

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

CASE NO: 2025/040663

In the matter of:

SWIMMING SOUTH AFRICA	Applicant
and	
SOUTH AFRICAN WATER POLO NPC (REG NO. 2025/152675/08)	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	Eighth 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

APPLICANT'S HEADS OF ARGUMENT

INTRODUCTION

- 1 The applicant is Swimming South Africa, which is recognised under the National Sport and Recreation Act 110 of 1998 (the “**NSRA**”) as well as by World Aquatics as the national federation responsible for the sport of swimming in all of its disciplines, including water polo.
- 2 Section 1 of the NSRA defines a national federation as the national governing body for a code of sport “recognised by the relevant controlling international controlling body as the **only authority for the administration and control of the relative code of sport** ... in the Republic”. (own emphasis)
- 3 The first to thirteenth respondents (the respondents) are not satisfied with Swimming South Africa being the only recognised authority for the sport of swimming. Instead of airing their differences within the various structures of Swimming South Africa, the respondents chose to usurp the governance of water polo through the vehicle of the first respondent.
- 4 This is in breach of the provisions of the NSRA as well as the international administration of swimming, including the discipline of water polo. The applicant must affirm its authority over the discipline of water polo. It is entitled to an interdict against the respondents to prevent them from interfering with the applicant's governance of the sport of swimming, including the discipline of water polo.

5 In these heads of argument we discuss the following:

5.1 The nature of sport administration in the Republic, and the position that the applicant occupies within this space.

5.2 The respondents' interference with the applicant's governance and administration of the sport of swimming, and in particular the discipline of water polo, and the absence of any suitable alternative remedy open to the applicant.

5.3 Finally, we discuss the urgency of this matter.

6 The applicant is entitled to the interdict it seeks. The respondents should pay the costs of this application at Scale C, including the costs of two counsel.

THE ADMINISTRATION OF THE SPORT OF SWIMMING

7 Swimming is a sport that is regulated under the NSRA and the international structures responsible for the administration of the sport of swimming. This includes the discipline of water polo.

8 Section 1 of the NSRA defines a national federation as having the following features:

8.1 It is the national governing body of a code of sport in the Republic; and

8.2 It is recognised by the relevant international controlling body as the only authority for the administration and control of that code of sport within the Republic.

- 9 National federations are central under the NSRA to the administration and governance of the sport. Section 6 of the Act requires them, among other things, to assume full responsibility for the safety issues within their sport. Section 10(1) of the Act encourages national federations to become financially self-reliant, and also accountable for funds received from the Department of Sport and Recreation of South Africa. A national federation will not receive funding if it does not have a development program, or if it excludes persons from disadvantaged groups.
- 10 Section 2(5) of the Act obliges national federations to develop their respective sports in accordance with the service level agreement concluded with Sport and Recreation South Africa under section 3A of the Act, the development programmes contemplated under section 10(3) of the Act, and the guidelines of the Minister under section 13A of the Act.
- 11 The Act clearly contemplates that the administration of sport within the Republic should align with the existing international framework and structures, and that the national federation is central to the administration and governance of the sport. 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.
- 12 This hierarchical structure of sporting federations was recognised by Unterhalter J (as he then was) in *Ndoro v SAFA*.¹ In that matter it was recognised that FIFA served as the body that controlled the sport of football at an international level, while SAFA regulated the sport at a national level.² In acting as the regulator of

¹ *Ndoro and Another v SAFA and Others* 2018 (5) SA 630 (GJ) at paragraph 57.

² *Ndoro* at paragraph 27.

the sport of football, SAFA exercised a public function that was subject to the prescripts of the Promotion of Administrative Justice Act 3 of 2000 (“**PAJA**”).³

- 13 It is submitted that one cannot separate the public powers of a national federation (as recognised in *Ndoro*) from the hierarchical structure, whereby that federation exercises full national governance over the sport within the Republic in accordance with the rules and prescripts of the controlling international body. If there were more than one entity governing a sport within the Republic, then none of those entities could truly be said to have any compelling control over the sport:⁴ a person may avoid the rules of one entity by joining another, or by even initiating a new entity.
- 14 Currently, Swimming South Africa is the only national federation for the sport of swimming recognised both locally by the fourteenth respondent (“**SASCOC**”) and under the NSRA, as well as internationally by World Aquatics, the international entity responsible for the sport of swimming internationally.⁵ The sport of swimming includes the discipline of water polo. Swimming South Africa is therefore the only national federation responsible for the administration of the discipline of water polo within the Republic.
- 15 It is accepted that hypothetically, a separate body may be created in the Republic with a focus on the sport of water polo. If that were the case, then that body would have to be recognised under the NSRA as well as by World Aquatics. In the light of the statutory and international framework that is described above, such a body

³ *Ndoro* at paragraph 48.

⁴ *Ndoro* at paragraph 43.

⁵ AA paragraph 7 at CL 005-2.

could only be established with the consent of Swimming South Africa and would have to be approved internally by Swimming South Africa. The respondents may not simply “wake up one morning” and decide to have the discipline of water polo administered by an entity other than Swimming South Africa.

- 16 The hypothetical scenario above does not accord with reality. There is only one nationally and internationally recognised entity for the administration of the discipline of water polo, and that is Swimming South Africa. The first respondent is not recognised nationally or internationally as the entity responsible for the sport of water polo. This has been confirmed by SASCOC in its confirmatory affidavit, which highlights that the first respondent has not been, and will not be, recognised as the administrative body for water polo.⁶
- 17 Even though the respondents were invited to work within the structures of Swimming South Africa to contribute towards the administration of water polo, they made unreasonable demands against Swimming South Africa and refused to engage it in good faith.⁷
- 18 The first respondent is also not able to apply to World Aquatics for international recognition, because clause 5.2 of the World Aquatics constitution makes it clear that only one national body shall be recognised in each country for the sport of swimming. A proviso is made under clause 5.5 allowing for the recognition of a second national body where the disciplines of swimming are governed separately. This however is not the case in South Africa: Swimming South Africa

⁶ CL 008-50.

⁷ RA paragraphs 11 – 13 at CL 006-7 – 006-8.

regulates all of the disciplinary codes under swimming, including water polo, as the respondents themselves acknowledge.⁸

- 19 It further bears mention that the administration of the sport of swimming under a single national federation does not in any way infringe the right of freedom of association. Any person is free to associate with any person they wish, but that association may not usurp public powers that have been allocated to another entity. In other words, the respondents are free (under their right of association) to meet, engage each other, and as a group engage Swimming South Africa about concerns that they have in the sport of water polo. But this cannot translate to a right to usurp, or in any way interfere with, the governance of the sport of water polo.

THE RESPONDENTS HAVE UNLAWFULLY INTERFERED WITH THE APPLICANT'S AUTHORITY

- 20 It is clear from the above that Swimming South Africa has the right and the obligation to assert its exclusive governance over the sport of swimming, including the discipline of water polo. No other entity is recognised within the Republic as being responsible for the governance or the administration of the sport. Any entity purporting to do so is acting contrary to the NSRA, the public administration of the sport of swimming, and unlawfully. This is to the prejudice

⁸ AA paragraph 7 at CL 005-2.

of athletes, who would be misled into participating under a parallel entity that has no national or international recognition.⁹

- 21 The respondents are in breach of the rights of Swimming South Africa. The first respondent has been set up as an entity whose aim and purpose is to take over the administration of the discipline of water polo,¹⁰ even though it is not recognised either by Swimming South Africa, SASCOC or by World Aquatics in any capacity.¹¹ The second to fourth respondents are its directors, and the fifth to thirteenth respondents are its executive committee.
- 22 The respondents do not deny that they are interfering with Swimming South Africa's administration and governance of water polo. They admit it. They call for "the peaceful transfer of authority" to the first respondent.¹² They describe the first respondent as having been established "to be in a position to take control of the development of water polo".¹³ They admit that they have devised a new parallel registration system "to organise and unite clubs, players, coaches and referees and to develop high performance programmes for its members".¹⁴ The long-term aim is for the first respondent to become "the new national governing body for the sport of water polo".¹⁵

⁹ FA paragraphs 60 – 67 at CL 001-25 – 001-27.

¹⁰ AA paragraphs 22 – 23 at CL 005-8.

¹¹ AA paragraphs 6 – 7 at CL 005-2.

¹² AA paragraph 22 at CL 005-8.

¹³ AA paragraph 23 at CL 005-8.

¹⁴ AA paragraph 23.1 at CL 005-8.

¹⁵ AA paragraph 23.2 at CL 005-8.

23 The respondents punctuate their position with the following threat:¹⁶

“If Swimming South Africa does not co-operate, it [the first respondent] will ultimately seek to replace Swimming South Africa as the internationally recognised body responsible for water polo in South Africa.”

24 As we have demonstrated above, the respondents do not have a right to pursue either its aims or to carry out its threat. If they were genuinely interested in reforming the administration of the discipline of water polo, they were entitled to engage Swimming South Africa on these reforms. They cannot simply establish a body to compete with Swimming South Africa’s control over the discipline, with the long-term aim of taking over the administration of the discipline, either “peacefully” by the acquiescence of Swimming South Africa, or otherwise.

25 The respondents have clearly interfered with Swimming South Africa’s ability to administer and govern the sport of swimming and the discipline of water polo. The first respondent has been created as a body in direct competition with Swimming South Africa, and athletes, officials, coaches, and clubs have been invited to register with the first respondent.¹⁷ The media has reported on the first respondent as being an entity directly in competition with Swimming South Africa for the control of the sport of water polo.¹⁸ The issue is not, as the respondents suggest, whether media articles have any probative value, but rather the inescapable fact that the first respondent has created confusion within the

¹⁶ AA paragraph 25 at CL 005-9.

¹⁷ AA paragraph 23.1 at CL 005-8.

¹⁸ FA paragraphs 40 – 43 at CL 001-19 – 001-20.

discipline of water polo, which has been noticed by the broader public and the media.¹⁹

- 26 The first respondent has also fielded inquiries by athletes about their participation in an international water polo championship.²⁰ Its response to this was to publish a newsletter in which it subtly dissuades athletes from participating in this event under the auspices of Swimming South Africa, inviting athletes to ask whether they are “proud to wear your SA colours”, while questioning the administration and governance of Swimming South Africa in relation to this event. It concludes with a note to encourage athletes to boycott the event in protest against Swimming South Africa’s administration: “passively accepting these circumstances will only allow similar circumstances to continue”.²¹
- 27 There can be no doubt that the respondents are actively interfering with Swimming South Africa’s administration and governance of the sport. The rights of Swimming South Africa are threatened with irreparable harm as a result, and it is entitled to an interdict. In the same way that a municipality is obliged to ensure compliance with its own town planning scheme,²² Swimming South Africa is obliged to affirm its own authority over the sport of swimming under the NSRA.
- 28 Swimming South Africa has no suitable alternative relief. This is because the first respondent in particular exists outside of any disciplinary structure under the sport. The first respondent is not a member of SASCOC or of World Aquatics.

¹⁹ AA paragraph 56 at CL 005-21.

²⁰ FA paragraph 56 at CL 001-24; AA paragraph 68 at CL 005-25.

²¹ Annexure “FA13” at 002-126.

²² *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987 (4) SA 343 (T) at 349l.

Although some of the respondents are members of Swimming South Africa and may be disciplined, this would not amount to a suitable alternative remedy. The entity established in competition with Swimming South Africa – the first respondent – would remain unscathed. The other respondents may simply resign from Swimming South Africa to avoid disciplinary action, or others may be recruited to run the first respondent. The only suitable remedy open to Swimming South Africa is an interdict.

- 29 It is accordingly submitted that a proper case has been made for a final interdict vindicating Swimming South Africa's governance of the sport of swimming under the NSRA as well as under the international structures for the administration of the sport.

URGENCY

- 30 The urgency of this matter is clear. The respondents are actively interfering with Swimming South Africa's administration of the sport on an ongoing basis. The media has reported on this matter on numerous occasions and it is clear that the respondents are benefiting from having created confusion among athletes as to whom the true and appropriate authority is for the sport of water polo – they are fielding "inquiries" from athletes and are encouraging athletes to boycott Swimming South Africa's administration.
- 31 This has an impact on Swimming South Africa's administration of the sport. It affects its ability to select teams for events, including international events and the

Olympic Games,²³ and it creates confusion among the athletes and deprives it of the ability to select elite athletes who may be members of the first respondent, since only members in good standing of the applicant are eligible for selection to represent the country at international events. The first respondent will not have the authority to award national colours to its elite members thereby depriving those athletes of the opportunity to represent the country in internationally sanctioned events and even stifling their professional careers.

32 This is an ongoing harm that calls for immediate relief, or the harm to Swimming South Africa and the integrity of the discipline of water polo will continue unabated. Swimming South Africa shall not be able to obtain substantial redress at a hearing in due course.²⁴

33 It is accordingly submitted that the matter is urgent.

CONCLUSION

34 The governance of the sport of swimming in South Africa under the NSRA and international entities requires one entity – the national federation – to be in control of the sport. Swimming South Africa, as the only entity recognised internationally and nationally, is the only federation responsible for the administration of water polo. The respondents' interference with this is unlawful and harmful to the discipline.

²³ FA paragraph 61 at CL 001-25.

²⁴ *In re several matters on the Urgent Court Roll 2013* (1) SA 549 (GSJ) at paragraph 7.

- 35 The applicant is accordingly entitled to the relief that it seeks. An interdict should be granted to affirm its authority over the sport, with costs at scale C, including the costs of two counsel.

N ARENDSE SC

O BEN-ZEEV

29 April 2025