

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2025-034876

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE 11/06/2025

In the matter between:

THE TEARS FOUNDATION

Applicant

And

**INDEPENDENT REGULATORY BOARD
FOR AUDITORS**

1st Respondent

VBS CHARTERED ACCOUNTANTS

2nd Respondent

BURTON VAN STAADEN

3rd Respondent

JUDGMENT

FISHER J

Introduction

[1] This is, essentially, an application to force an auditing firm (VBS) and the auditor of the firm who attended to an audit (Mr van Staaden), respectively the second and third respondents (collectively the auditor respondents) to restate their findings in an audit report (the report) compiled by van Staaden after the auditing of the financial statements of the applicant, The Tears Foundation (Tears).

[2] Tears is a non-profit organisation that has enjoyed some repute in South Africa in the combatting of Gender Based Violence (GBV).

[3] The first respondent is the Independent Regulatory Board for Auditors (IRBA).

[4] The relief sought is framed as a declarator in relation to an alleged loan from Tears to Fireworx Management Solutions (Pty) Ltd (Fireworx).

[5] This alleged loan was determined by van Staaden in the course of the performance of his duties as an auditor of Tears to be irregular and was reported by him to IRBA as such.

[6] The applicant seeks that it be declared that the transaction in issue was not a contravention of the Companies Act.¹

[7] It is also sought that, consequent upon this declaration, the auditor respondents be directed to rectify the report by removing the contentious paragraphs in relation to the alleged irregularity.

¹ Act 71 of 2008.

[8] An order was initially also sought that the respondents accept the opinion of Senior Counsel in relation to the regularity of the transaction. This relief was not persisted with.

[9] The stated purpose of the application is to remove a risk identified by the directors of Tears. They state that, if it is made known to the general public and specifically existing or potential donors that the transaction in issue was identified as irregular and reported as such to IRBA, this will have a negative effect on the flow of donations to Tears.

[10] The applicant's entitlement to the relief it seeks must be viewed in the context of the respondents' obligations and functions read with the law relating to declaration of rights by the court.

Legal principles relating to reporting of irregularities

[11] The auditing profession is governed by The Auditing Professions Act (APA).² It has as a primary purpose the protection of the public.³

[12] To this end IRBA is established under Chapter II of the APA. It is a juristic entity and exercises its functions in accordance with the Constitution and all other laws. Specific mention is made of the Public Finance Management Act.⁴

[13] IRBA has, as a primary purpose, the regulation of the auditing profession by acting as a statutory watchdog which works with the profession to identify malfeasance and corruption within government and commerce.

[14] The APA imposes on auditors the obligation to report to IRBA any act or omission by a person responsible for the management of an entity which has or is likely

² Act 26 of 2005.

³ Id section 2.

⁴ Act 1 of 1999.

to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor in the entity or which is fraudulent or amounts to theft or represents a material breach of a fiduciary duty owed to the entity. Such an act or omission is termed a “reportable irregularity”.⁵

[15] The duties of an auditor in relation to an audit and the criteria to be employed are carefully stated in the APA. These criteria include that the auditor be free from any restrictions; that he has, by means of such methods as are reasonably appropriate having regard to the nature of the entity, satisfied himself of the existence of all assets and liabilities shown on the financial statements and that he has obtained all information, vouchers and other documents which were, in his opinion, necessary for the proper performance of his duties.⁶

[16] A crucial function of an auditor is his reporting duty in respect of reportable irregularities.

[17] Section 45 of the APA describes the duty and gives context to it on the basis that it sets out the procedure that an auditor is obliged to follow once he has reason to believe that a reportable irregularity has taken place.

[18] This procedure entails an immediate report to IRBA without reference to management of the entity in respect of which the audit is being conducted.

[19] After the report is made, management must be notified in writing and steps must be taken to discuss the report and to afford management the opportunity to make representations in respect of the report.

[20] Pursuant to management’s representations, the auditor must send another report to IRBA, which report must include a statement of his opinion to the effect that no

⁵ Id definition of “reportable irregularity” section 1.

⁶ Id section 44.

reportable irregularity has taken place or the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss; or the reportable irregularity is continuing. Detailed particulars and information supporting the opinion are required to be furnished.⁷

[21] On receipt of the report of the irregularity, IRBA is obliged to notify any appropriate regulator in writing of the details of the reportable irregularity to which the report relates and provide it with a copy of the report.⁸

[22] In *Pacific Acceptance Corporation Ltd v Forsyth and Others*⁹ which is regarded in foreign and local law as a *locus classicus* in relation to auditors' duties as to fraud and error, it was stated that an auditor, whilst not obliged proactively to seek out fraud or error, should consider past irregularities if material irregularities appear and are interconnected. It was also emphasized that context was crucial and that suspicious circumstances triggered a heightened duty of care.

[23] As to the context in which the report was made, there is statutory recognition that special considerations apply to non-profit organisations (NPOs) in relation to their financial management.

[24] Nonprofit Organisations Act¹⁰ (NPO Act) was enacted to establish an administrative and regulatory framework within which nonprofit organisations can conduct their affairs.

[25] An NPO is defined under the Act as an entity “established for a public purpose and of which its income and property are not distributable to its members or office bearers except as reasonable compensation for services rendered.” (Emphasis added).

⁷ Id subsections 45(1) to (3)

⁸

⁹ *Pacific Acceptance Corporation v. Forsyth* (1970) 92 W.N.

¹⁰ Act 71 of 1997.

[26] Schedule 1 of the Companies Act ¹¹ is devoted to provisions pertaining to NPOs. It states that a non-profit company must not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the company or of a related or inter-related company, or to a person related to any such director. ¹²

[27] Sub-item 5(3) provides that a transaction is not prohibited on various bases including that "... it is in the ordinary course of the company's business and for fair value;"

[28] It is this proviso that the applicant's directors seek to rely on for the declaratory and further relief claimed.

[29] A court cannot grant a declaration regarding a fact; the declaration must relate to a right. ¹³

[30] The applicant must thus establish that it has a right to have the auditor's report of the irregularity expunged.

[31] In order for a court to interfere with the report by way of directive and place the desired restriction on the auditor respondents, the applicant would have to show that the auditor acted unreasonably at common law and with reference to his duties under the APA in not accepting the explanation to the effect that the payment in issue was made in the ordinary course of the business of Tears.

[32] The material facts of the matter are examined with reference to this question.

Material facts.

¹¹ Schedule I of the Companies Act 71 of 2008.

¹² *Id* Item 5(3)(a).

¹³ *Electrical Contractors Association SA v Building Industries Federation SA* (2)1980 (2) SA 516 (T)

[33] The applicant is a non-profit organization registered with the Department of Social Development under the Non-Profit Organisation (NPO) Act 71 of 1997 and is a public benefit organisation as defined by section 30 of the Income Tax Act 58 of 1962.

[34] Ms Mara Glennie has been director and CEO of Tears since its establishment on 09 October 2012.

[35] Michael Johnson is Glennie's co-director and has also been a director since Tears was incorporated. There is a close personal relationship between Johnson and Glennie. It seems undisputed that they are romantic life partners.

[36] Up until 30 June 2023, Glennie was an employee of Tears, and she provided her services directly to the organization.

The new service model

[37] From 01 July 2023, Glennie began providing services through Fireworx, which is owned and controlled by her. Essentially, it is her alter ego. It is not clear whether she also continued to draw any monies directly from Tears in her personal capacity as director after she imposed this this new service model on Tears.

[38] The R2 million payment in issue was made approximately three weeks after the start of this new service model.

[39] Tears does not generate its own income. It obtains donations from major South African companies, including public companies, and the general public. Glennie lists the donors between March to October 2024 and the amount of donations received as Standard Bank: (R3 million); AVBOB (R2.1 million); Capitec Bank: (R1 million); Adcock Ingram (R500 000); Empact Group (R250 000-00); Bidvest Services (R105 000-00); Bowler Packaging (R101 000); Smollan (R58 482) and Toyota South Africa (R55 000-00).

[40] Donations from the general public can be made through platforms on Tears' website such as *Payfast* and *SnapScan* which makes donating a simple exercise.

[41] Thus, for the period ending October 2024 Tears sourced donations from its larger donors in an amount totalling in excess of R7 million. Many of the donors making up the large donor cohort are regular contributors. Glennie does not state what amounts were forthcoming from the general public – but there are regular widescale calls for donations on social media platforms and the popular press. Accordingly, one would expect some income from this quarter.

[42] It is safe to state that millions of Rands income flow to Tears from its donors annually.

[43] During May 2024 an accounts manager employed by Tears, Mr Dirk Bornebusch (Bornebusch), began expressing concerns to Glennie in relation to the manner in which the financial affairs of Tears were being run.

[44] On 31 July 2024 Bornebusch addressed an email to Glennie in terms of which he conveyed his concerns in the following terms:

“Subject – Litany of errors that are affecting the Core of the Foundation [Tears].

Dear Mara

You have an obligation and a responsibility to your Donors who one would refer to as investors if you were in charge of a company. These Donors contributions big and small should be used for the intentions set out in Section 18A [which allows for tax exemption on donations] .

The other obligation and responsibility are towards your staff, making sure that salaries can be paid, and that the Foundation [Tears] is not closed down as a result of running out of funds or forced to close down for breaking the legal rules which an NPO has to follow.”

Then followed a list of seven items where Glennie had overpaid debts or paid twice. This included an attempt to make payment to the City Council for R6655.89 for Glennie's private water account which was mistakenly paid in the amount of R 665 589.00.

[45] Bornebusch, thus, recommended to Glennie that the bank account of Tears be handed over to an employee with a financial background and that a proper payment system be put in place which included requisitioning and vouchers. He also recommended that Glennie's personal expenses not be put through the Tears bank account.

[46] Glennie alleges that Bornebusch eventually took it upon himself to notify donors of irregularities in relation to the conduct of the finances by Glennie.

[47] Glennie alleges the reason for these allegations by Bornebusch was that he acted in concert with a former Tears employee, Ms Clair Thompson. Glennie says that Thompson sought to "sink" Tears as she was in the process of establishing her own Non-Profit Company and sought to attract Tears' donors to her company.

[48] Glennie, on behalf of Tears, obtained an urgent *ex-parte* interdict on 8 November 2024 in terms of which Bornebusch was interdicted from publishing any information which accused its directors of mismanagement, or fraud.

[49] Pursuant to the disclosures of Bornebusch, major donors withdrew their regular funding and required that Tears provide an independent audited financial statement for the period ending on 29 February 2024 – i.e. the period March 2023 to February 2024, before donor funding would resume.

[50] van Staaden, was tasked with conducting the independent audit and compiling the 2024 Annual Financial Statements (AFS) for Tears.

The audit by Mr van Staaden and the reportable irregularity

[51] Van Staaden states that on 12 August 2024, being the date on which Glennie and Johnson signed the audit engagement letter, he issued what he calls *audit fraud and error questionnaires* to Glennie, Bornebusch and Thompson with a request that they review and complete the questionnaires and return them directly to him.

[52] Van Staaden explains that issuing of these fraud and error questionnaires is a standard audit practice which is conducted as part of an audit risk assessment process to assist the auditor to identify potential instances of fraud and error within the financial reporting and financial transactions of the organisation being audited. Those providing the information are not required to verify the responses with management or anyone else and the responses to the questionnaire are considered to be confidential communication between the auditor and the person who completed it.

[53] Van Staaden received Bornebusch's emailed response on 16 August 2024 in which Bornebusch identified what he believed to be instances of suspected fraud and error as well as internal control weaknesses.

[54] Van Staaden alleges that Thompson was reluctant to submit written responses to the fraud and error questionnaire and indicated that she feared that she may lose her job if it became known to Glennie that she had revealed information in respect of suspected financial irregularities within the organisation to the auditors.

[55] Van Staaden relates that he eventually conducted a telephonic interview with Thompson on 19 August 2024 during which she advised him of instances of suspected errors as well as internal control weaknesses.

[56] In November 2024, van Staaden received representations on behalf of Glennie and Johnson, prepared by Johnson that disputed and/or provided additional comments

relating to the response that was provided by Bornebusch to the fraud and error questionnaire.

[57] A R2 million payment by Tears to Fireworx was identified by van Staaden as a possible violation of the Companies Act. Van Staaden flagged this irregularity in his audit findings in a first draft audit report which was issued to the directors of Tears on 31 January 2025, with a request for them to review the report and to provide their final comments.

[58] Van Staaden also submitted his initial report to IRBA in terms of his obligations under section 45 of the APA on 12 December 2024 in respect of the suspected reportable irregularity. The irregularity related to non-compliance with the Companies Act, and specifically Item 5(3) of Schedule 1 that prohibits a non-profit company from providing a loan or other financial assistance to another company that is related to a director of the company.

[59] The directors were not satisfied with the treatment of the loan in the draft report. They allege that the loan fell within the exception which allows for loans which are in the ordinary course of business.

[60] The explanation provided by Glennie is to the effect that the payment was of a loan to Fireworx to be used as the purchase price for a property which was to serve as a safe-house for abused women. Glennie calls this the "*Joy Cottage project*".

[61] Glennie went as far as to approach Senior Counsel and obtained an opinion to the effect that the loan met the requirements of the proviso.

[62] The opinion did nothing to allay the concerns raised by van Staaden and he refused to lift the flagging of the transaction as irregular.

[63] The alleged loan was then repaid.

[64] It seems that it was hoped by the directors that this repayment of the funds would lead to any mention in the AFS being expunged. But van Staaden would not go further than reporting, in terms of section 45, that “the irregularity was no longer taking place”.

[65] Glennie and Johnson indicated that they did not accept van Staaden’s findings in respect of the reportable irregularity and the report to IRBA.

[66] Van Staaden makes the point that the directors’ disagreement at this stage was of no consequence as he simply had to comply with his reporting responsibilities in terms of Sections 44(2) and 44(3)(e) of the Auditing Professions Act.¹⁴

[67] Van Staaden states that among the disclosures made by Bornebusch were the payments to Fireworx and Groundwave. Groundwave is owned by Johnson, and during the period of the audit he through Groundwave received R310 000 recorded as “consulting fees”.

The Proceeding’s before the urgent court on 18 and 19 March 2025

[68] In the court proceedings in the urgent court of 18 March 2025, IRBA and the auditor respondents filed a notice to abide. This was, clearly, to avoid having to become embroiled in the payment of legal costs which costs were sought on opposition.

[69] Counsel for Tears thus made the submission that the matter was thus essentially unopposed and moved for an order.

[70] I expressed the court’s concern as to the explanation proffered in the founding affidavit for the alleged loan. It seemed to me to be incongruous that funds would be withdrawn from the bank account of Tears and paid into an account which was essentially the personal account of Glennie on the basis that the funds remain in such

¹⁴ *The Auditing Profession Act of 26 of 2005.*

account whilst a property transaction was being negotiated by Glennie on behalf of Tears. This explanation did not then and still make no sense to this court.

[71] Counsel for the applicant then sought that Glennie be permitted to file a supplementary affidavit providing further explanation for the transaction. The matter was stood down for the filing of the supplementary affidavit the following day.

[72] Whilst an unsigned supplementary affidavit was filed, it appears that the applicant thought better of having the matter heard before me. On the day of the hearing counsel appeared and stated that the application was “withdrawn”. I was informed that the reason for the withdrawal was the need to formulate a fresh application in order to take account of the concerns raised by the court. This would, I was informed by counsel, take some time because reference had to be made to “financial documents” and “expert assistance”.

[73] This submission was notwithstanding the alleged urgency and the fact that I had already allowed supplementation of the founding affidavit.

[74] I was concerned that it was being sought that the matter be removed from my oversight precisely because I had required that I be addressed on aspects of the application that gave me cause for concern.

[75] The reason proffered for the withdrawal on the face of it made no sense in that, to the extent that further work was needed on the application, this could have been achieved by postponement and supplementation.

[76] It was also difficult to understand how expert assistance would serve the purpose of meeting my inquiries as to the central issue being that the explanation of the transaction in issue appeared, on the face of it, to be incongruous.

[77] I inquired as to whether the respondents had given their consent to the withdrawal as was required under rule 41. This was met with the submission by counsel that such consent was not required in that the application was not opposed.

[78] I corrected the position as to this point, the correct position being that the notices to abide did not amount to non-opposition but rather consent to allow the court to decide the matter on the pleaded case. This was ultimately conceded by counsel and the matter was allowed to stand down for the purposes of securing this required consent.

[79] The court was approached later in the day on the basis that the consent for withdrawal had been obtained. There were letters proffered from IRBA and the attorneys for the auditor respondents to the effect that the withdrawal was consented to. These letters were not confirmed under oath.

[80] I was concerned that given the unusual nature of the withdrawal – being that the matter would be reinstated by way of a fresh application there may be a misunderstanding as to what was being consented to.

[81] It was later established that, in fact, the understanding with respect to the auditor respondents was not that the matter would be retried on different papers and with respect to IRBA it was understood that a fresh application would be brought before me on the basis that my concerns were pertinently addressed.

[82] The consent to the withdrawal was thus not competently informed and was, in any event, withdrawn by all the respondents.

[83] Mr Peace Makhubele who represented IRBA attended the proceedings every day. He, diligently, brought the concerns of IRBA to my attention in relation to the consent.

[84] Thus, the case remained before me.

[85] I allowed still further time to file another supplementary affidavit given the nature of my concerns which related to possible dishonesty and mismanagement of the applicant.

[86] I indicated, furthermore, that it would be prudent for Glennie to address the advance and repayment of the alleged loan with reference to the bank statements of Tears and Fireworx which would provide context as to the manner in which the alleged loan funds were treated in the accounts of Fireworx.

[87] I also suggested that a more complete picture should be provided as to the nature of the business of Fireworx and specifically whether it only served Tears. It was also sought that the entity conducted by the applicant's partner, Groundwaves also provide information as to payments received from Tears and the basis for such payments.

[88] Bank statements of Fireworx and Tears were then provided. Counsel for the applicant then withdrew as counsel in open court on the basis that he had no capacity to deal further with the matter because of his workload.

[89] The matter was postponed but stayed under my management.

Further filings after the hearing of 19 March 2025

[90] On the basis of the supplementary affidavits filed by the applicant, the auditing respondents chose to file further papers.

[91] Van Staaden filed a report on the matter which set out, in detail, the sequence of events leading to his audit, his finding on the reportable irregularity and his reasons for refusing to expunge all reference to the irregularity from his audit report.

[92] This report was later confirmed under oath.

[93] Glennie was then afforded yet a further opportunity to file a further supplementary affidavit in reply to the affidavit of van Staaden.

[94] Glennie complains that the report /affidavit of van Staaden contains reference to annexures which were not initially furnished. These annexures were later uploaded to Caselines. They are, in any event, of no moment and I have not had reference to them.

The bank statements

[95] The Groundwave bank statements requested by me were not produced.

[96] It was, however, explained by Glennie in the second supplementary affidavit that Groundwave provides products and services in the electrical engineering industry. Glennie alleges that Groundwave has, since 2015, provided Tears with advice on technical matters and has sold its products.

[97] The payments made to Groundwave by Tears in the 2024 accounting period were, according to Glennie, services charged at a rate of R600 per hour. Groundwave's services were allegedly used by Tears on an ad hoc basis. Glennie explains that the hours would be reconciled as an average and one invoice to the nearest round number would be generated and presented to Tears. Presumably this reconciliation was done by Johnston.

[98] Groundwave also allegedly provided Tears with administrative assistance such as assisting with filling out grant applications, developing business plans for Tears and conducting research.

[99] Van Staaden raises concerns that the common directorships of Johnson in Groundwave and Tears present as a potential for conflict of interest. The same concerns are expressed in relation to Glennie and Fireworx.

[100] It is of concern that Johnston did not produce the Groundwave bank statements notwithstanding that there was a direction the he do so.

[101] The bank statements produced by Glennie were as follows:

Fireworx 6[...] (this will be referred to as account ending 953 or the Fireworx business account);

Fireworx 48-hour cash accelerator Account 7[...] (account ending 688);

Fireworx 48-hour cash accelerator account 7[...] (account ending 793);

Tears account 6[...] (account ending 421 or Tears business account)

Tears 48-hour cash accelerator account 6[...] (account ending 413)

Tears 48-hour cash accelerator account 7[...] (account ending 996)

Tears 48 hr cash accelerator account 7[...] (account ending 766)

Tears 48 hr cash accelerator account 7[...] (account ending 342)

48 hr cash accelerator account 7[...] (account ending 160)

[102] Glennie, whilst acknowledging that Tears has a number of accounts, does not explain the purpose of the multiplicity of accounts.

[103] It seems that the cash accelerator accounts are saving accounts which allow for a higher interest rate on deposits.

[104] Glennie alleges that the alleged loan that Tears advanced to Fireworx was held intact and ringfences by Fireworx for the period June 2023 to November 2024 and not drawn down on. Glennie is adamant that the alleged loan was not utilised in the operations of Fireworx or for personal expenses.

[105] The following perplexing and somewhat contradictory explanation is provided by Glennie at paragraph 31 of the second supplementary affidavit as to the payment into another Fireworx account before repayment of the alleged loan to Tears:

“In November 2024, the full amount of the loan was ring-fenced and paid into a 24-hour call account. This was done instead of paying the money directly back to Tears as a consequence of the queries raised by the auditors and pending the resolution of the disputes which had arisen. Tears drew down on the funds in the period November to January 2025 in order to cover its cash flow shortages as a result of donor funding ceasing. None of Tear’s funds were discipated. [sic] -----”
(emphasis added)

[106] The fact that the repayment is alleged to be both a drawing down of funds to cover cash flow problems of Tears and a repayment of the alleged loan is perplexing.

[107] The following material transactions emerge from the Fireworx business account ending 953:

- a. The account was opened on 15 June 2023 with a deposit of R1000 “startup funds”.
- b. The R2 million alleged loan was on 23 June 2023 (little after a week of the account opening) transferred to Fireworx from Tears’ savings account ending 996. Curiously the payment is referenced as “Investment Deposit” and not as a loan.

c. On 28 June 2023 R100 000 being in respect of the first “consultancy fee” was made by Tears to Fireworx. After that date and for the duration of the financial year under the audit in question, payments in this amount are reflected as regular payments to the Fireworx business account by Tears.

d. It is noted that, in the financial year following (i.e. the year commencing March 2024) which was not part of the audit, the payments were increased to R150 000.

e. All payments received into the Fireworx business account from Tears, aside from the funds designated as “investment deposits” are designated as “consultancy fees” or “management fees”.

f. From the bank statement for period 12 July to 12 August 2023; the period 12 August 2023 and the period 12 September to 12 October 2023 the following large transactions emerge:

- On 20 July 2023 payment of R200 000 referenced as “Summerhaze” was made out of the Fireworx business account. It is not disputed that this was a payment associated with Glennie’s residence and it was flagged by van Staaden as a possible irregular usage of the R2 million - even accepting the version of Glennie that this was a loan.
- On 24 July 2023 an ad hoc payment of R351 700 referenced as “consultancy” was paid into the account. This amount is in addition to the regular consultancy fee of R 100 000.
- On 11 August a payment of R 150 000 went out of the Fireworx business account referenced as “manufacturing”.
- A total amount of R 456 798 is reflected as having been credited to the account in four payment transactions in this statement period; this amount includes the regular R100 000 payment for consultancy
- As at 12 August 2023 the balance was R 2 107 516. The R 2 million in issue thus made up most of the balance held in the account for this statement period.

- The statement for 12 August to 12 September 2023 reveals three credit transactions totalling R101 310 including the R100 000 consultancy amount credited on 28 August 2023. The smaller payments making up the balance are also referenced as “consultancy”. The payments out of the account represent, to a large extent, repairs and painting of Summerhaze.
- For the period 12 September to 12 October 2023 there are payments recorded of personal expenses which indicates that a credit card facility was now connected to the account. Reflected are 50 credit transactions of a private expenditure nature totalling in excess of R193 000. Thus, there was a private expenditure on this credit card beyond the consultancy fee payments.

[108] The credit card is used to pay the living expenses of Glennie. The merchants’ references show purchases ranging from grocery stores (Woolworths and P n P), clothes shops, monthly beauty salon charges, pharmacy charges, restaurant charges, payments to hardware stores and to pet shops.

[109] The consultancy fees paid by Tears to Fireworx amount, on average, to a total of approximately R1.8 million per annum.

[110] Glennie would no longer pay tax on a PAYE basis as she is not salaried. It is not clear whether or how tax is paid by Fireworx.

[111] Glennie lives a life of relative luxury based on the expenditure profile which emerges from the bank statements of Fireworks.

[112] For the statement period 12 October to 11 November 2023 there are two credit transactions totalling just over R 114 000 but there are 37 debit transactions totalling approximately R1.9 million. This includes a transfer of R1.8 million on 25 October 2023 into the Fireworx savings account ending 793. This amount could only emanate from the R2 million paid into the Fireworx account on 23 June 2023 as there was no other income.

[113] There was, after these latter transactions, an amount of approximately 250 000 left to the credit of the Fireworx business account.

[114] In her second supplementary affidavit, Glennie says the following in relation to the payment of R 1. 8 million into the Fireworx savings account:

“On 25 October 2023, I transferred the sum of R1.8 million from Fireworx' current account, 6[...] [the business account], into Fireworx' savings account 7[...]. I did so in order to ensure that interest would be earned on the loan while I pursued the acquisition of a property for the Joy Cottage project”.

[115] This raises the question as to why funds would be borrowed by Fireworx from Tears only to be transferred to an interest-bearing account held by Fireworx when Tears had its own interest-bearing accounts.

[116] It is relevant that the alleged loan of R 2 million was interest free. Thus, Fireworx was earning interest on the money whilst Tears was not.

[117] For the period 11 November to 11 December 2023 there were no credit transactions but there were debit transactions in the amount of approximately R120 000.

[118] On 29 Feb 2024 being the end of the financial year an amount of R123 000 is credited as “expenses per slips”. This is in addition to the usual R100 000 consultancy fee.

[119] VSB was engaged on 12 August 2024 to perform the audit in issue. This was more than a year after the alleged loan from Tears to Fireworx.

The bank statements for the period March 2024 to January 2025

[120] It is not clear what level of oversight was in place during this period. The services of the auditor respondents were terminated after the audit. It seems that this was a direct result of the dispute in issue.

[121] On 17 April 2024, the business account held a balance of R 20 164. This is low relative to the usual financial position in the account.

[122] On 18 April 2024 a “consultancy fee” of R 1 million was paid into the account.

[123] This was in addition to the monthly consultancy fee which had now been raised by 50% to R 150 000.

[124] There were further payments deserving of mention in the financial year ending February 2025.

[125] Two amounts of R 500 000 each were transferred from the Fireworx business account to Tears business account on 11 and 13 January 2024 respectively. The explanation given by Glennie is that this was because Tears had “cash flow problems”. But reference to Tears’ savings account ending 776 as at 12 January 2024 reflects a credit balance of in excess of R4.6 million. This seems at odds with the version of Glennie that there were cash flow problems.

[126] It is then explained by Glennie that this alleged loan to Tears (which allegedly came out of the loan monies from Tears) was the reason for the payment of R 1 million on 18 April 2024. The fact that this payment is reference as “consultancy fees” is at odds with this explanation.

[127] A further item which stands out is referenced as “investment deposit” in the amount of R885 000 which was paid to Fireworx from Tears’ saving account ending 793 on 01 November 2024.

[128] It should be recalled that Glennie has sole control over all bank accounts and operates on same on the basis that she makes and designates the payments.

Discussion

[129] It is not denied that the sole income flowing into Fireworx is derived from Tears.

[130] There is a conflict of interest in relation to Glennie who runs Fireworx and pays herself significant monthly amounts on the basis that these are consultancy and or management fees. There is also a conflict between the directorships of Glennie and Johnson and between Groundwave and Johnston.

[131] The amounts which are paid into the Fireworx business account for consultancy services seem to me to be relatively high for the administration of a charity. It is not made clear how these consultancy fees are calculated or audited. It is also not clear how the tax structure works given that these are donor funds.

[132] I have concerns that the court processes have been used by Glennie to prevent legitimate concerns relating to the potential mismanagement and even misappropriation of such funds being raised.

[133] The evidence of repayment of the alleged loan which was placed before van Staaden and this court raises questions as to why it was necessary to first repay the alleged loan into another Fireworx's bank account before it was repaid.

[134] This may have been in order to suggest that there had been a ringfencing of the alleged loan when, in fact, the bank statements of the account into which the R 2 million was ultimately paid reflect that there was no ringfencing and that the amount was not paid in on the basis that it was a loan.

[135] The founding affidavit did not disclose the method of payment of the alleged loan.

[136] The transfer of the R 2 million occurred at a time when the new dispensation involving Glennie providing her services as a consultant through Fireworx was in its inception.

[137] Most importantly, there is no contemporaneous evidence of the alleged loan.

[138] Van Staaden requested that he be provided with the written loan agreement during the audit. This request was met with the explanation that the written loan agreement was lost and that Glennie could only provide a recent document concluded as a replacement.

[139] There is also no evidence of the alleged extensive negotiations relating to the property purchase. Not even one email is put up. This is notwithstanding that the negotiations were said to be with Standard Bank. A financial institution would insist on correspondence in writing. This suggests that the joy cottage project is nothing more than a recent fabrication.

Conclusion

[140] To my mind, the explanation as to the R 2 million payment is so implausible that it falls to be rejected out of hand. I must and I do accept the opinion of the auditor respondents to the effect that the payment was irregular. As must IRBA.

[141] The salient transfers of substantial funds between Tears and Fireworx which seem to be outside of any normal consultancy agreement are of grave concern to this court.

[142] Even on Glennie's version, the allegation that the R2 million was paid as a loan for a project in waiting and not drawn down on is demonstrably false on an analysis of the bank accounts

[143] The movement of funds back and forward and into different accounts seems to me to be unbridled and inexplicable.

[144] The raise of the consultancy or management fee in the new financial year by 50% also seems unusual.

[145] The fact that the written "loan agreement" in relation to the R 2 million was "lost" and had to be refabricated when it was asked for by van Staaden is a further indication that the payment was not a loan but a misappropriation into the newly opened bank account of Fireworx.

[146] This calls into question the veracity of payments made to Groundwave and the further large payments made into the Firework bank account in the unaudited financial year.

Costs and further measures

[147] There was never any basis for this application. In fact, like the proceedings against Bornebusch, the application represents a cynical attempt to avoid disclosure and transparency.

[148] That van Staaden made the report in the context of his duties and acting as a reasonable auditor, is to my mind, beyond question.

[149] I intend to mark the court's displeasure by way of a punitive costs order. It would, however, be inappropriate for these costs to be paid by the applicant out of donor funds.

[150] Glennie is thus called upon to show cause as to why she should not be held liable for the costs of this application.

[151] In light of these findings IRBA is entitled and obliged to attend to its reporting function under section 45(3) of the APA.

Order

[152] In the circumstances I make the following order:

1. The application is dealt with as one of urgency
2. The application is dismissed.
3. Mara Glennie is to show cause, by the filing of an affidavit within 30 days of this order, as to why she should not be ordered to pay all the costs of this application in her personal capacity on the scale as between attorney and client and on scale C and the determination of the costs of the application is thus postponed sine die.
3. The first respondent is directed in terms of section 45(3) of the APA to notify any appropriate regulator in writing of the details of the reportable irregularity to which the report in issue relates and provide them with a copy of the report. This should include notification to the South African Revenue Services.

FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 11 June 2025.

Heard:

18, 19 & 20 March 2025

Further affidavits filed: 12 May 2025 & 19 May 2025
Judgment delivered: 11 June 2025

APPEARANCES:

Applicant's counsel: Adv. C van Der Merwe.
Applicant's Attorneys: JMD Attorneys

First Respondent's representative: Mr P Makhubele

Second and Third Respondent's attorneys: Fortuin & Associates Attorneys