IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED

DATE: 13 May 2025

SIGNATURE:

Case No. 043089/2023

In the intervention application between:

COETZER, CASPER NICOLAAS	First Applicant
MNCUBE, VICKQUS NKOSIKHONA	Second Applicant
VAN NIEKERK, YVONNE	Third Applicant
ZA SQUARE CONSULTING (PTY) LTD	Fourth Applicant

and

OFFICE OF THE CHIEF JUSTICE	Respondent

In the main application between:

OFFICE OF THE CHIEF JUSTICE	First Applicant
and	
THOMSON REUTERS (PROFESSIONAL) UK LTD	First Respondent
NATIONAL TREASURY	Second Respondent
STATE INFORMATION TECHNOLOGY AGENCY SOC LIMITED	Third Respondent
THE AUDITOR-GENERAL	Fourth Respondent

Coram:	Millar J
Heard on:	12 May 2025
Delivered:	13 May 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 13 May 2025.

JUDGMENT

MILLAR J

[1] This is an application brought by the applicants for an order permitting their intervention in an application for self-review of a tender awarded by the Office of the Chief Justice (OCJ) to Thomson Reuters (Professional) UK Ltd (TR).

[2] Pursuant to the award of the tender and signature of a contract between OCJ and TR, it emerged that the first to third applicants, former employees of the OCJ had established the fourth applicant and had then submitted and been awarded a sub-contract in terms of the main tender. During the currency of their employ with the OCJ, the first to third applicants had in some way been involved in the adjudication and award of the tender or had knowledge of it.

[3] After the sub-contract had been awarded by TR to the fourth respondent, the OCJ had become aware of this. This all occurred after the signature of the contract but before the first to third applicants, who had tendered their resignations and were now working their notice periods, had finished doing so.

[4] The OCJ initiated an application for self-review of the tender awarded to TR. This is the main case which is set down for hearing in this Court on 27 May 2025. In the filing of its papers for the self-review certain technical grounds were raised as to why the award of the tender should be set aside. Additionally, the OCJ through its then Secretary General, also filed an affidavit in which certain allegations and concerns about the role of the first to third applicants in the award of the tender, and subsequently thereto, in consequence of their establishment of the fourth applicant and its award of the sub-contract were concerned.

[5] The applicants in this application do not oppose the reviewing and setting aside of the main tender. In addition, the sub-contract between the fourth applicant and TR has also since been cancelled. Save for any historical role they played in

their erstwhile capacity as employees of the OCJ, they have no interest in the proceedings, save in one respect.

[6] It is contended by the applicants that the allegations made regarding their conduct while they were employees is false and defamatory and that the making of such allegations, without what they contend is any basis, was done purely to bring them into disrepute and to harm their reputations and future commercial prospects. In this regard in particular, the suggestion that the OCJ would seek an order 'blacklisting' the fourth respondent with national treasury so that it could not do business with government in the future is of particular concern to them.

[7] The entire application for intervention is predicated on what are contended to be the false allegations and the apprehension that the court hearing the review and deciding it may well make findings against the applicants during its consideration and ultimate decision of the matter.

[8] The basis for the intervention was succinctly expressed by the first applicant as follows:

> *"Furthermore, the Applicants are not opposed to the reviewing and setting aside of the impugned award and contract awarded to Thomson Reuters on other grounds delineated in OCJ's founding affidavit except those grounds referred to above which seek to blame the applicants and characterize their conduct as criminal in the procurement process that led to the impugned award."*

[9] In consequence of the grounds which the applicants assert cast their conduct in a negative light, they say that they ought to be given leave to intervene to protect their *"rights to dignity and a right to be heard."*

[10] The OCJ opposes the application for intervention on the basis that since it is common cause between the parties that the tender is to be reviewed and set aside, the applicants have no interest in any order that the court would make. It is the case for the OCJ that the only interest that the applicants claim to have, is in the reasoning that may (or may not) be adopted by the court hearing the review application and only insofar as any characterization by that court of any of the conduct of the first to third applicants while they were employees, may aggrieve them.

[11] Rule 12 provides that "*Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.*" This rule also finds application in motion proceedings such as the present by virtue of rule 6(14).

[12] The test for intervention is well established. In *National Director of Public Prosecutions v Zuma,*[1] on all fours with the present case, it was held that:

> "*Nevertheless, to be able to intervene in proceedings a party must have a direct and substantial interest in the outcome of the litigation, whether in the court of first instance or on appeal. The basic problem with the application is that the applicants have no interest in the order but only in the reasoning. They are in the position of a witness whose evidence has been rejected or on whose demeanour an unfavourable finding has been expressed. Such a person has no ready remedy, especially not by means of intervention. To be able to intervene in an appeal, which is by its nature directed at a wrong order and not at incorrect reasoning, an applicant must have an interest in the order under appeal. The applicants do not have such an interest.*"

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[1] 2009 (2) SA 277 (SCA) at para [85].

[13] The applicants have no interest in the order and have said so explicitly. They have also not set out any basis, prima facie or otherwise upon which they would be able to be of assistance to the review court.[2]

[14] To my mind, the main review proceedings will be decided based on the record of the proceedings which are under review. This record sets out the conduct of the applicants while they were employees of the OCJ. The court hearing the review will decide the relevance if any, of the conduct of the applicants regarding whether the review is to be granted or not and will consider the veracity and appropriateness of any adverse statements made about them in its consideration of the matter.

[15] For the applicants, insofar as their past conduct while employed by the OCJ is concerned "*The moving finger writes: and having writ, Moves on: nor all thy Piety nor Wit shall lure it back to cancel half a Line, Nor all thy Tears wash out a Word of it.*[3]" Their position is no different to any past employee of any institution whose conduct while employed is to be considered. The right to dignity is not in issue. Either the grounds of review premised on the conduct of the applicants have merit or they do not. The application to intervene, for the reasons I have given lacks any merit and must be refused.

[16] This is however not the end of the matter. In the founding affidavit and subsequently replying affidavit deposed to by the first applicant, allegations were made calling into question the honesty and integrity of the Secretary General of the OCJ who had deposed to the affidavits on its behalf in the review proceedings. The OCJ besides opposing the main application has also applied to strike out the

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2 *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) t/a Sibaya Casino Entertainment Kingdom and Others and a related matter* [2020] 4 All SA 226 (KZP).

3 *Rubaiyat of Omar Khayyam*, Translated by Edward Fitzgerald, Quatrain LI (51).

contents of a significant number of paragraphs of the founding affidavit which it regards as scandalous and vexatious.[4]

[17] There is no point served in dealing and repeating each of the allegations that were made. To do so would only serve to give them life. On a conspectus of the allegations, none of them advance the case for intervention or for that matter the review.

[18] Such allegations appear to have been made with the sole purpose of humiliating, demeaning and bringing the former Secretary General into disrepute by suggesting that she was somehow involved with or abetted impropriety.[5] There is no evidence to support this at all.[6]

[19] The allegations which the OCJ has sought to have struck out span no less than 20 paragraphs in the founding affidavit. These are paragraphs 35 to 39, 41 to 50, 53 and 62 to 65. It bears mentioning that the founding affidavit only consists of 69 paragraphs so, almost a third of the total founding affidavit was devoted to such allegations.

[20] I am persuaded that the allegations made in the paragraphs in question are scandalous and vexatious and are to be struck out.

[21] This brings me to the question of costs. Regarding the scale of costs, it was argued for the OCJ that a punitive order for costs was warranted insofar as the applicants knew that they did not intend to challenge the review *per se* and for

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4 In terms of rules 6(11) and 6(15).

5 *See Helen Suzman Foundation v President of the Republic of South Africa; Glenister v President of the Republic of South Africa* 2015 (2) SA 1 (CC) at paras [27] – [28].

6 The allegations were made ostensibly based on inadmissible hearsay evidence for which there was no application made to have such evidence admitted, this notwithstanding the assertion in the replying affidavit that such an application would be made at the hearing.

that reason had no real prospect of being granted leave to intervene. The OCJ was put to entirely avoidable and unnecessary expense in having to oppose the application and to deal also with the intemperate, vexatious and scandalous allegations made against the former Secretary General.

[22] It was argued that since no evidentiary basis was laid for such allegations, they were made gratuitously and with the improper motive as set out above. It is for this reason that the OCJ argued that an order for costs as between attorney and own client[7] should be made as a mark of this court disapproval.

[23] I am of the view that a punitive costs order on the scale as between attorney and own client is warranted in the circumstances and this is the order that I intend to make. The OCJ engaged the services of two counsel and there is no reason that the costs order should not include those costs.

[24] In the circumstances, I make the following order:-

[23.1] The application for intervention is dismissed.

[23.2] Paragraphs 35 to 39, 41 to 50, 53 and 62 to 65 of the first applicant's founding affidavit are struck out.

[23.3] The first, second, third and fourth applicants are ordered to pay the respondent's costs, jointly and severally, the one paying the others to be absolved on the scale as between attorney and own client, scale C, which costs are also to include the costs consequent upon the engagement of two counsel.

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7 *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at para [222].

A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	12 MAY 2025
JUDGMENT DELIVERED ON:	13 MAY 2025
COUNSEL FOR THE APPLICANTS:	ADV. LR MODIBA
INSTRUCTED BY:	CHITA INCORPORATED ATTORNEYS
REFERENCE:	MR. T CHITA
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INSTRUCTED BY:	THE STATE ATTORNEY, PRETORIA
REFERENCE:	MR. D MPHEPHU