



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 13754/2024

In the matter between:

PRABASHNEE NAIDOO

APPLICANT

and

SOUTH AFRICAN FRAUD PREVENTION SERVICE

FIRST RESPONDENT

MARIS IT DEVELOPMENT (PTY) LTD

SECOND RESPONDENT

**CSG SECURITY (PTY) LTD
(Reg No.: 1997/005499/07)**

THIRD RESPONDENT

THE STANDARD BANK OF SOUTH AFRICA LIMITED FOURTH RESPONDENT

ORDER

The following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the third respondent on Scale B, including the costs of counsel.

JUDGMENT

Delivered on: 1 October 2025

Masipa J

Introduction

[1] The applicant seeks final interdictory relief directing the removal of her fraud listing on the database maintained by the South African Fraud Prevention Service (SAFPS).

[2] The first and second respondents abided the decision of the Court. The fourth respondent did not oppose, and the applicant gave an undertaking not to seek relief against it. Only the third respondent opposed and filed an answering affidavit and heads of argument.

Background

[3] The listing arose from information provided by the second respondent and filed by Mr Geldenhuys of the third respondent. SAFPS, a non-profit company, is a registered credit bureau in terms of s 43 of the National Credit Act 34 of 2005 (the NCA). The applicant was subject to a criminal investigation under CAS 54/01/2023. In January 2024, the National Prosecuting Authority (the NPA) declined to prosecute and entered a *nolle prosequi* decision in her favour.

[4] On 9 May 2024, before any application to SAFPS, the applicant lodged a complaint with the National Credit Regulator (the NCR). That complaint did not yield a substantive result. In November 2024 and again in January 2025 she was informed to restart the process, but these communications related to her earlier complaint and not to the later refusal decision of SAFPS. On 6 June 2024, the applicant formally applied to SAFPS for removal of her listing. SAFPS responded on 13 June 2024, refusing the request and expressly advised her of the right to pursue remedies with the NCR or Ombudsman. However, the applicant did not challenge this decision with the NCR or Ombudsman.

[5] The applicant claims that the continued listing is wrongful, has resulted in prejudice including the refusal of vehicle finance and infringes her constitutional rights. In her view, it was sufficient that she had already lodged a complaint for the listing with the NCR. According to her, the listing and not the refusal to delist her was what she was challenging in these proceedings.

The applicant's case

[6] The applicant contends that she has satisfied the requirements for a final interdict as set out in *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd*,¹ being a clear right which she says arises from the *nolle prosequi* and which she contends evidences the absence of any adverse finding of fraud; an injury has already been suffered through the declined finance application and will remain if the listing is not removed; and lastly, that there is no adequate alternative remedy, as the NCR process has proved slow and ineffective.

[7] She disputes that she was obliged to bring review proceedings under Uniform rule 53, since SAFPS itself abided and raised no objection to her approach. The applicant further argues that she bears no duty to aver her innocence, the onus in criminal law rests on the State. A *nolle prosequi* ended the fraud investigation, and the SAFPS Code of Practice, which regulates members, cannot override prosecutorial decisions or bind her personally.

The third respondent's case

[8] The third respondent raises three main points:

(a) Incorrect procedure

[9] The third respondent submits that SAFPS's decision of 13 June 2024 was a statutory determination, and therefore susceptible only to review proceedings under Rule 53. The applicant seeks to overturn the refusal without producing the review record. This, the third respondent contends, renders the application procedurally defective.² While the decision in *Du Bruyn v South African Fraud Prevention*

¹ *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* [2016] ZACC 42; 2017 (1) SA 613 (CC) para 8.

² *Kalefya v South African Fraud Prevention Services and Another* [2022] ZAGPJHC 367.

*Services NPC and Another*³ was brought by way of ordinary motion rather than a Rule 53 review, it illustrates the substantive grounds on which SAFPS decisions have been tested. It does not, however, alter the principle that where the operative decision is being set aside, the ordinary procedural vehicle is a Rule 53 review.

(b) Alternative remedy

[10] SAFPS expressly directed the applicant to the NCR and Ombudsman. These are adequate remedies. While she had earlier complained to the NCR on 9 May 2024, this was before SAFPS's refusal of 13 June 2024. The later November 2024 and January 2025 follow-ups were continuations of that earlier complaint and not a challenge to the refusal decision. After the refusal, she did not pursue the available channels. A prior complaint cannot substitute for utilising the designated remedies following the operative decision.

(c) Dirty Hands/ substantive merits

[11] The applicant has not positively alleged that she is innocent of fraud. When challenged in the answering affidavit, she refused to do so. Fraud listings are not contingent on conviction; they arise from credible evidence of fraudulent conduct following investigation. A *nolle prosequi* is not an acquittal. Civil proceedings are contemplated. In any event, listings are retained for ten years unless sufficient cause for earlier removal is shown.

Issues

[12] The issues are:

- (a) Whether the application is fatally defective for not being brought under rule 53;
- (b) Whether the requirements for a final interdict are satisfied, particularly the absence of an alternative remedy;
- (c) The effect of the *nolle prosequi* decision on the applicant's entitlement to removal; and
- (d) The characterisation of the decision under challenge: the initial listing, or SAFPS's refusal to delist.

³ *Du Bruyn v South African Fraud Prevention Service NPC and Another* [2024] ZAGPPHC 502.

Analysis

Rule 53 and PAJA

[13] A preliminary difficulty lies in the form of proceedings. Rule 53 is not itself a source of review powers but a procedural gateway. It requires the decision-maker to file the record and entitles an applicant to supplement its papers. The substantive grounds of review derive from either the Promotion of Administrative Justice Act 3 of 2000 (PAJA), if the decision qualifies as ‘administrative action,’ or from the constitutional principle of legality. Whether or not PAJA applies, the procedural mechanism of rule 53 is ordinarily obligatory. By seeking to set aside the consequences of the decision through an interdict, the applicant bypassed both the substantive and procedural foundations of a review.

The nature of the decision under challenge

[14] There is also uncertainty as to which decision is properly before this Court. The applicant frames her case as a challenge to the initial decision to list her and thus invokes interdictory relief. The third respondent, however, correctly points out that once the applicant disputed the listing, SAFPS rendered a determination on 13 June 2024 refusing to remove her from its database. That determination, rather than the initial listing, is the operative decision presently affecting her rights. The proper course would therefore have been to review that decision in terms of rule 53. To seek an interdict against the consequences of the listing, without impugning the refusal decision in review form, amounts to an indirect attempt to overturn it without compliance with rule 53 procedure.

Final interdict

[15] The applicant has shown harm to her reputation and creditworthiness. However, she cannot demonstrate the absence of an adequate alternative remedy. Section 72 of the NCA, together with the oversight of the NCR and the Ombudsman, provides a statutory framework for challenging adverse listings. Her earlier NCR complaint of 9 May 2024 preceded the SAFPS decision and therefore does not qualify as a proper pursuit of those remedies. After the refusal, she did not engage the available channels.

The effect of the nolle prosequi

[16] The applicant's reliance on the *nolle prosequi* is misplaced. Such a decision is not equivalent to an acquittal. It does not expunge suspicion of fraud, nor does it bar civil proceedings. As the third respondent points out, the standard for a fraud listing is not criminal proof beyond reasonable doubt but credible evidence.

Applicant's omission to aver innocence

[17] Of concern is the applicant's failure to make a positive allegation that she is not linked to fraud, even when directly challenged. While the criminal law imposes no onus on an accused to prove innocence, these proceedings are not criminal in nature. Her silence weighs against her case, particularly in light of the detailed allegations set out in the third respondent's papers.

Constitutional considerations

[18] The applicant has invoked her constitutional rights to dignity and to fair administrative action. These rights are of central importance, and any adverse listing that unjustifiably tarnishes a person's reputation would implicate them. However, the NCA establishes a regulatory framework that gives effect to these rights through statutory remedies, including referral to the NCR and the Ombudsman. Until those remedies are exhausted, it cannot be said that the applicant's constitutional rights have been unjustifiably limited. The constitutional dimension does not therefore alter the outcome of this application.

Conclusion

[19] The applicant approached this Court on the basis that a *nolle prosequi* decision in her favour entitled her to be removed from the SAFPS fraud database. That contention cannot be sustained. A decision not to prosecute is not a judicial pronouncement of innocence. It does not expunge adverse information or prevent civil proceedings. To premise a clear right solely on a *nolle prosequi* is to conflate prosecutorial discretion with exoneration.

[20] The matter is compounded by the form of proceedings. What is effectively sought is to undo SAFPS's refusal of 13 June 2024. That is a decision taken in the

exercise of statutory power. The proper remedy was to bring review proceedings under rule 53, read with PAJA if applicable, or under the principle of legality. The interdictory route chosen by the applicant seeks to bypass the procedural safeguards inherent in the review process, including the filing of the record.

[21] Even if the application were properly before this Court, the applicant has not met the substantive requirements for a final interdict. She has demonstrated harm to her reputation and credit standing, but she cannot establish the absence of an adequate alternative remedy. The statutory scheme of the NCA provides her with recourse to the NCR and Ombudsman. Her earlier complaint to the NCR, lodged on 9 May 2024, preceded the SAFPS refusal. After that refusal, she did not pursue the remedies expressly advised to her. A litigant cannot disregard the remedies provided by statute and fall back upon the Court as a first resort.

[22] The Court is not insensitive to the stigma that may flow from an adverse fraud listing. The constitutional rights to dignity, reputation, and fair administrative action are implicated. But those rights are given practical content by the statutory framework, which must first be exhausted before judicial relief can be considered. To hold otherwise would undermine the careful regulatory balance struck by the NCA. In sum, the application is procedurally misconceived and substantively premature. The applicant has not established a right to the extraordinary relief of a final interdict.

Order

[23] The following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the third respondent on Scale B, including the costs of counsel.

MASIPA J

APPEARANCE DETAILS:

For the applicant:	Ms K Gopal
Instructed by:	Arusha Naidoo & Associates
For the respondent	Mr AJ Gevers
Instructed by:	Mooney Ford Attorneys
Matter heard on:	11 September 2025
Judgment delivered on:	1 October 2025