

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

Case Number: 2025-040663

In the matter between:

SWIMMING SOUTH AFRICA

Applicant

And

SOUTH AFRICAN WATER POLO NPC

First Respondent

ZAIDA ADAMS

Second Respondent

MATTHEW KEMP

Third Respondent

ROBERT WAGNER

Fourth Respondent

ROBBIE TAYLOR

Fifth Respondent

DUNCAN WOODS

Sixth Respondent

SIEG LOKOTSCH

Seventh Respondent

TONY FERGUSON

Eight Respondent

JARED WINGATE-PEARSE

Ninth Respondent

RICHARD IRVINE

Tenth Respondent

DELAINE MENTOOR

Eleventh Respondent

STEFFANIE WERRETT

Twelfth Respondent

KEVIN ADRIAAN

Thirteenth Respondent

**SOUTH AFRICAN SPORTS CONFEDERATION
AND OLYMPIC COMMITTEE**

Fourteenth Respondent

FIRST TO THIRTEENTH RESPONDENTS' HEADS OF ARGUMENT

INTRODUCTION

1. The Applicant (“**Swimming South Africa**”) seeks wide-ranging final¹ interdictory relief against the First to Thirteenth Respondents (the “**Respondents**”). The relief sought includes orders interdicting and restraining the Respondents from –
 - 1.1. Passing the First Respondent (“**SA Water Polo**”) off as if it “*had the authority to govern or administer the sport of water polo in South Africa*”;²
 - 1.2. Purporting to carry out the administration or governance of the sport of water polo in South Africa;³ and
 - 1.3. Interfering with the “*affairs of the Applicant*” and in particular from directing or encouraging any person or entity to “*boycott or avoid participating in events*” held under the auspices of the Applicant.⁴
2. SA Water Polo is not passing itself off as the national federation with the authority to administer and govern the sport of water polo in South Africa. Neither is it encouraging water polo players and clubs to boycott or avoid participating in the Applicant’s events. These allegations are false. The confirmatory affidavits filed herewith reflect the Respondents’ unequivocal and ongoing cooperation with Swimming South Africa where required.⁵
3. SA Water Polo accepts and respects that Swimming South Africa is the current

¹ Applicant’s Heads, para 29, **Record** p. 11.

² Notice of Motion, para 2.1, **Record** p 001-4.

³ Notice of Motion, para 2.2, **Record** p 001-4.

⁴ Notice of Motion, para 2.3, **Record** p 001-4.

⁵ See especially the confirmatory affidavits of Mr Siegfried and Mr Irvine where WhatsApp correspondence show that that the Respondents have sought to co-operate when required with Swimming South Africa. **Record** p 008-34 and **Record** 008-38.

administrator of water polo in the Republic. However, in response to Swimming South Africa's systematic and well-documented failures⁶ over the last three decades,⁷ SA Water Polo seeks:—

- 3.1. In the short term: to organise and unite clubs, players, coaches and referees, and to develop high performance programmes for its members; and
- 3.2. In the longer-term: (a) to apply for membership with World Aquatics (governed by Swiss law) in order to ensure that SA Water Polo teams can compete at the highest international levels; and to the extent necessary, (b) to work with the relevant Minister and the Department of Sports, Arts and Culture together with South African Sports Confederation, Olympic And Paralympic Committee ("SASCOC") (the Fourteenth Respondent) and Swimming South Africa.
4. SA Water Polo is an emergent organisation – formed with the support of hundreds of water polo players, officials and administrators across the country – with the broad goal of developing and advancing the sport of water polo.⁸ SA Water Polo and the Respondents have the right to organise and associate, and to express themselves, rights which are protected by sections 16 and 18 of the Constitution.
5. Conversely: Swimming South Africa has no right to suppress criticism, and stand in the way of SA Water Polo and the Respondents from acting lawfully, in the interests of its members, and with the utmost good faith.

⁶ Annexure "FA4", **Record** p 002-90.

⁷ AA, para 58, **Record** p 005-22.

⁸ AA, para 25, **Record** p 005-9.

6. Indeed, Swimming South Africa does not seek to vindicate a *bona fide* claim. It has brought this application for the ulterior purpose of discouraging, censoring, intimidating, and silencing the Respondents. This constitutes an abuse.⁹
7. In the circumstances, the application falls to be dismissed with costs.

BACKGROUND

8. In South Africa, responsibility for the development and promotion of high-performance sports is regulated by the National Sport and Recreation Act 110 of 1998 (“**the Act**”). In terms of the Act -
 - 8.1. a “*sport or recreation body*” is any national federation, agency or body, including a trust or registered company of such a national federation, agency or body, involved in the administration of sport or recreation at national level; and
 - 8.2. there is to be a “*national federation*”, which is the national governing body of a sporting code recognised by the relevant international controlling body as the only authority for the administration and control of the relevant code of sport or recreational activity in the Republic; and
 - 8.3. a “*sports confederation*”, which means the confederation recognised by the relevant Minister as the representative of sport or recreation bodies, including Olympic national federations.

⁹ *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* 2023 (7) BCLR 779 (CC) (14 November 2022) para [2] and [6].

9. In terms of Regulation 3(1)(f) a “*sport or recreation body*” will be recognised if it is (amongst other things) “*recognised by a relevant international controlling body*”.¹⁰
This recognition can be obtained on application to the Director: Department of Sport, Arts and Culture.
10. Swimming South Africa is the current national federation in South Africa recognised by World Aquatics (the applicable international sporting federation) as governing a number of aquatics disciplines, including swimming and water polo.
11. The Constitution of Swimming South Africa provides that¹¹ –
 - 11.1. it is a voluntary association that administers and controls “Aquatics and its disciplines” which include–
 - 11.1.1. diving;
 - 11.1.2. masters;
 - 11.1.3. open water swimming;
 - 11.1.4. swimming;
 - 11.1.5. synchronised swimming (now known internationally as artistic swimming); and
 - 11.1.6. water polo. (clause 1.1)

¹⁰ Recognition of Sport and Recreation Bodies Regulations, 2011 (Government Gazette No. 34509).

¹¹ Annexure “FA1”, **Record** p 002-3.

- 11.2. it is registered with Sport and Recreation South Africa as a “*national federation*” (clause 1.4.1);
 - 11.3. it has as its stated objectives to *inter alia* develop, control and promote “*all aquatic disciplines*” for its abled and disabled members in the Republic of South Africa (clause 4); and
 - 11.4. it has a membership comprised of individuals, clubs, districts and other recognised affiliates over which it has the power to disqualify and/or discipline (clause 5 read with clause 15).
12. SA Water Polo has described the problem with the wide-ambit of Swimming South Africa’s structure and failed operations in its answering affidavit:¹²
- 12.1. As water polo participation has evolved, its administrative and developmental requirements have become increasingly distinct from those of swimming, necessitating a dedicated organisational structure to effectively address its specific needs. While both swimming and water polo take place in the pool, they fundamentally differ in their activity and focus.
 - 12.2. Swimming (at a competitive level) is largely an individual endeavour, where athletes concentrate intensely on their personal technique, speed, and endurance, racing against the clock and competitors, in separate lanes, with success resting primarily on solitary performance.
 - 12.3. Water polo, conversely, is inherently a team sport; success hinges on

¹² AA para 9 – 13, **Record** p 005-3 & 4.

collective strategy, constant communication, intricate passing, defensive coordination, and direct physical engagement with opponents, requiring players to function as a cohesive unit rather than relying solely on individual prowess.

12.4. These differences mean that these two sports require materially different organisational structures and approaches in relation to a number of aspects, including but not limited to: (i) talent identification and development pathways; (ii) training philosophies and resource allocation; (iii) competition structure and emphasis; (iv) selection criteria and processes; and (v) coaching structures and support.

12.5. Consequently, administering swimming effectively should involve the creation of systems that allow individuals to reach their peak potential. By contrast, administering water polo effectively requires building frameworks that foster teamwork, strategic cohesion, and collective success, all while developing the necessary individual skills within that team context.

13. These problems are not unique to South Africa. In response to these universal challenges, the model of governance internationally is varied:¹³

13.1. Esteemed water polo playing nations such as Hungary (a nation renowned for its unparalleled historical dominance and consistent success in international water polo), Serbia (the second most successful national team after Hungary in the history of the sport), Croatia and Australia all have

¹³ AA para 33, **Record** p 005-12 & 13.

separate national federations responsible for the sport of water polo, as distinct from swimming.

- 13.2. In so far as Australia is concerned, and although it occurred over four decades ago now, there was an amicable transition from a single, unified aquatics body, then the Amateur Swimming Union of Australia (ASU), to four independent unions in the sports of diving, synchronised swimming, swimming and water polo, respectively, through a change to the ASU constitution. Swimming organised itself under the newly incorporated Australian Swimming Inc. and water polo under the Australian Amateur Water Polo Association.
- 13.3. Others, such as the United States of America and Canada, have the same separation in national governance and administration for the sports of water polo and swimming, but have elected (for their own reasons) to insert an additional organisational layer in the form of a unified aquatics body designed to advocate for and represent their members (the various national governing bodies of each distinct sport) in dealings with the international federation (World Aquatics) and their national Olympic Committees etc. Notable, however, for this group is that these unified aquatics bodies deliberately play a minimal role in the governance and administration of each individual sport at a national level, leaving primary responsibility for the governance of each of the aquatic sports to the member national federation themselves.
14. In short: Swimming South Africa is administratively outdated: it has failed to evolve

and advance water polo in South Africa, particularly at an elite level. These failures have resulted in the parlous, shambolic, and neglected state in which water polo currently finds itself in South Africa, with a lack of meaningful transformation, poor administration, a dearth of fundraising initiatives, and a non-existent high performance programme.¹⁴

15. It is not the purpose of these heads of argument to deal with the full administrative failings and governance issues within the sports for which Swimming South Africa is responsible but, briefly, and as explained by Duncan Woods, the Sixth Respondent, in his confirmatory affidavit,¹⁵ these failures include –

- 15.1. The failure to approve the appointment of a coach for the national men's team;
- 15.2. Failure to establish selection committees and/or selection criteria with the result *inter alia* that teams for major events are not selected timeously and athletes are ill-prepared;
- 15.3. Failure to put in place appropriate training programmes or performance requirements;
- 15.4. Players being forced to pay large amounts of money – in most instances on short notice – to attend tournaments in order to represent South Africa; and
- 15.5. The failure to put in place appropriate review and oversight mechanisms of

¹⁴ AA para 15.1, **Record** p 005-05.

¹⁵ **Record** p 008-3.

teams' performance after major events.

16. As a consequence of these and other failures, and as supported by annexure "DW3" to Mr Woods's affidavit,¹⁶ there has been a marked decline in the performance of the national men's water polo team from 1994 to 2024.
17. These allegations are not seriously disputed by Swimming South Africa in its replying affidavit, or refuted in its heads of argument.
18. In any event, motion proceedings are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual disputes because they are not designed to determine probabilities.¹⁷

THE CREATION OF SA WATER POLO

19. South Africa Water Polo NPC is a newly registered non-profit company. SA Water Polo was set up, *inter alia*, to:-¹⁸
 - 19.1. address the state in which water polo currently finds itself in South Africa, with a lack of meaningful transformation, poor administration, a dearth of fundraising initiatives, and a non-existent high performance programme;
 - 19.2. address the failure of Swimming South Africa to meaningfully engage in good faith with water polo stakeholders and role players by forming a collective body which, *de facto*, represents the overwhelming majority of the

¹⁶ **Record** p 008, 16.

¹⁷ The *Plascon-Evans* test as refined in *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para [26].

¹⁸ AA para 15, **Record** p 005-05.

water polo playing community throughout the country and which has the best interests at heart for the promotion and development of water polo in South Africa;

- 19.3. address the distinct needs and developmental pathways for water polo and a desire for more focused governance tailored to the specific requirements of the sport; and
 - 19.4. address the need for an entity that has autonomy in its decision-making processes, resource allocation and the formulation of strategic plans specifically designed to advance water polo, and that can engage with and serve the effectively voiceless and isolated majority of water polo players and potential water polo players in South Africa.
20. SA Water Polo has the support of the following institutions and individuals¹⁹
- 20.1. Gauteng Water Polo, Cape Town Metro Water Polo, Winelands Water Polo, Nelson Mandela Bay Water Polo, and SA Masters Water Polo;
 - 20.2. The Chair of Schools Water Polo South Africa (the Tenth Respondent) and the Chair of Eastern Gauteng Water Polo (the Twelfth Respondent) (both of whom are cited in their personal capacity but who form part of the interim executive committee);
 - 20.3. Administrators and coaches, including the former SA Women's Water Polo head coach and the first female head coach in the Olympic Games history

¹⁹ AA para 18, **Record** p 005-6.

(the Eleventh Respondent herein); and

- 20.4. Approximately 750 water polo players, officials and administrators.
21. SA Water Polo has been formed without members, with the intention to seek approval from the water polo playing community itself by encouraging as many as possible to associate voluntarily with it.²⁰ Thereafter, the intention is to ultimately coordinate, vote on, and register a bespoke memorandum of incorporation that provides for those persons to become members and elect, where applicable, its leaders.²¹
22. SA Water Polo intends to invite Swimming South Africa to enter into meaningful engagement with it. The desired outcome of such engagement would be for Swimming South Africa to acknowledge that it has failed in its administration of the sport and to allow for the peaceful transfer of authority to SA Water Polo to run water polo in South Africa (as in other countries).²² SA Water Polo intends to achieve this goal, to the extent necessary, by working with the relevant Minister and the Department of Sports, Arts and Culture together and SASCOC.
23. But, if Swimming South Africa does not co-operate in transferring this authority, and should SASCOC refuse to co-operate, SA Water Polo will apply to World Aquatics independently for it to be recognised as the body responsible for water polo in South Africa. The determination of this issue would be solely within the jurisdiction of World Aquatics. Any dispute in relation thereto would be determined in accordance with the World Aquatics Constitution. The documentation that would be placed before

²⁰ AA, para 16, **Record** p 005-6.

²¹ AA, para 16, **Record** p 005-6.

²² AA, para 22, **Record** p 005-8.

World Aquatics would include a number of further documents that would be germane to any decision to be made by World Aquatics. However no such application has yet been made. This position is explained more fully below.

INTERNATIONAL RECOGNITION AS A MEMBER OF WORLD AQUATICS

24. International sporting federations typically structure their constitutions to assert their independence and autonomy from interference from external bodies, in particular, national governments.²³ World Aquatics is no different.

25. The constitution of World Aquatics provides that:

25.1. the Constitution shall be governed by and interpreted in terms of Swiss law;²⁴

25.2. the Court of Arbitration for Sport (“CAS”), with its seat in Lausanne, Switzerland, has exclusive jurisdiction to resolve any kind of disputes between *inter alia* World Aquatics, World Aquatics Members, members of World Aquatics Members, and “*National Aquatics bodies*”;²⁵ and

25.3. the CAS shall resolve any dispute in accordance with the Code of Sports-related Arbitration (the “CAS Code”), the Constitution, the applicable World Aquatics Rules and subsidiarily Swiss law.

26. The CAS has accepted the importance and legitimacy of the principle that international federations are designed to be independent and autonomous.²⁶ SA Water

²³ Lewis and Taylor ‘Sport: Law and Practice’ 4th Edition (2021) *Bloomsbury Professional* Chapter A1 pp 4 and 5 – at para A1.2 and A1.4.

²⁴ Article 36, **Record** p 002-87

²⁵ Article 31.1, **Record** p 002-86.

²⁶ Lewis & Taylor *op cit* note 22 at 5 para A1.4 and the authorities cited therein. See in particular *Kuwait Sporting Club et al v FIFA & Kuwait Football Association*, CAS 2015/ N4241, para 8.60.

Polo's application for membership, in due course, shall be determined by World Aquatics, and that international federation alone, and any dispute in relation thereto would be referred to arbitration before the CAS.

27. In *Indian Hockey Federation (IHF) v. International Hockey Federation (FIH) & Hockey India* (CAS 2014/A/3828), the CAS interpreted and reinforced the following legal principles:

27.1. The contents of the Swiss constitutional right²⁷ to associate is designed to protect the association – within certain boundaries – from all kinds of state interference (including interference by state courts);²⁸

27.2. Swiss law gives the members of an association a very broad autonomy, including in choosing who else to admit to membership of the association. The right of a Swiss association to regulate and determine its own affairs is considered essential for the association;²⁹

27.3. One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions;³⁰ and

27.4. The starting point is that an association has autonomy to accept or refuse

²⁷ Article 23 of the Federal Constitution of the Swiss Confederation ("Freedom of Associations") guarantees freedom of association. It provides that: "*Every person has the right to form, join or belong to an association and to participate in the activities of an association. No person may be compelled to join or to belong to an association.*"

²⁸ Para 139.

²⁹ Para 142.

³⁰ Para 143.

applications for membership.³¹

28. An international federation alone has the right to decide who to admit as a member to represent a particular country or territory; not the government or National Olympic Committee of the country or territory in question (such as SASCOC).³² In this regard, the CAS has held that unless the International Olympic Committee (“**IOC**”) proves that an international federation has violated the Olympic Charter (in which case the IOC may impose sanctions on the international federation), the IOC cannot take any action with regard to a specific sport which could be regarded as prejudicial to the independence and autonomy of the international federation administering that sport.³³
29. This does not stop an international federation from taking account of the views of the country's National Olympic Committee as to which body should be admitted to membership as the national federation of the sport in that country. In fact, some international federations make recognition by the NOC a condition of membership.³⁴
30. However, this is by no means the uniform, or recommended, position.³⁵ In *Indian Hockey Federation (IHF) v International Hockey Federation (FIH) & Hockey India* the CAS reiterated at para 159 that it would be contrary to the principle of the

³¹ Para 155.

³² Lewis and Taylor *op cit* note 22 at 32 and 33 para A1.43. In *Russian Badminton Federation v International Badminton Federation*, CAS 2005/A/971, the International Badminton Federation sought to justify its decision to recognise one Russian national body instead of another on the basis that the Russian Olympic Committee had recommended that action. The CAS panel rejected that argument at para 7.2.6 stating “*The ROC has no right to 'pick and choose' the national associations which [...] compose its membership. The recognition of the national federations lies exclusively within the jurisdiction of the international federation. This principle conforms with and remains consistent with Rule 26 of the Olympic Charter which states that each international federation 'maintains its independence and autonomy in the administration of its sport'.*” Another example of this was the *Croatian Golf Federation v European Golf Association*, CAS 2010/A/2275 at para 27.

³³ *Prusis & Latvian Olympic Committee (LOC) v International Olympic Committee (IOC)*, Arbitration CAS Ad Hoc Division CAS OG 02/001, par 10.

³⁴ See for example *Bulgarian Sport Shooting Federation (BSSF) v International Sport Shooting Federation (ISSF) & Bulgarian Shooting Union (BSU)*, CAS 2014/A/3863 at paras 80-81, 87.

³⁵ Lewis and Taylor *op cit* note 22 at 33 para A1.44 (in particular footnote 3).

autonomy of the association to oblige an international federation to wait, in deciding on an application for membership, on the government of the relevant country to choose, between two or more entities, which it will designate as a specific candidate member.³⁶

31. Thus, in order to be admitted to membership of an international federation, a national federation must satisfy the criteria for admission to membership set out in the international federation's constitution, and continue to satisfy them thereafter.³⁷ Those criteria vary from sport to sport.

32. Insofar as World Aquatics is concerned:

32.1. Application for membership shall be submitted together with certain information and a signed undertaking by any applicant to observe and comply with the Constitution, the World Aquatics rules as well as the decisions of the World Aquatics body. However, the Bureau shall decide "in its absolute discretion, whether to admit an applicant for membership. In particular, in its decision, the Bureau is not bound by any decision of national or international political or sport organisations. If membership is not granted by the Bureau, the applicant may appeal such decision to the next Congress." (article 5.4) (emphasis added).

32.2. In relation to those countries where two or more national bodies separately govern various disciplines of Aquatics, the Bureau shall take all appropriate

³⁶ See further para 2.4.2.2 of *Federation Internationale de Motocyclisme v Kuwait Motor Sports Club*, Swiss Tribunal decision number CAS 4A_314/2017 dated 28 May 2018 where para 159 of *Indian Hockey Federation (IHF) v International Hockey Federation (FIH) & Hockey India* was expressly endorsed.

³⁷ Lewis and Taylor *op cit* note 22 at 35 para A1.45.

measures to ensure that the interests of all athletes and aquatics institutions are properly promoted and the participation of all athletes and World Aquatics competitions and events is encouraged. In this regard "*the Bureau will determine on a case-by case basis, the rights and obligations that any such National Body that is not a member of World Aquatics shall have and which benefits such National Body may receive, taking into due consideration the specificities of the relevant country and the needs of the athletes of that Country*" (clause 5.5).

33. Accordingly, Swimming South Africa is a National Federation currently recognised by World Aquatics as a Member. But: SA Water Polo is not prohibited from (a) applying to World Aquatics as a National Body, as defined, and to receive recognition as such; and (b) in due course applying to be admitted as a member and recognised as the national federation responsible for the administration of water polo in South Africa.

THE REQUIREMENTS FOR FINAL RELIEF

34. In order to succeed, Swimming South Africa must demonstrate (a) a clear right(s); (b) an injury actually committed or reasonably apprehended; and (c) the absence of another satisfactory remedy.³⁸

35. The Respondents deny that:

- 35.1. Swimming South Africa has established any clear rights to the relief sought;³⁹

³⁸ *Setlogelo v Setlogelo* 1914 AD 221.

³⁹ *Setlogelo (supra)*; see also *Primedia (Pty) Ltd v Radio Retail (Pty) Ltd* 2012 JDR 0508 (SCA).

and

35.2. That SA Water Polo is engaging in the conduct complained of, and as such, Swimming South Africa is not entitled to the relief as there is no “*continuance of the thing against which [the] interdict is sought*”.⁴⁰

36. We substantiate these submissions under the following four headings:

36.1. First, SA Water Polo is not passing off as alleged;

36.2. Second, SA Water Polo has not usurped the administration or governance of water polo;

36.3. Third, SA Water Polo is not interfering in the governance of Swimming South Africa; and

36.4. Finally, Swimming South Africa has no entrenched and exclusive right to be recognised as the national federation for the administration of water polo in South Africa.

(i) Passing-off

37. Swimming South Africa seeks to interdict the Respondents from “*passing-off*” SA Water Polo as “*if it had the authority to govern the sport of water polo in South Africa*”.⁴¹

⁴⁰ *Steam Development Technologies 96 Degrees Proprietary Limited v Minister: Department of Public Works & Infrastructure* (4264/2023) [2024] ZAECKMHC 23 (16 February 2024) at [12].

⁴¹ NOM, para 2.1, **Record** p. 001-4.

38. Correctly, this contention and the consequential relief sought is not seriously pursued in the heads of argument filed on behalf of Swimming South Africa. We nevertheless briefly demonstrate why no such case has been made out for this relief.

39. Rabie JA defined passing-off in *Capital Estates v Holiday Inns*⁴² as follows:

“The wrong known as passing-off consists in a representation by one person that his business (or merchandise, as the case may be) is that of another, or that it is associated with that of another, and, in order to determine whether a representation amounts to a passing off, one enquires whether there is a reasonable likelihood that members of the public may be confused into believing that the business of the one is, or is connected with, that of another.”

40. The Supreme Court of Appeal has emphasised that *“the public is often more likely to focus on the brand name of a particular product rather than any other feature. Therefore, a competitor whose mark or name is clearly distinguishable from that of the other brand, is likely to avoid a finding of passing off.”*⁴³ (emphasis added)

41. No factual basis is set out in the founding papers for this relief. SA Water Polo does not purport to be Swimming South Africa. It is also not associated with Swimming South Africa. SA Water Polo is not a member of the Applicant and the Applicant has no jurisdiction over it.⁴⁴

42. That the Respondents never made the type of representation complained of is apparent

⁴² *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others* 1977 (2) SA 916 (A) at 929C; quoted with approval in *Koni Multinational Brands (Pty) Ltd v Beiersdorf AG* 2021 BIP 15 (SCA); (553/19) [2021] ZASCA (19 March 2021), para [19].

⁴³ *Koni (supra)* at [88].

⁴⁴ Annexure "FA1", **Record** p 002-35. Indeed, if Swimming South Africa did have jurisdiction over SA Water Polo, it would be obliged in terms of its own Constitution to refer the dispute to arbitration.

from Annexure FA4, in which SA Water Polo stated the following:

*“SA Water Polo believes that the most seamless transition from the existing to the new structure will be in consultation with [Swimming South Africa] who would be required to recognise the new structure including all necessary delegated levels of authority for [SA Water Polo] to run the sport of [water polo]. Failing this, [SA Water Polo] will engage with World Aquatics to recognise it separately from Swimming South Africa as the body representing the vast majority of players”.*⁴⁵

43. Similarly, in Annexure FA5, SA Water Polo states:

“[SA Water Polo] was formed to take control of the sport’s future...[SA Water Polo] is not a breakaway...We aim to collaborate with [Swimming South Africa] but are also prepared to seek recognition from World Aquatics if necessary...”

44. On Swimming South Africa’s version, the Respondents have never represented that SA Water Polo is the body responsible for the governance or administration of water polo in the country. Indeed, SA Water Polo was explicitly operating “*in consultation with SSA*” and was seeking its “*recognition*”.

45. Swimming South Africa is currently the body responsible for the governance and administration of water polo in South Africa. The water polo community knows this. The public knows this. Members of the public would not reasonably have been confused as to where the authority for governance or administration resided: with Swimming South Africa (hence the need for SA Water Polo to consult with it in the development of the sport).

46. What is clear, therefore, is that SA Water Polo was, and remains, candid about the fact that it does not currently hold the authority to administer the sport of water polo, and

⁴⁵ AA, para 53.3, **record** p 005-19; FA Annexure FA4, **record** p. 002-92.

that it intended to engage with Swimming South Africa in this regard. In no way could this constitute a representation that SA Water Polo had the authority to govern or administer water polo in the country, or that it held that authority concurrently with Swimming South Africa, or in its stead.

47. Furthermore, and contrary to Swimming South Africa's position, the media's reporting of the contents of the open letter is ultimately destructive of its case. As reported in FA6, SA Water Polo indicated that it aims to "[win] *official recognition*", necessarily implying that it does not currently have official recognition.

48. In the circumstances, Swimming South Africa has failed to demonstrate that the Respondents passed-off that SA Water Polo has the authority to govern or administer water polo in South Africa. As such, it is not entitled to the relief sought in paragraph 2.1 of the Notice of Motion.

(ii) SA Water Polo has not usurped the administration or governance of water polo

49. Swimming South Africa also seeks to interdict the Respondents from "*purporting to carry out the administration or governance of the sport of water polo in South Africa*".

50. In support of this contention, one might have expected Swimming South Africa to have averred that SA Water Polo was either -

50.1. engaged in the conduct delineated in paragraph 4 of Swimming South Africa's constitution;

50.2. engaged in the representation of South African athletes internationally, before World Aquatics or the Olympic Committee;

- 50.3. purporting to select players for Olympic, national or provincial representation; or
- 50.4. organising water polo competitions in which South African athletes could compete, either provincially, nationally or internationally.
51. It has made no such allegations. That is because, factually, SA Water Polo is not purporting to govern or administer water polo in South Africa. It is merely a *de facto* body representing the overwhelming majority of the water polo playing community,⁴⁶ interspersed between that community and Swimming South Africa, which has the goal of developing and advancing the sport of water polo in collaboration with Swimming South Africa,⁴⁷ with the view to ultimately becoming the new national body for the sport in the future.
52. That it may ultimately acquire the right to administer or govern the sport of water polo in the country in due course, and through the appropriate legal channels,⁴⁸ does not entitle Swimming South Africa to an interdict.
53. On the facts upon which this matter must be decided,⁴⁹ all SA Water Polo has been doing is:
- 53.1. engaging with clubs, players and stakeholders in the wider water polo community;⁵⁰

⁴⁶ AA, para 15.3, **record** p. 005-5.

⁴⁷ AA, para 25, **record** p. 005-9.

⁴⁸ AA, para 22, **record** p.005-8.

⁴⁹ *Plascon-Evans (supra)* at 623A.

⁵⁰ FA, Annexure FA4, **record** p. 002-90.

- 53.2. engaging with the media as to the need for development of water polo in South Africa;⁵¹
- 53.3. developing means to implement a new registration system to organise and unite clubs, players, coaches and referees;⁵² and
- 53.4. developing a high-performance programme for its members.⁵³
54. None of these actions fall within Swimming South Africa's exclusive constitutional objectives. That is, because they do not relate to the governance or administration of the sport.
55. Swimming South Africa has no right to prevent a group of water polo players voluntarily getting together to discuss ways of improving the sport or their own performance. That players, clubs and stakeholders have decided to come together by way of an NPC is of no moment.
56. Furthermore, because SA Water Polo is not a member of Swimming South Africa, the latter has no authority over its actions. As such, Swimming South Africa has no legal right to demand that SA Water Polo cease its work.
57. This is merely a manifestation of SA Water Polo's (and indeed the various clubs', associations' and players') constitutional rights to freedom of association.⁵⁴ The Constitutional Court has repeatedly affirmed that freedom of association is a fundamental right that protects against coercion, enables individuals to organise

⁵¹ FA, Annexures FA6 to FA9, **record** pp. 002-96 to 002-114.

⁵² FA, Annexure FA4, **record** p. 002-92.

⁵³ FA, Annexure FA5, **record** p. 002-94.

⁵⁴ The Constitution of the Republic of South Africa, 1996, section 18.

around particular issues of concern, and hold both public and private bodies to account.⁵⁵ The right has dual content in that it allows for a person to freely associate (positive element) as well as to decide not to associate at all (negative element).⁵⁶

58. In the circumstances, Swimming South Africa has failed to demonstrate that the Respondents are purporting to carry out the administration or governance of the sport of water polo in South Africa. As such, it is not entitled to the relief sought in paragraph 2.2 of the Notice of Motion.

(iii) SA Water Polo has not interfered in the Applicant's administration or governance

59. Swimming South Africa seeks to interdict the Respondents from “*interfering with [its] affairs*”⁵⁷ and in particular, from “*directing people to boycott or avoid participating in events held under the auspices of Swimming South Africa*”;⁵⁸ “*interfering in its communications to its membership*”⁵⁹ or “*securing sponsorships or raising funds from the public to fund the administration of water polo in South Africa*”.⁶⁰

60. As regards the last of these supposed forms of interference, Swimming South Africa fails to make even a single factual allegation in support thereof. As such, it has not made out a case for the relief sought in paragraph 2.3.4 of the Notice of Motion, and it falls to be dismissed out of hand.

⁵⁵ See *One Movement South Africa NPC v President of the Republic of South Africa and Others* 2024 (2) SA 148 (CC) at 227; *National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe) and Others* 2020 (6) BCLR 725 (CC) para 33.

⁵⁶ *Ibid.* This is a principle mirrored in international sports law. See Lewis & Taylor *op cit* note 22 at 54 para A1.63.

⁵⁷ NOM, para 2.3, **record** p. 001-4.

⁵⁸ NOM, para 2.3.1, **record** p. 001-4.

⁵⁹ NOM, para 2.3.3, **record** p. 001-5.

⁶⁰ NOM, para 2.3.4, **record** p. 001-5.

61. As regards the remaining allegations of “interference”, Swimming South Africa avers that the Respondents have -

61.1. *“called the persons and entities that have chosen to associate with it to boycott SSA events and to ignore communications from SSA”*;⁶¹

61.2. issued FA13 to its members to *“dissuade athletes and families of athletes from participating in the Africa Aquatics Tournament”*;⁶²

61.3. *“directly interfered with [its] communications and prevented it from notifying athletes that they were selected for the Africa Aquatics Tournament”*.⁶³

62. However, contrary to what is alleged by Swimming South Africa, it is in fact clear that:

62.1. Annexure FA13 is simply a response to inquiries SA Water Polo had received from a various stakeholders which advises parents and players to not be *“pressured into making decisions without careful consideration”*, reiterating that *“ultimately [it] is a personal decision for each family”*.⁶⁴

62.2. Rather than interfering with Swimming South Africa’s communications, some of the Respondents have gone out of their way to actively assist its team leaders with the provision of direct contact details for the parents of the selected athletes, for which they (the team leaders) have been extraordinarily

⁶¹ FA, para 54, **record** p. 001-23.

⁶² FA, para 56, **record** p. 001-24.

⁶³ FA, para 57, **record** p. 001-24.

⁶⁴ FA, Annexure FA13, **record** p. 002-126.

grateful.⁶⁵

62.3. It is the inadequacy of Swimming South Africa's own administrative systems and communication network that have led to (i) the lack of selection and preparedness for international events;⁶⁶ and (ii) athletes not receiving its communications⁶⁷ respectively.

63. The Respondents are entitled to communicate and express their views and their ideas. This conduct is constitutionally protected.⁶⁸

64. Therefore, on the facts upon which this case must be decided,⁶⁹ Swimming South Africa has failed to establish any interference on the part of the Respondents in its administration or governance of water polo, still less that they were/are doing so unlawfully. As such, Swimming South Africa is not entitled to the relief sought in paragraphs 2.3.2 to 2.3.4 of the Notice of Motion.

(iv) No exclusive right to administration and governance

65. There is a further aspect which underlies Swimming South Africa's application.

66. Whether the applicable legal and administrative framework entitles Swimming South Africa to the exclusive authority to administer or govern water polo in the country in perpetuity is dependent on an interpretation of the relevant empowering provisions.

⁶⁵ AA, para 71, **record** p. 005-26; Annexures SL1, AF1, RI1 and R12.

⁶⁶ AA, pars 74 - 81, **record** pp. 005-31 to 005-34.

⁶⁷ AA, para 72, **record** pp. 005-27 to 005-31.

⁶⁸ *Islamic Unity Convention v Independent Broadcasting Authority* 2002 (4) SA 294 (CC) at pars 23 – 25.

⁶⁹ *Plascon-Evans (supra)* at 623A.

67. The process for doing so is largely settled:

67.1. Although the ‘*inevitable point of departure*’ is a document’s language, neither it nor context predominates.⁷⁰

67.2. The ‘*triad of text, context and purpose*’ is not to be applied ‘*in a mechanical fashion*’, their interrelationship constituting ‘*the enterprise by recourse to which a coherent and salient interpretation is determined*’.⁷¹

67.3. A commercially sensible interpretation,⁷² which does not undermine a document’s apparent purpose,⁷³ or lead to an absurdity,⁷⁴ should be favoured.

68. It follows that the fundamental consideration in interpretation is to discern the intention from the words used in the context of the document, the factual matrix surrounding the creation of the document, and its purpose.⁷⁵

69. According to this exercise it is clear that -

69.1. recognition of a sporting body at the national and international level are distinct processes;

69.2. at the national level, the Regulations clearly (i) anticipate the possibility of the existence of multiple sport and recreation bodies, some of which may be

⁷⁰ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) in paras 17-19 and para 25.

⁷¹ *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) para 25.

⁷² *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) para 12.

⁷³ *Endumeni (supra)*, para 18.

⁷⁴ *Ibid*, para 25.

⁷⁵ *Novartis SA (Pty) Ltd v Maphil Trading (Pty) Ltd* 2016 (1) SA 518 (SCA) at paras 27, 28, 30 and 35.

national federations, with no restriction on the number of sport and recreation bodies from within any one particular sport; and (ii) that such sport and recreation bodies, including those from within one sport could be recognised at an international level;

69.3. recognition by the relevant Minister, or indeed any other national governmental body, is not a necessary condition for recognition by World Aquatics;

69.4. there is room within World Aquatics' structures for the recognition of more than one 'national body' to separately govern different aquatic sports within a single jurisdiction;

69.5. where that is the case, the World Aquatics Bureau has the discretion to determine the rights, obligations and benefits of any such national body that is not a member of World Aquatics; and

69.6. in making such a determination, the Bureau would act in accordance with Article 5.5 of World Aquatics' constitution.

70. Thus, while Swimming South Africa is the national federation currently recognised by World Aquatics as a member, SA Water Polo is not prohibited from applying to World Aquatics as a national body (and thereafter, and in due course, becoming a fully-fledged member).

71. It appears that Swimming South Africa is *ad idem* as to this interpretation.⁷⁶
72. Indeed, many other countries have more than one entity responsible for the administration and governance of discrete sports within aquatics.⁷⁷ It is not inherently a unitary function to be performed by one body for all time.
73. The fact that a particular body is, and has been, endowed with the authority to govern or administer a particular sporting code historically does not mean that another body may not be established for the purposes of lawfully acquiring that authority in due course.⁷⁸
74. Again, it appears that Swimming South Africa is *ad idem* on this point.⁷⁹
75. As such, Swimming South Africa does not have an exclusive right in perpetuity to govern or administer the sport of water polo in South Africa. Accordingly, it has no right to prevent SA Water Polo from taking steps to legally acquire that right in due course (including by establishing its legitimacy in the wider stakeholder community by creating the appropriate organisational structures in the interim).
76. That this may result in Swimming South Africa permanently losing the authority to govern or administer water polo in the country in future is merely an example of democracy in action. It does not confer it with a legal right worthy of interdictory

⁷⁶ Applicant's Heads, para 11: "*while other bodies may be recognised under section 1 of the NSRA, this does not detract from the hierarchical structure to which the NSRA adheres*".

⁷⁷ AA, para 33, **record** pp. 005-12 to 005-14.

⁷⁸ Arbitration CAS 2014/A/3828 *Indian Hockey Federation (IHF) v. International Hockey Federation (FIH) & Hockey India*, award of 17 September 2015.

⁷⁹ Applicant's Heads, para 15: "*it is accepted that hypothetically a separate body may be created in the Republic with a focus on water polo. If that were the case, then that body would have to be recognised under the NSRA as well as by World Aquatics*".

protection.

77. In the circumstances, Swimming South Africa has failed to demonstrate that the Respondents' conduct has unlawfully infringed a clear right on its part. As such, Swimming South Africa is not entitled to any relief and its application should fail.

(v) Requisites for interdictory relief accordingly not established

78. For all the reasons set out above, Swimming South Africa has failed to establish the requirements for a final interdict. It has not established a clear right on its part, nor has it established any harm actually committed or reasonably apprehended.
79. In the circumstances, Swimming South Africa is not entitled to relief and its application must fail.

THE AFFIDAVIT OF NOZIPHO JAFTA

80. In its heads of argument⁸⁰ Swimming South Africa purports to rely on a short affidavit filed by Nozipho Jafta, the CEO of SASCOC, delivered after all the affidavits had been filed in terms of the Court order granted by the Judge President on 2 April 2025 and, conveniently, on the same day the Applicant's heads of argument were due.
81. Ms Jafta does not say that her views represent SASCOC as a whole. She says that her authority to depose to the affidavit stems from her "*position*" as CEO.⁸¹
82. In any event, SASCOC has not given notice to oppose the application. It has no

⁸⁰ Para 16.

⁸¹ Para 2 of Ms Jafta's affidavit.

attorneys of record. Ms Jafta has nonetheless purported to file an affidavit, *albeit* labelled a “*confirmatory affidavit*”. Neither Ms Jafta nor SASCOC had a right to do so.

83. The full court of this division held in *African Transformation Movement v Speaker of the National Assembly and Others* [2023] 3 All SA 58 (WCC) (“ATM”) that a respondent who wishes to oppose an application is required within a stipulated period – and after it has given notice of an intention to oppose – to file its answering affidavit (or if it intends to raise any question of law only to deliver a notice setting forth such question). The applicant can thereafter deliver replying affidavits within a stipulated period, whereafter the applicant, or failing that the respondent, can set the application down for hearing.⁸²
84. There is no provision in the Rules that entitle SASCOC to deliver “supporting papers”, thereby making itself in effect a co-applicant. If a respondent wishes to be a principal party in obtaining the relief sought by the applicant, it should apply to be joined as a co-applicant so that the other respondents in the matter can answer the case put up by it and so that the exchange of papers and subsequently hearing can proceed in a structured manner.⁸³
85. SASCOC has therefore failed to participate in these proceedings. The affidavit filed is not in accordance with the manner provided for in the Uniform Rules of Court. It falls to be disregarded *in toto*.⁸⁴

⁸² ATM, para 76.

⁸³ ATM, para 77.

⁸⁴ The SASCOC affidavit was not delivered by Swimming South Africa as a further affidavit but, even if it had been, the result would be the same: the affidavit must be regarded as *pro non scripto*. See *Standard Bank of SA*

86. Even if regard could legitimately be had to the SASCOC affidavit, there is a second, more fundamental point. The recognition of a national federation lies exclusively within the jurisdiction of the international federation, in this case World Aquatics. The Act recognises this fact: the definition of a “national federation” means a national governing body of a code of sport or recreational activity in the Republic “*recognised by the relevant international controlling body as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic*”.
87. What SASCOC says or does not say will not determine whether SA Water Polo succeeds in its application for membership with World Aquatics.
88. This position conforms with a fundamental principle of international sports law: international federations always maintain their independence and autonomy in the administration of its sport, free from governmental or political interference.⁸⁵
89. SASCOC’s position, both in fact and in law, does not support the relief sought by Swimming South Africa.

CONCLUSION

90. In the circumstances, the Respondents accordingly pray that the application be dismissed with costs, including the costs of two counsel on scale C.

Ltd v Sewpersadh & Another 2005 (4) SA 148 (CPD) at paras [12] and [13]; *Hano Trading CC v JR 209 Investments (Pty) Ltd & Another* 2013 (1) SA 161 (SCA), paras [13] and [14].

⁸⁵ See *Russian Badminton Federation v International Badminton Federation*, CAS 2005/A/971 at para 72.2.4 and 7.2.5.

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First to Thirteenth Respondents' Counsel

6 May 2025

Chambers

LIST OF AUTHORITIES

Domestic

1. *Setlogelo v Setlogelo* 1914 AD 221.
2. *Steam Development Technologies 96 Degrees Proprietary Limited v Minister: Department of Public Works & Infrastructure* (4264/2023) [2024] ZAECMKHC 23 (16 February 2024).
3. *Primedia (Pty) Ltd v Radio Retail (Pty) Ltd* 2012 JDR 0508 (SCA).
4. *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) 620 (A).
5. *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others* 1977 (2) SA 916 (A).
6. *Koni Multinational Brands (Pty) Ltd v Beiersdorf AG* 2021 BIP 15 (SCA); (553/19) [2021] ZASCA (19 March 2021).
7. *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).
8. *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA).
9. *Islamic Unity Convention v Independent Broadcasting Authority* 2002 (4) SA 294 (CC).
10. *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA).

11. *Novartis SA (Pty) Ltd v Maphil Trading (Pty) Ltd* 2016 (1) SA 518 (SCA).
12. *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA)
13. *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* 2023 (7) BCLR 779 (CC)
14. *Standard Bank of SA Ltd v Sewpersadh & Another* 2005 (4) SA 148 (CPD)
15. *Hano Trading CC v JR 209 Investments (Pty) Ltd & Another* 2013 (1) SA 161 (SCA)
16. *One Movement South Africa NPC v President of the Republic of South Africa and Others* 2024 (2) SA 148 (CC)
17. *National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe) and Others* 2020 (6) BCLR 725 (CC)

Court of Arbitration for Sport

18. *Indian Hockey Federation (IHF) v. International Hockey Federation (FIH) & Hockey India*, Arbitration CAS 2014/A/3828.
19. *Bulgarian Sport Shooting Federation (BSSF) v International Sport Shooting Federation (ISSF) & Bulgarian Shooting Union (BSU)*, Arbitration CAS 2014/A/3863.
20. *Federation Internationale de Motocyclisme v Kuwait Motor Sports Club*, Swiss Tribunal decision number 4A_314/2017 dated 28 May 2018.
21. *Russian Badminton Federation v International Badminton Federation*, Arbitration CAS 2005/A/971.

22. *Prusis & Latvian Olympic Committee (LOC) v International Olympic Committee (IOC)*, Arbitration CAS Ad Hoc Division CAS OG 02/001.

Legislation

23. The Constitution of the Republic of South Africa, 1996.
24. National Sport and Recreation Act 110 of 1998.
25. Recognition of Sport and Recreation Bodies Regulations, 2011 (Government Gazette No. 34509).