**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO: 000317/2023**

**DELETE WHICHEVER IS NOT APPLICABLE**

(1) REPORTABLE: ***NO***

(2) OF INTEREST TO OTHER JUDGES: ***NO***

(3) REVISED.

(4) Date: 06 February 2026

Signature: _____

In the matter between:

| | |
|---|---|
| **MULTIPURPOSE DISTRIBUTORS** | Applicant |
| And | |
| **THE COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE** | 1st Respondent |
| **P GOVENDER** | 2nd Respondent |
| **K MOODLEY** | 3rd Respondent |
| **A PILLAY** | 4th Respondent |

**JUDGMENT**

**NYATHI J**

**Introduction – the application to strike**

[1] The respondent in its response to the application for review, launched an interlocutory application by the respondents, brought in terms of Rule 6(15) of the Uniform Rules of Court, to strike out specified paragraphs in the applicant's replying affidavit on the grounds that they constitute inadmissible hearsay, are irrelevant and/or prejudicial. The application arises in pending review proceedings in which the applicant seeks to set aside a decision of the Commissioner to hold it liable for excise/levy assessments linked to alleged fraudulent use of its remover codes.

[2] The respondents' concise heads contend that disputes of fact have arisen on the papers; that the Plascon-Evans rule therefore frames the approach to final relief on motion; and that, because affidavits are both pleadings and evidence, hearsay matter in reply must be struck out so that it does not form part of the evidentiary material to be applied under Plascon-Evans.

[3] The applicant's submissions and heads of argument answer that (a) the review is to be determined on rationality grounds; (b) the impugned passages were properly responsive to an email annexed by the respondents; (c) the existence of a dispute of fact is contrived and in any event not determinative for a Rule 6(15) inquiry; and (d) even if portions were hearsay, they would be admissible under section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

[4] The strike-out notice identifies paragraphs in the reply which, the respondents say, repeat or rely on communications (including an email referencing the remover code

and an alleged admission by one Ms Karyn Lichaba in or about November 2017) without establishing a basis for the deponent's personal knowledge, and whose probative value depends on the credibility of third parties.

**Issues for determination:**

[5] The issues for determination are:

(i) whether the impugned passages are hearsay and inadmissible at this stage of the proceedings;

(ii) whether they are scandalous, vexatious or irrelevant within the meaning of Rule 6(15); and

(iii) whether, even if hearsay, they should nevertheless remain by virtue of the statutory discretion in section 3(1)(c) of Act 45 of 1988 or because they are properly responsive to matter introduced by the respondents.

[6] Rule 6(15) permits the court to strike out a matter which is scandalous, vexatious or irrelevant, and which is prejudicial to the other party. The striking-out power is discretionary; the threshold is not met merely because the material is unfavourable. The court balances relevance and prejudice, having regard to the proper ventilation of issues on affidavit. The applicant emphasises this by pointing out that the challenged passages were directed at an email annexed by the respondents, and that refusing a proper reply would undermine the *audi alteram partem* principle.

[7] In motion proceedings, affidavits serve a dual role of pleadings and evidence; the usual rules of admissibility apply. The respondents rely on the well-known Plascon-Evans approach to factual disputes in applications seeking final relief, as well as authorities confirming the evidential character of affidavits in motion practice.

[8] Hearsay is not *per se* inadmissible in civil proceedings. Under section 3(1)(c) of the Law of Evidence Amendment Act, hearsay may be admitted if the court, having regard to various listed factors, is satisfied that admission would be in the interests of justice. The applicants argue that the impugned material would meet that discretionary standard. [emphasis added].

[9] The underlying matter is a review. While some relief sought may be final in effect, the strike-out application is not the occasion to resolve whether Plascon-Evans governs the ultimate merits. What is material is whether the impugned reply passages are properly relevant to issues placed in dispute by the respondents and whether their presence would unfairly prejudice the respondents. The respondents' heads link strike-out to preventing hearsay from "continuing to form part of the evidentiary material" to be applied in the Plascon-Evans rubric. That contention conflates admissibility questions with the weighting of competing versions. Whether certain paragraphs will carry weight at the merits stage is distinct from whether they should be excised now.

[10] The applicant contends that the impugned passages respond to an email annexed by the respondents and address allegations raised in the answering affidavit; the true purpose of the replying affidavit is to refute the respondents' case. Preventing such a reply would unjustifiably curtail the applicant's opportunity to meet the case against it. I agree that, to the extent the reply engages directly with documents and assertions placed on the record by the respondents, it is *prima facie* relevant.

[11] Several impugned statements appear to refer to communications (including an alleged admission by Ms Karyn Lichaba around November 2017) and to operational arrangements tied to remover codes whose details may lie outside the deponent's direct personal knowledge. The respondents are correct that such statements, if tendered for their truth, are hearsay. They submit no factual basis has been laid to render them admissible, and that allowing them to remain would prejudice SARS because the material would be applied under Plascon-Evans.

[12] However, two considerations militate against striking out at this stage:

a. First, section 3(1)(c) confers a broad interests-of-justice discretion. Whether to admit hearsay often depends on the totality of the record, the availability of the source (e.g., where the email's author is identifiable), the nature of the review grounds, and whether the statements are corroborated by contemporaneous documentation. Premature excision may unnecessarily truncate the record and hamper the court's later calibration of admission and weight. The applicant squarely invokes this statutory discretion.
b. Second, where the respondents themselves introduced the email and thereby put the subject matter into issue, a proportion of the reply's references are contextual and explanatory rather than offered as standalone evidential truth. Rule 6(15) is directed at improper matter; it is not a surrogate for objections that can be dealt with through rationality review analysis or weight.

[13] Prejudice as described in Rule 6(15), is not mere annoyance at unfavourable content. It contemplates unfairness in the litigation process. The applicant's heads correctly note that vexatious matter refers to wording intended to harass or annoy; nothing in the reply (as described in the strike-out notice and heads) suggests such intention or language. To the extent the respondents argue prejudice because the material might be considered later under Plascon-Evans, that is not the kind of prejudice Rule 6(15) is aimed at.

[14] Having considered the parties' submissions, I am not persuaded that the respondents have demonstrated that the impugned passages are scandalous, vexatious or irrelevant, nor that their presence in the record occasions prejudice in the Rule 6(15) sense. To the extent any statements are hearsay, their admission and weight are best determined in the review hearing under section 3(1)(c) and the ordinary motion principles. The strike-out application therefore fails.

**The review application proper**

[15] The applicant seeks to review and set aside SARS's decision to issue a letter of demand in the sum of R7 985 412.23, being customs duties, VAT, interest, penalties and a forfeiture amount in terms of s 88(2)(a) of the Customs and Excise Act 91 of 1964 ("CEA"). In the alternative, it seeks that the matter be remitted to SARS for reconsideration; and ultimately it asks this Court to replace the impugned decision with a finding that it is not indebted to SARS at all.

[16] SARS opposes the application. It raises a preliminary point that the review is out of time under s 7 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), and on the merits contends that the applicant, as a licensed remover of goods in bond, is liable for duty by operation of s 18 of the CEA read together with s 64D.

**Background and undisputed factual matrix**

[17] The core events concern alcohol products declared for export to Mozambique under various export bills of entry processed by Turners Shipping (Pty) Ltd on behalf of Ocean Traders International Africa (Pty) Ltd ("OTIA"), with Cogef Trading LDA reflected as consignee. Multipurpose was reflected on the export bills of entry as the licensed remover of the goods.

[18] Multipurpose had leased trucks to Frimol Logistics (Pty) Ltd ("Frimol") pursuant to a truck lease arrangement. The applicant avers that although trucks were leased, its remover code was used without knowledge or consent, and that SARS failed to verify declarations and authorisations properly. SARS disputes this and points to:

*(a) a letter dated **28 September 2020** ostensibly authorising use of remover code 21329136,*

*(b) statements attributed to Multipurpose personnel indicating that the leasing arrangement "comes with" the remover code, and*

*(c) prior communications in* ***November 2017*** *in which Multipurpose authorised certain companies to use its remover code.*

[19] SARS's audit and verification reflected that for a number of export bills of entry the goods were marked for arrival at the border but never marked for exit on the SARS SSM system; certain CN2 references furnished were allegedly invalid/false because they related to different transactions at other borders; and hard copy electronic road manifests indicated an exit status inconsistent with the SSM record. From this SARS inferred diversion and raised the demand.

**The issues**

[20] Two issues arise arise:

20.1. Preliminary: Whether the review was instituted within the 180-day period contemplated by s 7(2) of PAJA (and, if not, whether condonation/extension under s 9 of PAJA is warranted).

20.2. Merits (in the event the Court reaches them): Whether SARS's decision is reviewable under PAJA on grounds of irrationality, unreasonableness or procedural unfairness, and specifically whether Multipurpose is liable under s 18 of the CEA (read with s 64D) as the remover of goods in bond in circumstances of alleged diversion and failure to produce proof of unlawful export.

**The preliminary point: PAJA timeliness**

[21] SARS contends the 180-day period ran from 5 April 2022, the date on which the Internal Administrative Appeal (IAA) under Part A of Chapter XA of the CEA was concluded; on that footing Multipurpose should have launched its review by October 2022 but only did so in January 2023. SARS relies on Petrogas SA[1] (an unreported judgment of the Gauteng Division) for the proposition that Part A of Chapter XA of the CEA does not constitute an "internal remedy" for PAJA purposes, meaning the IAA's conclusion does not defer commencement of the 180-day clock; SARS also invokes the principle that courts strictly enforce PAJA's time limits.

[22] Multipurpose counters that both internal appeal and ADR under Chapter XA are internal remedies that had to be exhausted before review, and that after ADR was terminated SARS issued a notice (MD11) advising the applicant of its rights and stating that prescription runs for one year from the termination of ADR for proceedings against the State in terms of s 96 of the CEA. The applicant argues that, read with s 7(2) of PAJA and s 9(1), the time bar either did not run until ADR termination or was extended "in writing" by SARS's notice.

[23] The difficulty for the applicant is twofold. First, on the authorities and the stance adopted in the respondents' heads, Part A of Chapter XA is not an internal remedy for PAJA purposes and does not suspend the running of s 7(1) (and by parity of reasoning, ADR, being within the same administrative hierarchy, does not change that position). Second, s 9(1) of PAJA requires the court to extend the 180-day period where the interests of justice so demand; it is not competent for an administrator's letter to unilaterally extend PAJA's time limits. On the papers and heads before me, Multipurpose did not seek condonation (or set out facts warranting extension) in the

[1] Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd v Commissioner for the South African Revenue Service [2018] ZAGPPHC 871

manner PAJA contemplates. In those circumstances, a court is enjoined to refuse to entertain the merits.

[24] I accordingly uphold the preliminary point and find that the review was launched out of time and that no condonation has been shown on the papers or in the heads to justify an extension under s 9.

**Merits (obiter)**

[25] Even if I am wrong on timeliness, the application would in any event fail on the merits.

[26] The review standard is well settled: courts scrutinise administrative decisions through PAJA to ensure they are rational, reasonable and procedurally fair, mindful of the separation between appeals and reviews articulated in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*[2], and as restated in *CSARS v Dragon Freight*.[3] This Court does not sit to determine the correctness of the decision, but whether it falls within the bounds of reasonableness.

[27] SARS's factual basis is substantial: Multipurpose was reflected as the licensed remover on the export bills of entry; several consignments were marked for arrival but never for exit on the SSM system; CN2 references furnished were invalid for the transactions in question; and the road manifest "exit" statuses conflicted with the SSM record, pointing to non-export/diversion. Those facts, taken together, support SARS's inference that the goods were diverted and that liability under s 18 remained because the remover had not produced proof that liability ceased under s 18(3)(a)(i)–(ii).

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[2] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* **[2004] ZACC 15**; **2004 (4) SA 490** (CC)

[3] Commissioner for the South African Revenue Service and Others v Dragon Freight (Pty) Ltd and Others (751/21) [2022] ZASCA 84; [2022] 3 All SA 311 (SCA).

[28] On authorisation, SARS relies on a 28 September 2020 letter and statements by Multipurpose personnel indicating that the leasing arrangement included the remover code, as well as a 14 November 2017 email showing prior authorisations of third parties to use the code. Multipurpose alleges fraud, denies issuing any authorisation to Frimol/OTIA in relation to the consignments, and says it is a victim rather than a perpetrator. While those denials are noted, the materials SARS cites provide a plausible evidentiary basis for concluding that Multipurpose at least caused or permitted the removal, satisfying s 18(2) ("removes or causes such goods to be removed") and triggering the obligations in s 18(3) and s 64D(6). In that light, SARS's decision falls within the band of reasonableness.

[29] The applicant's contention that SARS ought to have verified the declarations and authorisations more rigorously before release does not, in my view, transform SARS's subsequent decision into one that is irrational or procedurally unfair, particularly where the remover is strictly tasked by the statute to ensure proper acquittal or proof of export and bears continuing liability until that occurs.

**Costs**

[30] SARS seeks costs. The ordinary rule is that costs follow the event. There is no basis in the heads or record before me for a punitive costs order; the matter was complex but not marked by reprehensible conduct. Ordinary party-and-party costs are appropriate.

**Order**

[31] The following order is made:

31.1 The application is dismissed on the grounds that it was instituted outside the period prescribed by s 7(1) of PAJA, and no condonation under s 9 has been sought or established.

31.2 In the alternative (obiter), were timeliness not dispositive, the application would be dismissed on the merits because SARS's decision is rational, reasonable and lawful under s 18 and s 64D of the CEA and is not susceptible to review under PAJA.

32.3 The applicant is to pay the costs of the application, including costs of counsel, on the party-and-party scale B.

31.4 The respondent's application in terms of Rule 6(15) to strike out specified paragraphs of the applicant's replying affidavit having been dismissed, the respondents are to pay the costs of that specific application, including costs of counsel, on the party and party scale B.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 13/05/2025
Date of Judgment: 06 February 2026

On behalf of the Applicant: Mr G.Y. Benson
Instructed by: Pahad Attorneys c/o: Savage Jooste & Adams Inc, Pretoria

On behalf of the Respondents: Mr. A. Thompson
Instructed by: Maponya Incorporated, Pretoria.

**Delivery**: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 06/02/2026.