

**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR BUILT ENVIRONMENT
("APPEAL COMMITTEE")**

In the matter between:

PETER KANE

Appellant / Applicant

and

ENGINEERING COUNCIL OF SOUTH AFRICA ("ECSA") First Respondent

RAYNARD TALJAARD

Second Respondent

APPEAL COMMITTEE MEMBERS:

- Mr. Gugulethu Oscar Madlanga (Chair), Mrs. T.L. Myers and Mr S. Simpasa
- For the Appellant/Applicant Dr Peter-John Karle Kane
- For the First Respondent Mr Fareed Jasset of MF Jasset & Dhlamini Incorporated
- For the Second Respondent Mr Gustav Fichardt of Webber Wentzel Attorneys
- Hearing 06 November 2025
- Decision 17 November 2025

Summary: *Application for appeal in terms of Section 21 of the Council for the Built Environment Act 43 of 2000 ("CBE Act"), read with Section 35 of the Engineering Profession Act 46 of 2000, Policy of Conducting Appeals as approved by Council for the Built Environment ("CBE") on 27 November 2024, appeal against the decision of Engineering Council of South Africa ("ECSA"), dated 21 May 2025 as recorded in Council Resolution 103 (2024/25FY), not to prefer disciplinary charges against the Second Respondent, First Respondent, Application for Condonation granted, Second Respondent's application to be referred as interested party to the appeal proceedings granted, Appellant's /Applicant's application for appeal dismissed with no order as to costs.*

DECISION

1. **INTRODUCTION**

- 1.1 In this matter the Appellant lodged an appeal against the decision of the First Respondent dated 21 May 2025. The Appeal Committee is established in terms of Section 21 (3) of the Act to adjudicate appeals in a lawful, reasonable and procedurally fair manner¹.
- 1.2 The Appellant in this matter is Dr Peter John Karle Kane whose insurance claim has been repudiated by Santam Insurance and has lodged an appeal in terms of Section 21 of Council for the Built Environment Act 23 of 2000.
- 1.3 The First Respondent is ECSA and the appeal relates to a decision of ECSA's governing Council, taken at its ordinary meeting on 2 April 2025, to decline the bringing of charges of improper conduct against Mr Raynard Johannes Taljaard, a registered Professional Engineering Technologist (Pr. Tech Eng No. 9670034).

¹ See record of the proceedings, Appeal Record 2: First Respondent's bundle pages 6 - 33

- 1.4 The Second Respondent is Raynard Taljaard cited in these proceedings as an interested party who was appointed by Santam to prepare an engineering report on behalf of the insurer, Santam following standard damage to the Applicant's residential property in Stellenbosch.

2. **FACTUAL BACKGROUND & COMPLAINT**

- 2.1 Dr Kane herein called Appellant is aggrieved by the decision of Engineering Council of South Africa ("ECSA") by declining to bring charges of improper conduct against Mr Raynard Johannes Taljaard and has exercising rights in terms of Section 35 of Engineering Profession Act 46 2000.
- 2.2 The Appellant lodged his complaint against the Second Respondent's conduct in execution of his mandate in carrying structural assessment to his property. The Second Respondent was appointed by Santam as an Independent Contractor to determine whether the property of the Appellant had suffered structural damages.
- 2.3 On 21 May 2025, the First Respondent issued its final ruling on the complaint lodged by the applicant advising him as well that the investigating committee and Council had found insufficient evidence to proceed with disciplinary charges against the Second Respondent.
- 2.4 As a result of the decision of the First Respondent not to prefer charges of misconduct against the Second Respondent, the Appellant lodged his appeal.
- 2.5 It is common cause that the Appellant's complaint was ECSA's failure to address the clear conflict of interest thereby breaching Rule 3 (1) (E) of the ECSSA Code of Conduct (Board Notice 41 of 2017) and by failing of ECSA to ensure that the Second Respondent disclosed his indemnity arrangement with the insurer and alleging as well that ECSA failed to enforce professional independence².

² See record of proceedings: Appeal Record 1, Appellant's bundle, Annexure C, grounds of incorrectness page 10

- 2.6 Upon receiving the complaint, the First Respondent appointed an Investigator to conduct an investigation and upon receipt of the report, the First Respondent made its decision and the Appellant is appealing against that decision³.

3. **GROUNDINGS OF APPEAL APPLICATION AND ARGUMENT**

- 3.1 ECSA's failure to address the clear conflict of interest breaches Rule 3(1)9(e) of the ECSA Code of conduct (Board Notice 41 of 2017).
- 3.2 By failing to ensure Mr Taaljardt disclosed his indemnity arrangement with the insurer, ECSA failed to enforce professional independence.
- 3.3 The decision not to prefer charges ignores material evidence, including the indemnity clause and missing registration information.
- 3.4 ECSA's failure to provide written reasons violates Section 35(1)(a) of the Engineering Profession Act and Promotion of Administration Justice Act (PAJA).
- 3.5 The lack of reasons obstructs the right to a meaningful appeal, rendering the decision procedurally unfair and substantively unreasonable.
- 3.6 Mr Taaljardt was given ample opportunity to disclose any conflict of interest but failed to do that.
- 3.7 It was the Appellant contention that the Second Respondent had concluded an indemnity agreement with Santam and that the failure by the Second Respondent to disclose his practice registration was a serious omission which raises legitimate questions regarding professional transparency and verification of authorship of his report the failure by First Respondent to provide its record of decision and/or reasons as to why it came to a conclusion to decline to charge the Second Respondent with improper misconduct and such failure violates PAJA⁴.

³ See Record of proceedings: Appeal Record 1, Appellant's bundle (notice of appeal, pages 1 to 30)

⁴ Refer to Promotion of Justice Act 3 of 2000 Sections 3, 5 and 6 and PAIA (5) footnote: Refer to Promotion of Access of Information Act 2 of 2000, Section 25, 28, 37, 44 and 46. Footnote (6) See Record of proceedings, Record of Appeal: Appeal Record 4: Appellant's heads of argument, pages 1 to 109.

3.8 The Appellant alleges that the Second Respondent's report was tainted by a conflict of interest in that Mr Taljaard failed to disclose his indemnity arrangements with Santam⁵. In fleshing out this basis, the Appellant states that Mr Taljaard was appointed:

"2.....by the insurer as an 'independent' structural engineer to investigate my property.

*3. His report included an indemnity clause stating the insurer would defend him in litigation implying a conflict of interest"*⁶.

*4. The Appellant also raises the following: "The report did not disclose Mr Taljaard's ECSA registration number or contact details undermining transparency"*⁷.

*5. Based on this the Appellant concluded that "The decision not to prefer charges ignores material evidence, including the indemnity clause and missing registration information"*⁸.

*6. After investigating, ECSA's Governing Council, acting in terms of the Engineering Professions Act 46 of 2000 ("EPA") on 2 April 2025 resolved that there was insufficient evidence of improper conduct and that Taljaard not be charged"*⁹.

*7. The Appellant was advised that this outcome through a closure letter dated 21 May 2025"*¹⁰ which enclosed the Council's resolution and advised of his right of appeal to the CBE under Section 35 of the Act, which the Appellant has now done.

3.9 It is common cause as well that on 22 November 2024, ECSA appointed Robert Moffat ("Moffat"), a professional engineer to investigate the complaint. The investigation comprised evaluation of the complaint and attachments, the registered person's response and telephonic engagements with both parties.

3.10 The investigation confirmed that Taljaard inspected the property on 10 November 2021 at Santam's instance and issued an opinion on likely causes and provisional

⁵ See Annexure C of the CBE Notice of Appeal – Grounds of Incorrectness

⁶ Annexure B of the CBE Notice of Appeal – Material Facts.

⁷ fn 2 op cit.

⁸ Point 3 of the Annexure C of the CBE Notice of Appeal – Grounds of Incorrectness

⁹ ECSA Governing Council Resolution dated 2 April 2025 – attachment of the Appellant's Notice of Appeal

¹⁰ Attachment 3 of the Appellant's Notice of Appeal)

repairs. In April 2024, when Taljaard was re-appointed, the Appellant refused access for a further inspection which is when Santam appointed Beeby.

- 3.11 Moffat recorded that the report by Taljaard expressly framed its conclusions as an opinion, and that the Appellant was at liberty to obtain a second opinion following Santam's determination¹¹.
- 3.12 As to the wording complained of, Moffat noted that Taljaard submitted his report "*on the basis of indemnity*"¹². There is, however, no documentary or other evidence of any indemnity agreement by Santam in favour of the registered person.
- 3.13 The investigation further recorded through the statement provided by Taljaard to Moffat that Santam has engaged Taljaard for many years and he has conducted over 11000 structural investigations with more than 15 insurers since 1993.
- 3.14 Significantly, Moffat found no evidence of prejudice to the Appellant arising from Santam's appointment of Taljaard or from the clause as worded
- 3.15 It is also important to bear in mind that the Appellant elected not to permit a further inspection by Moffat stating that he is "*....concerned that a site visit could inadvertently shift the focus of the investigation toward technical matters, which are not the subject of my complaints. Additionally, the production of another report, could complicate my ongoing case with the ombudsman against the insurance company where I have provided my own comprehensive argument to their findings and is being looked at as we speak. My aim is not to question anyone's technical competence but to address the disclosure-related issues that underpin my complaints*".
- 3.16 Moffat's report concluded that there was insufficient evidence of improper conduct and no prima facie case to prefer charges, recommending that no further action be taken.

¹¹ Para 4.3 of Moffat's report)

¹² Para 4.3 of Moffat's report

- 3.17 The Governing Council then accepted that outcome on 2 April 2025.
- 3.18 The Governing Council, acting under the EPA, was required to determine whether the facts disclosed a prima facie case of improper conduct warranting a disciplinary hearing.
- 3.19 Having considered Moffat's report, the Council resolved that the evidence did not establish improper conduct. The decision is rationally connected to the information before it.
- 3.20 There was no failure on the part of Council to apply its mind, or failure to regard material evidence, or the committing of an error of law. The decision therefore falls within ECSA's administrative discretion and is therefore, for the reasons stated, lawful, reasonable, rational and procedurally fair.
- 3.21 The issue for the Appellant is that he is dissatisfied with the findings contained in Taljaard's report. Had the report supported his insurance claim, it is unlikely that this complaint or appeal would have been pursued. Notwithstanding this, the Appellant declined to permit Moffat to conduct an inspection of the property and has never obtained an independent engineering opinion.
- 3.22 This is peculiar, because the most logical way to show that Taljaard's opinion was tainted would have been to rebut it on its merits. Yet the Appellant has not taken that route. Instead, he seeks to cast doubt on Taljaard's character by alleging a conflict of interest for which there is no factual foundation and his alleged failure to properly record his qualifications, which was not necessary in the context of the aim and purpose of the report he prepared for Santam.

4. **ANALYSIS OF THE ARGUMENTS**

- 4.1 At the hearing of this appeal, the First Respondent provided the following documents as part of its record of decision and disclosure under PAJA: -

- 4.1.1 Annexure “A”: being the Investigation Report of Moffat dated 10 December 2024;
- 4.1.2 Annexure “B”: being the response letter of Taljaard dated 4 December 2024;
- 4.1.3 Annexure “C”: being the Governing Council Resolution dated 2 April 2025 which the Appellant already had in his possession.
- 4.1.4 Annexure “D”: being the ECSA Closure letter dated 21 May 2025 which the Appellant already had in his possession.
- 4.2 These documents collectively set out the factual basis, evidence, analysis and conclusion upon which the Council exercised its discretion in terms of the EPA.
- 4.3 The filing of this record, together with the reasons as set out below, fully satisfies the Respondent’s obligation to provide written reasons under section 5 of the Promotion of Administrative Justice Act 3 of 2000.
- 4.4 The Appellant’s procedural unfairness claim¹³ premised on an alleged failure to provide reasons, is therefore rendered moot. The Appellant has now received the documents and reasons relied upon by the Council.
- 4.5 At the hearing of this appeal the Appellant conceded as well that he was not pursuing the issue of record but was pursuing the issue of indemnity which issue was further argued by both the First and Second Respondents made submissions to the fact that there was no indemnity
- 4.6 The indemnification stated in Mr Taljaard ’s report is inelegant in its wording and this was assumed by Dr Kane to refer to an indemnification by Santam on Mr Taaljaard’s report. However, Santam has stated that there is no indemnification agreement between Santam and Dr Kane. There is no conflict of interest as there is no evidence of contractual arrangement of indemnity between Santam and Mr Taaljaardt.

¹³ Para 5 of Annexure C of the CBE Notice of Appeal

4.7 The contested clause reads as follows at para 2 of Taljaard's report:

"This report is prepared in good faith and to the best ability and experience of the author and is submitted on the basis of indemnity against any claim that may arise from the use of this report".

4.8 The allegation that this clause constitutes proof of insurer indemnification is without factual foundation as there is no document, contract, or correspondence that supports the existence of any indemnity by Santam.

4.9 The investigation by Moffat found no evidence of any agreement whereby Santam undertook to defend or indemnify the engineer.

4.10 The clause was drafted as a general statement by Taljaard about the conditions under which his report was submitted. It was intended to protect him by limiting his own exposure, but it did not involve any promise or reciprocal commitment from Santam, it therefore operated as one-sided disclaimer.

4.11 Therefore, properly construed, the clause is unilateral in nature. It reflects only Taljaard's intention to exclude his own liability to Santam arising from the use of the report by Santam. It contains no language indicating that Santam undertook any corresponding obligation to indemnify or hold him harmless in the event of a claim by a third party.

4.12 An indemnity may be defined as an agreement in which the promisor [*in this instance it would be Santam*] enters into an original contract to make good loss which the promises [*in this instance it would be Taljaard*] may suffer¹⁴.

4.13 One of the tests to establish whether it is an indemnity is whether a price is payable by the creditor [*in this case it would be Taljaard*] for the covering of the risk¹⁵.

¹⁴ Butterworths Forms and Precedents Commercial Transactions 2 – IND-5

¹⁵ Butterworths Forms and Precedents Commercial Transactions 2 – IND-5 which cites Iscor Pension Fund v Marine Trade and Insurance Co Ltd 1962 (1) SA 178 (T) at 183 and 186

- 4.14 An indemnity is therefore an agreement and will be construed or interpreted in accordance with the general principles of the law of contract pertaining to the interpretation of agreements¹⁶.
- 4.15 There is no evidence of there being such contract between Santam and Taljaard or that any amounts were paid by Taljaard to Santam. There is also no suggestion of dishonesty or bias in this matter.
- 4.16 What is also clear is that the phrasing of the clause in question is merely drafting and carried over, possibly, from loss of adjuster reports.
- 4.17 Properly interpreted, the clause merely signifies that the report prepared by Taljaard constitutes professional opinion and that Santam should accept it as such, without recourse against him if subsequent facts or expert views differ. This type of limitation of liability disclaimer is conventional in professional practice and serves to clarify that the opinion is offered in good faith, not as a guarantee of outcome.
- 4.18 ECSA has since given reasons for the decision taken.
- 4.19 Inclusion of registration number after the registration category on written documents is not mandatory but good practice.
- 4.20 The Appellant contends that Taljaard failed to display his registration number and that the report misled him as to his professional status.
- 4.21 ECSA's investigation confirmed that Taljaard was duly registered as a Professional Engineering Technologist (Pr Tech Eng No. 9670034) at all material times.
- 4.22 The report was commissioned by Santam, not by the Appellant and was explicitly intended for Santam's internal claim assessment purposes.

¹⁶ Butterworths Forms and Precedents Commercial Transactions 2 – IND-6

- 4.23 Santam is an established client which is a major insurance company in South African which engaged Taljaard's services for many years and was fully aware of his professional category and competence. Santam must therefore have been fully aware of Taljaard's registration category.
- 4.24 The absence of the registration number on the case of the report is therefore an administrative omission, not misrepresentation.
- 4.25 Because Santam was fully cognisant of Taljaard's registration and status, there existed no legal or ethical duty to state his qualifications within the report. No breach of transparency or integrity can be inferred.
- 4.26 The Appellant contends that he had been led to believe by Taljaard that he is a Structural Engineer¹⁷. If indeed Taljaard led him to believe that he was a 'structural engineer', it needs pointing out that it is a descriptive designation referring to a field of engineering practice, not a protected statutory title. Under Section of the Engineering Profession Act, only the designations 'Professional Engineer (Pr Eng.); Professional Engineering Technologist (Pr Tech Eng)' and similar abbreviated titles are restricted. A registered Professional Engineering Technologist may therefore accurately describe himself as a structural engineer when engaged in structural work, provided such description is not calculated to mislead. If Taljaard used the term, then it was descriptive of his function in the context of the report he prepared.

5. **RULING**

- 5.1 The Appellant has conceded that his application for appeal has no merits if the new facts which supports his ground for appeal were not going to be considered for purposes of his appeal by the Appeal Committee and as a result thereof, the Appellant voluntarily tendered withdrawal to his appeal and apologized to Second Respondent, for having put himself into the appeal proceedings.

¹⁷ ECSA Complaint Affidavit dated 1 October 2024

5.2 In support of its application for condonation of late filing, the First Respondent has shown good cause why the prescribed time period was not complied with as a result thereof, I make the following orders:

5.2.1 *The application for condonation by First Respondent is granted.*

5.2.2 *The application for appeal is dismissed with no order as to costs.*

5.2.3 *ECOSA's Governing Council's decision dated 2 April 2025 is hereby confirmed.*

SIGNED at PRETORIA, on the day 17th of NOVEMBER 2025, on behalf of the Appeal Committee



Chairperson of Appeal Committee

Mr. Gugulethu Oscar Madlanga

pp. T.L. Myers

Appeal Committee Member: Professional Valuer

Mrs. T.L. Myers

pp. S. Simpasa

Appeal Committee Member:

Professional Engineering Technologist

(Civil/ Structural) – Specialist

Mr S. Simpasa