LAST MATEMA
versus
MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT (1)
and
PUBLIC ACCOUNTANTS AND AUDITORS BOARD (2)
and
ADMIRE NDURUNDURU (3)

HIGH COURT OF ZIMBABWE
DEMBURE J
HARARE, 21 March & 1 April 2025

Opposed Court Application

S Chimedza, for the applicant
T Musakwa, for the 1st respondent
C Damiso, for the 2nd & 3rd respondents

DEMBURE J

INTRODUCTION

[1] This is a court application for a declaratory order and consequential relief. The application is brought in terms of s 14 of the High Court Act [*Chapter 7:06*]. The applicant seeks the following relief:

> "1. It is hereby declared that the current board of the 2nd respondent is improperly constituted and does not comply with the requirements of the Public Entities Corporate Governance Act [*Chapter 10:31*] and the Constitution of Zimbabwe.
> 2. 1st Respondent be and is hereby ordered to immediately appoint a new board for the 2nd respondent.
> 3. It is hereby declared that the 2nd Respondent has acted in violation of the Public Entities Corporate Governance Act [*Chapter 10:31*] by illegally extending the tenure of 3rd respondent beyond the 10-year limit set by Section 11(5) of the Act.
> 4. 2nd Respondent be and is hereby ordered to align its operations, procedures, and practices with the aforementioned Acts to ensure accountability, transparency, and alignment with national development policies anchored on good corporate governance.
> 5. Costs of suit on a legal practitioner-client scale if opposed."

On 21 March 2025, the court, after hearing submissions from counsel on a preliminary issue, reserved its judgment *sine die*.

FACTUAL BACKGROUND

[2] The applicant is a registered public accountant and, therefore, regulated by the second respondent in his professional practice. He brought this application in his capacity as a concerned citizen with "a vested interest in the promotion of good corporate governance, transparency and accountability in public entities." At the time this application was filed, the applicant was a self-actor.

[3] The first respondent, the Minister of Finance and Economic Development was cited as the authority "responsible for appointing the board of the [second] respondent in accordance with the provisions of the Public Entities Corporate Governance Act [*Chapter 10:31*] (*"the PECG Act*"). The second respondent is the Public Accountants and Auditors Board *("the PAAB"*), a statutory board established in terms of s 4 of the Public Accountants and Auditors Act [*Chapter 27:12*] (*"the PA&A Act"*). The third respondent is the current secretary of the second respondent.

[4] The application was triggered by what the applicant alleged were unrefuted media reports of patent corporate governance failures at the PAAB. He relied on the Newsday article dated 23 August 2024 and The Standard of 1 September 2024. The article was titled *"PAAB boss has breached term limit".* He submitted that the article alleged the illegal extension of the third respondent's tenure beyond the ten-year limit set by the PECG Act. It was also his contention that the second respondent did not publicly deny or take corrective action in response to the allegations, which are serious and constitute a breach of s 17(1) of the PECG Act, which restricts the tenure of senior executives in public entities to a maximum of ten years.

[5] The applicant further stated that the third respondent was appointed as secretary of the second respondent in 2012. His source of such information was an online article by an online news agency called "Pindula". He also stated that the third respondent's appointment as the secretary or chief executive officer of the second respondent was not approved by the President in terms of s 17(2) of the PECG Act. The other issue raised was

that the current board or the second respondent was not set up in terms of s 11 of the PECG Act and that it falls short of the requirements that it be composed by people of diverse backgrounds, skills and qualifications in terms of s 11(7) of the same Act and s 198 of the Constitution of Zimbabwe, 2013.

[6] The applicant submitted that this court should declare the current PAAB improperly constituted and the tenure of the third respondent to have been illegally extended in breach of s 17 of the PECG Act. He also sought an order for the first respondent to appoint a new board in compliance with the PECG Act and the Constitution and have a new secretary appointed to replace the third respondent.

[7] The application was opposed by all the respondents. The first respondent raised two points *in limine:* that there was an imprecise and or incompetent pleading of a constitutional matter and that there was a misjoinder or incompetent order sought in that the first respondent has no power to appoint members of the PAAB in terms of the law. On the merits, it was submitted that there was no recognisable cause of action and substantive basis for the relief sought.

[8] The second and third respondents, on the other hand, contended that the application was part of a sustained harassment campaign against the second respondent following its decision to reject the application for registration of an audit firm, Makuvire and Matema Advisory, a firm in which the applicant is a partner. It was further denied that there had been any corporate governance failures within the second respondent and that the third respondent's tenure of office had been illegally extended as alleged. They also submitted that the relief sought was legally incompetent and the application ought to be dismissed with costs on a punitive scale. In the second and third respondent's heads of argument, the issue argued is that the provisions of the PECG Act do not apply to the PAAB, and therefore, the application has no proper legal footing. This issue also exercised the mind of the court and had to be determined first.

PRELIMINARY ISSUE FOR DETERMINATION

WHETHER OR NOT THE PUBLIC ENTITIES CORPORATE GOVERNANCE ACT ("PECG ACT") IS APPLICABLE

SUBMISSIONS MADE BEFORE THIS COURT

[9] Ms *Damiso* submitted that the question that arises is whether the PAAB fall under the regulation of the PECG Act. It does not. That answer is derived from statutory interpretation. Our starting point is s 3 of the PECG Act, which defines the scope of application of the Act. It provides in general terms that it shall apply to all public entities. The general meaning of a public entity is defined in s 2 of the Act. It includes a statutory body. The statutory body covered by the Act is further defined in s 2. The second respondent is not a statutory body governed by the Act as defined in s 2. Its members are not appointed by the President, a Vice-President, a Minister, a Deputy Minister, another statutory body or by a constitutional Commission. Not even one of the board members is appointed by any of these public officials. Instead, in terms of s 6 of the PA&A Act, they are appointed by the constituent bodies.

[10] Counsel further argued that it is clear that the second respondent does not mean the statutory body to which the provisions of the Act apply. There is no reason to depart from that meaning. It is trite that words used in a statute must be given their ordinary meaning unless that would lead to an absurdity or a repugnancy. There is no justification to adopt any meaning other than the meaning arising from the Act. The second respondent is not the statutory body regulated by the PECG Act as the members of the PAAB are not appointed by the public officials stated.

[11] Ms *Musakwa* submitted that she had nothing more to say as counsel for the second and third respondents had already made full submissions on the issue for determination.

[12] *Per contra*, Mr *Chimedza* submitted that he did not agree with the submissions from the respondents' counsel. He argued that they failed to understand the nature of the second respondent. It is a mere body or grouping of persons. In terms of s 4 of the PA&A Act, the board shall be a board corporate. Section 2 of the PECG Act defines a public entity as including a statutory body, a public commercial entity or an entity under an agreement for a partnership or joint venture between the state and any other entity or any subsidiary of these entities. The key word there is "includes". It means that statutory bodies are included.

Yes, the second respondent may not be a statutory body as per the definition, but it is a public entity.

[13] Counsel further argued that if the Act says public entities shall include statutory bodies, it follows that there are other entities which are not statutory bodies. The word 'includes' is permissive and not exclusive. If the Act says it shall be restricted to them, then the argument by my colleague would hold water. Focusing on whether the second respondent is a statutory body would be focusing besides the point. The question is whether the second respondent is a public entity. He also argued that he did not see the need to dwell on the definition of a statutory body.

[14] Mr *Chimedza* further submitted that the second respondent is a species of a public entity described as a regulatory entity. A regulatory entity is a public entity established to regulate a particular area or activity in the public interest. The second respondent does not fit in the definition of a statutory body, but that does not exclude it from being a public entity. Section 5 of the PA&A Act lists more than ten items as the functions of the second respondent. It is clear from that section that the second respondent is a regulatory entity and the area of activity is the accounting profession. A regulatory entity means a public entity. Almost all of substance done by the second respondent has to have the approval of the Minister. In terms of s 43(3) the second respondent's by-laws must be approved and gazetted by the Minister. Its regulations on professional standards must be approved by the Minister under s 44. References were also made to ss 3, 9(2), 17, 18, 42 and 45.

[15] Counsel argued that the PAAB is a body whose operations or activities are substantially controlled by the state. It is, therefore, a public entity in the form of a regulatory entity. It is not excluded from the definition by the inclusion of other forms of public entities mentioned. The second respondent has a life of its own recognized within the PECG Act. The second respondent, having not disputed that it is a regulatory entity, if it does not want the Act to apply to it must have shown that at least it is exempted in terms of s 43 of the PECG Act or that it is a constitutional Commission or a Government department. I hasten to state that I did not hear of any concession made by the second respondent that it is a regulatory entity as defined in terms of the PECG Act.

[16] In reply, Ms *Damiso* argued that the question is whether or not the second respondent answers to the definition of a statutory body as defined in s 2. Legislation is the voice of the lawmaker, and it does so in clear and unequivocal language. One of the ways it does this is by using the definition section. The definition section is where the meaning of any word used is given. The definition of a statutory body has been given, and it clearly excludes the second respondent as its members are not appointed by public officials. She further submitted that counsel for the applicant did not dispute that the board members are appointed by constituent bodies.

[17] Counsel further argued that a point was made that the second respondent's operations are substantially controlled by the Minister. That is not correct. The second respondent is not substantially controlled by the first respondent. The bone of contention is the second respondent's refusal to issue a licence to the firm of the applicant. That decision is made by the second respondent and is not controlled by the first respondent. Principally, the functions of the board in s 5 relate generally to self-regulation of the accounting profession. In the exercise of all these functions, there is no requirement for the second respondent to resort to the Minister. The second respondent is self-autonomous in the exercise of its functions. This is why the Act intended to exclude the second respondent.

[18] Ms *Damiso* also submitted that the PAAB has powers to make regulations and by-laws, which must be approved by the Minister as the responsible authority. The regulations are initiated by the second respondent. The Minister has no authority to make by-laws of the second respondent. He has no disciplinary power over the second respondent's members. The Minister has no authority to appoint even one of the board members. It does not have even one *ex-officio* member. Officers of the first respondent are not *ex-officio* members of the board. The philosophy of self-regulation is what the legislature intended. There is no basis to move the point by the applicant to avoid this autonomy. The application must be dismissed with costs on a higher scale.

ANALYSIS OF THE LAW AND THE FACTS

[19] It is a settled principle of that law that when interpreting statutes, the golden rule of interpretation is the first cannon of interpretation to be resorted to. The rule states that

words used in a statute must be interpreted in their context and must be given their ordinary grammatical meaning unless doing so would lead to an absurdity or a repugnancy or inconsistency with the intention of the Legislature. See *Pwanyiwa* v *Shamva Gold Mine* SC 34/24. At pp 6-7, MAVANGIRA JA restated the legal position as follows:

> "In *Godfrey Tapedza & 9 Ors v Zimbabwe Energy Regulatory Authority & Anor* SC 30/20, this Court, *per* HLATSHWAYO JA, as he then was, stated as follows at p 4:
>
> > "It is an established principle of law that when interpreting a statute, the first cannon of interpretation to be applied is the golden rule of interpretation. This rule is to the effect that where the language used in a statute is plain and unambiguous, it should be given its ordinary meaning unless doing so would lead to some absurdity or inconsistency with the intention of the legislature. A provision of a statute should be given a meaning which is consistent with the context in which it is found."
>
> The learned Judge also aptly cited *Chegutu Municipality v Manyora* 1996 (1) ZLR 262 (S) at 264 D - E where McNALLY JA stated the following:
>
> > "There is no magic about interpretation. Words must be taken in their context. The grammatical and ordinary sense of the words is to be adhered to, as LORD WENSLEYDALE said in *Grey v Pearson* (1857) 10 ER 1216 at 1234, 'unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.'"

[20] The crux of the applicant's case is the contention that the second respondent (the PAAB) is a public entity regulated by the PECG Act. The question that arose was whether or not the second respondent is regulated by the PECG Act or whether the said Act apply to it. In other words, is it a public entity as defined in terms of the PECG Act? The cause of action set out in the founding affidavit and the relief sought are all based on the contention that the PECG Act applies to the second respondent. If it does not, then that is the end of the matter. The starting point in resolving the issue would be s 3 of the PECG Act. The said provisions read:

> "**3 Application of Act**
>
> (1) Subject to subsection (2), **this Act shall apply to public entities** notwithstanding anything to the contrary in their enabling instruments.
>
> (2) This Act shall not apply to Ministries and departments of the Government." [my emphasis]

[21] The public entities to which the PECG Act applies are further defined in s 2 of the Act. A "public entity" means:

"an entity whose operations or activities are substantially controlled by the State or by a person on behalf of the State, whether through ownership of a majority of shares in the entity or otherwise, and includes—

(a) a statutory body; and
(b) a public commercial entity; and
(c) an entity established under an agreement for a partnership or joint venture between the State and any other person, which entity declared in terms of subsection (2) to be a public entity; and
(d) any subsidiary of an entity referred to in paragraph (a), (b) or (c)."

The same s 2 further defines a statutory body for the purposes of the Act as:

"(a) a constitutional Commission; or

(b) a –

(i) body corporate established directly by or under an Act for special purposes specified in that Act; or

(ii) board, committee or similar entity which is established directly by an Act for special purposes specified in that Act;

whose members consist wholly or mainly of persons appointed by the President, a Vice-President, a Minister, a Deputy Minister, another statutory body or by a constitutional Commission." [my emphasis]

[22] Using the above definition and applying the golden rule, it is clear that the second respondent is not the statutory body as defined by s 2 of the PECG Act. This is so as the key point is that the body's members must "consist wholly or mainly of persons appointed by the President, a Vice-President, a Minister, a Deputy Minister, another statutory body or by a constitutional Commission." The second respondent's members are appointed in terms of s 6 of the PA&A Act. The said provisions state clearly the appointing authority as the constituent bodies as defined in s 3 of the Act. The provisions read:

"6. Membership of Board

(1) The Board shall consist of members appointed by the constituent bodies in terms of this section.
(2) Subject to subsection (3), each principal constituent body shall appoint two persons, and each associate constituent body shall appoint one person, who are qualified for membership in terms of section 7.
(3) …
(4) …
(5) As soon as possible after appointing a member or an alternate member to the Board, a constituent body shall inform the secretary of the Board, in writing, of the name and address of the member or alternate member so appointed."

[23] It is without any doubt that the constituent bodies specified in Parts I and II of the Second Schedule of the PA&A Act do not include the public officials listed in s 2 of the PECG Act or any statutory body or a constitutional Commission referred thereto. There is no further doubt that the second respondent does not fall into any of the forms of statutory bodies as defined in s 2 of the PECG Act. However, that is not the end of the matter.

[24] As already alluded to above, the PECG Act, as provided in s 3, applies to public entities. We have to revisit the definition of a public entity in s 2. I restate what a public entity means:

> "an **entity whose operations or activities are substantially controlled by the State or by a person on behalf of the State**, whether through ownership of a majority of shares in the entity **or otherwise**, and **includes** – …" [my emphasis]

The word "include" is generally understood to have an expansive, non-restrictive meaning, meaning that the listed items are not the sole things covered, but rather, the list is illustrative and other similar things may also be included. The use of the word "include" does not limit the scope of the provision to only the listed items. This position was confirmed by the Supreme Court in *Amberley Estates (Pvt) Ltd v Controller of Customs and Excise* 1986 (2) ZLR 269 (SC) at 276 where GUBBAY JA (as he then was) had this to say:

> "It is to my mind clear that by the use of the word "includes" the Legislature intended to extend the meaning of "manufacture" in its ordinary, popular and natural sense to embrace the specially mentioned activities of "mixing, brewing, distilling" or "production" about which there might have been disputes whether they came within the overall process of manufacture."

[25] In the same *Amberley Estates* judgment *supra*, the court held that the *ejusdem generis* rule is hardly appropriate "to a case where the word 'include' is used." See also *Southern Life Association Ltd* v *Commissioner for Inland Revenue* 1985 (2) SA 267 (C) Similarly, in *casu*, the Legislature intended to extend the meaning of a public entity by the use of the word "includes" to cover the forms set out in para(s) (a) to (d). But it does not mean that the list of the public entities is closed to those specifically mentioned. I am of the opinion that "include" in the context does not limit the meaning of a public entity to

the four forms mentioned. It is trite that legislative enactments "should be construed that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant." See *R v Standard Tea and Coffee Co (Pty) Ltd* 1951 (4) SA 412 (A) at p 416F.

[26] If the Legislature intended to say that the four mentioned forms are the only public entities, it would have said so and would not have used the word "include". I agree with Mr *Chimedza* that the use of the word "includes" in the definition of a public entity signifies that the forms mentioned in para(s) (a) to (d) are not the only things the provision covers, but that the list is not exhaustive. The fact that the Legislature used the word "include" means that the list of the four forms or species of the public entities mentioned was not exhaustive or exclusive. Thus, in this regard, in *Car Rental Services (Pvt) Ltd v Director of Customs & Exercise* 1988 (1) ZLR 402 (SC) at 409, the Supreme Court had the occasion to comment on this aspect in the following manner:

> "It is not for the courts to legislate or attempt to improve on the situation achieved by Parliament through the language it has chosen in its enactment. Effect must be given to what the Act says or permits and not to what it may be thought it ought to have said or prohibited. If there is a *casus omissus* in the Act, and if it could lead to undesirable consequences, the court has no power to fill it. It is a matter for the Legislature."

[27] By the use of the word "includes", it simply means that the meaning of a public entity cannot be restricted to the specially mentioned four forms or categories of public entities. Therefore, if an entity does not fall within the said mentioned forms, like the second respondent, that should not be the end of the matter. The question remains whether or not the entity can still be defined as "an entity whose operations or activities are substantially controlled by the State or by a person on behalf of the State, whether through ownership of a majority of shares in the entity or otherwise." The key words in there are "substantially controlled". Accordingly, even if the second respondent is not a statutory body as defined in s 2 of the PECG Act or does not fall under the forms set out in para(s) (a) – (d) thereof, if it is shown that its operations or activities are substantially controlled by the State or the Minister it would still be regarded as a public entity in terms of the PECG Act.

[28] Mr *Chimedza* submitted that the second respondent is a regulatory entity as defined under s 2. A "regulatory entity" in terms of s 2 means "a public entity established to regulate or supervise a particular area of activity in the public interest." It is clear that a regulatory

entity referred to is or remains a public entity. This means that the issue is not resolved by simply looking at the definition of a regulatory entity but rather on the definition of a public entity itself. The issue of whether the state or its organs or officials exercise substantial control on the operations or activities of the entity is what should be considered first. The words "substantially" and "controlled" are not defined in the Act. According to the Oxford English Dictionary, "substantially" means "to a larger extent or degree" or "in the main, mostly". The synonyms include "considerably", "significantly", "very much", "largely", and "mainly". "Controlled", on the other hand, means "under the control of someone or something". "Control" is further defined to mean "the fact or power of directing and regulating the actions or things; direction, management; command". See the Oxford English Dictionary. The term "substantially controlled" denotes the highest degree of control, not merely ordinary or minor instances of control. It must, therefore, be said that in its activities or operations, the entity is largely or mostly controlled by the state or the Minister.

[29] In *casu,* the second respondent is established in terms of s 4 of the PA&A Act as a board corporate. Its activities or operations are principally governed by the functions it is set up to perform. These are set out in s 5 of the PA&A Act as follows:

> **"5. Functions of Board**
> (1) Subject to this Act, the functions of the Board shall be—
> (a) to consider and determine applications for registration in terms of Part III;
> (b) to maintain the Registers;
> (c) to issue practising certificates to registered persons in terms of Part IV and, in accordance with that Part, to cancel or suspend such certificates;
> (d) to define and enforce ethical practice and discipline among registered persons;
> (e) to encourage co-operation between the constituent bodies in matters of common interest;
> (f) to take such steps as appear to the Board to be necessary or desirable to advance the standing and effectiveness of the accountancy profession in Zimbabwe;
> (g) to represent the views of the accountancy profession on national, regional and international issues;
> (h) to evaluate and monitor the standards of qualifying examinations, courses and training set or offered by the constituent bodies;
> (i) to evaluate examinations and training courses of foreign institutions with a view to making recommendations to the constituent bodies;
> (j) to promote the standardization of qualifying examinations on common subjects;
> (k) to take such steps as appear to the Board to be necessary to provide for the manpower requirements of the accountancy profession in Zimbabwe.

> (2) For the better exercise of its functions, the Board shall have power to do or cause to be done all or any of the things specified in the First Schedule, either absolutely or conditionally and either solely or jointly with others."

[30] What is clear from a reading of the PA&A Act as a whole is that in the exercise of all the functions stated in s 5, the PAAB is an autonomous body. It is generally not subjected to the control of the first respondent or the Minister in the exercise of those functions under s 5. Its decisions in the exercise of all its functions are final and are generally not subjected to an appeal to the Minister. Under s 40(1), anyone aggrieved by its decisions appeals to the High Court. This also applies to the decision alluded to by the second respondent, where the board rejected the application for registration by the applicant's audit firm. Its decisions are final and binding unless set aside or reversed on appeal or review by this court. The Minister also has no power to appoint any of the board members or to remove them from office on his own initiative. Only the constituent bodies have the power to appoint the board members in terms of s 6, and those constituent bodies are not controlled by the Minister or the State.

[31] While there are some provisions in the Act highlighted by Mr *Chimedza* where the approval or authority of the Minister as the responsible authority is required, those exceptional circumstances do not turn the PAAB into an entity substantially controlled by the Minister. I do not agree that the second respondent is such a public entity as defined in s 2 of the PECG Act. In the exercise of its functions, it largely enjoys autonomy from the Minister. It is largely self-regulatory. Its decisions do not have to be approved by the Minister. While its accounts and financial records in terms of s 17 must be kept and audited by such auditors or persons as approved by the Minister, that is not indicative of substantial control. The board also submits its reports and financial statements to the Minister under s 18, but these instances are not in themselves an indication of any substantial control. These are some residual and peripheral regulatory frameworks to a rather largely self-regulating power of the board over its ordinary activities or operations.

[32] The second respondent has the power to prescribe rules of professional conduct to be observed by registered persons in terms of s 33 through by-laws. In terms of s 43(1), the

board may make by-laws on anything within its functions. The board also has the power to make regulations prescribing *inter alia*, the auditing and accounting standards, minimum qualifications for registration of public auditors and anything to promote the integrity of the accountancy profession under s 44. The by-laws and regulations shall only have effect upon approval by the Minister and published in the gazette. The Minister is the responsible authority to give legal effect to the subsidiary laws made by the board in the exercise of its functions. This does not take away its existence as a self-regulating professional body in terms of s 5 but simply as a way to give legal effect to its laws. The Minister does not make such by-laws or regulations for the board. The Minister only comes in on very limited instances as the responsible Minister, but overall, there is no indication of substantial state control reflected from the provision of the PA&A Act. The residual power exercised by the Minister in terms of ss 3, 9(2), 17, 18, 42, 43, 44 and 45 cannot be categorised as creating what can be termed substantial control over the activities or operations of the second respondent. It is clearly an autonomous body regulating the accounting profession. That it is a self-regulating body is what comes out from a reading of the provisions of its governing Act, the PA&A Act.

[33] There was nothing before me that showed that the second respondent is a public entity as defined in s 2 of the PECG Act. In any case, by-laws or regulations even of any self-autonomous professional body or association, including the likes of the Law Society of Zimbabwe set up in terms of s 51 of the Legal Practitioners Act [*Chapter 27:07*], can only acquire the force of law through approvals by the responsible Minister. That does not in itself mean that the Minister substantially controls its activities. The exercise by the Minister of certain powers in very limited or special cases does not meet the threshold of substantial control in this case.

[34] The governing Act does not support the contention by the applicant that the second respondent's activities or operations are substantially controlled by the state or the Minister. That view is at odds with the law. The board's activities or operations in the exercise of its functions under s 5 point to self-regulation of the accounting profession. If

the totality of the provisions of the PA&A Act is carefully considered, the Legislature clearly intended such autonomy from the state or responsible Minister. There can be no doubt that the PAAB does not fit into the definition of a public entity as set out in s 2 of the Act. It is not a public entity or a regulatory entity as defined in s 2 of the PECG Act.

DISPOSITION

[35] Since the second respondent is not a public entity as defined in terms of s 2 of the PECG Act, it follows that the provisions of the PECG Act do not apply to it. The PAAB is not regulated by the PECG Act. There is, therefore, no legal foundation for the present application and the relief sought. This application lacks a proper legal footing. Given its improper footing, the application ought to be dismissed. This would be the proper exercise of my discretion. Thus, in *Katerere & Ors* v *Triangle (Pvt) Ltd* SC 23/23 at p 10 the Supreme Court endorsed this legal position when it stated as follows:

> "The decision of the court *a quo* is thus correct and cannot be faulted in this regard. The court correctly exercised its discretion in dismissing the matter. In the case of *Khauyeza* v *The Trial Officer & Anor* SC 23/19, this Court held that **an application brought on an improper footing ought to be dismissed rather than be struck off the roll."** [my emphasis]

[36] There is no reason for the court to depart from the general principle that costs shall follow the cause. Ms *Damiso*, however, prayed for costs on a legal practitioner and client scale. Mr *Chimedza* did not, however, make any submissions on the appropriate award of costs if the application was to be dismissed. The award of costs is a matter at the discretion of the court. It is a settled principle of the law that costs on a legal practitioner and client scale are awarded only in exceptional circumstances. TINDAL JA in *Nel* v *Waterberg Landbouwers Ko-operative Vereeninging* 1946 AD 597 at 607 explained the award of these costs as follows:

> "The true explanation of awards of attorney and client costs not authorized by statute seems to be that, by reason of special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the courts in case considers it just, by means of such order, to ensure more effective than it can do by means of judgment for party and party costs that the successful party will not be out of pocket in respect of the expenses caused to him by the litigation ."

[37] The question I had to answer was whether there was any conduct that would warrant the court to mulct the applicant with costs on a punitive scale or whether the circumstances of this case justified such a decision. It was submitted that the applicant has been harassing the second respondent with numerous unmerited proceedings. Ms *Damiso* referred the court to para(s) 3 and 4 of the second respondent's opposing affidavit. The cases cited by counsel were never determined as being unmerited. However, one common trend in them is that they all follow the decision by the second respondent to reject the application for registration of the applicant's audit firm, Makuvise and Matema Advisory.

[38] I consider the current proceedings to have been recklessly undertaken and to constitute an abuse of court process. While the application was filed by the applicant as a self-actor, the assumption of agency by his legal practitioners ought to have presented an opportunity for the applicant to be properly advised. But that was not to be. The interpretation given that the PAAB is a public entity, without laying down any strong legal basis for the application of the provisions of the PECG Act to the second respondent, was patently erroneous and ill-advised. The applicant's counsel read the provisions of the PA&A Act in isolation and not as a whole and as guided by the clear functions of the PAAB. This application was a complete waste of the court's time and resources, which ought to have been used for worthy causes.

[39] The application was a knee-jerk reaction to some media reports. The applicant injudiciously founded his cause on some public media articles. The proper legal context was needless lost in that media fanaticism. These proceedings were utterly unwarranted and groundless. The applicant was ill-advised to pursue this application in the form it was pleaded. I, therefore, find that exceptional circumstances exist to justify a punitive award of costs.

[40] In the result, it is ordered that:

The application is dismissed with costs on a legal practitioner and client scale.

DEMBURE J: ……

Mudimu Law Chambers, applicant's legal practitioners
Civil Division of the Attorney-General's office, first respondent's legal practitioners
Mangezi, Nleya & Partners, second and third respondents' legal practitioners