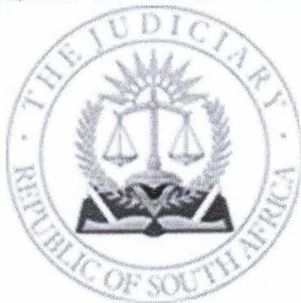
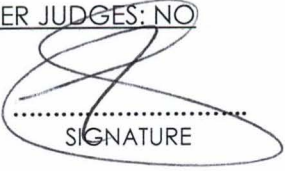


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 30565/2020

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
30 March 2022	 SIGNATURE
DATE	

In the matter between:

JAN VAN DEN BOS N.O.

(In his capacity as Administrator of
Panarama Place Body Corporate)
**TRADE WORX 148 (PTY) LTD t/a
PAL PROPERTY MANAGEMENT &
ADMINISTRATORS
MINISTER OF HUMAN SETTLEMENT
MEC FOR HUMAN SETTLEMENT
GAUTENG PROVINCE
COMMUNITY SCHEME OMBUD SERVICES
ESTATE AGENCY AFFAIRS BOARD**

1st Appellant

2nd Appellant
3rd Appellant

4th Appellant
5th Appellant
6th Appellant

AND

**LETSOALO MMAKHUDU SIMON
LUVUNO LINAH HOSHI
MPHEKGWANA ALFRED MATOME
MAMONYANE EDITH
LUKHELE WANG DANIEL
TEME KEIKANETSWE CHRISTINA
MALINGA DUMSANE GEORGE**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent

(This judgment is handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 30 March 2022.)

JUDGMENT

MIA, J

- [1] This is an appeal against the judgment handed down on 21 December 2020. The first appellant appeals against the whole of the judgment and order. The respondents opposed the appeal. None of the other appellants referred to filed notices or appeared.
- [2] The appellant's application contained a lengthy list of grounds on which he sought to appeal. The grounds of appeal include that a complaint lodged by Mr Lerole against Mr. Jan van Den Bos & Associates, PAL Properties and Tygerberg Body Corporate with the Community Schemes Ombud Services during 2017 under case number CSOS001285/GP/17 was not relevant in the urgent application to the respondents. Furthermore, that the fifth appellant's adjudication order was not binding. A further ground was that there were orders made under case number 10218/2019 and suspended under case number 35448/2020. This appears to have been a development after the order was handed down. The appellant referred to in the heading a list of case numbers that did not form part of this matter and papers which were not attached. The appellant listed further that the court failed to consider that the grounds on which the matter was to be heard on an urgent basis was premised on an order between parties unrelated to the above case number 30565/2020. If any only interim relief ought to have been granted related to this it was contended that the finding was based on the premise that the Body Corporate of Tygerberg and Panarama Place have an "intercorrelation" between the same set of facts.
- [3] The appellant also raised issues relating to
- the appellant as an administrator of Prospect Place Body Corporate;

- the urgent order in relation to the relief the respondents could obtain within the criminal justice system;
- whether reliance on annexures W27 and W40 is factually correct;
- whether reliance on an annexure where no reference was made to Mr van den Bos, in his personal and/or nominated official capacity as administrator was correct;
- related to a finding that owners of sectional title units and/or the Body Corporate of Panarama Place may indirectly be barred from initiating proceedings on grounds that debt incurred by occupants and the occupants be absolved from levy payments; and
- that the court approved the stay in sale of executions against the interests of the Body Corporate of Panarama Place.
- in doing the above the court failed to apply the provisions of the Sectional Title Act 95 of 1986, and subsequently the Sectional Title Schemes Management Act 8 of 2011 and the regulations thereto subsequently enacted which sets out the requirements in relation to retention of financial documentation and the administrator's obligation thereto.
- the court was unable to know that the appellants have substantially complied with the 20 March 2019 order under case number 20181/2019 albeit its suspension on 3 November 2020.
- the appellant referred to Annexure C where Dippenaar J on 3 and 19 December 2020 granted an order that the appellant joins all the parties under the above-mentioned case numbers for determination in a consolidated hearing under Rule 10 (which order will be made available in due course as annexure C which appellants have not been able to obtain at the time of lodging this application).

[3] The appellant contended further that the fifth respondent's order was being challenged under case number 35448/2020 and has been suspended pending the determination of case number 35448/2020 under Part B. Consequently, the fifth respondent is unable to adjudicate further. Moreover, the appellant indicated that it had served financials

and related documents under case number 35448/2020. In the circumstances, the urgent application ought to have been dismissed and the respondents ought to have paid the costs on an attorney-and-client scale.

- [4] Counsel appearing for the appellants submitted that he had not drawn the application for leave to appeal nor had the appellant set the matter down. The appellant sought to have the matter joined with the matters referred to above. He conceded that there was no reference to the above matters in the application, nor was there reference to the suggestion made that the assaults or intimidation was a matter between occupants of the Body Corporate of Panarama Close as raised in the submission. There was no Annexure C attached to the application for leave to appeal and no attachment of any of the orders referred to in the application for leave to appeal. He submitted that there was compliance with the court's orders 1-4, and the issue of intimidation could not be argued further on the papers as it had not been raised and the only issue he could raise was with regard to the costs order against the appellant. This was so as the appellant in the normal course complied and furnished financial information which the respondents could obtain from the Body Corporate.
- [5] Counsel for the respondent submitted that the appellant's application for leave to appeal was only lodged to avoid complying with the court order. This it was argued was the reason the appellant failed to prosecute the leave to appeal.
- [6] Counsel for the respondent submitted that the test in terms of s 17(1) of the Superior Court Act, 10 of 2013 required that leave to appeal only be granted where the Judge or Judges concerned are of the opinion that:
- "(a) (i) the appeal would have a reasonable prospect of success; or
(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

- (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”

[7] He submitted furthermore that the test was clear and remained whether the appeal would have a reasonable prospect of success meaning that another Court would reasonably come to a different decision. He argued that the appellant’s application in this matter did not meet the requirement to be granted a leave. He continued that it should fail for the following reasons:

- 7.1 The court had the power to appoint and to remove the administrator and an order that the administrator be investigated should be abided rather than avoided by appealing the decision.
- 7.2 The court had appointed the administrator and could order an investigation. There was no prospect of an appeal aimed at avoiding an investigation.

[8] He relied on the decision in *John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) and Another* 2018 (4) SA 433 SCA, at paragraph [2] where the Court set out the test as follows:

“the test we must apply is not whether JWP’s proposed appeal should succeed but whether there are reasonable prospects of success in the proposed appeal.”

In addition, counsel pointed out that the respondents also took issue with the absence of heads of argument in the matter and that the respondents were compelled to set down the matter as the appellant had not done so.

[9] Counsel referred to the further case of *Doorewaard and Another v S* 2019 ZANWHC/Case number CC33/2017(unreported) where the Court

at paragraph [2] stated

“The law governing a notice of appeal (and also notice of application for leave to appeal) is trite. The grounds of appeal in a notice of application for leave to appeal must be clearly and succinctly set out in unambiguous terms so as to enable the Court and the respondent to be fully and properly informed of the case which the applicant seeks to make out and which the respondent is to meet in opposing the application for leave to appeal. The notice should not contain arguments. Therefore heads of argument must also be filed and served in which the points to be argued will be set out in much more detail.”

[10] In the present matter, the appellant filed the application for leave to appeal and then did nothing further. The appellant did not ensure the appeal was set down and failed to file heads of argument more than four months after the appeal was filed. In the application for leave to appeal, reference is made to other case numbers where the appellant sought to have his term of appointment extended. None of those court orders were attached and it is not clear that there was substantial compliance with the court order. Counsel for the appellant submitted that there was compliance with orders 1-4. This submission is contrary to the grounds raised in the application for leave to appeal that seeks to appeal the whole of the order.

[11] In addition to the lengthy application for leave to appeal the appellant cited the Minister of Human Settlements, the MEC for Human Settlement, the Community Scheme Ombud Services and the Estate Agency Affairs Board. None of those appellants appeared to have filed notices or appeared to have had supported the appellant's application for leave to appeal. It is not clear how the fifth appellant appeals the order if the appellant suggests that the fifth appellant is conflicted. There was nothing received from the Community Service Ombud

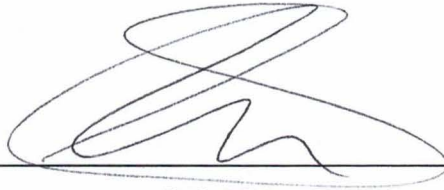
suggesting the office was not in a position to give effect to the order. It is only the appellant who has difficulty with the order.

- [12] I have noted counsel for the appellant's request that the application be postponed to be heard with matters that are referred to in the application for leave to appeal. There is no reason to do so. Copies of the applications referred to were not furnished. It is not clear why the determination having been made and the application for leave to appeal being filed, the appellant has not prosecuted the application and sought relief it ought to have. Counsel for the appellant conceded that the application was incomplete as the annexure referred to was not attached. Moreover, counsel relied on the argument that the attacks on the respondent were perpetrated by tenants of the Body Corporate which was not supported by the record or the application and was raised for the first time from the bar.
- [13] I have considered the submissions of both counsel and the grounds on which the appellant relied in the application for leave to appeal. Counsel for the appellant submitted that the appellant had complied in any event with orders 1-4 and the appellant only took issue with the order for costs. Having regard to the submissions and the application for leave to appeal, the relief was granted based on the papers before the court pertaining to the evidence relating to the racist and derogatory language leveled at occupiers and owners of properties, the alleged assault and intimidation but more importantly the evidence which was placed before the court that the appellant appointed a company as the managing agent, where he was listed as a director and the failure to furnish certain owners with financial information.
- [14] In considering the record and the grounds of appeal I am not persuaded that another court would reasonably come to a different conclusion.

Having considered the above, I am of the view that costs should follow the outcome.

[15] In the result I make the following order:

1. The application for leave to appeal is dismissed with costs.



S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicants : Mr M Kohn
Instructed by : AM Ellis Attorneys

On behalf of the respondents : Mr N Kubayi
Instructed by : Noveni Eddy Kubayi Inc

Date of hearing : 24 March 2022
Date of judgment : 30 March 2022