

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

CASE NO: 2021/5060

REPORTABLE: ~~YES~~/NO  
OF INTEREST OF OTHER JUDGES: ~~YES~~/NO  
REVISED

In the matter between:

**ANANIAS BILA & OTHERS**

**Applicants**

and

**MONTEREY BODY CORPORATE**

**First Respondent**

**PAL MANAGEMENT COMPANY**

**Second Respondent**

**VAN DEN BOS, JAN**

**Third Respondent**

**NEIVA, ANTONIO CARLOS**

**Fourth Respondent**

**COMMUNITY SCHEME OMBUDSMAN SERVICE**

**Fifth Respondent**

**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

**Friedman AJ:**

1 This is an application for leave to appeal against the judgment and order which I handed down on 24 November 2021 in the above-mentioned application.

2 I have, in my judgment on the merits ("**the merits judgment**"), explained the history of this matter and the relief sought. It is accordingly not necessary to go into those issues here. In the merits judgment, I found it convenient to distinguish between two broad categories of relief sought by the applicants in their notice of motion. First, there was the prayer which sought to hold the third respondent in contempt of an order made by this Court under case number 28015/2017 (prayer 1 of the notice of motion). Secondly there was, essentially, all of the other prayers for relief (prayers 2 to 8 of the notice of motion).

3 It is trite that an appeal lies against the order made at first instance, and not against the reasoning in the judgment explaining the order. The order which I made on the merits was to dismiss the application with costs. So, section 17 of the Superior Courts Act 10 of 2013 requires me to ask two questions. First, whether the applicants have reasonable prospects of success on appeal – ie, reasonable prospects of persuading an appeal court to grant some or all of the relief sought. Secondly, even if they do not, whether there is some other compelling reason to grant leave to appeal.

4 No compelling reason, unrelated to the prospects of success, has been suggested and none occurs to me. So, the real issue is prospects of success. In my view, there is no reasonable prospect of my order dismissing the application being overturned on appeal. I explain this briefly below.

5 As I did in the merits judgment, let me distinguish between the two categories of relief sought. The prayer seeking a declaration of contempt has simply not adequately been supported in the founding affidavit. I do not believe that there is a reasonable prospect that an appeal court would find otherwise.

6 As to the rest of the relief sought, I made the point in the merits judgment that much of it was not properly formulated and was hard to follow. The approach that I, in essence, followed was to construe the founding affidavit very generously in order

to try to identify the true issues – an exercise which was necessary because the true issues were not concisely and clearly identified by the applicants themselves. Having conducted that exercise, I concluded that, to the extent that the applicants had valid complaints relating to the way in which the body corporate was being managed, their remedy did not lie in approaching this Court for relief, but rather in exercising their rights in terms of sections 38 and 39 of the Community Schemes Ombud Service Act 9 of 2011 (“the CSOS Act”).

7 The question whether sections 38 and 39 of the CSOS Act oust the jurisdiction of this Court to consider applications for relief covering the same subject matter, is an interesting one. For the reasons given in the merits judgment, I respectfully agree with the conclusion of Sher J in *Heathrow Property Holdings No 3 v Manhattan Place Body Corporate* 2021 JDR 1017 (WCC) that the jurisdiction of this Court is indeed ousted in those circumstances. But I would never be so cavalier as to discount the possibility that we are wrong. The difficulty for the applicants in this case is that, even if I were wrong on the meaning of sections 38 and 39 of the CSOS Act, the applicants would independently need to be able to make out a case for some or all of the relief except for the contempt relief (which plainly does not fall under the CSOS Act and which I dismissed for different reasons).

8 For the reasons given in the merits judgment (and briefly above), I do not believe that the applicants have reasonable prospects of persuading an appeal court that any of the relief in prayers 2 to 8 of the original notice of motion could be granted, even if the jurisdiction of this Court is not ousted by the CSOS Act. In the circumstances, the application for leave to appeal must be dismissed. There is no reason why costs should not follow the result.

## **ORDER**

9 I accordingly make the following order:

- 1. The application for leave to appeal the judgment and order under case no 2021/5060 handed down on 24 November 2021 is dismissed.**

**2. The parties listed at Caselines at 027-10 (whose names are listed in Annexure A to this judgment) are to pay the costs of the application for leave to appeal.**

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**ADRIAN FRIEDMAN  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected above 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 18 February 2022.

**APPEARANCES:**

Attorney for the applicants: Makhosi Poyo Inc

Counsel for the applicants: M Poyo (attorney with right of appearance)

Attorney for the first to fourth respondents: AM Ellis Attorney

Counsel for the first to fourth respondents: M Köhn

Date of hearing: 18 February 2022

Date of judgment: 18 February 2022

**ANNEXURE A**

1. ANANIAS MOSES BILA of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
2. JOYCE HLANGANANI MATSHEKE of No. [...], Door [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
3. DAMBISA TISO of Unit No. [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
4. IDAH DIKELA of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
5. HASEL NTOMBOMZI JONES of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
6. VALARIE MOLOKWANE of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
7. CHARLIE MOFOKENG of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
8. FARO THOMAS MOHLALA of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg
9. ELIZABETH BUSISIWE MAHLALELA of Unit [...], Monterey Body Corporate, 27 Lily Avenue, Berea, Johannesburg