



**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2 (1) OF
THE SPECIAL INVESTIGATIONS UNIT AND
SPECIAL TRIBUNALS ACT 74 OF 1996
(REPUBLIC OF SOUTH AFRICA)**

IN THE MATTER BETWEEN:

CASE NO:GP22/2021

HASSAN EBRAHIM KAJEE

APPLICANT

AND

THE SPECIAL INVESTIGATIONS UNIT

FIRST RESPONDENT

THE MINISTER OF POLICE

SECOND RESPONDENT

THE MINISTER OF HEALTH

THIRD RESPONDENT

THE MINISTER OF CORRECTIONAL

SERVICES AND CONSTITUTIONAL

DEVELOPMENT

FOURTH RESPONDENT

IN RE:

THE SPECIAL INVESTIGATING UNIT (SIU)
/PLAINTIFF

FIRST APPLICANT

THE MINISTER OF POLICE
PLAINTIFF

SECOND APPLICANT/

THE MINISTER OF HEALTH
PLAINTIFF

THIRD APPLICANT/

THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES
PLAINTIFF

FOURTH APPLICANT/

AND

HASSAN EBRAHIM KAJEE

RESPONDENT/DEFENDANT

JUDGMENT

Summary

Civil procedure – whether a Tribunal judgment is reviewable in terms of s 6 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) – whether the Tribunal lacks jurisdiction to review its own decisions – whether the judgment is reviewable.

Held – Tribunal judgments being expressly excluded from the definition of administrative action, they are not reviewable under PAJA – the Tribunal lacks jurisdiction over a review application brought in terms of s 22 of the Superior Courts Act, 10 of 2013 on the procedure set out in Rule 53 of the Uniform Rules – review relief is incompetent when sought against the legal effect of an order and not the method of the proceedings.

Modiba J

Introduction

[1] Hassan Ebrahim Kajee (Kajee) instituted an application in terms of Uniform Rule 53, primarily seeking the following order:

“That the judgment of the Honourable Modiba J handed down on the 28 (sic) February 2023 in the above-mentioned Tribunal under the above case number on a Rule 30 Application brought by the respondents (sic) [Kajee] herein, is hereby reviewed and set aside.”

- [2] I conveniently refer to the 28 February 2023 judgment as the judgment. Where I need to distinguish between that judgment and the present one, I refer to the latter as this judgment. I rendered the judgment in an interlocutory application Kajee filed in an action the Special Investigating Unit and the cited Ministers instituted against him. I conveniently refer to the action as the main action.
- [3] It is important to mention that Kajee brought this application under circumstances where he is *ipso facto* barred from filing a plea and/or counter claim or a further exception in the main action. If he persists in defending the action, it is open to him to bring an application to uplift the bar.
- [4] After Kajee instituted the review application, I issued directives for the filing of further papers. The Special Investigation Unit (SIU) is the only party opposing the application. It filed a notice of intention to oppose, notice to raise a point of law in terms of Uniform Rule 6(5)(d)(iii) and an answering affidavit. Kajee failed to file his replying affidavit. He has also failed to file heads of argument. As directed, I determine this application on the papers filed as no complexities of a legal or factual nature arise.

Points of law

- [5] The SIU has raised the following points of law:
- (a) the judgment under review is not reviewable under the Promotion of Administrative Justice Act (PAJA)¹;
 - (b) the Tribunal lacks jurisdiction to review its own decisions;
 - (c) the judgment is not appealable.

Whether the judgment is reviewable under PAJA

- [6] Kajee contends that the judgment constitutes an administrative action reviewable in terms of s 6 of PAJA. As contended on behalf of the SIU, PAJA defines administrative action as:
- “... any decision taken, or any failure to take a decision, by –
- (a) an organ of state, when –

¹ Act 3 of 2000.

- (i) exercising a power in terms of the Constitution or a provision of the Constitution; or
- (ii) exercising a public power or performing a public function in terms of any legislation; or

(b) ...

which adversely affects the rights of any person and which has a direct, external legal effect, but does not include –

(aa)...

(bb)

(cc)

(dd)

(ee) the judicial functions of a judicial officer of a court referred to in section 166 of the Constitution or of a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996) and the judicial functions of a traditional leader under customary law or any other law; ...”

- [7] Since the judgment derives from a judicial function of a judicial officer of the Tribunal as contemplated in PAJA, and is expressly excluded from being an administrative action reviewable in terms of PAJA the relief Kajee seeks is incompetent.

The Tribunal's jurisdiction

- [8] The SIU correctly contends that the Tribunal lacks jurisdiction to review its own decision(s) or proceedings where the review application is brought in terms of s 22 of the Superior Courts Act, 10 of 2013 on the procedure set out in Rule 53 of the Uniform Rules. In terms of Uniform Rule 53, only a High Court has jurisdiction to review the decision or proceedings of any inferior court and/or of any tribunal, board or officer performing a judicial, quasi-judicial or administrative function. The Tribunal cannot review its own judgements and orders made.

[9] Furthermore, in my view, the Tribunal derives its jurisdiction from the Special Investigating Unit and Special Tribunals Act of 74 of 1996 (its enabling legislation). It lacks jurisdiction under its enabling legislation to adjudicate this application.

Whether the judgment is reviewable

[10] In the judgment, I granted the following order:

“1. The defendant’s notice of motion supported by a founding affidavit, purported to be an exception in terms of Uniform Rule 23(1) dated 10 November 2022 is set aside as an irregular step.

2. The defendant is ordered to pay the costs of the Rule 30 application on an attorney and client scale including the costs of two counsel.”

[11] The SIU correctly contends that on an appropriate interpretation of the relief sought in the notice of motion, Kajee seeks to review the legal consequences and/ the findings made in the judgement, and not against the method of the proceedings. Such an outcome is not reviewable.

Grounds of review as set out in answering affidavit

[12] The SIU filed an answering affidavit to be considered only if its points of law are not upheld. They have all been upheld. Kajee’s application is so bad in law that it would be a waste of scarce judicial resources to consider the grounds of opposition set out in the answering affidavit despite being urged by superior courts to consider all points that arise in a matter so that in the event of an appeal, it does not consider any issue in the first instance.

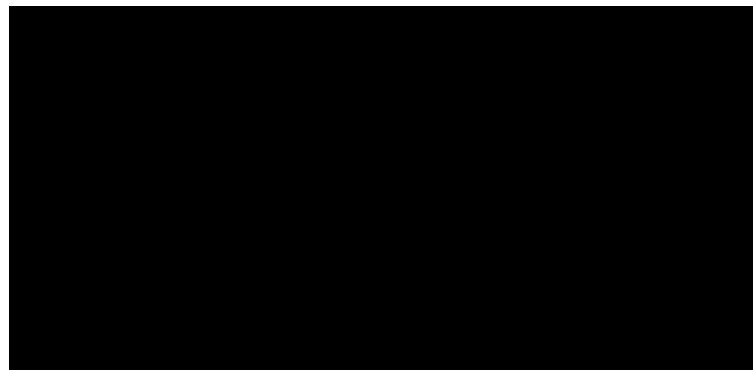
Costs

[13] The SIU seeks a dismissal of the application with a punitive costs order, including the cost of two counsel because the application is misplaced, bad in law, ill thought through, frivolous and vexatious. For all these reasons, I find that a prayer for the dismissal of the application with punitive costs is appropriately made.

Order

[14] In the premises, the following order is made:

The application is dismissed with costs on the attorney and client scale.



JUDGE L.T. MODIBA
PRESIDENT OF THE SPECIAL TRIBUNAL

Appearances

Attorney for the SIU: Mr Pearton, Gildenhuis Malatji Attorneys

Counsel for the SIU: Adv DJ Joubert SC assisted by Adv Van Rhyn Fouche

Attorney for Mr Kajee: Mr S Ngcingwana, Ngcingwana INC Attorneys

Date of hearing: Not applicable, application determined based on papers filed.

Date of Judgement: 30 July 2024

Mode of delivery: this judgment is handed down by sending it by email to the parties' legal representatives, loading on Caselines and release to SAFLII and AFRICANLII. The date and time for delivery is deemed to be 10 a.m.

