THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

REPORTABLE
Case No: 473/12

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, PROVINCE OF THE EASTERN CAPE, N.O. **First Appellant**

THE SUPERINTENDENT- GENERAL OF THE DEPARTMENT OF HEALTH, EASTERN CAPE PROVINCE **Second Appellant**

and

KIRLAND INVESTMENTS (PTY) LIMITED t/a EYE & LASER INSTITUTE **Respondent**

Neutral citation: *Member of the Executive Council for Health, Eastern Cape Province v Kirland Investments* (473/12) [2013] ZASCA 58 (16 May 2013)

Coram: Mthiyane DP, Maya JA & Plasket, Saldulker et Meyer AJJA

Heard: **03 May 2013**

Delivered: **16 May 2013**

Summary: **Administrative law – finality of decisions – *functus officio* rule – effect of invalid administrative decisions – administrative action may only be set aside in proceedings properly brought for judicial review.**

ORDER

On appeal from: Eastern Cape High Court, Grahamstown (Makaula J sitting as court of first instance):

(a) The appeal is dismissed with costs, including the costs of two counsel.

(b) The cross-appeal is upheld with costs, including the costs of two counsel.

(c) The order of the court below is amended by the deletion of paragraphs 1 and 4.

JUDGMENT

PLASKET AJA (MTHIYANE DP, MAYA JA, SALDULKER and MEYER AJJA concurring)

[1] The facts of this matter disclose a sorry tale of mishap, maladministration and at least two failures of moral courage. The appeal concerns three issues. In the first instance, it concerns the validity of two administrative decisions, taken by the second appellant (the superintendent-general of the Department of Health in the Eastern Cape province), to revoke approvals granted to the respondent (Kirland Investments) to establish two private hospitals which were given during his absence from office by the person who acted in his stead (the acting superintendent-general). Secondly, it concerns the validity of the decision taken by the first appellant (the MEC of the Department of Health) in an internal appeal upholding the decisions to revoke the approvals. Thirdly, it concerns a cross-appeal by Kirland Investments against an order setting aside the approvals granted to it by the acting superintendent-general and remitting the applications for approval to the superintendent-general. The matter was heard by Makaula J sitting in the Eastern Cape High Court, Grahamstown and both the appeal and cross-appeal are before this court with his leave.

The facts

[2] Kirland Investments conducts business as an owner and operator of private hospitals. This is an activity that was regulated, at the time relevant to this matter, by the Health Act 66 of 1977 and regulations made under that Act. The administration of the relevant provisions of the Act was assigned to the Eastern Cape provincial government. Regulation 7 of the Regulations Governing Private Hospitals and Unattached Operating Theatre Units[1] vests the power to take decisions to grant or refuse approvals to operate private hospitals in the superintendent-general, and reg 20 creates an internal appeal to the MEC.

[3] By letters dated 11 July 2006 and 15 May 2007, Kirland Investments applied for approvals to build and operate a 120 bed hospital in Port Elizabeth and two unattached operating theatres and a 20 bed hospital in Jeffreys Bay. According to the superintendent-general in office at the time, Mr Lawrence Boya, he took advice on a number of applications from an advisory body that he had established for the purpose and decided to refuse Kirland Investments' applications. He gave instructions for letters to this effect to be drafted but before they could be signed by him, mishap struck when he was involved in a motor accident which resulted in him taking sick leave for six weeks. An acting superintendent-general, Dr Nandi Diliza, was appointed to perform his functions during his absence. The decisions taken by Boya were never communicated to Kirland Investments.

[4] By letter dated 23 October 2007 and signed by Diliza, however, Kirland Investments was informed that both of its applications had been approved. It was told that building plans would have to be submitted to the department within three months. (This period was later extended.) After Boya returned to work, he dealt with applications from Kirland Investments for amendments to the approvals that had been granted. Kirland Investments wanted an increase in the number of beds at both hospitals. Boya refused these applications because, he stated, 'according to departmental norms, Nelson Mandela Metro is over serviced'. The plans for both hospitals had, by this stage, already been submitted.

[1] Government Notice R158 of 1 February 1980.

[5] By letter dated 20 June 2008, and without any prior notice to Kirland Investments, Boya purported to withdraw the approvals that Diliza had granted in respect of both hospitals. The letter stated that the approvals granted by Diliza were 'contrary to our view that the area is over supplied'. It then stated:

'I regret to inform you that the Department has withdrawn the approval. I point out that on 9 October 2007 and after I had considered all applications, I decided to refuse the application because Port Elizabeth is over serviced with private health facilities.'

[6] Kirland Investments was informed of its right to appeal against these decisions to the MEC in office at the time, Ms Pemmy Majodina, which it did. The appeal was unsuccessful. The letter notifying Kirland Investments' attorneys of the dismissal of the appeal was to the following effect:

'I point out that on **9 October 2007** the Superintendent-General decided to refuse your client's applications to establish private hospitals at Port Elizabeth and Jeffreysbay. After the above decision was taken, and unbeknown to the Superintendent-General, the Acting Superintendent-General took another decision on **23 October 2007** to grant permission to your client to establish private hospitals at Port Elizabeth and Jeffreysbay. There was no rational basis for granting permission to your client to establish private hospitals at Port Elizabeth and/or Jeffreysbay.

The proper functionary had already taken a proper decision at the time when the Acting Superintendent-General took a contradictory decision.

. . .

It is clear from the above that the Superintendent-General did not withdraw his own decision. He withdrew the decision of the Acting Superintendent-General which could and should not have been taken under the above circumstances. With respect, your contention that the Superintendent-General was *functus officio* is based on a wrong premise. In my view, the Superintendent-General was within his right to withdraw the Acting Superintendent-General's decision.

. . .

Regarding paragraph **20.4** of your client's grounds of appeal, I point out that when it came to the attention of the Superintendent-General that his decision had been altered for no apparent reason, he had to act. He decided to withdraw a decision that should never have been taken. A hearing to you at that stage would not have made any difference to the decision made by the Superintendent-General. In any event, I have now considered all your client's grounds of appeal.

I have considered your client's applications in respect of Port Elizabeth and Jeffreysbay, the recommendations made by the Advisory Committee to the Superintendent-General, the Superintendent-General's decision on **9 October 2007**, the circumstances under which the Acting Superintendent-General took the decisions on **23 October 2007** and the Superintendent-General's decision to withdraw the Acting Superintendent-General's decisions. I have thereafter decided that there is no need for the establishment of a private hospital at either Port Elizabeth or Jeffreysbay. I can accordingly not grant the relief sought in paragraphs **28.1** and **28.2** of your client's grounds of appeal. In all the circumstances, I have decided to dismiss your client's appeal.'

[7] In the first sentence of this judgment I spoke of maladministration and failures of moral courage. Diliza stated in her affidavit that prior to her making the decisions in favour of Kirland Investments, the MEC at the time, Ms Nomsa Jajula, had informed a meeting of senior staff that she had been approached by a Mr Stone Sizani, the provincial chairperson of the African National Congress (the ruling party in the Eastern Cape) and that she was going to Port Elizabeth to meet him to discuss Kirland Investments' applications for approval and to be shown its clinic.

[8] At a subsequent meeting, Jajula informed staff members, including Diliza, that she had met with Sizani, she had seen Kirland Investments' clinic and that it was small and needed expansion, that it would be unfair to refuse its applications and that she was under pressure from the executive council of the provincial government 'because the Department was seen as withholding licences from BEE companies to establish private hospitals'.[2]

[9] On 23 October 2007, Jajula summoned Diliza to her office. Jajula had a file in her possession and told Diliza that she had seen in the file that Kirland Investments' applications had not been approved. She said that she was under political pressure to grant the applications 'because the refusal to grant the Applicant's applications put her in a bad light in the political arena' and instructed Diliza to approve the applications. (Jajula has not deposed to an affidavit and so, despite the denial of

[2] Kirland Investments was not at the time of the applications 'BEE compliant' but in the Jeffreys Bay application it stated: 'At this stage we confirm that we will comply with Government Legislation regarding BEE. We are committed to source the appropriate shareholders and provide the employment opportunities as envisaged in the published BEE charters. We undertake to provide the Department of Health with the necessary documentation.'

these allegations by Kirland Investments and competing allegations as to whether Jajula made certain admissions or denials, no proper dispute of fact is created. Therefore, for purposes of this matter, Diliza's version must be accepted.[3])

[10] So much for the maladministration. It was followed by the first failure of moral courage: Diliza simply granted the applications as she had been instructed to do, lamely stating that she was 'obliged' to give effect to Jajula's instruction. She granted the applications, what is more, in the full knowledge that the advisory committee had recommended that they be refused and aware of why it had so recommended.

[11] The second failure of moral courage followed soon thereafter. Boya returned to work and discovered what had happened. In order to explain why he had dealt with the applications for the expansion of the original approvals in the way in which he had, and had not acted immediately to rectify what he considered to be unlawful decisions, he stated:

'With Mrs Jajula still operating as the MEC of the Department, it was virtually impossible for anyone to do anything about the dilemma that was caused by her instructing Dr Diliza to approve the Applicant's applications.'

[12] Legal advice had been sought concerning how to deal with the problem. That advice was apparently to the effect that Diliza's decisions could simply be revoked. Boya followed that advice and, as stated above, informed Kirland Investments on 20 June 2008 that the approvals that had been granted to it had now been withdrawn.

The issues in the appeal

[13] In respect of the appeal against both the setting aside of Boya's withdrawal of the approvals and the MEC's upholding of those decisions on internal appeal there are, it seems to me, four main issues that must be addressed in sequence. They are: (a) the effect of Boya's decisions on 9 October 2007 to refuse the applications; (b) the effect of Diliza's decisions to grant the applications on 23

[3] See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26.

October 2007; (c) whether, when he purported to withdraw Diliza's decisions, Boya was *functus officio*[4] or whether he had the lawful authority to do what he did; and (d) the regularity of the MEC's decision in the internal appeal.

Boya's decisions of 9 October 2007

[14] Boya's decisions of 9 October 2007 to refuse Kirland Investments' applications were never communicated to it and neither were they made public in any way. The evidence is clear: the letters that would have informed Kirland Investments of the refusal of their applications lay, unsigned and unsent, in a file in the department.

[15] The fact that the decisions were not communicated or otherwise made known has an important effect: because they were not final, they were subject to change without offending the *functus officio* principle. In *President of the Republic of South Africa & others v South African Rugby Football Union & others*[5] the Constitutional Court, in dealing with the President's power to appoint a commission of enquiry, held that the appointment 'only takes place when the President's decision is translated into an overt act, through public notification' and that prior to this overt act, he was 'entitled to change his mind at any time'. More generally, Hoexter sums up the position as follows:[6]

'In general, the *functus officio* doctrine applies only to final decisions, so that a decision is revocable before it becomes final. Finality is a point arrived at when the decision is published, announced or otherwise conveyed to those affected by it.'

[16] The result is that as the power to approve or refuse to approve the operating of private hospitals vests in the *office* of superintendent-general as head of the

[4] V G Hiemstra and H L Gonin *Trilingual Legal Dictionary* (3 ed)(1992) define the term *functus officio* to mean 'nie meer diensdoende nie; nie meer in funksie nie// no longer in office (officiating); having discharged his office'. The *functus officio* rule does not apply to subordinate legislation because s 10(3) of the Interpretation Act 33 of 1957 states: 'Where a law confers a power to make rules, regulations or by-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in like manner and subject to the like consent and conditions (if any) to rescind, revoke, amend or vary the rules, regulations or by-laws.'

[5] *President of the Republic of South Africa & others v South African Rugby Football Union & others* 2000 (1) SA 1 (CC) para 44.

[6] Cora Hoexter *Administrative Law in South Africa* (2 ed) (2012) at 278.

department,[7] and that office includes an acting superintendent-general,[8] Diliza was not precluded from taking decisions contrary to those taken by Boya but never communicated to Kirland Investments. She had the authority to take the decisions which she took but *w*hether her decisions were valid decisions for other reasons is another matter.

Diliza's decisions of 23 October 2007 and Boya's revocation thereof

[17] I have set out Diliza's evidence as to how and why she took the decisions to approve Kirland Investments' applications. The validity of those decisions is not the subject of challenge in these proceedings. That is an issue to which I shall return when I deal with the cross-appeal.

[18] On Diliza's own evidence in the papers before us, however, the decisions were invalid because they were taken as a result of the unauthorised dictation of Jajula, contrary to s 6(2)(*e*)(iv) of the Promotion of Administrative Justice Act 3 of 2000 (the PAJA).[9]

[19] It was argued by the appellants, however, that because the decisions are invalid, Boya, on his return to work, was entitled to revoke them: an unlawful administrative action, so the argument goes, is a nullity and can simply be ignored by the administrative authority that took it. The correctness of this argument is at the heart of this appeal.

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[7] Regulation 7(1).

[8] Section 10(2) of the Interpretation Act 33 of 1957 states: 'Where a law confers a power, jurisdiction or right, or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power, jurisdiction or right, may be exercised and the duty shall be performed from time to time by the holder for the time being of the office or by the person lawfully acting in the capacity of such holder.' See too *Holden v Minister of the Interior* 1952 (1) SA 98 (T) at 103G-H.

[9] See *Mlokoti v Amathole District Municipality & another* 2009 (6) SA 354 (E); *Hofmeyr v Minister of Justice & another* 1992 (3) SA 108 (C); *Minister of Justice v Hofmeyr* 1993 (3) SA 131 (A). See too Hoexter (note 6) at 274.

[20] This argument runs contrary to authority in this court. In *Oudekraal Estates (Pty) Ltd v City of Cape Town & others*[10] Howie P and Nugent JA set out the position thus:

'For those reasons it is clear, in our view, that the Administrator's permission was unlawful and invalid at the outset. Whether he thereafter also exceeded his powers in granting extensions for the lodgement of the general plan thus takes the matter no further. But the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the Administrator's approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view, it was not. Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.'

[21] There is no suggestion in the above passage that the obviousness of the unlawfulness is a factor of any relevance. Indeed, Hoexter understands *Oudekraal* to mean – and she is, in my view, correct – that 'even an obvious illegality cannot simply be ignored'.[11] One can easily understand why this is so. It would be intolerable and lead to great uncertainty if an administrator could simply ignore a decision he or she had taken because he or she took the subsequent view that the decision was invalid, whether rightly or wrongly, whether for noble or ignoble reasons. The detriment that would be caused to the person in whose favour the initial decision had been granted is obvious. Baxter says the following:[12]

'Indeed, effective daily administration is inconceivable without the continuous exercise and re-exercise of statutory powers and the reversal of decisions previously made. On the other

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[10] *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2004 (6) SA 222 (SCA) para 26. See too *Queenstown Girls High School v MEC, Department of Education, Eastern Cape & others* 2009 (5) SA 183 (Ck) para 20; *Norgold Investments (Pty) Ltd v Minister of Minerals and Energy, Republic of South Africa & others* [2011] 3 All SA 610 (SCA) paras 46-47.

[11] Note 6 at 547.

[12] Lawrence Baxter *Administrative Law* (1984) at 372. See too Hoexter (note 6) at 277.

hand, where the interests of private individuals are affected we are entitled to rely upon decisions of public authorities and intolerable uncertainty would result if these could be reversed at any moment. Thus when an administrative official has made a decision which bears directly upon an individual's interests, it is said that the decision-maker has discharged his office or is *functus officio*.'

[22] I therefore conclude that Boya could not validly take the view that because the decisions taken by Diliza were invalid, he could treat them as nullities and formally revoke them. For as long as the decisions taken by Diliza had not been set aside on review they existed in fact and had legal consequences. As Boya had no authority arising from the empowering legislation to revoke final decisions already taken – much less in the absence of a hearing being granted to Kirland Investments – he was, in relation to the decisions taken by Diliza in her capacity as acting superintendent-general, *functus officio*.[13]

The MEC's decision on appeal

[23] The MEC's decision to uphold the revocation of the approvals is premised, inter alia, on Boya not being *functus officio*. In her reasons for dismissing the appeal, she stated that Boya had withdrawn Diliza's decisions 'which could and should not have been taken under the above circumstances', that he was 'within his right to withdraw the Acting Superintendent-General's decision' and that the contention that he was *functus officio* was 'based on a wrong premise'.

[24] It is clear from what I have said above that she committed an error of law in that respect: as a matter of law, Boya was *functus officio* and so could not validly do what he had purported to do. The error of law was, without doubt, material in the

[13] See for example, *Thompson, trading as Maharaj and Sons v Chief Constable, Durban* 1965 (4) SA 662 (D) at 667C-D: 'Generally speaking, a person to whom a statutory power is entrusted is *functus officio* once he has exercised it, and he cannot himself call his own decision in question.' And at 668D, the court stated: 'The general rule is that, in the absence of special statutory provision, once a judicial or *quasi*-judicial decision has been given, the Court or officer giving it is *functus officio* in respect of the matter to which it relates.' (The reference to quasi-judicial decisions can now be read to be a reference to administrative decisions generally, but excluding the making of subordinate legislation.) See too Hoexter (note 6) who says: 'Ordinarily, however, the administrator will be *functus officio* once a final decision has been made and will not be entitled to revoke the decision in the absence of statutory authority to do so.'

sense that, had she not erred, her decision would have had to be to uphold Kirland Investments' appeal.[14] In the result, her decision falls foul of s 6(2)(*d*) of the PAJA.

The cross-appeal

[25] At paragraph 8 of the judgment of the court below, Makaula J spoke of Kirland Investments having sought the review of four decisions including 'the **ASG's** [acting superintendent-general's] decision of 23 October 2007 approving the establishment application'. He then proceeded to find, at paragraph 27, that this decision (perhaps more correctly 'these decisions') was to be 'reviewed and set aside' because Diliza had ignored the advisory committee's recommendations and had acted under dictation. Finally, he made orders reviewing and setting aside 'the decision of the Acting Superintendent-General dated 23 October 2007 . . .'[15] and remitting 'the applicant's applications for establishment of private hospitals and unattached operating theatres in Port Elizabeth and Jeffreys Bay' to the superintendent-general for reconsideration.[16]

[26] Kirland Investments never applied for this relief. They would not have wanted to because the approvals that were granted by Diliza were precisely what they had applied for. The MEC and superintendent-general, on the other hand, never applied for the review and setting aside of the approvals and neither did they bring a counter-application to this effect. It is therefore clear that when Makaula J said that Kirland Investments had sought the setting aside of Diliza's decisions (and the consequential remittal order) he erred.

[27] In my view Makaula J had no jurisdiction to set aside the approvals granted by Diliza in the absence of either an application or a counter-application in which that relief was sought. Section 6(1) of the PAJA, not surprisingly, postulates proper proceedings having been instituted as a pre-condition to a court's exercise of its powers of judicial review when it states that '[a]ny person may institute proceedings in a court . . . for the judicial review of an administrative action'. In terms of s 8(1), a

[14] *Hira & another v Booysen & another* 1992 (4) SA 69 (A).
[15] Paragraph 1 of the order of the court below.
[16] Paragraph 4 of the order of the court below.

court may grant just and equitable relief, including the setting aside of an administrative action, 'in proceedings for judicial review in terms of s 6(1)'. Taken together, these provisions mean no more than that, before a court may set aside an administrative action, there must have been proceedings for judicial review that were brought for that relief, in exactly the same way that, before a court may grant an award of damages, there must have been a claim instituted in accordance with the proper procedure.

[28] Not surprisingly, the case law is in harmony with what I consider to be the trite proposition that I have stated above. In *Oudekraal*, for instance, this court, after finding that the approval of the township in issue was invalid, proceeded to say:[17]

'One of those consequences is that the invalid approval is liable to be set aside in proceedings properly brought for judicial review. It is not open to us to stifle the right that any person might have to bring such proceedings, or to pre-empt the decision that a court might make if it is called upon to exercise its discretion in that regard.'

[29] The Constitutional Court arrived at much the same conclusion in *CUSA v Tao Ying Metal Industries & others*,[18] a matter concerning the review of an arbitration award made by a commissioner of the Commission for Conciliation, Mediation and Arbitration (the CCMA) in a labour dispute. Ngcobo J stated that 'the role of the reviewing court is limited to deciding issues that are raised in the review proceedings' and that it 'may not, on its own, raise issues which were not raised by the party who seeks to review an arbitral award'.

[30] I conclude therefore that, as no application or counter-application was ever made before Makaula J for the review and setting aside of the approvals granted by Diliza, the cross-appeal must succeed.

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[17] Note 10 para 46.

[18] *CUSA v Tao Ying Metal Industries & others* 2009 (2) SA 204 (CC) para 67. See too *Tao Ying Metal Industry (Pty) Ltd v Pooe NO & others* [2007] 3 All SA 329 (SCA) para 61; *Mgoqi v City of Cape Town & another; City of Cape Town v Mgoqi & another* 2006 (4) SA 355 (C) paras 10-13; *Queenstown Girls High School v MEC, Department of Education, Eastern Cape & others* (note 10) para 13.

Conclusion and order

[31] Mr Buchanan, who appeared with Mr Bloem for the MEC and the superintendent-general, made much of the fact that if the appeal fails and the cross-appeal succeeds, two invalid administrative actions will remain in effect. This situation, he said, should not be permitted to persist because the effect of this court's decision will be, he argued, to clothe the invalid approvals with the cloak of validity.

[32] It is incorrect to say that Diliza's decisions are valid: they exist as a fact and can have legal consequences for as long as they have not been set aside but the fact that they have not been set aside does not mean that they have somehow become valid. That is not what *Oudekraal* says. Moreover, Hoexter makes the point that administrative action 'is *treated* as though it is valid until a court pronounces authoritatively on its invalidity, but that does not mean that it is in fact valid'.[19]

[33] The answer to their dilemma lies in the hands of the MEC and the superintendent-general: if they want Diliza's decisions to be set aside, they must bring a proper application for that relief, and in all likelihood, their standing to do so will not be open to challenge.[20]

[34] It was suggested by Mr Buchanan that such an application would be doomed to failure because of the long delay from when the decisions were taken (on 23 October 2007) to when the application would be launched. Section 7(1) of the PAJA requires proceedings for review to be brought 'without unreasonable delay' and 'not later than 180 days' after any internal remedy has been exhausted or, in the absence of an internal remedy, after the person affected became aware of the administrative action concerned and the reasons for it, or 'might reasonably have been expected to have become aware of the action and the reasons'. Section 9(1) allows for the granting of condonation in appropriate cases in which proceedings

[19] Note 6 at 546.

[20] See *Municipal Manager: Qaukeni Local Municipality & another v FV General Trading CC* 2010 (1) SA 356 (SCA) para 23, and the cases cited therein. See too Hoexter (note 6) at 511.

have been instituted outside of the 180-day period.[21] The answer lies in bringing the application and applying for condonation. If a good explanation for the delay is given, the delay may be condoned. Indeed, in the *Oudekraal* saga, an application to set aside the approval of the township was brought subsequent to the first decision of this court, and a delay of 47 years was condoned by this court.[22]

[35] There is a far more fundamental reason why we are not able to assist the MEC and superintendent-general in the way suggested: this court, like the court below, has no jurisdiction to set aside Diliza's decisions because they have never been taken on review.

[36] In the result, the appeal must fail and the cross-appeal must succeed. I make the following order:

(a) The appeal is dismissed with costs, including the costs of two counsel.

(b) The cross-appeal is upheld with costs, including the costs of two counsel.

(c) The order of the court below is amended by the deletion of paragraphs 1 and 4.

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C Plasket
Acting Judge of Appeal

[21] See generally on s 7(1) and s 9(1) of the PAJA, as well as the common law delay rule, *Beweging vir Christelik-Volkseie Onderwys & others v Minister of Education & others* [2012] 2 All SA 462 (SCA).

[22] *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* 2010 (1) SA 333 (SCA).

APPEARANCES:

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