IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: **25674/2024**

In the matter between:

A P N.O.	First Applicant
A P N.O.	Second Applicant
(in their capacities as the parents of L)	
D G N.O.	Third Applicant
A G N.O.	Fourth Applicant
(in their capacities as the parents of M)	

and

OAKDALE AGRICULTURAL HIGH SCHOOL	First Respondent
THE GOVERNING BODY OF OAKDALE AGRICULTURAL	Second
Respondent	
HIGH SCHOOL	

THE DISCIPLINARY COMMITTEE OF OAKDALE AGRICULTURAL HIGH SCHOOL	Third Respondent
DAVID MAYNIER N.O.	Fourth Respondent
BRENT WALTERS N.O.	Fifth Respondent

Coram	:	Da Silva Salie, J
Matter heard	:	28 August 2025
Judgment delivered	:	3 September 2025
Counsel for Applicants	:	Adv. A P J Els SC
Instructed by	:	Couzyn Hertzog & Horak c/o Van Zyl Attorneys
Counsel for 1st to 3rd Respondents	:	Adv. A. Montzinger
Instructed by	:	Hofmeyer & Sons

JUDGMENT HANDED DOWN ON 3rd SEPTEMBER 2025

Order

[70] In the result, I make the following order:

> *"(i) The disciplinary proceedings and the imposed sanctions of August 2024 are declared invalid and of no force and effect.*
>
> *(ii) The disciplinary proceedings of October 2024 and the imposed sanctions are reviewed and set aside.*

(iii) *The matter is not remitted.*

(iv) *The conditional counterapplication is dismissed.*

(v) *The first to third respondents are ordered to pay the applicants' costs on scale C."*

DA SILVA SALIE, J:

Introduction

[1] This matter concerns the review of disciplinary proceedings conducted by the Governing Body and Disciplinary Committee of Oakdale Agricultural High School ("the school") in August 2024 and October 2024. The applicants are the parents of two learners, L and M, both minors currently in Grade 10. Both learners were found to have contravened the rule against vaping. It is from this vaping incident that both hearings stem. The applicants challenge the validity of the proceedings and the sanctions imposed, which they allege were unlawful, procedurally unfair, and disproportionate. The first to third respondents are collectively referred to as the school or the respondents. This application is only opposed by the school. The fourth and fifth respondents are cited in their capacity as Provincial Minister of Education and the Head of Department of the Western Cape Education Department respectively. No relief is sought from the fourth and fifth respondents and they do not oppose the relief sought.

Historical Background:

[2] L and M are learners at Oakdale Agricultural High School, a public school as contemplated in Section 15 of the South African Schools Act, 84 of 1996 ("the Act") and established in terms of Section 21 of the Western Cape Provincial School Education

Act, 12 of 1997. At junior school level, both L and M were selected to play rugby for the South Western Districts. Given their outstanding rugby talent, the school approached both their parents in 2022 and offered them scholarships to attend the school and hostel. They commenced grade 8 in 2023. Later in that year, November 2023, L and M were each found in possession of a vape. Vaping constitutes serious misconduct in terms of the school's Code of Conduct ("the Code"), categorised as a Code C offence – a serious misconduct. Paragraph 1.7.1 reads:

> *"1.7.7 The possession or use of cigarettes, e-cigarettes or any other smoking device, but not limited to vape equipment is prohibited."*

[3] During November 2023 a vape was hidden in L's cupboard. The other hostel boarders in the room told L they would all inform the junior leaders and/or teacher that it's his vape. L then informed one of the junior leaders and asked them what to do, who advised him to inform a teacher immediately. He then admitted to the teacher that he had a vape and had used it. Upon being questioned, he disclosed that M had also used the vape that was hidden in the cupboard. M admitted to use thereof and both were convicted during disciplinary measures and found guilty of a category C offence. They were (as well as one more hostel boarder) suspended from the hostel for a period of 6 weeks.

[4] During the following academic year, on 20 August 2024 M (together with two other learners) sat in a room in the hostel and used a vape. As L walked past the room, he saw them using a vape. He entered the room, took a puff from the vape and then departed to participate in a rugby training session at the school. L was later called by a teacher, Mr. Stefan De Klerk ("Mr. De Klerk") who alleged to have a photo taken via the security camera facing M's room where L can be seen using a vaping device. L admitted to using it, however, informed Mr. De Klerk that it was not his vape. In respect of M, a teacher walked into the room and told him to hand "it" over. M withdrew it from where he had hidden it under his body. Disciplinary proceedings followed before the governing body. Both learners admitted the contravention and were found guilty of vaping. On 27

August 2024, the governing body imposed the following sanctions, in writing, addressed to the applicants in respect of each learner and signed by Mr. De Klerk designation stated as Prosecutor and Mr. Jac Saayman as Chairman. The sanctions are stated as follows:

> *(a) Permanent suspension from the hostel (suspension applies for his Grade 11 and Grade 12 period).*
> *(b) Reapplication to the hostel can be considered at the end of 2025.*
> *(c) Any further Category C offence will lead to implementation of a suspended sentence.*

[5] On 21 August 2024, the day after the August incident, the learners were asked to vacate the hostel by latest on Friday, 23 August 2024. Notices were communicated to the parents of L and M on 22 August 2024 that a disciplinary hearing would be held 5 days later, on Tuesday, 27 August 2024. During the disciplinary hearing, L's father made submissions that L was not "caught" with a vaping device but that he disclosed it voluntarily. He also informed the panel that his son was physically assaulted by older learners whose names he had implicated. He was informed during the hearing that L is found guilty of the offence and permanently expelled from the hostel. The same applies in respect of M. On this date, both the learners had already vacated the hostel as per the prior notice from the school immediately after the incident.

[6] The hostel forms an integral part of school life at Oakdale, and the Code requires that learners reside in the hostel unless they live with their parents in Riversdale. This sanction of expulsion had differing consequences for the two learners: M, whose parents reside in Riversdale, could theoretically continue; L, whose parents reside in George, could not. He did however continue to reside with an elder in the Riversdale community who was prepared to house him until November 2024. This is also tantamount to a breach of the code of conduct, which highlights the far-reaching consequences of expulsion from the hostel.

[7] M's father wrote a letter to the school on 29 August 2024, informing them that he does not accept the sanction to expel M from the hostel. He enquired, inter alia, regarding his right of appeal. The school replied that they are obliged to strictly enforce the Code and that the Education Department need not approve the Code as the policies are exclusively within their discretion, and that there exists no right to appeal.

[8] On 4 September 2024, attorneys acting for M's parents raised with the school, in writing, that whilst the expulsion sanction was issued by the school and implemented, the sanction of expulsion was not referred to the Head of Department of the Western Cape Education Department (the fifth respondent) for confirmation as required by section 9 of the Schools Act. It was pointed out to the school that it was not within their rights to expel hostel boarders and that they may only make a suggestion for expulsion to the Education Department, who then has a right to impose the sanction. L's parents attended a meeting with the principal, Mr. Willem Du Buisson, at the school. They expressed their views to the principal that the penalty imposed was disproportionate to the offence and that no one has ever been given such a severe penalty for vaping, which he conceded. In seeking alternative means to address the transgression, Mr. Du Buisson indicated that as the policy was determined by the governing body, he suggested that correspondence be addressed with them in time for the governing body's next meeting on 12 September 2024.

[9] On 10 September 2024 they addressed a detailed letter to the governing body, however, on 14 September 2024 the chairperson, Mr. Saayman, informed them that the governing body decided not to deviate from the decision of the disciplinary committee. A similar letter was issued to M's parents. A flurry of correspondence followed in the succeeding weeks between attorneys representing both the parents and the school during which attempts were made by the parents for the school to reconsider their sanctions alternatively they would launch a judicial review application. In response thereto, and through their attorneys, the school maintained their position of expulsion, declined to allow them to return to the hostel for the last term of 2024 and indicated that any judicial review application to set aside the August 2024 sanctions shall be opposed.

[10] On 3 October 2024 further correspondence is addressed to the attorneys acting for the school. In terms thereof, the applicants' wish to avoid litigation at all costs are expressed and additionally that they could not submit an appeal in terms of Regulation 18L of the Regulations[1] as the aforesaid regulations state as follows:

> *"18K Recommendation of expulsion by a governing body*
> *(1) If the governing body decides that expulsion is the suitable sanction, the governing body must make a written recommendation to the Head of Department to expel the hostel boarder-*
> *(a) from the hostel; or*
> *(b) from the hostel and from the school."*
>
> *(2) Pending a decision by the Head of Department, the governing body may suspend, or extend the suspension of, the hostel boarder-*
> *(a) from living in the hostel; or*
> *(b) from living in the hostel and attending the school for a period of not longer than 14 days from the day the recommendation was submitted to the Head of Department."*
>
> *"18L Appeal in respect of expulsion*
> *(1) A hostel boarder, or the parents of a hotel border, who has been expelled-*
> *(a) from the hostel; or*
> *(b) from the hostel and from the school,*
> ***may appeal against the decision of the Head of Department by submitting a notice of appeal to the Provincial Minister within 14 school days of receipt of the notice of expulsion from the Head of Department as contemplated in Regulation 18(5)(b)."*** *(emphasis my own)*

[1] Regulations relating to the Management and Control of Hostels at Public Schools and the Control over the Immovable Property and Equipment of Hostels under the Western Cape Education Department

[11] The communication further informs the school's attorneys that the failure of the governing body to refer its decision to permanently expel L from the hostel to the Head of Department, effectively prevented their clients from lodging any appeal as contemplated in Regulation 18L. Paragraph 8 of the correspondence reads:

> *"We hold instructions to proceed with the launching of an application where the notice of motion will have a Part A and a Part B. In Part A the Court will be requested on an urgent basis to prevent the school and the governing body from implementing the decision to permanently expel L from the hostel, pending the final determination of the review (dealt with in Part B).*

[12] Shortly thereafter, within the timeframe set out in the above stated correspondence, the attorney for the school responded with the relevant excerpt quoted below:

> *"It is my instructions to inform you than L will be re-admitted to the School's hostel on Monday, 14 October 2024 and that the School will send a letter to L's parents.*
> *It is furthermore my instructions that the School's Governing Body will reconsider its policy on the permanent expulsion of hostel boarders from the School's Hostel so as to ensure that it is in line with the requirements of the Regulations …..*
> ***I am therefore of the view that there is no need to proceed with a review application for the relief sought under either Part A or Part B of your clients' application."*** *(emphasis my own)*

[13] The same position was followed by the school in respect of M and he returned to school, like L, on 14 October 2024 which amounts to an effective period from 21 August 2024 to 14 October 2024 to 53 days (approximately 8 weeks suspension) in respect of both L and M.

[14] Correspondence from the school addressed to the parents of L and M confirms that the learners would be able to return on the 14th of October 2024, however, that the charges against them are not withdrawn and that a new notice will be issued to them for a date after the school's Code had been revised, where provision will be made for an appropriate adjustment of the sanctions. This time the correspondence is signed by Mr. Du Buisson (as principal), Mr. Saayman (as chairman of the governing body) and Mr. De Klerk as Investigating Officer and Disciplinary Head of the Hostel.

[15] On 16 October 2024 the school issued by email a further notice to the parents of the L and M that in light of the fact that the disciplinary committee had been informed that the sanction of expulsion had to be considered by the Head of Department in terms of the Regulations, a new disciplinary meeting will follow on 24 October 2024 at 15h00 so that new sanctions can be issued in accordance with the regulations. Whilst the attachment to the notice sets out several directives in relation to the October hearing, it does not state what the charges are save in a nuanced way: (translated from Afrikaans to English as follows):

> *"The charges to which the learner had pleaded guilty and had been found guilty are of a serious nature, and expulsion from the hostel, as per the Learners' Code of Conduct, is a possibility…."*

[16] The first and second applicants' attorneys – on behalf of L - responded to the notice on 21 October 2024, I quote paragraph 5 – 8 as follows:

> *"5. L has already been tried for the offence committed during August 2024, and he has been sanctioned therefor – he was expelled from the Hostel for a period of 7 weeks (which we reiterate was an illegal sanction).*
> *6. It is trite that double jeopardy is not permitted in South African law.*
> *7. L cannot be held accountable for Oakdale not being informed of the legislation applicable to it, and for conducting illegal disciplinary enquiries as well as imposing illegal sanctions.*

8. *The re-trial of L is thus very clearly a violation of the prohibition on the double jeopardy rule and the matter is res judicata.*
9. *Our Clients will thus not entertain the disciplinary enquiry in principle, and any sanction imposed thereat will be the subject to an appeal and/or a review."*

[17] On 24 October 2024, and upon 7 days' notice, the school convened fresh disciplinary proceedings and on the same incident of vaping. New sanctions were imposed, however this time it did not include expulsion from the hostel. The sanctions were nonetheless substantial and far-reaching. The sanctions, signed by Mr. De Klerk, this time in the capacity as Prosecutor, and Mr. Saayman as Chairman, are translated from Afrikaans and read as follows:

[17.1] In respect of L:

(a) No leadership position until the end of grade 12.
(b) No participation in any school sport, -activities or -events until the end of the second term 2025.
(c) 5 x counselling sessions with the school counsellor.
(d) Withdrawal of bursary

[17.2] In respect of M:

(*a) All detention sessions until the end of 2024.*
(b) Study in the study hall until the end of 2025.
(c) No leadership position until the end of grade 12.
(d) No participation in any school sport, -activities or -events until the end of the second term of 2025.
(e) 5 x counselling sessions with the school counsellor.
(f) Withdrawal of bursary.

[18] The effect of these sanctions was that, in practical terms, L and M were excluded from core aspects of school life and permanently barred from holding leadership positions and withdrawal of their bursaries in addition to the 7–8-week suspension from hostel which they had already served.

[19] The applicants again engaged in extensive correspondence with the school, raising objections to the sanctions which had substantial consequences for L and M's education and wellbeing as well as concerns that the sanctions were disproportionate, stigmatizing and unlawful. They contended that the governing body was rendered *functus officio* after the August hearings, and that the October proceedings were thus *ultra vires.* The school did not relent, which culminated in this review application.

[20] Against this background, the factual sequence is largely common cause. What is in dispute are the legal consequences flowing from these facts: (a) whether the governing body became *functus officio* in August 2024; (b) whether the October 2024 proceedings were lawful given that it sought to commence the proceedings *de novo*; and (b) the sanctions were disproportionate to the contravention of vaping.

[21] If the two proceedings are set aside, it begs further questions: (a) what remedy should this Court consider in the circumstances? (b) Is it just and equitable to remit the matter to the governing body for a fresh hearing, or (c) should the matter be brought to finality by this Court without remittal. I deal with these issues in more detail hereunder.

[22] In practice, in addition to the other sanctions, the learners effectively endured the consequences of an 8-week expulsion from the hostel. In total 15 weeks of expulsion in respect of the November 2023 and the August 2024 disciplinary measures which were about 7 and 8 weeks respectively. Until 13 March 2025 and after the issue of this review application, the learners had also been excluded from participating in sports and related activities and school social events. The applicants set out in detail events which underscored that the school highlighted to other fellow learners that L and M were serious transgressors. This included making them sit separated from other learners at

school events, glaringly spectacled for their peers to see as being learners who have offended. On 9 February 2025 they were requested by senior scholars (cheerleaders) to put on the jerseys of other schools, and they would be tackled by Oakdale scholars for a promotional video. When a teacher, Mrs. Robinson saw the activity as they were being driven on a small utility vehicle ("gator") as part of the making of the video, she publicly demanded that they get off and step away as the school wants no association with them. Mr. De Klerk was called by her to attend the scene as the learners explained that they were obeying the instructions of the seniors. Mr. De Klerk arrived at the scene, visibly angry and addressed the learners in an extremely agitated manner in the presence of the other learners. These actions cumulatively, the parents submit, had gone beyond the pale to discipline their children and instead of helping to reform them, it had broken their self-esteem. The applicants submit that the energetic and positive boys have now been showing signs of depression and self-doubt with the passage of time and events causing them to wear them down. Counsel for the school defended the disciplinary measures on the basis that this was a necessary course of action to make an example of L and M and illustrate the consequences of transgressions to the rest of the learners at the school.

Video footage of corporal punishment:

[23] At the commencement of the hearing, I engaged counsel regarding the video footage referred to in the replying affidavit of the first applicant as annexure RA7 but which had not been attached to the Court file. The footage (as set out in the replying affidavit) depicts L, with other learners watching, being struck with a cane on his buttocks by Mr. De Klerk, while L is required to lean over a bed. The footage had only at the time of the replying affidavit been made available to L's father by a fellow learner, hence it did not form part of the founding papers. Whilst the footage was not challenged by the respondents' counsel, it was submitted though for the school that the events depicted on the footage bore no relevance to the present proceedings. Counsel of the respondents submitted that the school had taken measures against Mr. De Klerk and that it was a matter unrelated to the issue before this Court.

[24] Both Counsel agreed that the footage would be provided to my registrar after the hearing which I have since received and viewed. I must express that the corporal punishment depicted and inflicted upon the learner is deeply disturbing and unfortunate, given our prevailing constitutional and regulatory framework which unequivocally prohibits corporal punishment in schools. Whilst the incident is not directly the subject of this review, it remains relevant for one important reason: Mr. De Klerk was also the prosecutorial persona in the disciplinary proceedings under scrutiny. Counsel for the school suggested that, if I were to remit the matter to the school for reconsideration, I could order that Mr. De Klerk not participate in any capacity to renewed disciplinary proceedings which would offer the required safeguards regarding fairness. I shall deal with that aspect later in this judgment.

Issues for determination:

[25] The central issues for determination can be succinctly summarized as follows, whereafter I shall deal with each aspect in more detail below:

[a] Whether the disciplinary decisions constitute administrative action under PAJA or otherwise reviewable under the principle of legality.

[b] Whether the August 2024 proceedings amounted to a determination on the merits, thereby rendering the school governing body functus officio.

[c] Whether the October 2024 proceedings were unlawful and disproportionate; and if so,

[d] What remedy is just and equitable in the circumstances.

Is the review by this Court competent under PAJA or the principle of legality

[26] The applicants seek to review the decisions under the Promotion of Administrative Justice Act 3 of 2000 ('PAJA"), alternatively under the constitutional principle of legality. The respondents conceded that the decisions constitute "administrative action" as defined in PAJA. Their issue, however, lies in the argument that the applicants have not exhausted their internal remedies, wherefore it is not capable of accessing this Court under review. I understand the school's argument to mean that the school could not be considered to have made a final decision on the matter, hence, the applicants' contention that the school had become *functus officio* is not sustainable.

[27] As I see it, the decisions of the governing body and disciplinary committee constitute "administrative action" under PAJA as they are decisions of a public body exercising a public power with direct and external legal effect. They are thus reviewable under section 6 of PAJA. However, even if PAJA did not apply, the residual constitutional principle of legality ensures reviewability. All exercise of public power must be lawful, rational, and consistent with the Constitution. This duality prevents the school's decisions from escaping scrutiny under either PAJA or legality. I now turn to the submissions made by both counsel relating to the further issues.

Was the August 2024 hearing of final effect and is the school functus officio thereafter?

[28] Counsel for the applicants argued that the August proceedings were final as it amounted to a determination on the merits. Once the governing body found L and M guilty of vaping and imposed the sanctions in respect thereof, it had exhausted its jurisdiction and thus became *functus officio*.

[29] However, the argument for the applicants is that the governing body overreached by purporting to impose hostel expulsion rather than merely recommend it as it is required to do. Whilst this was an irregularity by the school, it did not entitle it to start the hearings afresh. By failing to refer the expulsion sanction to the Head of Department for a decision, it amounted to denying them from the safeguard of an

internal appeal. Consequently, the internal remedy, serving as a protective mechanism, was effectively taken away from the learners. This, it is argued, compounded the unlawfulness and prejudice as the parents could not appeal to the Head of Department against the expulsion as the Act intended. I understand the applicants' contention to be that the learners did not merely face a "paper sanction", but one which was effectively implemented and executed. This is so as the sanctions were enforced upon the learners. They had endured 08 weeks of expulsion including suspension from other activities and ongoing associated stigma.

[30] Counsel for the respondents submitted on the other hand that whilst the August 2024 hearing resulted in a sanction of hostel expulsion, it was not final in effect since it was never referred to the Head of Department for confirmation. It was argued on behalf of the school that it remained entitled to set aside the August hearing and thereafter lawfully reconvened and reconsidered the matter in October 2024. Insofar as it had not made a final determination on the merits, it is the school's contention that the applicants cannot seek oversight by resort of review from this Court as it had to exhaust its internal remedy. In short, the school was of the view that the October 2024 proceedings cured the irregularities in the August hearing.

Finding in respect of the August 2024 Proceedings

[31] The August 2024 proceedings require scrutiny. At that hearing the governing body made a finding that L and M were guilty of vaping in the hostel. Having reached that conclusion, the governing body did not only impose the sanction of expulsion from the hostel but instead of referring it to the Head of Department, it enforced the sanction of its own accord. This was beyond its lawful competence. Under section 9 of the South African Schools Act 84 of 1996, only the Head of Department may expel a learner from the school or its hostel. However, in *casu*, the expulsion was in fact executed, spanning over a period of approximately 8 weeks. For the duration of this period, L and M were excluded from the hostel, separated from normal school life and subjected to the consequences of what was in law an impermissible execution of the sanction. This

underscores that the irregularity was not just a technicality but had real, prejudicial effects on the learners and their families and had already been served substantially.

[32] By imposing this sanction itself, the Governing Body acted *ultra vires*. In these circumstances, I find the argument on behalf of the school highly problematic. Clearly, the submission that the applicants had not pursued its internal remedies is a fallacy and is not sustainable. The school robbed the learners from that avenue by acting beyond its powers in the execution of the expulsion sanction and now relies on its own irregularity to prevent the learners from being vindicated on that aspect.

[33] It follows logically that the decision and the implementation of expulsion by the school is unlawful and invalid. The doctrine of *functus officio* applies in that once the Governing Body had decided the matter, it could not unilaterally revisit and rehear it.

The School's omission to refer the recommendation to expel to the Head of Department:

[34] The school's omission to refer the sanction to the Head of Department is not a neutral omission: it deprived the applicants of the statutory right of appeal. Once the governing body made a finding and imposed a sanction, even if it overreached its powers (expelling instead of recommending expulsion), it had exhausted its disciplinary jurisdiction in relation to the learners' offending conduct, that being, that vaping incident.

[35] By failing to refer its recommendation to expel the learners from the hostel to the Head of Department for a decision and further recourse to follow, the school in effect closed off the statutory internal appeal path. For these reasons I find that the school could not re-prosecute L and M for the same vaping incident as it had become *functus officio*. I pause to add that it is evident from the flow of correspondence that the school appreciated its irregularity. At this stage, if it wanted to nonetheless proceed with its sanctions against the learners, it could have brought the matter to Court itself by way of self-review. That would have allowed a Court on review to set aside the unlawful sanction and remit the matter to the governing body or the head of department as it

deemed appropriate in the circumstances. It goes without saying that for any new vaping incident (after August 2024) the school remained fully empowered to convene disciplinary hearings in accordance with its Code. However, it could not revisit or "re-try" the August vaping incident by itself, as it amounted to a second prosecution on the same facts or a case of double jeopardy. As the school failed to pursue that avenue, the Court cannot cure it now through remittal. The proverbial horse had already bolted when it had executed the expulsion, thereafter, setting the August 2024 hearing aside when its *faux pas* (false step) was laid bare.

What is the effect of the October 2024 Proceedings – the second bite at the cherry:

[36] My finding that the governing body was *functus officio* after the August 2024 proceedings is, in my view, dispositive of this matter. Once it had decided the merits and imposed sanctions, its jurisdiction was exhausted, and the October 2024 proceedings were impermissible *ab initio* (from the beginning). That conclusion is sufficient to set aside both sets of proceedings. My reasoning thus far makes plain why the August 2024 proceedings cannot stand. The same considerations, viewed alongside the independent defects in the October 2024 proceedings, lead me to the conclusion that they too cannot survive judicial scrutiny. The October hearing was not a lawful "fresh start" but an impermissible rehearing of the same incident. However, I still consider the challenges raised in respect of the October hearing. Before I turn to the issue of disproportionality and procedural defects, it is appropriate at this stage to consider the conduct of vaping and the seriousness of its contravention by L and M.

Vaping: A growing scourge among learners:

[37] Vaping constitutes a serious contravention of the Code. Beyond being a disciplinary infraction, it represents a broader social and health challenge confronting schools in South Africa and globally. Scientific literature shows that nicotine in e-cigarettes harms adolescent brain development, increases addiction risks, and

undermines physical and mental health[2]. The allure of vaping – marketed with appealing flavours and sleek designs – makes it particularly insidious among teenagers, whose developmental stage renders them more susceptible to peer pressure and addictive behaviours.

[38] In South Africa, the Tobacco Products and Electronic Delivery Systems Control Bill, 2022 recognises this danger and seeks to bring e-cigarettes and related products under the same strict controls as traditional tobacco, including prohibiting sale to and use by minors.[3] This reflects a clear public policy trajectory that vaping is not to be trivialized but treated as a high-level form of misconduct where learners are concerned.

[39] It is therefore understandable that schools treat vaping as serious misconduct. At the same time, this reality underscores the delicate balance that must be struck while schools are entitled, and even obliged, to act firmly to protect learners and their reputation. The measure adopted must, however, remain consistent with legality, proportionality and the educational purpose of discipline.

Vaping: Scientific Harm and Regulatory Context:

[40] It was not in dispute that vaping is a contravention of the school's code of conduct and that it is harmful. The applicants accepted that the contravention would warrant sanction however, counsel for the applicant's argued vaping is not as serious a transgression as the school had categorised it in its Code. As I see it, L and M together with their parents, the applicants, had entered a contract with the school thereby accepting its binding force. To that extent, I would agree that the learners made themselves guilty of the serious contravention of vaping as it is defined in the school's Code. However, importantly, the seriousness of the contravention does not obviate the requirement that disciplinary processes be conducted lawfully, fairly and within the bounds of the Code, nor does it permit sanctions that are excessive or disproportionate.

---

[2] South African Medical Research Council, Position Statement on Electronic Cigarettes (2021); World Health Organisation (WHO) – E-cigarettes and Youth (2020)
[3] Tobacco Products and Electronic Delivery Systems Control Bill [B33-2022]

[41] Importantly, vaping, though harmful and rightly prohibited, must be distinguished from the use of illicit drugs: the latter carries criminal implications, whereas vaping falls under the regulatory framework of the Tobacco and Related Products legislation. I pause to mention that during the disciplinary proceedings and in response to submissions by the father of L that the school could bring more attention to the serious consequences of vaping, a member of the disciplinary body exclaimed in laughter that vaping is in contravention of the law. The conflated view, treating vaping as a criminal offence, most likely influenced both the severity of the sanctions imposed and the way the transgressions were assessed. In my view, such a conflation distorted the proportionality enquiry and consideration between the transgression and an appropriate sanction by the disciplinary body.

[42] Nicotine in e-cigarettes harms adolescent brain development, increases the risk of addiction, and undermines long-term health. International authorities, including the World Health Organization[4], warn that vaping during adolescence leads to dependence while exposing users to harmful aerosols with respiratory and cardiovascular risks. South African research has echoed these findings: studies by Reddy et al[5]and Egbe et al[6] - *South African peer-reviewed studies (Reddy, Egbe)* - demonstrate that e-cigarette use is rising among South African youth, often under the misperception that vaping is harmless. The South African Medical Research Council has similarly cautioned against youth uptake.[7]

[43] Locally, the legislature has recognised the dangers by proposing the Tobacco Products and Electronic Delivery Systems Control Bill (2018, updated 2022),[8] which

---

[4] *World Health Organization, Tobacco: E-cigarettes (Fact sheet, May 2023); Centers for Disease Control and Prevention, Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults (updated 2022).*

[5] *Reddy P, Sewpaul R, Naidoo I, Keter A, Yach D, "E-cigarette use and smoking cessation behaviour among South African adults" (2018) 108 South African Medical Journal 9, 700-706.*

[6] *Egbe CO, London L, Ndwandwe D, "E-cigarette use in South Africa: reasons for use, perceptions of harm, and quitting behaviour" (2021) BMC Public Health 21:298.*

[7] *South African Medical Research Council (SAMRC), Policy Briefs on Electronic Nicotine Delivery Systems (various, 2020–2022).*

[8] *Tobacco Products and Electronic Delivery Systems Control Bill [B33-2018] and Draft Bill (2022 update).*

would regulate e-cigarettes in the same way as traditional tobacco products, including prohibiting their sale to minors. These scientific findings and statutory developments underscore that vaping by school learners constitutes serious misconduct which schools are entitled to treat as egregious.

[44] I appreciate that schools face an onerous and daunting task in addressing vaping, which is harmful to learners and brings the school into disrepute. Deterrence is important. But one cannot sacrifice an individual learner at the altar of deterrence. Discipline must build and reform the learner, not break them down or diminish their self-esteem.

Repeat Offences and the Development Context of Learners:

[45] This brings me to the fact that the school considered L and M's November 2023 vaping finding as an aggravating factor given that they were repeat offenders. This fact must be given due consideration when it had imposed the October 2024 sanctions.

[46] The school's Code permits suspension of privileges for repeat Category C offences and refers to repeat offenders as having repeated the offence ***"within the same academic year"***. In other words, a repetition fresh on the heels of the previous offences and the consequential sanctions is clearly aggravating because it illustrates, disconcertingly, that the learner has quickly disregarded the prior discipline whilst still in the same grade and more than likely, under the same conditions.

[47] It demonstrates a disregard for corrective measures and a persistence in misconduct. Such conduct I would agree justifies an escalation of sanction. By contrast, where incidents occur across different academic years, the position is materially different. Each new year in high school marks a substantial stage in development for an adolescent learner: maturity and conscientisation but so too the social pressures which bears upon the learner as it finds his or her way in a hostile world, wanting to fit under social pressure.

[48] In this case, the November 2023 and August 2024 incidents were in different academic years. The suspension of privileges aforesaid amounted to a permanent suspension and not what is contemplated from the wording of the school's Code of Conduct. A mere reading of the code contemplates suspension but for a period, but not what would be the rest of the offending learner's school career. A transgression in a later year should not automatically be treated as a repeat offence, because the learner is assessed against a new development baseline. An adolescent is not static: every year brings measurable changes for a child. The passage of time, whilst it comes with intellectual advancement, emotional and psychological maturity it also comes part and parcel with more complex subject matter, demands of greater social integration and belonging; the learner's own organic struggles such as identity formation; peer pressure; hormonal and cognitive change along fluctuating emotions and the uneven process of maturing responsibility.

[49] Discipline must build and reform the learner, not break them down or diminish their self-esteem. Withdrawal of bursaries and permanent exclusion from leadership positions exceeded what the school itself contemplates and provide for in its own Code of Conduct.

Stigmatisation and Humiliation

[50] In my view, the sanctions stigmatised L and M, excluding them permanently from positions in leadership, permanently withdrew their bursaries additionally with actions which, considered cumulatively with other sanctions, humiliated rather than reformed. The treatment of L and M extended beyond sanction into humiliation. They were made to sit apart from other learners at school functions, publicly labelled as transgressors, and excluded from events.

[51] Disproportionality must be seen in the context of it being in addition to the sanctions which I had already discussed above, namely, the expulsion from hostel,

permanent withdrawal of their bursaries and any leadership positions it could hold for the rest of their schooling. Such treatment violates dignity, entrenches stigma, and is counter-productive to discipline. It fosters resentment and perpetuates misconduct. Schools hold authority in trust. With that comes the duty to discipline fairly and restoratively.

[52] Discipline that humiliates learners cannot be justified academically and from a developmental perspective. It otherwise lacks educational purpose. Discipline in schools is not aimed at revenge or retribution but rather at deterrence (general and individual) and reformation. Its purpose is to guide learners towards accountability and growth, while maintaining order and protecting the school community. Sanction must therefore be corrective and proportionate because a broken staff cannot grow into a branch. Where sanctions become so severe that they strip a learner of dignity, self-esteem and any hope of reintegration, particularly in school leadership positions, the sanctions cease to serve their educational purpose. Once a child's spirit is broken by disproportionate punishment, the prospects of reform and growth are diminished, if not extinguished. For a high school learner, leadership roles embody hope, dignity and an opportunity to grow. Leadership roles in a school context are more than ceremonial titles. They represent recognition of a learner's maturity, responsibility and trustworthiness. Even the aspiration or opportunity to reach such positions fosters motivation, pride and a sense of belonging within the school community. Removing that permanently is more than just a sanction. It forecloses a development pathway. To permanently bar L and M from holding or aspiring to leadership until the end of Grade 12 (effectively a total exclusion) is counterproductive to the very purpose of discipline and diminishes their sense of dignity and belonging.

Withdrawal of bursaries as a sanction:

[53] The respondents sought to defend the permanent withdrawal of L and M's bursaries on the basis that, although such a sanction is not provided for in the school's Code, the conditions of the bursaries itself permit cancellation in the event of

misconduct. I find this reasoning unpersuasive. The bursary agreements cannot be read in isolation from the school's disciplinary framework and constitutional obligations. Discipline must be consistent, transparent and proportionate. To invoke the bursary conditions as an additional sanction outside the Code amounts to double punishment and undermines the principle of legality. Moreover, the bursaries to L and M were offered to facilitate access to education; their withdrawal as a disciplinary measure is inimical to their constitutional right to basic education and the best interests of the child.

[54] In light of the foregoing analysis, I am satisfied that the sanctions imposed at the October 2024 hearing were manifestly disproportionate, and together with the additional findings hereinbefore, fall to be set aside.

Conditional Counterapplication

[55] The first and second respondents brought a conditional counterapplication seeking if the August proceedings were found invalid, that the October proceedings be substituted and proceed as valid. In other words, the school seeks that if the August 2024 proceedings are found to be unlawful, the Court should "substitute" the October 2024 proceedings so that those sanctions could stand and proceed as valid.

[56] This counter application cannot succeed. The school had acted beyond its powers and *ultra vires* by deciding and enforcing the expulsion of the learners, a fact which is not disputed. An *ultra vires* act cannot be cured by substitution.

[57] The conditional counterapplication therefore ought to be dismissed.

Remedy

[58] Section 172(1)(a) of the Constitution requires that unlawful conduct must be declared invalid. However, Section 172(1)(b) allows for a just and equitable remedy in the event of a declaration of invalidity.

[59] It is well established that when a Court reviews the exercise of public power based on legality, a declaration of invalidity under section 172(1)(a) ordinarily has retrospective effect. The unlawful act is treated as void *ab initio* — it never had legal force or effect from the outset. This principle, affirmed in ***State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd 2018 (2) SA 23 (CC),*** ensures that no unlawful exercise of public power can be validated by the mere passage of time.

[60] On the facts of this case, the retrospective effect means that the August 2024 proceedings are regarded as having been unlawful from the moment they were conducted. Its later attempt to "set aside" the August outcome and to reconvene in October 2024 was therefore without legal foundation. In practical terms, there was no valid decision to undo: the August hearing never produced a lawful result capable of reconsideration. This is why the October 2024 proceedings cannot stand. They were built on the fiction that the governing body could revive or correct an earlier process, when in fact that process had been a nullity.

[61] Counsel for the applicants argued that if the governing body considered its August 2024 proceedings to be unlawful, as clearly it had realized, it ought itself to have approached this Court to set them aside by way of a self-review as contemplated in ***Gijima***. In principle though, once the governing body had decided the matter it was *functus officio* and only a Court could set that decision aside. The power to undo its own decision did not rest with the governing body. In practice, however, I do not regard it as realistic or sustainable to expect a law school governing body, comprised of parents and educators, to invoke the jurisdiction of this Court by having to institute a self-review.. However, the school's attempt and persistence to reconvene another

hearing was not a lawful substitute for such a review but rather an impermissible rehearing of the same facts.

[62] The proper course was to recognize the finality of the August proceedings. It is the persistence of the governing body to reconvene the hearing that this Court had to be approached by the parents of L and M to vindicate their children's rights. That course of action is directly relevant to the question of costs: had the school accepted the finality of the August proceeding, further litigation may well have been unnecessary. Alternatively, if it wanted to pursue the vaping incident with new sanctions, it ought to have approached this Court for relief, by setting aside their August proceeding. The school's unlawful "second bite" forced the parents into this litigation.

[63] Apart from my *functus officio* finding, the October 2024 proceedings cannot stand. They were procedurally defective in that the learners and their parents were not afforded adequate and meaningful notice, the same incident was reheard without authority and the prosecutorial role of the teacher, Mr De Klerk, raises concern of fairness and impartiality. Moreover, as stated above, the sanctions imposed were grossly disproportionate. Not only did it exceed the limits of the school's own code of conduct but on a conspectus of all relevant facts and circumstances, it was disproportionate.

The remedy: Whether to direct remittal or not?

[64] Counsel for the applicants argued that consideration of a remedy is not mandatory as it could, as he argued, be sufficient in the circumstances to set the two hearings aside. This would have retrospective effect and that given the facts of the matter no purpose would be served for the matter to be referred to the school for a new decision hearing. Counsel for the respondents argued that deterrence was a legitimate disciplinary purpose, and that the sanctions imposed served the best interests of the wider learner body by sending a strong message that vaping would not be tolerated. It was argued for the school that discipline is best left to the school authorities, and that at

most, the matter should be remitted for reconsideration if procedural defects were found.

[65] I bear in mind that L and M have already endured the combined effect of both the August and October sanctions. The August sanction of hostel expulsion, though unlawful, was implemented in practice and disrupted their schooling and living arrangements. The October sanctions, in turn, imposed exclusions from bursaries, leadership, sport, and social participation. Together, these measures amounted to a prolonged and cumulative punishment. I am also mindful of the emotional and psychological hardship these processes and sanctions caused, not only to the learners but also to their parents, the four applicants, who were forced to watch their children stigmatised and humiliated. This holistic impact underscores the need for finality. To remit the matter for yet another hearing would risk compounding the harms suffered and would not be just and equitable under section 172(1)(b).

[66] The appropriate remedy is therefore to review and set aside both the August and October proceedings without remittal. For the reasons to which I had come, I am satisfied that no remedy beyond setting aside is just and equitable as contemplated in section 172(1)(b) of the Constitution. To remit or substitute would only perpetuate the irregularities already identified. The proceedings of August and October 2024 and the imposed sanctions respectively are set aside in their entirety, and nothing remains to be remitted or substituted.

Costs

[67] As to costs, I am satisfied that they should follow the result. The matter raised complex issues of administrative and constitutional law. The applicants engaged senior counsel. They repeatedly raised concerns with the school in correspondence, which went unheeded. This litigation became inevitable.

[68] I note the respondents' reliance on a without prejudice Rule 34 tender, dated 28 March 2025. In that tender the first and second respondents consented to the setting aside of the sanctions but proposed referral back to the Disciplinary Committee for reconsideration. On costs, they tendered that each party pay its own costs, alternatively that costs be paid on the lower scale A.

[69] This tender did not address the substance of the applicants' case. The applicants sought the review and setting aside of both proceedings as unlawful, not a mere reconsideration. Remittal would have entrenched the very irregularities challenged. The costs proposal was also inadequate considering the complexity, senior counsel's engagement, and respondents' refusal to heed earlier correspondence at the instance of the applicants. The applicants were justified in rejecting the tender. Accordingly, a costs order on scale C is warranted.

Order

[70] In the result, I make the following order:

> *"(i) The disciplinary proceedings and the imposed sanctions of August 2024 are declared invalid and of no force and effect.*
>
> *(ii) The disciplinary proceedings of October 2024 and the imposed sanctions are reviewed and set aside.*
>
> *(iii) The matter is not remitted.*
>
> *(iv) The conditional counterapplication is dismissed.*
>
> *(v) The first to third respondents are ordered to pay the applicants' costs on scale C."*

_____

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION