**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

10/11/2026 2026
DATE

SIGNATURE

**Case No. A206 / 2022**

In the matter between:

**SOUTH AFRICAN COUNCIL FOR THE**

**ARCHITECTURAL PROFESSION** Appellant

and

**COUNCIL FOR THE BUILT ENVIRONMENT** First Respondent

**MARK DYLAN OATES** Second Respondent

**Summary:** Professional regulation – Architectural profession – Disciplinary proceedings – Appeal by the South African Council for the Architectural Profession to the High Court under section 33(6) of the Architectural Profession Act 44 of 2000 against a ruling of the appeal committee of the Council for the Built Environment – Nature of appeal – Held that section 33(6) creates an appeal in the ordinary or narrow sense, confined to the record, in which the only determination is whether the decision under appeal was right or wrong – Wide appellate powers conferred on the Council for the Built Environment by section 21 of the Council for the Built Environment Act 43 of 2000 do not pass by implication to the High Court.

Administrative law – Procedural fairness – Disciplinary process before professional regulator – Held that the Council for the Built Environment erred in finding that the proceedings before the Investigating Committee and the Disciplinary Tribunal were vitiated by material irregularities – Attendance of officials at the Investigating Committee, refusal of a pre-hearing meeting under Board Notice 5 of 2021, the composition of the Tribunal, and the failure to call the complainant and administrative officials did not render the proceedings void – Regulator entitled to frame a Rule 4.1 charge from information obtained during its investigation and not bound by the complainant's characterisation of the grievance.

Administrative law – Internal appeal – Participation of Investigating Committee members in the Council appeal contrary to paragraph 14.5 of Board Notice 5 of 2021 and a rushed hearing – Held that the Council appeal was defective, but that a defect confined to the internal appeal does not, without more, invalidate an otherwise regular first-instance decision – Council for the Built Environment erred in setting aside the Tribunal's finding and discharging the practitioner.

Remedy – Remittal – Remittal to the Council of the South African Council for the Architectural Profession inappropriate given a reasonable apprehension of a predetermined outcome – Appeal remitted to the Council for the Built Environment for determination afresh on the merits by a differently constituted appeal committee – Orders of the appeal committee directing investigations into officials of the South African Council for the Architectural Profession and the adoption of policies exceeded its powers and set aside – Appeal upheld in part – Each party to pay its own costs.

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**ORDER**

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The following order is made:

1. The appeal succeeds in part.
2. The ruling of the Appeal Committee of the Council for the Built Environment dated 4 July 2022 is set aside, including the orders in paragraphs 75.4 to 75.6 of that ruling.
3. The ruling is substituted with the following:

3.1 The second respondent's appeal to the Council for the Built Environment against the decision of the Council of the South African Council for the Architectural Profession dated 8 April 2022 is remitted to the Council for the Built Environment for determination afresh, on the merits, of the second respondent's appeal against the finding and sanction of the Disciplinary Tribunal of the South African Council for the Architectural Profession dated 7 September 2021, by an appeal committee none of whose members served on the appeal committee that made the ruling referred to in paragraph 2.

3.2 In determining the appeal, the appeal committee must:

(a) proceed on the basis that the proceedings before the Disciplinary Tribunal of the South African Council for the Architectural Profession were not vitiated by the irregularities found in the ruling referred to in paragraph 2;

(b) determine on the merits whether the second respondent contravened Rule 4.1 of the Code of Professional Conduct and, if so, the appropriate sanction; and

(c) afford the appellant and the second respondent a reasonable opportunity to make written and oral representations.

3.3 Each party pays its own costs of the appeal.

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**JUDGMENT**

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**TOLMAY J ( MKHABELA J CONCURRING)**

*Introduction*

[1] This appeal arises under section 33(6) of the Architectural Profession Act (the APA).[1] The appellant (SACAP) found the second respondent (Mr Oates) guilty through its Disciplinary Tribunal of failing to record the terms of his appointment in writing, contrary to Rule 4.1 of the Code of Professional Conduct and fined him R10 000,00. SACAP's Council dismissed his internal appeal, but the first respondent (the CBE) later overturned that decision and issued additional orders. Mr Oates opposes this appeal, while the CBE has filed a notice to abide.

[2] SACAP asks this Court to set aside the CBE's ruling and to reinstate the Tribunal's finding and sanction. The central question is whether the CBE was correct to set aside the entire disciplinary process and, if not, what order it ought to have made.

[3] The issues are whether:

a) the appeal under section 33(6) of the APA is an appeal in the wide sense, permitting this Court to rehear the matter and determine the merits afresh, or an appeal in the narrow sense;
b) the CBE correctly found that the proceedings before the Investigating Committee and the Disciplinary Tribunal were vitiated by material procedural irregularities;
c) the participation of Investigating Committee members in the Council appeal, and the conduct of that appeal, justified setting aside the Disciplinary Tribunal's finding and discharging Mr Oates;
d) SACAP was entitled to frame a Rule 4.1 charge from information obtained during its investigation, although the original complaint concerned overcharging;
e) the CBE acted within its statutory powers in directing investigations into SACAP officials and the adoption of new administrative policies; and
f) if the appeal succeeds in any respect, what the appropriate remedy is, including whether the matter should be remitted and, if so, to which body.

[1] 44 of 2000.

*Background*

[4] The matter arose from a complaint by Mr Mano Pandaram, lodged under Rule 1 of the Code of Professional Conduct, that Mr Oates had overcharged for services not rendered. On 8 December 2020, SACAP issued Mr Oates with a charge sheet containing three charges unrelated to the complaint. The first alleged that he contravened Rule 4.1 by undertaking architectural work without recording all the terms of appointment in writing or, alternatively, by using terms that did not comply with Rules 4.1.1–4.1.8. The second alleged that he contravened Rule 2.4 by failing to participate regularly in continuing professional development activities. The third alleged that he contravened Rule 5.10 because his practice's letterhead omitted the principals' names and registration numbers, their registration categories in the prescribed abbreviations, and the professional designations and qualifications of principals not registered with the Council. Mr Oates pleaded not guilty to all three charges.

[5] A Disciplinary Tribunal convened under section 31 of the APA heard the matter on 2 September 2021. On 7 September 2021, it found Mr Oates guilty of charge 1, contravening Rule 4.1 of the Code of Professional Conduct, and fined him R10 000,00. SACAP withdrew charge 2 at the hearing, and the Tribunal dismissed charge 3.

[6] Mr Oates appealed the Disciplinary Tribunal's decision on 25 September 2021. On 10 March 2022, the SACAP Council heard the appeal virtually under sections 33(1) and 33(2) of the APA. It dismissed the appeal and confirmed the Tribunal's decision on 8 April 2022. Mr Oates then appealed to the CBE under section 33(3) of the APA. The CBE issued its ruling on 4 July 2022, and SACAP filed the notice giving rise to this appeal on 4 August 2022.

*The CBE's findings*

[7] Finding gross procedural irregularities, the CBE set aside both the Disciplinary Tribunal's and the SACAP Council's decisions. It identified several irregularities.

[8] The CBE found that the Investigating Committee had neither properly investigated the complaint against Mr Oates nor shown that it had independently obtained and verified the necessary evidence. In its view, the directive wording of paragraph (b) of SACAP's

submission indicated that the Committee had merely endorsed SACAP's position instead of conducting its own investigation.

[9] The CBE also found insufficient separation between the Investigating Committee and the SACAP Registrar, noting that the Committee's minutes of 5–6 November 2020 listed several SACAP officials as attendees. Sections 17 and 40(2) of the APA require a properly constituted committee that is independent of the Council.

*[10]* The CBE further found that SACAP had refused Mr Oates's request for a pre-hearing meeting under paragraph 6.1 of Board Notice 5/2021. Paragraph 6.2 provides that *"In the event a pre-hearing meeting is held, the purpose of such meeting shall be to curtail and limit the issues in dispute and agree on those not in dispute.*The paragraph further provides that the discussions may include but is not limited to the following headings: Prejudice; settlement; admissions sought; disputes regarding the duty to prevent evidence first and onus of proof; proof of affidavits; responsibility for copying and preparation of bundles; status of the documents; and estimated duration of the hearing.

[11] The CBE identified additional defects in the disciplinary proceedings: the Tribunal was not constituted in accordance with section 30(2) of the APA; the complainant was not called to testify; Mr Oates's representations were not meaningfully considered; and he was not allowed to question the Registrar and Ms Mashile before the Tribunal. The CBE found that Rule 3 of Board Notice 64 of 2017, read alone, is ambiguous as to who may issue a summons for a witness, an ambiguity compounded by the reference in Rule 4 to "a party". Relying on section 31(3) of the APA, it held that the power to subpoena rests with the Disciplinary Tribunal, and that the Tribunal had failed in its duty under that section by not securing the attendance of the Registrar and Ms Mashile.

[12] The CBE also found the appeal before the SACAP Council procedurally defective. SACAP made no submissions, while Mr Oates received neither advance notice of the applicable procedure and time limits nor sufficient time to present his case. Council President Mr Nduku allowed only 30 minutes for the proceedings, and Dr Dlamini,who presided at the appeal, said he had to leave after 15 minutes. Sixteen minutes into his submissions, Mr Oates was interrupted and instructed to conclude within five minutes. The recording indicated that Dr Dlamini, who chaired the hearing,

had already left when Mr Nduku closed the proceedings. The CBE regarded the scheduling of the appeal on a date unsuitable for Council members as highly irregular and concluded that the hearing was rushed and grossly irregular.

[13] The CBE concluded that Mr Oates had not been given a meaningful opportunity to challenge SACAP's case on appeal, contrary to paragraph 14.4 of Board Notice 5 of 2021 and paragraph 10(4) of Board Notice 64 of 2017.

[14] The CBE further found that three members of the Investigating Committee—its chairperson, Ms Mandisa Daki, Mr Vusi Phailane, and Mr Lufuno Motsherane /Nematswerane—also heard the appeal. This overlap was irregular because the legislation requires the Committee and the SACAP Council to remain separate and independent.

[15] The CBE drew an adverse inference from SACAP's refusal to provide Mr Oates with electronic recordings of the Disciplinary Tribunal proceedings and its unilateral omission of pages from his submissions in the record before the appeal committee. Having found that procedural unfairness rendered the entire process void, the CBE set it aside without considering the merits of the complaint.

*Analysis*

*The statutory scheme*

[16] Sections 28 and 29 of the APA require complaints to be referred to an investigating committee. If the committee decides that a registered person should be charged, it brings the charge. A person who denies the charge is tried by a disciplinary tribunal appointed under section 30. Under section 30(2), the tribunal must comprise at least three members:

(a) a specialist in the relevant professional field;

(b) a suitably experienced professional; and

(c) a legally qualified person with appropriate experience.

[17] Section 32 governs findings and sanctions. Under section 33, a registered person found guilty may appeal to the council within 30 days. The council may uphold or dismiss the appeal, and its decision may be appealed to the CBE within a further

30 days. Section 33(5) allows a registered person whose appeal the CBE has dismissed to appeal to the High Court. Section 33(6) confers a right of appeal on the council to the High Court.

[18] The Rules for Inquiry into Alleged Improper Conduct (Board Notice 5 of 2021, Government Gazette 44190 of 19 February 2021) supplement the Act. Paragraph 14.4 requires the council to conduct appeals "in a lawful, reasonable, and procedurally fair manner", while paragraph 14.5 prohibits a Council member who served on the Investigation Committee in the same matter from hearing the appeal. Rule 10(5) of the earlier rules (Board Notice 64 of 2017) imposed the same prohibition.

*The nature of the appeal jurisdiction*

[19] SACAP contends that section 33(6) grants the Court a wide appellate jurisdiction, allowing it to reconsider the facts and law and determine the merits of the Rule 4.1 charge despite earlier administrative defects. Mr Oates argues that the provision does not authorise the Court to reconsider the substantive merits of a professional disciplinary dispute. He submits that a statutory disciplinary appeal body has no original or *de novo* jurisdiction unless the governing statute expressly provides otherwise, which the APA does not.

[20] In *Tikly and Others v Johannes NO and Others* (*Tikly*),[2] the court explained the different connotations that can be attributed to an appeal as follows:

"*The word 'appeal' can have different connotations. In so far as is relevant to these proceedings it may mean:*

*(i) an appeal in the wide sense, that is, a complete re-hearing of, and fresh determination on the merits of the matter with or without additional evidence or information (Golden Arrow Bus Services v Central Road Transportation Board, 1948 (3) SA 918 (AD) at p. 924; S.A. Broadcasting Corporation v Transvaal Townships Board and Others, 1953 (4) SA 169 (T) at pp. 175 - H 6; Goldfields Investment Ltd v Johannesburg City Council, 1938 T.P.D. 551 at p. 554);*

*(ii) an appeal in the ordinary strict sense, that is, a re-hearing on the merits but limited to the evidence or information on which the decision under appeal was given, and in which the*

[2] *Tikly and Others v Johannes NO and Others 1963 (2) SA 588* (T) at 590G–591A.

*only determination is whether that decision was right or wrong (e.g. Commercial Staffs (Cape) v Minister of Labour and Another, 1946 CPD 632 at pp. 638 - 641);*

*(iii) a review, that is, a limited re-hearing with or without additional evidence or information to determine, not whether the decision under appeal was correct or not, but whether the arbiters had exercised their powers and discretion honestly and properly (e.g. R v Keeves, 1926 AD 410 at pp. 416 - 7; Shenker v The Master, 1936 AD 136 at pp. 146 - 7)."*

[21] Section 33(6) of the APA reads:

*"(a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.*

*(b) The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE."*

[22] Paragraph (a) confers the right of appeal, while paragraph (b) addresses only notice and timing. By referring simply to an "appeal", without authorising new evidence, a rehearing, or determination without the record, the provision contemplates an appeal in the ordinary sense of that term.

[23] By contrast, section 21 of the Council for the Built Environment Act [3] frames appeals to the CBE more broadly. Section 21(1) requires the CBE to "consider and decide" the appeal without limiting it to the existing record; section 21(2) permits the appellant to submit "any documents or records supporting such appeal"; and section 21(4) requires the appeal committee to conduct the appeal in accordance with section 33 of the Constitution. In *Nunes v Crawford* (*Nunes*),[4] this was regarded as a deliberate legislative choice. The legislature expressly conferred broader appellate powers at the CBE stage, but not at the High Court stage. This context strongly indicates that the High Court's appellate jurisdiction is narrower.

[24] A comparable provision appears in section 20(1) of the Health Professions Act 56 of 1974, which allows "any person aggrieved by a decision of the council, a professional board or a disciplinary appeal committee" to appeal that decision to the

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[3] 43 of 2000.

[4] [2010] 4 All SA 304 (WCC) para 35.

appropriate High Court. Section 20(2) requires the appeal notice to be lodged within one month.

[25] In *Emergency Medical Supplies and Training CC t/a EMS v Health Professions Council of South Africa and Another* (*EMS*)[5] and *De Beer v Raad vir Gesondheidsberoepe van Suid-Afrika* (*De Beer*),[6] the Supreme Court of Appeal held that section 20 creates an appeal in the narrow sense. Such an appeal is confined to the evidence on which the original decision was based, which precludes additional grounds, such as allegations of procedural bias or conflict of interest; those fall within the purview of review proceedings.

[26] In *Health Professions Council of SA v De Bruin*,[7] the Supreme Court of Appeal explained:

'The appeal to the High Court created by s 20 of the Act has (in my view correctly) been described as "an appeal in the ordinary sense", i.e. "a rehearing on the merits but limited to the evidence or information on which the decision under appeal was given, and in which the only determination is whether that decision was right or wrong".'[8]

[27] SACAP argues that, unlike the HPA, the APA establishes the CBE as an external appeal body with broad powers and that this Court should therefore assume the CBE's jurisdiction. The submission has some structural appeal but finds no support in the text: broad jurisdiction conferred on one body does not pass by implication to the next.

[28] By parity of reasoning, and in the absence of any textual indication to the contrary, section 33(6) of the APA creates a narrow appeal. The Court is therefore confined to the record and must decide only whether the decision under appeal was correct.

[29] Contrary to SACAP's contention, this conclusion does not allow misconduct to escape scrutiny because of procedural error. In a narrow appeal, the Court still

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[5] *Emergency Medical Supplies and Training CC t/a EMS v Health Professions Council of South Africa and Another [2013] 4 All SA 1 (SCA)*.
[6] *De Beer v Raad vir Gesondheidsberoepe van Suid-Afrika [2006] 4 All SA 21 (SCA)* paras 25–27.
[7] *Health Professions Council of South Africa v De Bruin* **[2004] 4 All SA 392 (SCA).**
[8] Id para 23.

determines from the record whether the CBE correctly identified each irregularity, assessed its materiality, and granted an appropriate remedy. The Court does not, however, sit as a disciplinary tribunal of first instance.

[30] Because this is a narrow appeal rather than a review, this Court does not determine free-standing review grounds of its own.[9] It decides only whether the CBE was correct in the findings it made, which were themselves findings of procedural irregularity. SACAP's request that the CBE ruling be "reviewed and set aside" is therefore treated as a request to set it aside on appeal.

*Procedural challenges*

*The Investigating Committee and the Registrar*

[31] The CBE found that the Investigating Committee had merely "rubber-stamped" directives from SACAP's administration. It relied on the wording of SACAP's submission and the presence of SACAP staff, including the Registrar, at the Committee meeting on 5 and 6 November 2020. It considered the Registrar's conduct grossly irregular and unconstitutional.

[32] The minutes list seven members as "present" and staff, including the Registrar, as "in attendance". Neither the APA nor the Rules prohibit officials from attending to assist a committee, and the record contains no evidence that the Registrar or any other official voted on or directed the decision to charge. Nor is an investigating committee statutorily required to interview the complainant. Its role is to gather information and recommend whether a charge should be brought. Mr Oates was notified of the complaint on 18 August 2020 and responded fully.

[33] The record nevertheless reveals irregularities in SACAP's documentation. The supporting-document list includes dates preceding the engagement, including a complaint affidavit dated 12 December 2019 and a membership profile dated 24 January 2020. It also refers to a warrant of execution dated 16 September 2019 that Mr Oates says he has never seen.

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[9] EMS para 6.

[34] Although these errors cast doubt on SACAP's administration and warranted close scrutiny by the CBE, they do not establish that the Investigating Committee abdicated its function. The CBE therefore erred in treating them as evidence of the Committee's dereliction and of grossly irregular and unconstitutional conduct by the Registrar.

*The Tribunal proceedings*

[35] The Tribunal comprised Adv Block, a legally qualified member, and Messrs Williams and Coetzer, both professional senior architectural technologists. The SACAP Council's decision records that they were appointed from a panel through a public procurement process and that Mr Williams specialises in the relevant professional field.

[36] The CBE gave no reasons or evidence for its finding that some members "were not those envisaged" by section 30(2), nor did it identify any unmet requirement. Mr Oates likewise asserted, without substantiation, that the panel lacked a specialist.

*The pre-hearing meeting*

[37] Paragraph 6.2 of Board Notice 5 of 2021 states the purpose of a pre-hearing meeting "in the event" one is held: to narrow the issues, record admissions, and organise documents. It is a case-management mechanism, not a right whose denial renders a hearing unfair.

[38] Mr Oates received the charge sheet more than eight months before the hearing, responded comprehensively, and had a full hearing. The CBE's conclusion that charges 1 and 3 "would have been withdrawn" at a pre-hearing meeting was speculative. Its reference to charge 1 must have meant charge 2, which was withdrawn; charge 1 was not. The CBE therefore erred in finding that SACAP's refusal to hold the meeting violated section 33 of the Constitution and PAJA and contributed to invalidating the proceedings.

*Failure to call the complainant, the Registrar and Ms Mashile*

[39] Mr Oates was convicted solely of failing to record terms of appointment that complied with Rule 4.1. That issue depended on the documents and his own account. In his written response, he admitted that there was no signed contract and that the

parties had proceeded on an oral understanding, relying instead on emails and the published fee guideline, Board Notice 121. The complainant's evidence was unnecessary to establish those facts, and the Registrar and Ms Mashile, as administrative officials, could offer no relevant evidence about them.

[40] Section 31(3) of the APA empowers the Tribunal, not the parties, to subpoena witnesses. Although it could have assisted a self-represented practitioner more actively, Mr Oates showed no prejudice concerning the charge on which he was convicted. The CBE therefore erred in finding that this rendered the proceedings void.

*The relationship between the complaint and the charges*

[41] Mr Oates's principal substantive objection is that the charges did not relate to the original overcharging allegation. Although the Investigating Committee found no evidence of overcharging, it brought three regulatory charges: one was withdrawn for lack of evidence, another was dismissed, and SACAP later raised a professional indemnity insurance deficiency that had not been charged.

[42] This unsatisfactory history understandably gave Mr Oates the impression that he faced a "moving target". However, a professional regulator may formulate charges from all the information before it and is not bound by the complainant's characterisation of the grievance.[10]

[43] Fairness requires practitioners to know the case they must meet before the hearing. In December 2020, Mr Oates was charged under Rule 4.1 with failing to record the terms in writing or, alternatively, with recording terms that did not comply with Rules 4.1.1–4.1.8. He addressed both allegations in writing and at the hearing. The difference between the complaint and the charge did not, on its own, invalidate the conviction. SACAP's later reliance on professional indemnity insurance bears on the weight of its subsequent submissions, not the fairness of the hearing on the charge as framed.

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[10] ***Health Professions Council of South Africa v Haeck*** **(A2023/050722) [2024] ZAGPJHC 455 (7 May** 2024) para 38 and the **authorities cited therein.**

*The Council appeal*

[44] The Council appeal is different. The record established, and the parties did not dispute, that the three Investigating Committee members referred to above participated in the Council appeal and concurred in its decision of 8 April 2022.

[45] Paragraph 14.5 of Board Notice 5 of 2021 and Rule 10(5) of the 2017 Rules, referred to above, expressly prohibit this overlap. The prohibition is substantive: it preserves the separation between the body that decides to prosecute and the body that hears the appeal. A breach creates, at minimum, a reasonable apprehension that the appeal body was asked to endorse its own earlier decision.

[46] SACAP did not seriously dispute the overlap, arguing only that it did not taint the Tribunal proceedings. Although correct to that extent, the argument does not meet the defect in the internal appeal itself.

[47] The record also supports the CBE's findings, summarised above, that the Council appeal was rushed and that the presiding member appears to have left before it ended. The CBE therefore correctly concluded that the Council's appeal decision could not stand.

*The Rule 4.1 finding and the remedy*

[48] The CBE's conclusion that the entire process was void rested on its findings concerning the Investigating Committee, the Tribunal, and the Council appeal. This Court has found that it erred on the first two. The remaining question is whether the defect in the Council appeal justified setting aside the Tribunal's finding and discharging Mr Oates.

[49] It did not. A defect confined to the internal appeal does not, without more, invalidate an otherwise regular first-instance decision. Instead, it means that Mr Oates has not received the appeal guaranteed by statute. Section 33(1) entitles Mr Oates to have his appeal against the Tribunal's finding and sentence heard by a lawfully constituted appeal body.

[50] By setting aside the conviction and discharging Mr Oates, the CBE effectively upheld his internal appeal on grounds that, apart from the Council-level defect, this Court has found unsustainable. It therefore erred.

[51] This Court does not decide whether the Tribunal's Rule 4.1 finding and sentence were correct. In this narrow appeal, the Court cannot determine the conviction's merits as the first appellate tribunal when the statutory internal appeal has not lawfully occurred.

[52] The record contains material supporting both parties: SACAP relies on Mr Oates's acknowledgement that no signed written agreement existed and on his reliance on Board Notice 121, while Mr Oates relies on his emails with the complainant and the engagement's scope. A properly constituted appeal body must decide these competing contentions.

[53] The question of remittal was not dealt with in the heads of argument, but this Court raised it during argument. SACAP argued that, even if the matter were remitted on procedural grounds, the outcome would be the same on Mr Oates's own version. In the alternative, it submitted that a discharge was not the correct order where the CBE made no finding on whether Rule 4.1 had been breached: a defect at the appeal stage cannot operate backwards to cancel the Tribunal's completed decision, and the correct remedy for a defective process is remittal, not what counsel called an "acquittal". Counsel relied on *Nunes* for this Court's power to remit and accepted, correctly, that remittal is within this Court's discretion. SACAP asked that any remittal order state its purpose and that, on remittal, each party pay its own costs, because a prima facie finding of guilt remains unanswered.

[54] Although this Court raised remittal, counsel for Mr Oates did not address it. This Court must nevertheless consider whether remittal to the SACAP Council, even if differently constituted, would give a reasonable observer in Mr Oates's position cause to apprehend a predetermined outcome.

[55] The record supports that concern for three reasons. First, the Council has already committed itself to a particular outcome. It resolved to challenge the CBE's decision and now seeks reinstatement of the conviction and the R10 000,00 sanction,

together with a punitive costs order against the CBE and Mr Oates, jointly and severally. Second, SACAP's leadership endorsed the original appeal decision. The presiding member signed it, and the President, Vice President, and other Council members concurred. Third, bias at the Council stage already forms part of the challenge. Mr Oates contends that the participation of Investigating Committee members in the Council appeal gave rise to a reasonable apprehension of bias.

[56] Requiring different members would not resolve the difficulty. The decision-maker would remain the Council—the body that resolved to litigate and now advocates the very outcome it would be asked to reconsider. A reasonable observer in Mr Oates's position could therefore apprehend that the outcome was predetermined. In my view, this is sufficient to displace remittal to the Council.

[57] Remittal to the CBE would address Mr Oates's concerns and provide the statutory framework under section 21 of the CBE Act for properly determining the appeal. This is because the CBE has broader powers than this Court. As noted above, section 21 contains three features absent from section 33(6):

a) a general mandate to "consider and decide the appeal";
b) authority to receive documents beyond the existing record; and
c) a mandatory duty under section 21(4) to conduct the appeal in accordance with section 33 of the Constitution.

[58] In *Nunes* the Court confirmed that the legislature framed section 21(4) "in peremptory terms".[11] The CBE can therefore do what this Court cannot on a narrow appeal: reconsider the merits of Mr Oates's appeal and, if necessary, receive additional material. In *Nunes* the applicant, was an architect. The CBE appeal committee ordered SACAP to reopen its investigation into a complaint against him without giving him notice of the appeal.

[59] He asked the Court to set that decision aside and to substitute its own finding. He sought a finding that the appeal committee lacked jurisdiction or, alternatively, that the appeal be dismissed. The Court held that the CBE had convened its appeal committee without regard to section 21(4) of the CBE Act, read with section 3(2)(b) of

[11] Par.39.

PAPJA and section 33 of the Constitution. The decision was adjudicatory, not a policy decision, and it materially affected the applicant's career and reputation. Fairness therefore required that he be given notice. The appeal committee had considered the prospects of success of the complaint. The applicant should have been allowed to address it on that question, because it was integrally linked to the decision to order a reinvestigation.

[60] *Nunes* concerned a PAJA review; this matter is an appeal under section 33(6). The proper enquiry therefore differs. In *Nunes* the Court considered whether exceptional circumstances justified departing from remittal, the usual review remedy. Here, the Court must decide whether the CBE's decision was correct and, if not, what order the CBE ought to have made. Remittal is thus available, but it is not the default remedy.

[61] However, remittal to the CBE gives effect to the structure of the legislation as both parties describe it, at the level where that structure applies. The Council's decision of 8 April 2022 cannot stand for the reasons given above, but this Court does not set it aside. It remains in place solely as the decision against which Mr Oates's appeal to the CBE lies. Because section 21 of the CBE Act empowers the CBE to consider and decide that appeal afresh, the CBE will determine Mr Oates's appeal against the Tribunal's finding and sanction on its merits. The defects in the Council appeal are thereby cured, not endorsed, through a full and fair hearing before the CBE rather than a further Council hearing.

[62] The CBE did not decide whether Mr Oates contravened Rule 4.1, or whether the sanction was appropriate. It set the process aside on procedural grounds. Mr Oates's defence on the merits, including his contention that the charge did not reflect the complaint, has therefore never been decided by a body with power to decide it.

[63] The CBE's ruling strongly criticised SACAP and its officials, describing the appeal proceedings as "merely a farce and a sham" and directing an investigation into named officials. SACAP, in turn, characterises the ruling as "biased and clearly personal". These circumstances could reasonably create an apprehension that the original committee had prejudged the matter against SACAP. The remitted appeal

should therefore be heard by a committee whose members did not participate in the committee that issued the ruling of 4 July 2022.

*Orders 75.4 to 75.6*

[64] Paragraphs 75.4 TO 75.6 of the CBE's ruling require a separate finding on the CBE's statutory power. The CBE relied on section 4(l) of the CBE Act to direct its Council to investigate SACAP's Registrar and two officials. Although section 4(l), as quoted to this Court, empowers the CBE to "investigate or initiate investigations into matters pertaining to its functions and policies", it does not authorise an appeal committee deciding a disciplinary appeal under section 33(3) of the APA to order an investigation into another statutory body's employees.

[65] Sections 3 and 4 of the CBE Act, cited in support of the recommendations in orders 75.5 and 75.6, set out the CBE's objects and general functions. They do not empower an appeal committee, when deciding an individual appeal, to direct or recommend that SACAP adopt policies within a specified period.

[66] Whatever the scope of the CBE's broader oversight powers, an appeal committee cannot exercise them as relief in an individual disciplinary appeal. Orders 75.4 to 75.6 therefore exceeded the Appeal Committee's powers and must be set aside. This judgment does not prevent the CBE from exercising, through the proper processes, any power it lawfully holds.

*Conclusion*

[67] The issues identified at the outset are answered as follows: (a) section 33(6) of the APA creates an appeal in the narrow sense; (b) the CBE erred in finding that the proceedings before the Investigating Committee and the Disciplinary Tribunal were vitiated by material irregularities; (c) the CBE correctly found the Council appeal defective, but that defect did not justify setting aside the Tribunal's finding and discharging Mr Oates; (d) SACAP was entitled to frame the Rule 4.1 charge as it did; (e) orders 75.4 to 75.6 exceeded the Appeal Committee's powers; and (f) the

appropriate remedy is to remit Mr Oates's appeal to the CBE for determination on the merits by a differently constituted appeal committee.

*Costs*

[68] Measured against the order, success is divided. SACAP succeeds in obtaining paragraph 2 of the order: the CBE's ruling of 4 July 2022 is set aside, including orders 75.4 to 75.6 of that ruling. **It also succeeds in obtaining paragraph 4(a), which directs the appeal committee to** proceed on the basis that the Tribunal proceedings were not vitiated by the irregularities the CBE found. SACAP fails, however, in its principal relief: this Court has held that section 33(6) creates a narrow appeal, and it has declined to reinstate the conviction and sanction. Instead, paragraph 3 remits the appeal to the CBE for determination on the merits. Mr Oates, for his part, succeeds on the nature of the appeal and on the defect in the Council appeal, and that defect is what makes the remittal in paragraph 3 necessary. Because that defect is attributable to SACAP, it would not be fair to award SACAP the costs of the success it achieved. The CBE abided the decision and sought no costs.

[69] SACAP sought a punitive costs order against the CBE and Mr Oates, jointly and severally. Neither the conduct of the CBE in deciding the appeal, which this Court has upheld in part, nor Mr Oates's opposition to this appeal warrants such an order. For these reasons, paragraph 5 of the order provides that each party pays its own costs of this appeal.

[70] Paragraph 5 of the order is confined to the costs of this appeal and does not affect the costs order made by Swanepoel J.

The following order is made:

1. The appeal succeeds in part.
2. The ruling of the Appeal Committee of the Council for the Built Environment dated 4 July 2022 is set aside, including the orders in paragraphs 75.4 to 75.6 of that ruling.
3. The ruling is substituted with the following:



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3.1 The second respondent's appeal to the Council for the Built Environment against the decision of the Council of the South African Council for the Architectural Profession dated 8 April 2022 is remitted to the Council for the Built Environment for determination afresh, on the merits, of the second respondent's appeal against the finding and sanction of the Disciplinary Tribunal of the South African Council for the Architectural Profession dated 7 September 2021, by an appeal committee none of whose members served on the appeal committee that made the ruling referred to in paragraph 2.

3.2 In determining the appeal, the appeal committee must:

(a) proceed on the basis that the proceedings before the Disciplinary Tribunal of the South African Council for the Architectural Profession were not vitiated by the irregularities found in the ruling referred to in paragraph 2;

(b) determine on the merits whether the second respondent contravened Rule 4.1 of the Code of Professional Conduct and, if so, the appropriate sanction; and

(c) afford the appellant and the second respondent a reasonable opportunity to make written and oral representations.

3.3 Each party pays its own costs of the appeal.



**R TOLMAY**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**



**R MKHABELA**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10 November 2026.

APPEARANCES:

| | | |
|---|---|---|
| For the Appellant | : | Adv T Mathopo with Adv T Mabelane |
| Instructed by | : | Ndzabandzaba Attorneys Inc. Bryanston |
| For the 1st Respondent | : | No appearance (notice to abide) |
| Instructed by | : | |
| For the 2nd Respondent | : | Adv C van der Linde |
| Instructed by | : | Adams Attorney, Northcliff |
| Matter heard on | : | 4 June 2026 |
| Judgment date | : | 10 November 2026 |