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Efficiency of process

South African civil procedure offers several mechanisms for efficient dispute resolution, and the past year has been dominated by one development in particular: the move toward mandatory, court-annexed mediation in the country's busiest division, the Gauteng Division of the High Court of South Africa.

Rule 41A(2) of the Uniform Rules of Court: Rules Regulating the Conduct of Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa (Uniform Rules) requires that, in every new proceeding in the High Court, the applicant or plaintiff serve on each respondent or defendant a notice indicating whether it agrees to or opposes referral to mediation. In turn, a defendant or respondent, when delivering a notice of intention to defend or notice of intention to oppose or any time thereafter (not later than the delivery of a plea or answering affidavit), must serve a notice on the plaintiff or applicant indicating whether the said defendant or respondent agrees to or opposes referral of the dispute to mediation. In the Gauteng Division, this voluntary framework has been overtaken by a mandatory regime.

On 22 April 2025 (revised 9 June 2025), the Judge President, acting in terms of section 8(4)(b) of the Superior Courts Act 10 of 2013 and section 173 of the Constitution, issued a Directive and Mediation Protocol making mediation a precondition to obtaining or retaining a civil trial date, in response to a backlog that had seen dates allocated as far ahead as 2031.[1] Under the transitional timetable, 2026 trial dates provisionally remain on the roll; however, a mediator's report must be filed at least 30 court days beforehand, failing which the matter is struck from the roll without costs. From 1 January 2027, no trial date will be allocated at all without a mediator's report (or, in the Specialised Commercial Court, a report from the Judicial Case Manager). A newly created Special Interlocutory Court hears applications to compel compliance from dilatory parties. The Directive survived direct-access challenges in the Constitutional Court, which were dismissed on 28 May 2025 without a determination on the merits. However, it continues to be challenged in the High Court, where judgment is pending.

Summary judgment remains a central efficiency tool. Where a defendant's plea discloses no defence and appears to be designed merely to delay, a plaintiff may deliver an application for summary judgment within 15 days of the plea, supported by an affidavit from the plaintiff or a person able to swear positively to the facts. An application for summary judgment can be brought in the following circumstances:

- The claim is based on a liquid document.
- The claim is for a liquidated amount of money.
- The claim is for the delivery of specified movable property.
- The claim is for ejectment or eviction.

On service of the summary judgment application, the defendant can either:

- give security to the claimant to the satisfaction of the court for any costs that may be awarded; or
- satisfy the court that the defendant has a *bona fide* defence to the action. This can be done by way of affidavit, which must be delivered five days before the day on which the application is to be heard, or with the leave of the court by oral evidence given by the defendant or any other person. The evidence must fully disclose the nature and grounds of the defence and the material facts relied on.

In addition, the Uniform Rules provide for efficient procedural tools such as judicial case management to ensure efficient and timely resolution of matters, pre-trial processes for purposes of, amongst others, identifying and narrowing down the issues in dispute, and default judgments. In trial proceedings, the claimant can apply for default judgment if a defendant fails to file a notice of intention to defend within 10 days of service of the combined summons. Under Rule 26 of the Uniform Rules, where a party fails to deliver a pleading within the prescribed time period, the opposing party may serve a notice of bar requiring the defaulting party to do so within five days, failing which that party is automatically barred from delivering the pleading without the leave of the court.

Technology and digitisation in the South African legal system have also become effective enablers of procedural efficiency. The Court Online and CaseLines platforms are end-to-end e-filing, case management and evidence management systems. The platforms were first piloted in Gauteng and continue to expand nationally, allowing registered law firms to file, search and manage matters electronically and to prepare and present indexed, paginated evidence bundles without physical attendance at court. Judgments are also uploaded and handed down electronically by the courts on the platforms. The implementation of Court Online and CaseLines has continued to expand across various divisions of the High Court, with KwaZulu-Natal's revised Practice Directive for Court Online and CaseLines having taken effect from 1 June 2026.

Lastly, in an effort to improve efficiency and enhance expertise in handling distinct areas of law, South Africa has established specialised courts that include, amongst others, the Labour and Labour Appeal Courts, the Land Claims Courts, the Electoral Court, the Competition Appeal Court and the Tax Courts. In addition, to ease the burden of the caseload of the Gauteng Division of the High Court, certain specialised courts have been established by the Office of the Judge President of the division. The Specialised Commercial Court is administered as part of the High Court, with the aim of promoting efficient conduct of litigation in the High Court and resolving disputes quickly, cheaply, fairly and with legal acuity. This court may be used by litigants who have initiated or intend to initiate a trial action or an application in a commercial matter. Further, a recently piloted dedicated Insolvency Court has been established in the High Court (Pretoria) to give recognition to the commercial imperative of expediting the resolution of matters in the insolvency field by establishing procedures that can afford quick turnaround lead times within the broad framework of the existing litigation model.[2]

Integrity of process

South Africa's legal system is underpinned by the principles of natural justice, including the right to a fair hearing, and the rule against judicial bias as well as the constitutional guarantee of judicial independence under section 165(2) of the Constitution, which protects judicial officers from interference by other organs of state.

Judicial appointments are conducted through public, transparent interviews before the Judicial Service Commission, which recommends suitable candidates to the President for appointment in accordance with the Constitution. This process is designed to safeguard both the independence and the perceived impartiality of the bench.

The Office of the Chief Justice, established as a separate entity from the Department of Justice and Constitutional Development, enhances the institutional and administrative independence of the judiciary and promotes accountability within the judicial system more broadly. This institutional separation is an important structural safeguard given the extent to which case allocation, court administration and resourcing can otherwise be used to influence outcomes indirectly.

Privilege and disclosure

Rule 35 of the Uniform Rules governs discovery, compelling litigants to disclose documents and recordings relevant to the issues in dispute, subject to established safeguards for privileged material. South African law recognises two forms of legal professional privilege – legal advice privilege and litigation privilege – which are both broader and narrower in different respects.[3]

Legal advice privilege protects confidential communications between a legal advisor and client made for the purpose of giving or obtaining legal advice. To invoke it, a party must show that (a) the information constitutes legal advice, (b) given by a legal advisor, (c) in confidence, to a client, and (d) in respect of which privilege is claimed. Legal advice privilege is confined in that it attaches to those who obtain the legal advice, but broad in that it covers everything that constitutes or formed part of the advice.

Litigation privilege protects communications between litigants or their legal advisors and third parties, including documents prepared for the purpose of pending or contemplated litigation. Litigation privilege has two established requirements: (a) the document must have been obtained or brought into existence for the purpose of a litigant's submission to a legal advisor for legal advice; and (b) litigation was pending or contemplated as likely at the time. Litigation privilege is therefore broader in that it covers third parties who are not legal advisors, but narrower in that it only covers those documents that were produced in contemplation of litigation.

Communications not made in confidence, privileged material that has since entered the public domain, and legal opinions sought to further an unlawful purpose likewise fall outside the protection. Where a document is prepared for mixed purposes (only one of which is to obtain legal advice in pending or contemplated litigation), South African courts apply a dominant purpose test, confirmed by the Supreme Court of Appeal (SCA) in *Ibex RSA Holdco Ltd and Another v Tiso Blackstar Group (Pty) Ltd and Others*.[4] The SCA considered a claim of litigation privilege over the PwC forensic report into the Steinhoff accounting irregularities. The SCA confirmed that the enquiry is whether the dominant purpose for which the document was brought into existence was to obtain legal advice or for use in pending or reasonably contemplated litigation and found on the facts that the report's dominant purpose was investigative rather than litigation-related, with the result that litigation privilege did not attach.[5]

Privilege may be waived expressly, through conduct, or by operation of law, and these principles apply with equal force to arbitral proceedings.

A separate and narrower privilege attaches to settlement negotiations. The SCA in *Absa Bank Ltd v Hammerle Group (Pty) Ltd* confirmed that, as a general rule, negotiations undertaken with a genuine view to settling a dispute are privileged from disclosure irrespective of whether they are expressly marked without prejudice, subject to exceptions.[6]

Client confidentiality is a more distinct and broader ethical duty than privilege, extending to all information acquired in the course of the attorney-client relationship regardless of whether it would independently qualify as privileged. A breach of this duty constitutes misconduct under the Code of

Conduct[7] for legal practitioners, enforceable through the disciplinary mechanisms of the Legal Practice Council.

Conflicts of interest are similarly regulated by the Code of Conduct, which prohibits a legal practitioner from acting where a conflict exists between the interests of current clients, a client and the practitioner's own interests, or where a conflict with a former client arises in a substantially related matter involving a risk that confidential information may be used to the former client's prejudice.

Evidence

South Africa follows an adversarial system of civil procedure, with parties bearing the onus of presenting evidence, including the calling and cross-examination of witnesses. All proceedings are adversarial, except mediation, which is, by its nature, a facilitated, non-adversarial process.

Document production is governed by Rule 35 of the Uniform Rules and parties must disclose the documents relevant to the issues in dispute. This Rule also entitles a party in litigation proceedings to compel the production of documents that are relevant to the dispute.

Witnesses, including third parties, may be subpoenaed in terms of Rule 38 of the Uniform Rules to give evidence at a trial.

Rule 35(15)(b) of the Uniform Rules defines a document as any written, printed, or electronic matter, and data and data messages as defined in the Electronic Communications and Transactions Act 25 of 2002 (ECTA). This broad definition brings electronic information within the scope of discovery under Rule 35.

Section 14(1) of ECTA provides that where a law requires information to be presented or retained in its original form, that requirement is met by a data message if the integrity of the information from the time that it was first generated in its final form as a data message or otherwise has passed assessment in accordance with subsection 2, and that the information is capable of being displayed or produced to the person to whom it is to be presented. Subsection 2 provides that for purposes of subsection 1, the integrity of the data message must be assessed (a) by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change that arises in the normal course of communication, storage and display, (b) in light of the purpose for which the information was generated, and (c) having regard to all other relevant circumstances.

While South African civil procedure accommodates electronic discovery through these provisions, the Uniform Rules do not yet provide for a comprehensive framework governing e-discovery processes, including the mechanisms for the preservation of metadata to safeguard the integrity of such electronic information.

Costs

The general position is that "costs follow the result". The successful party is, as a general rule, entitled to recover its costs from the unsuccessful party, subject to the court's overriding discretion.

Where judgment is awarded in favour of a party, but the other party was also successful on other issues in dispute, the court will attempt to determine which of the parties has been substantially successful. The principles guiding the courts in this respect are the following:

- As a general rule, the successful party is entitled to costs.
- In determining who the successful party is, the court will look to the substance of the judgment and not merely its form.
- The court can, for good reason, deprive a successful party of costs, in whole or in part.
- The court can, for good reason, order a successful party to pay the whole or a portion of the costs of the other party.

- The court can, in special cases, make an order that the unsuccessful party must pay the costs of the successful party on an attorney and client basis (see below).

The general rule is reversed when an application for indulgence is granted. The applicant in such circumstances must pay all the costs that can reasonably be said to be wasted because of the application.

The court sets a tariff of the costs. The party who is awarded costs prepares a bill of costs that is taxed by the taxing master in accordance with the applicable tariff.

The types of costs that a court can award are:

- **Party and party costs**: These do not include all the costs that a party to a suit may have incurred but only costs, charges, and expenses that appear to the taxing master to have been necessary for the attainment of justice or for defending the rights of a party. These only include costs incurred in the litigation itself.
- **Attorney and client costs**: These are costs that an attorney is entitled to recover from a client for professional fees and disbursements incurred on behalf of the client (and payable by the client regardless of the outcome of the case). The court can award these costs by reason of special considerations arising either from the circumstances that give rise to the action or from the conduct of a party. These include:

  (i) a party being guilty of dishonesty or fraud, or having vexatious and malicious or frivolous motives; or

  (ii) a party being guilty of grave misconduct either in the transaction under inquiry or the conduct of the case.

  The taxing master must still determine the reasonableness of the charges on an attorney and client scale.
- **Costs *de bonis propriis***: This is where costs are awarded against a party that acts or litigates in a representative capacity, usually in circumstances of bad faith and gross negligence. These costs are also awarded against attorneys and public officials where they are found to have acted in bad faith or with gross negligence.

The Uniform Rules have been amended to insert Rule 67A addressing the award of costs on the party-and-party scale. In terms of Rule 67A(2), in considering all relevant factors when awarding costs, the court may have regard to (a) the mediation provisions of the Uniform Rules, (b) failure by any party or their legal representatives to comply with Rules 30A, 37 and 37A, (c) unnecessary or prolix drafting, unnecessary annexures and unnecessary procedures followed, (d) unnecessary time spent in leading evidence, cross-examining witnesses and argument, (e) the conduct of the litigation by any party's legal representatives and whether the court should order costs *de bonis propriis* against such representatives, and (f) whether the litigation could have been conducted out of the Magistrates' Court.

Rule 67A(3) requires a costs order to indicate the scale (either Scale A, B or C) in terms of which the party-and-party costs have been granted. Such scales are set out in Rule 69(7) of the Uniform Rules and set out the maximum rate at which advocates' fees (and attorneys with a right to appear in the Superior Courts and who appear in a matter) may be recovered on a party-and-party bill of costs. Scale A refers to a maximum amount of R375.00 per quarter of an hour or part thereof, Scale B sets a maximum of R750.00 per quarter of an hour or part thereof, and Scale C refers to a maximum of R1,125.00 per quarter of an hour or part thereof.

Rule 67A(3) sets out the factors that the court ought to have regard to when determining the appropriate scale under which party-and-party costs may be awarded, including (i) the complexity of the matter, and (ii) the value of the claim or importance of the relief sought. Where a costs order does not indicate the applicable scale, Scale A will automatically apply.

Interest is payable on costs from the date of the taxing master's allowance of the taxed bill of costs.

A party entitled and wishing to demand security for costs must deliver a notice setting out the grounds on which security is claimed, and the amount demanded, as soon as practicable after the commencement of proceedings. Security for costs can be requested in the following cases:

- The court has discretion to order foreign claimants or applicants who are subject to the jurisdiction of the court to provide security for the costs of the litigation in which they are engaged. The court will take into account the:
  - place of residence and domicile of the foreign national;
  - character of the foreign national; and
  - financial circumstances of the foreign national.
- Where a company or other body corporate is the claimant or applicant and it appears by credible testimony that there is reason to believe that the company or body corporate (or its liquidator, if it is being wound up) will be unable to pay the costs of the defendant or respondent if successful in their defence.
- Where a court is satisfied that the litigation is vexatious.

Litigation funding

Litigation in South Africa remains primarily self-funded on the basis of hourly rates agreed between practitioner and client. The prescribed statutory tariffs exist principally for taxation purposes rather than as the basis for ordinary billing.

Contingency fee arrangements are legally permissible and regulated in terms of the Contingency Fees Act 66 of 1997 and the Code of Conduct for legal practitioners. Such agreements must define what constitutes success or partial success. The fee may not exceed 100% of the practitioner's normal fee, and any success fee may not exceed 25% of the amount awarded or obtained by the client, excluding costs.

Third-party litigation funding agreements are also recognised in South Africa, albeit without a dedicated statutory regime governing them. Litigation funders can be joined as co-litigants and can be held liable for the costs of the other party. Costs orders are, however, not granted against funders who do not seek to control the course of the litigation and lack personal interest in the litigation.

The Short-term Insurance Act 53 of 1998 defines specific short-term policies and also provides for contracts that are not covered by the definitions, known as "miscellaneous [short-term] policies". These are contracts under which a person, in return for a premium, undertakes to provide policy benefits if a risk relating to any matter not otherwise defined occurs. Legal expenses insurance falls under this definition and covers the insured against the risk of financial loss resulting from the costs incurred in becoming involved in future litigation.

Usually, the insurer will only accept liability, provide legal assistance, and ultimately pay expenses if the insured has a reasonable prospect of success in bringing or defending judicial proceedings. Cover is for litigation or other proceedings commenced during the currency of the policy. The policy may contain a contractual limitation on the sum or sums payable. South African courts have not yet pertinently considered legal expenses insurance contracts.

Class actions

A class action must be certified by the court. The court considers the following factors, amongst others, to determine the certification decision:[8]

- The existence of a class identifiable by objective criteria.
- Whether there is a cause of action raising a triable issue.

- Whether the right to relief depends on the determination of issues of fact, or law, or both, common to all members of the class.
- Whether the relief sought, or damages claimed, flow from causes of action that are ascertainable and capable of determination.
- Where the claim is for damages, whether there is no other appropriate procedure for allocating the damages to the members of the class.
- Whether the proposed representative is suitable to conduct the action and represent the class.
- Whether, given the composition of the class and the nature of the proposed action, a class action is the most appropriate means of determining the claims of class members.

The new Rule 11A of the Uniform Rules codifies, for the first time, the procedure for certifying a class action, giving expression to the framework above developed by the SCA in *Children's Resource Centre Trust and Others v Pioneer Foods (Pty) Ltd and Others*,[9] and clarified by the Constitutional Court in *Mukaddam v Pioneer Foods (Pty) Ltd and Others*.[10] The Constitutional Court has held that the "interests of justice" is the overriding test, and these requirements must serve as factors to be taken into account in the decision to certify a class action. They are not to be treated as conditions precedent or jurisdictional facts that must be present before an application for certification may succeed.

A certification application must be brought on notice of motion, supported by an affidavit establishing the factors above, and stipulate whether the class will be an opt-in or opt-out class or a combination of both.

The silicosis litigation brought on behalf of mineworkers against several mining companies remains the leading illustration of how the two models can be combined.[11] The court certified the class action on a hybrid basis, permitting the mineworkers to seek declaratory relief on the respondents' liability in the first stage of the proceedings as an opt-out class. Class members were accordingly bound by the determination of the common issues unless they elected to opt out. If successful at that stage, individual class members were then required to opt in to pursue their own claims for damages in the second stage of the proceedings.

Interim relief

South African courts recognise a range of interim relief mechanisms designed to preserve rights and prevent harm pending final determination of proceedings. Depending on the circumstances, these remedies may be sought on an urgent basis under Rule 6(12) of the Uniform Rules or in the ordinary course. They include interim interdicts, Anton Piller orders and anti-dissipation interdicts.

The foundational test for interim interdicts derives from *Setlogelo v Setlogelo* 1914 AD 221 and was refined in *L.F. Boshoff Investments v Cape Town Municipality* 1969 (2) SA 256 (c) as follows:

- A *prima facie* right.
- Reasonable apprehension of irreparable harm.
- The balance of convenience favouring the granting of the interim relief.
- No adequate alternative remedy.

As regards asset preservation, the English Mareva injunction has not been adopted as part of South African law. Instead, South African courts recognise a *sui generis* anti-dissipation interdict, granted in appropriate circumstances to prevent a respondent from dissipating assets with the intention of frustrating the enforcement of a judgment as confirmed by the court in *Knox D'Arcy Ltd v Jamieson*.[12] Anton Piller orders serve a different purpose, namely the preservation of evidence where there is a real risk that relevant documents or items may be concealed or destroyed. Courts may also grant the *mandament van spolie* to restore possession that was taken unlawfully and declaratory orders where appropriate.

Enforcement of judgments/awards

The enforcement of a money judgment by execution generally involves the issuing of a writ (High Court) or warrant (Magistrates' Courts) of execution, followed by the attachment of the judgment debtor's executable property and, where necessary, its sale in execution by public auction to realise funds to satisfy the judgment debt. The sale is conducted by the sheriff of the court. Executable property may include movable, immovable, or incorporeal property.

Where execution is unsuccessful because the judgment debtor is unable to satisfy the judgment debt or has insufficient executable assets, the creditor may, where the statutory requirements are met, apply for:

- the sequestration of the estate of the judgment debtor under the Insolvency Act 24 of 1936, where the debtor is a natural person; or
- the liquidation (winding-up) of the judgment debtor, where the debtor is a juristic person, in terms of the Companies Act 61 of 1973 read with the Companies Act 71 of 2008, or the Close Corporations Act 69 of 1984.

Cross-border litigation

South African courts generally give effect to parties' choice of governing law in agreements, subject to constitutional principles, public policy and legislation. The courts can only hear and adjudicate on matters that fall within their area of jurisdiction. Jurisdiction may be founded on factors such as the defendant's domicile or residence, location of a property in dispute, submission to the court's jurisdiction, or other jurisdictional connecting factors. In appropriate circumstances, attachment of property may found or confirm jurisdiction.

The present position in South Africa is that a foreign judgment is not directly enforceable, but constitutes a cause of action and will be enforced by the courts, provided that: (i) the court that pronounced the judgment had jurisdiction to entertain the case according to the principles recognised by South African law with reference to the jurisdiction of foreign courts; (ii) the judgment is final and conclusive in its effect and has not become superannuated; (iii) the recognition and enforcement of the judgments by South African courts would not be contrary to public policy; (iv) the judgment was not obtained by fraudulent means; (v) the judgment does not involve the enforcement of a penal or revenue law of the foreign state; and (vi) enforcement of the judgment is not precluded by the provisions of the Protection of Businesses Act 99 of 1978, as amended.[13]

The Enforcement of Foreign Civil Judgments Act 32 of 1988 establishes a statutory mechanism for the registration and enforcement in South African Magistrates' Courts of civil judgments from Namibia, while judgments from other countries are governed by common law. Similarly, the Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 provides for the recognition and enforcement of maintenance orders made in designated reciprocating states.

The obtaining of evidence in South Africa for use in foreign proceedings is governed principally by the Foreign Courts Evidence Act 80 of 1962, under which a Division of the High Court or the SCA may order the examination of witnesses or the production of evidence at the request of a foreign court. The Protection of Businesses Act 99 of 1978 restricts the enforcement of certain foreign judgments and compliance with certain foreign requests for evidence without the permission of the Minister of Economic Affairs.

International arbitration

The international arbitration regime in South Africa is governed by the International Arbitration Act 15 of 2017, which incorporates the UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended). The Act applies to international commercial disputes referred to arbitration in terms of an arbitration agreement.

Article 5 of the UNCITRAL Model Law on International Commercial Arbitration limits judicial interference on matters governed by the Act.

In addition, section 16 of the International Arbitration Act provides that an arbitration agreement and a foreign arbitral award must be recognised and enforced in South Africa as required by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

South Africa is also home to established arbitral institutions such as the Association of Arbitrators (Southern Africa) and the Arbitration Foundation of Southern Africa (AFSA), which administer both domestic and international arbitrations, including cross-border commercial disputes.

Mediation and ADR

The main methods of civil dispute resolution are litigation, arbitration, and mediation as part of broader ADR processes.

Rule 41A of the Uniform Rules and Rule 72 of the Magistrates' Court Rules formalise mediation within civil litigation in South Africa. The rules require parties both in the High Court and the Magistrates' Court, at the commencement of proceedings, to indicate whether they agree to refer the dispute to mediation.

In parallel, the Labour Relations Act 66 of 1995 mandates conciliation through the Commission for Conciliation, Mediation and Arbitration (CCMA) for disputes falling within its jurisdiction.

Recent legislation such as the Land Court Act 6 of 2023 has embedded mediation into land-related disputes, granting presiding judges the discretion, where it becomes evident that there are issues that might be resolved through mediation, to make orders directing the parties to attempt to settle issues through a process of mediation.

As stated above, in April 2025, the Gauteng Division of the High Court introduced a directive requiring mandatory mediation before civil trial dates are allocated. The directive applies to all civil trial matters from 1 January 2027, with the transitional period allocations requiring a mediator's certificate at least 30 days before the trial date.

Regulatory investigations

Consumer and business affairs in South Africa are subject to extensive regulatory oversight through statutory bodies empowered to investigate compliance, enforce legislation, and, in certain instances, impose or recommend sanctions.

Regulatory authorities such as the National Credit Regulator and National Consumer Tribunal oversee aspects of consumer credit and credit market conduct, while sector-specific regulators, including the Financial Sector Conduct Authority, the Independent Communications Authority of South Africa, and the National Energy Regulator of South Africa, amongst others, exercise supervisory and investigative powers within their respective industries. The Competition Commission and Competition Tribunal enforce competition law by investigating prohibited practices and by granting relief in appropriate cases, including interim relief during pending investigations.

Regulatory investigations are administrative in nature and may include the issuing of summonses, requests for information, inspections, and, where authorised by the relevant legislation, search and seizure operations conducted under warrant. These investigative processes do not themselves determine liability, but they often precede enforcement action, the imposition of administrative penalties, or referral to the relevant Tribunal or adjudicative body or the courts.

Regulatory decisions often give rise to collateral litigation, including administrative law review proceedings and disputes concerning the lawfulness or consequences of regulatory action. South African courts exercise oversight over such regulatory action through review proceedings under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) where conduct constitutes "administrative action" as defined, or otherwise under the constitutional principle of legality. PAJA gives effect to section 33 of the Constitution, which guarantees the right to lawful, reasonable, and procedurally fair administrative action.[14] Where PAJA does not apply, courts review the exercise of public power under the principle of legality, which requires that such power be lawfully authorised and rationally connected to its purpose.

Endnotes

1 https://www.judiciary.org.za/images/Directives/Directives_2025/DIRECTIVE%20ON%20MEDIATION%20IN%20THE%20GAUTENG%20DIVISION%20-%2022042025.pdf

2 https://www.justice.gov.za/about/sa-courts.html; https://www.judiciary.org.za/index.php/about-us/102-specialised-courts; https://www.judiciary.org.za/images/Directives/Directives_-_April_2020/High_Court_of_South_Africa/Gauteng_Division/Gauteng_Local_Division_Deputy_Judge_Presidents_Practice_Directive_-_Revised_Commercial_Court_Practice_Directive_with_Effect_from_01_June_2022.pdf

3 *Anglo American South Africa Limited v Kabwe and Others* 2021 JOL 54882 (GJ) para. 27.

4 *Ibex RSA Holdco Ltd and Another v Tiso Blackstar Group (Pty) Ltd and Others* 2025 (2) SA 408 (SCA).

5 *Ibid*. paras 47—74.

6 *Absa Bank Ltd v Hammerle Group (Pty) Ltd* 2015 (5) SA 215 (SCA) para. 13.

7 https://lpc.org.za/legal-practitioners/code-of-conduct

8 *Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* 2013 (2) SA 213 (SCA) para. 26.

9 *Ibid*.

10 *Mukaddam v Pioneer Foods (Pty) Ltd and Others* 2013 (5) SA 89 (CC).

11 *Nkala and Others v Harmony Gold Mining Company Ltd and Others (Treatment Action Campaign NPC and Another as amici curiae)* 2016 3 All SA 233 (GJ).

12 *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 365 to 370.

13 *Jones v Krok* 1995 (1) SA 677 (A) adopted by the SCA in *Society of Lloyds v Price; Society of Lloyd's v Lee* 2006 (5) SA 393 (SCA) para. 34.

14 Constitution of the Republic of South Africa: https://www.gov.za/documents/constitution/constitution-republic-south-africa-04-feb-1997

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