affidavit deposed by the chairperson of the applicant that the members of the applicant whose vehicles had been seized learned that they would be charged with contravention of the Interdict, and that they appeared at court.

The applicant's case in the founding affidavit

21. In its founding affidavit, the applicant confined itself to particulars of the fate of six of the vehicles listed as items 32, 24, 12, 5, 4 and 25 on the annexure as follows:

21.1 One driven by Ayabonga Sawula (**Sawula**) and owned by Landla

Joja, in which the criminal proceedings resulted in an order on 1 November 2023 under section 34(1) of the CPA to release the vehicle, yet, so alleged the applicant, "*the respondent ... refused to budge".*

21.2 Luthando Maxhonangwana who was arrested for contempt of court, and was unable to secure an answer from either the investigating officer or the prosecutor on the release of his vehicle;

21.3 Msindisi Ntozini (**Ntozini**) whose vehicle was seized but was not charged and instead issued with a fine in terms of the NLTA, which he paid;

21.4 Nkululeko Tshuta, Siphendulwe Ngqola and Maphiwandile Maseti were neither issued with fines nor were cases opened against them.

22. From these limited examples (which were confirmed on affidavit by the affected individuals), the applicant extrapolated to its other members and their vehicles, describing an alleged trend of the applicants being charged and appearing in court. That alleged trend was not confirmed by way of affidavits from those members who were not specifically named in the founding affidavit.

23. This extrapolated conclusion was followed, without more, by the conclusion that the continuous retention of the applicant's members' vehicles was unconstitutional (as an alleged infringement of the member's section 25 constitutional protection of property rights). The argument was that the

Order did not intend to authorise the municipality to retain the impounded vehicles indefinitely, as the respondents were allegedly doing. The argument was developed that the contemplated charges against the members were unfounded as the respondents relied upon an order made by a civil court, which did not give grounds for criminal charges in a criminal court. The applicant argued that the contempt of court charges levied ought to have been instituted in the same court that issued the order i.e., the High Court.

24. According to the applicant's attorney, Anitta Finini (**Finini**), who deposed to an affidavit on 29 August 2024, the applicant's members had visited the municipality's premises individually to establish what was required to obtain release of their vehicles. They allegedly failed to engage meaningfully with the municipality, the police and prosecution services – which is understood to mean that they engaged, but did not procure the result they desired. This report on such engagement was not made in the founding affidavit, nor was it confirmed on affidavit by the affected members of the applicant.

The opposing affidavits

25. The opposing affidavit on behalf of the provincial respondents was deposed on 7 December 2023 by Mr Quinton Williams (**Williams**). Apart from taking a point *in limine* regarding non-joinder, he pointed out that the applicant had failed to show how it complied with section 87 of the NLTA, or to make out a case that section 87 was not applicable to the relevant vehicles. Williams denied that any vehicles were being retained unlawfully and provided a

schedule setting out which vehicles were still held at the impoundment facility, which is controlled by the provincial respondents.

25.1 Details were provided of the reasons for impounding three vehicles, that could be released on payment of the impoundment fee.

25.2 He listed twelve vehicles that were repossessed by the financiers who hold the title to the vehicles, and attached copies of the orders obtained at the instance of those financiers, giving rise to attachment of those vehicles by the relevant Sheriff.

25.3 Twenty-two vehicles had been impounded under the Interdict.

25.4 Ntonzini's vehicle was not subject to an impound fee, could only be released upon finalisation of the criminal enquiry, and Williams had advised him that he had followed the incorrect procedure and should apply to be reimbursed the R7000,00 he had paid.

25.5 Sawula's vehicle had been repossessed in May 2023.

26. In a replying affidavit deposed on 7 December 2023, the applicant conceded that it could not persist with relief relating to the twelve repossessed vehicles. However, the applicant took issue with the account given by Williams, and characterised the criminal investigations as endless, prejudicial, unreasonable and unconstitutional, and the retention of the vehicles as inhuman and abusive. The Court was urged to exercise its inherent jurisdiction in terms of section 173 of the Constitution to order the release of the remaining vehicles.

27. The opposing affidavit on behalf of the municipal respondents was deposed by the municipality's Director: Community Services, Mr David Adonis (**Adonis**) was delivered on 6 December 2023. Adonis pointed out that the founding papers had failed to explain, in respect of each of the 37 vehicles, whether the vehicles were impounded by law enforcement or seized by SAPS.

    27.1 The founding affidavit also did not explain whether in the former event, the offenders pleaded guilty and paid the relevant fines entitling them to the release of their vehicles and in the latter event, whether criminal proceedings were pending, have been finalised or whether they engaged with the Public Prosecutor for George in relation to the release of the vehicles.

    27.2 In the case of Sawula, in whose favour an order to release his vehicle was made on 1 November 2023, no explanation was provided as to what he or the applicant had done to procure the release of the vehicle. Similarly, no information was provided about what, if anything, the other affected members of the applicant had done to procure the release of their vehicles.

28. In its replying affidavit of 11 January 2024 the applicant acknowledged that the applicant's application for registration made in September 2023 to the provincial taxi registrar had recently been refused.

Intervention by the applicant and its attorneys prior to the application

29. In August 2023, the applicant had intervened to seek a joint resolution for its members, and instructed its attorneys to approach the municipality to "*seek clarity as to how the issue of continuous retention of the vehicles can be resolved*".

30. Finini commenced engaging with the municipality on behalf of the applicant. For the preceding 14 months the applicant had not responded to the municipality's invitation of 6 June 2022 to provide a list of its members affected by the impoundments and arrests. Finini addressed a letter on 18 August 2023 to the municipality enclosing a list of 34 affected members and their vehicle details. She followed up with a letter on 30 August 2023 requesting the municipality to provide copies of the impoundment notices for those affected members, and a copy or extract from the court interdict that authorised the impoundments.

31. On 31 August 2023, the municipality informed the applicant's attorneys that to obtain information and access to any impoundment notices, they must follow the application process set out in the Promotion of Access to Information Act, 2 of 2000 (**PAIA**). The case number of the interdict was also provided. According to the municipal respondents, no PAIA application was made to the municipality.

32. In November 2023, these proceedings were instituted on the instructions of the applicant, and set down on 5 December 2023. The municipal and provincial respondents opposed.

33. In the founding affidavit for the joinder application served on 12 December 2023, Finini contended that the vehicles had been impounded for a very long time without any clarity as to when the investigations and prosecution would be concluded. She further contended, without any substantiation or particularity in relation to any of the remaining vehicles, that they were not required to be brought before the court to prove the charges against the applicant's members and there were no reasonable grounds for believing that the vehicles may be subjected to a forfeiture order. Despite investigation or prosecution being pending, she contended the vehicles were eligible to be released. She invited the prosecution respondents and the police respondents to explain whether they have any objection to the release of the vehicles, and threatened to seek a punitive costs order if they opposed the relief sought in terms of section 31(1) (a) of the CPA.

34. Prior to that affidavit, and on 4 December 2023, Mr C May (**May**) of the attorneys for the municipal respondents addressed an email to Finini.

    34.1 The letter asserted that having regard to the dates of impoundment of the vehicles, the urgency of the application was 'self-created'. The application was premised on section 31 of the CPA yet neither the SAPS nor the NPA had been joined. May asserted that a section 31 application should be brought to the Court where the criminal charges are pending, so the High Court did not enjoy jurisdiction. In the case of Sawula, an order had been made, so the matter was arguably *res*

judicata in relation to that vehicle. May proposed that the matter be referred to the semi-urgent roll on an agreed timetable.

34.2 Attached to the email was a notice in terms of Rule 35(14), calling for the applicant to make available for inspection, among other things, documentary proof that each of the 37 vehicles listed in the annexure are liable to be released to their owners either by virtue of the fact that the criminal proceedings in relation thereto have been finalised and/or in the case of impoundment, the impoundment fees have been paid. The response provided the same day was a tender to inspect the certificate of registration of the 37 vehicles in the annexure by arrangement between the parties. This response plainly did not address the request made.

35. On 8 December 2023, so Finini alleges in an affidavit filed on 29 August 2024, the applicant heard for *the first time* that the vehicles were retained in terms of the provisions of the CPA, that they were the subject of criminal proceedings and the provisions of the NLTA, that they were impounded in terms thereof, and that some of the vehicles were no longer in possession of the respondents and had been released to the Sheriff on behalf of vehicle financiers in terms of court orders.

36. Bearing in mind the exchange of correspondence between the applicant and the municipality during June 2022, Finini's assertion that the applicant learned the facts for the first time only on 8 December 2023 is clearly mistaken.

The Kweleta judgment

37. Counsel for each of the parties referred to the unreported decision of Lekhuleni J delivered on 22 January 2024 in the matter of *Kweleta v George Municipality and 9 others* under WCHC case number 22547/2023.

38. In *Kweleta*, the applicant's vehicle had similarly been seized and impounded by the municipality. The applicant argued that it was not in accordance with the empowering provisions of the NLTA and sought an order declaring that the impoundment of her motor vehicle was unconstitutional and unlawful, as well as an order compelling the respondents to release and return the vehicle to her forthwith – this echoes the relief sought in the present matter. The applicant and her husband had been assisted by CODETA, and instructed the same attorneys who represent CODETA George in the present matter. As in the present matter, Mr M Titus appeared for the applicant, Mr A Titus appeared for the municipal respondents, and Mr Abass appeared for the provincial respondents.

39. After considering sections 50(1), 87(1) and 89 of the NLTA, and the jurisdictional requirements before a vehicle may lawfully be impounded Lekhuleni J was satisfied that reasonable grounds had existed to impound the applicant's vehicle.[5] However he found that her prayer, in urgent motion proceedings, to declare the impoundment of her vehicle unconstitutional and unlawful to be legally incompetent. The declaration sought would have far-reaching consequences on the public of George and on other

[5] At para [4].

municipalities.[6] He held that the applicant, who had applied for urgent relief, would have had substantial redress at a hearing in due course, and if the applicant wanted her vehicle urgently, she could have paid the R2 500,00 impoundment fine and challenged the impoundment of her vehicle in due course at the Municipal Traffic Court as envisaged in section 87(1)(a) and (b) of the NLTA. Alternatively, she could have waited for the release of her vehicle when the matter was finalised as envisaged in section 87(1)(a) or (b) of the NLTA. The application was dismissed because the applicant had an alternative remedy at her disposal.[7]

40. In my view the reasoning of Lekhuleni J in *Kweleta* applies with equal force to the present matter. In this matter, the Court is no longer required to determine whether reasonable grounds existed for the impoundment of the 37 vehicles in question, because ultimately, the applicant conceded that the impoundments were <u>not</u> unlawful. The applicant has not, in any event, adduced sufficient evidence to enable the Court to make such a determination.[8]

41. After close of pleadings, so explains Finini, she requested the representatives of the provincial respondents to provide copies of the impoundment notices. Her affidavit is silent as to whether these were produced or not, and equally silent as to any request being made under

---

6 At para [42].
7 At para [44] to [45].
8 The undisputed evidence was that the impoundments were made under a law of general application, which does not permanently dispossess owners of their property. The applicant's belated concession was therefore wisely made.

PAIA.

42. The essence of the applicant's case is that the organs of state involved in this matter were responsible for keeping each of the applicant's members appraised regarding the fate of their vehicles. This proposition is untenable.

The impounded vehicles and their fate

43. On 23 May 2024, the applicant received a letter from the Senior Public Prosecutor reporting that he had called a meeting with the provincial respondents and the traffic department of the municipality in order to resolve the issue of the vehicles related to criminal proceedings.

44. According to Finini, the applicant was not apprised of the resolution reached between the prosecution services and the municipality on 23 April 2024.

45. She contends that had the municipal respondents and the provincial respondents apprised the applicant of developments they could have curtailed the costs incurred [in this application].

46. Finini's affidavit excluded any reference to the significant exchange of correspondence between the applicant and the municipality during June 2022 dealt with above.

Events subsequent to set down of hearing

47. On 27 August 2024, the provincial respondents filed an affidavit deposed to by Mr Quinton Williams (**Williams**), the Chief Provincial Inspector of Provincial Traffic Services, wherein he set out the status of the 37 vehicles

which the applicant seeks, in the notice of motion, to have returned to its members. He explained that some of the vehicles were released to financial institutions that held titles over them and obtained Court orders for their release. Some vehicles remain impounded due to ongoing criminal proceedings. In most cases the vehicle owners or drivers involved in those criminal proceedings had opted to pay admission of guilt fines and consequently the vehicles were released either to their owners or to individuals designated by the owners. One vehicle remains at the impound facility. That vehicle was impounded under the provisions of the NLTA. Williams explained that under normal circumstances and provided that there are no criminal proceedings instituted, the owner of the vehicle would have to pay an impound fee for the release of the vehicle. In that instance, there was a warrant of arrest connected to the driver of the vehicle. However, if the claimant, a Mr Chukuse, pays the impound fees, the vehicle can be released into his possession.

48. Williams' explanatory affidavit had been served on the applicant's attorneys on 26 August 2024. Finini deposed to an affidavit delivered on 29 August 2024 stating that the purpose of the affidavit was to summarise and crystalise the chronology of relevant events and to update the Court on developments that occurred subsequent to the close of pleadings. Finini explained that after considering Williams' affidavit, it "*then transpired that the vehicles concerned in this matter have since been released from the unlawful retention by the municipal respondents, the provincial respondents, and the Minister of Police save for one vehicle which I have referred to*

above". She contacted the applicant who confirmed the account in Williams' explanatory affidavit was indeed the position.

49. On 28 August 2024, counsel for the applicant, Mr M Titus, advised my Registrar that the applicant's argument would be limited to the issue of costs.

The applicant's submissions

50. The applicant's case is that the application was a necessity to resolve the issue of the continuous retention of the vehicles concerned: the firm intervention of the prosecution services to prevent the respondents' propensity to send the applicant's members from pillar to post was only taken after the institution of the proceedings, leading to progressive steps being taken to ensure release of the concerned vehicles. The applicant submits that it has been successful in achieving what was contemplated as the vehicles have been released from continuous retention.

51. The applicant accordingly contends that it is entitled to be awarded the costs of the application against those respondents that opposed in accordance with the general rule that costs should follow the result, asserting that it is entitled under section 195(1)(g) of the Constitution[9] to timely, accessible and

---

[9] Section 195(1)(g) provides:

"***Basic values and principles governing public administration***

(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

...

(g) Transparency must be fostered by providing the public with timely, accessible and accurate information."

accurate information, and that but for this litigation, the members of the applicant would not have learned of the fate of their impounded motor vehicles or secured their release.

52. Counsel for the applicant, Mr M Titus, submitted that the applicant was not attacking the impoundment of the vehicles, and it had not been the applicant's case that the seizure of the vehicles was unlawful. Counsel submitted that the way in which the arrests had been done was an affront to the dignity of the applicant's affected members.

52.1 He submitted that the only inference to draw from the municipality's letter of 6 June 2022 is that the continuous retention of the vehicles of the applicant's members was in retaliation, part of a strategy to "*curb behaviour*" and therefore in effect a punishment of the applicant's members.

52.2 He further submitted, with reference to section 31 of the CPA,[10] that if the vehicle seized was not required for evidence or for the purposes

---

[10] "***31 Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings***

(1)(a) If no criminal proceedings are instituted in connection with any article referred to in section 30 (c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.

(b) If no person may lawfully possess such article or if the police official charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

(2) The person who may lawfully possess the article in question shall be notified by registered post at his last-known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the State."

of a court order, it should have been released, that the charges against the applicant's members did not warrant forfeiture of their vehicles, and therefore the police respondents ought to have released them.

52.3 He acknowledged that the seizures were undertaken by the municipality and submitted that the sensible solution would have been for the municipality to abide the application and let the prosecution respondents deal with it.

52.4 He further submitted that when the municipality advised that an application should be made in terms of PAIA, this was unacceptable, as time was of the essence and in terms of the NLTA, impoundment notices should have been provided to each of the applicant's members at the time of impoundment. He submitted that the conduct of the municipality undermined the trust of the applicant's members in its services.

52.5 He acknowledged that on 8 December 2023, the applicant was provided with a spreadsheet showing which vehicles had been released, but many were still impounded and only repossessed vehicles had been released.

52.6 He submitted that on receipt of this application, the municipality should have simply abided the decision of the Court. Instead, it attacked the *locus standi* of the applicant by means of a Rule 35(14) notice requesting details of members and challenged the authority of

his instructing attorney to act for the applicant, which given the prior conduct over the preceding year and a half in which no meaningful engagement had taken place, was unreasonable and warranted a punitive costs order.

52.7 He conceded however that the respondents were entitled to interrogate the standing of the applicant, but submitted that it should not have been done aggressively.

The respondents' submissions

53. Counsel for the municipal respondents, Mr A Titus, submitted that the applicant had been advised by the municipality's attorneys in the correspondence of June 2022 that an approach needed to be made to the SAPS and to the NPA. Notwithstanding, the applicant persisted in seeking orders which it now claimed are moot. He submitted that the prayers seeking condonation for deviation from the rules and an urgent hearing had never been granted, and that the Court had not entertained the application on an urgent basis, all of which was relevant to the issue of costs. The applicant's prayers for declaratory relief and the release of the vehicles could not have been granted, to the knowledge of the applicant, until such time as the police respondents and the prosecution respondents had been joined. Accordingly, the municipality's non-joinder point had been successful.

54. Counsel for the municipal respondents also submitted that the municipality had been nothing but helpful to the applicant. He denied that the Rule 7

notice challenging the authority of the applicant's attorney was retaliatory, and explained that the Rule 35(14) notice served by the municipality concerning the members of the applicant had been directed at establishing the standing of the applicant, about which the municipality was now satisfied.

55. In regard to costs, Mr A Titus referred to:

55.1 the municipal respondents alerting the applicant to the fact that the matter was not ripe for hearing on 22 January 2024 in the absence of a joinder order yet the applicant insisted on having the matter enrolled;

55.2 the municipal respondents incurring costs for the two hearing dates and postponements in December 2023 and 22 January 2024;

55.3 the applicant insisting on arguing the main application and joinder application on the urgent roll on 23 February 2024; and

55.4 the outcome of the hearing on 23 February 2024 being another postponement, as five respondents who were to be joined were not before Court on the hearing date.

56. Mr A Titus referred to the lists provided by the provincial respondents that revealed 15 vehicles being repossessed by financial institutions on various dates ranging from 2022 to 2024 and 17 vehicles being released to their owners for various reasons in September 2023, March 2024, April 2024 and May 2024 and one vehicle being released in August 2024. He submitted

that it was disingenuous for the applicant to suggest that it was not aware of vehicles having been repossessed from its members and that they were unaware of vehicles being released prior to 31 May 2024. The applicant's professed ignorance of the date of its members vehicles, so submitted Mr A Titus, vindicated the municipal respondents' procedural challenges to the standing of the applicant and the authority of the applicant's attorneys. He refuted the argument advanced on behalf of the applicant that the *Biowatch*[11] principle applies, as the matter was not a constitutional one. He submitted that the litigation was vexatious and/or frivolous because the application was doomed to fail and was instituted without sufficient grounds. The municipal respondents sought the dismissal of the application with a costs order on an attorney and client scale.

57. Mr Abass, who appeared for the provincial respondents, equally sought the dismissal of the application, but was content with party and party costs. He pointed out that the owners must have known about the repossession orders and warrants issued at the instance of the financial institutions. Notwithstanding, even after the applicant was provided in December 2023 with a schedule showing which vehicles had been released, no change was made to the notice of motion and its annexed list of vehicles. Curiously, the applicant had not requested the provincial respondents to provide updated copies of the schedule as matters unfolded. It was incorrect to assume that the retention of the vehicles was done at the hands of the municipality

[11] *Biowatch Trust v Registrar, Genetic Resources* [2012] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) at paragraph [22].

because upon payment of the admission of guilt fine, a vehicle is released. The applicant had conceded that the impoundment of each vehicle was not unlawful, so, Mr Abass submitted, the respondents' conduct would not have been declared unlawful as prayed in the notice of motion. At least one vehicle had been released on 22 September 2023, prior to the launch of the application yet the applicant did not say so in its papers, which gave rise to doubt about whether it truly represents its members Furthermore, members of the applicant should have but did not inform the provincial respondents whether they had paid admission of guilt fines which would have entitled them to the release of their vehicles.

58. With reference to the *Kweleta* case,[12] he submitted that once the vehicles were impounded, the applicant's members could not complain about retention because they had a remedy. Mr Abass pointed out that the impoundments had occurred as a result of violations of the interdict granted in favour of the municipality. Taking account of the admission by the applicant that the impoundments were lawful, and that they knew that members had their vehicles repossessed under court orders by financiers, or could pay admission of guilt fines to release their vehicles, there was no basis for the far-reaching relief sought by the applicant in this matter.

Discussion

59. The question to be considered is to which of the parties, if any, costs should be awarded, and whether the costs follow the result of the litigation. The

[12] At paragraph [47].

applicant is essentially arguing that the litigation was the cause of the release of the vehicles, and for that reason it should be awarded its costs. In other words, although in the final result this Court did not order the release of the vehicles, the impetus created by the litigation occasioned their release, and therefore the incurring of costs in the litigation was justified. This argument completely disregards the causal relationship between the inaction or action of individual members of the applicant in paying their impoundment fines or admission of guilt fines to secure the release of their vehicles. These actions could have been taken by the applicant's members entirely independently of the litigation and their inaction, or failure to do so, was the cause of the vehicles being retained continuously (save where released to the title holders under different court orders). The action necessary to secure release was pointed out in the June 2022 correspondence from the municipality to the applicant's legal representative. Their failure to act upon that information promptly is simply not explained.

60. As much as the applicant's members are entitled under section 195(1)(g) of the Constitution to timely, accessible and accurate information, this must be read together with section 32 of the Constitution, and with PAIA. The preamble to PAIA recognises that:

> " * *section 32 (1) (a) of the Constitution provides that everyone has the right of access to any information held by the State;*
> * *section 32 (1) (b) of the Constitution provides for the horizontal application of the right of access to information held by another person to everyone when that information is required for the exercise or protection of any rights;*
> * *and national legislation must be enacted to give effect to this right in section 32 of the Constitution;*

...

** the right of access to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;*

** reasonable legislative measures may, in terms of section 32 (2) of the Constitution, be provided to alleviate the administrative and financial burden on the State in giving effect to its obligation to promote and fulfil the right of access to information;* "

61. The premise upon which the applicant and its members operated was that it was incumbent upon the relevant organs of state to sift through data in their possession in response to an inchoate and vaguely formulated demand for impoundment notices. The applicant's members enjoy the right of access to information but equally have the responsibility to take steps under the appropriate statutory provisions to secure that information, i.e. to apply in terms of PAIA to the relevant organ of state. The municipality invited them to so as early as June 2022, yet they failed throughout to do so. The municipality did not refuse to provide notices, but required the applicant to follow the requisite processes, which was an acceptable and reasonable response to limit the administrative burden on it. Had they made an application to the municipality under PAIA, the applicant's members would have learned during 2022 of the fate of their impounded motor vehicles and what steps were required to secure their release. This application, to this Court, was unnecessary and ill-considered.

62. The evidence does not support the submission that the arrests had been an affront to the dignity of the applicant's affected members or that the continuous retention of their vehicles was in retaliation, or a strategy to

punish the applicant's members.

63. The argument with reference to section 31 of the CPA that the charges against the applicant's members did not warrant forfeiture of their vehicles is one that should have been made in the criminal courts. In at least one instance, that of Sawula, that argument apparently resulted in a release order by the criminal court. This was the alternative remedy alluded to in *Kweleta*; as I have stated, the same remedy was available to the applicant's members. The existence of an alternative remedy is a further reason why this application was unnecessary and ill-considered.

64. The applicant is mistaken in its contention that the contempt of court charges should have been brought in the High Court as that was the court that granted the interdict allegedly being infringed. The Constitutional Court has held[13] that "*Simply put, all contempt of court, even civil contempt, may be punishable as a crime. The clarification is important because it dispels any notion that the distinction between civil and criminal contempt of court is that the latter is a crime, and the former is not*." Although the contempt of court in question in this matter is referred to as "civil contempt", and is usually dealt with by the civil law, there is nothing to prevent the Director of Public Prosecutions from indicting for criminal contempt of court in such a case if he or she thinks the circumstances merit public prosecution[14] - this will be appropriate where the civil and criminal forms of contempt coincide,

[13] *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* 2018 (1) SA 1 (CC) at para [50]
[14] *S v Beyers* 1968 (3) SA 70 (A) at 78 to 81

and where there is present some element which cannot be waived by the party whose rights are affected by the disobedience[15]. The interdict was directed among other things at preserving public order and compelling compliance with statutory licensing requirements. These elements could not be waived by the municipality when the applicant's members breached the interdict. In the circumstances, criminal charges were apposite, the NDPP was under a duty to protect the public by prosecuting,[16] and it was large to do so in lower courts which enjoy jurisdiction over the applicant's members. Any challenge to the jurisdiction of those courts should have been made to those courts in the course of defending the criminal proceedings.

65. There is merit in the submissions advanced on behalf of the municipal respondents that it must have been clear to the applicant, well prior to the hearing of this application on 30 August 2024, that the relief sought in the application had become moot. The applicant's persistence with this application was a breach of the duty upon the legal representatives to contribute to the efficient use of judicial resources by making sensible proposals so that the Court's intervention was not needed.[17]

66. The matter did not engage constitutional issues for the Court's decision. An issue does not become a constitutional matter merely because an applicant

---

[15] *Cape Times Ltd v Union Trades Directories (Pty) Ltd* 1956 (1) SA (N) 105 at 121
[16] *S v Beyers, supra* at 81
[17] Compare, in the context of appeals, the judgment of Rogers AJA in *John Walker Pools v Consolidated Aone Trade and Investment 6 (Pty) Ltd (in liquidation) and Another* 2018 (4) SA 433 (SCA) at paragraph [10].

calls it one[18]. The *Biowatch* principle does not apply. Costs will be awarded against the applicant.

67. The provincial respondents were no less affected by the applicant's conduct of the litigation than the municipal respondents. There is no rational basis to award costs to the respondents on different scales.

68. This brings me to the question whether costs should be awarded on the scale as between attorney and client. An award of attorney and client costs will not be granted lightly. The Court's discretion to order the payment of attorney and client costs requires finding special circumstances[19] or considerations to justify the granting of such an order.

69. I have taken into consideration the failure of the applicant and its members to make use of the provision of PAIA and of the alternative remedies as set out in *Kweleta*, the fact that they had the benefit of legal representation from August 2023, their failure to amend the notice of motion to take account of vehicles as they were released from impoundment, and their late joinder of the police and prosecution respondents without which the application was defective.

70. A significant factor weighed in the Court's consideration is the lengthy history of taxi related violence in the George area, that the municipality had

---

[18] *Jacobs and Others v S* [2019] ZACC 4; 2019 (5) BCLR 562 (CC); 2019 (1) SACR 623 (CC) (14 February 2019) at para [43] per Goliath AJ referring to *Fraser v ABSA Bank Ltd* 2007 (3) SA 484 CC at para 40

[19] *Nel v Waterberg Landbouwers Ko-Operatieve Vereeniging* 1946 AD 597 at 607

been engaging with the applicant about solutions even prior to 2022, that it had ultimately had to seek relief from this Court, and that the resulting interdict, designed to protect the public including law abiding taxi operators, underpinned the arrests and impoundments by which the applicant and its members were aggrieved.

71. Against that background, the applicant's approach to this Court for wide-ranging and ill-fated declaratory relief, on self-created urgency, was nothing less than an impertinence, compounded by the almost casual last minute concession that the declaratory relief was not being pursued.

72. I have also considered the fact that, but for the delivery by the provincial respondents of the comprehensive December 2023 schedule and Williams' affidavit of 27 August 2024, the Court would not have been enlightened about the release of the impounded vehicles. The delivery of Williams' August 2024 affidavit precipitated the applicant's belated concession that the arrests and impoundments were not unlawful and that the Court was not required to grant substantive relief.

73. However, the applicant inexplicably stopped short of withdrawing the application and tendering costs, which would have allowed the matter to be removed from the roll (creating capacity for other litigants in other matters to be heard), and would have saved the respondents some of the costs incurred in relation to the hearing. The applicant's obduracy is consistent with its members' failures to use cheaper and more expeditious means to obtain information under PAIA and to secure orders for release of the

vehicles from the lower courts or by paying the impoundment fines.

74. The applicant's insistence upon and persistence in using the resources of this Court merits the Court's disapprobation with a punitive costs order.

75. In the premises, the following order is granted:

75.1 The application is dismissed.

75.2 The applicant shall bear the costs of the first, second and third respondents, and that of the fourth and fifth respondents, on the scale as between attorney and client, such costs to include the costs of counsel, the costs of and related to all the postponements in the application and all reserved costs.

_____

GORDON-TURNER AJ

Appearances:

Counsel for the Applicant:	Adv Madoda Titus
Instructed by:	Ms Anita Finini Finini Attorneys
Counsel for the First to Third Respondents:	Adv Allen Titus
Instructed by:	Mr C May BDP Attorneys

Counsel for the Fourth & Fifth Respondents:	Adv Y Abass
Instructed by:	Ms T Lombard State Attorney