

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

CASE NO: 32190/21

DOH: 17 June 2022

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

SIGNATURE

DATE

01 July 2022

In the matter of:

DOORNHOEK EQUESTRIAN ESTATE

HOMEOWNERS ASSOCIATION

(Reg No: 2007/004715/08)

APPLICANT

And

THE COMMUNITY SCHEMES OMBUD SERVICE

FIRST RESPONDENT

ADV THEMBI PRECIOUS BOKAKO
JOHAN HENDRIK TOLSTOI KRUGER
PRETORIUS BROERS KONSTRUKSIE (PTY) LTD
(Reg No. 2004/031079/07)

SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT

JOHAN PAUL CASPER KRUGER
THE DOORNHOEK RESIDENTS ACTION GROUP

FIFTH RESPONDENT
AMICUS CURIAE

JUDGEMENT

THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE
CIRCULATED TO THE PARTIES BY WAY OF EMAIL / UPLOADING ON
CASELINES. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 01 JULY
2022

Bam J

A. Introduction

1. This is an opposed application for leave to appeal the decision of this court of 8 March 2022, in which I upheld the objection raised by the third, fourth, and fifth respondents, by way of a Rule 30 application. I shall refer to the respondents collectively as the respondent.

2. There are essentially two applications for leave to appeal. There is one brought by the applicant, Doornhoek Equestrian Estate Homeowners Association, while the Amici, Doornhoek Residents Action Group lodged its own application for leave to appeal. Neither of the two applications make any reference to the provisions of the Superior Courts Act¹, which governs appeals from this court.
3. The applicant does not state whether its application, by its own assessment, has any prospects of success nor does it aver any other basis why its application for leave to appeal should succeed. The Amici merely concludes that the appeal would have prospects of success and that there are compelling reasons why the appeal should be heard because it would lead to a just and prompt resolution of the issues between the parties.

B. Grounds

4. The grounds upon which the application is brought are set out in the parties' individual applications. I do not repeat them in this judgment. Since the essence of the two applications does not differ markedly, I merely state that they both contend that this court erred in upholding the third, fourth, and fifth respondent's objection, as well as in awarding costs against the applicant. The Amici, to whom I had awarded costs raises no contention about costs.

¹ Act 10 of 2013

5. The applicant's main contention is that the irregularity complained of by the respondent had to do with the failure by the applicant to follow the procedure pronounced by this court in *Sternesen & Tulleken Administrators CC v Linton Park Body Corporate* and another², read with section 57 of the Community Schemes Ombud Service Act³, (the Act). The applicant states that its failure to follow the procedure laid out in *Sternesen & Tulleken* is not an irregularity as envisaged in Rule 30. Rule 30, says the applicant, is only concerned with irregularities emanating from the use of Rules of the Court. Thus, this court erred in upholding the Rule 30 application.
6. In advancing the contention that Rule 30 is not there to serve as a ground for objection in respect of procedural aspects relating to other legislation but only to irregularities emanating from the use of the Uniform Rules of this Court, the applicant referred me to *Cochrane v City of Johannesburg*⁴ where this court affirmed the principle.
7. Both the applicant and the Amici state that in any event, each and every ground of appeal stated in the Notice of appeal appears in the founding affidavit of the main application. Thus, the notice of appeal was not aimed at replacing the grounds set out in the main application. According to the applicant, the notice of appeal was merely to illustrate that there was no conceivable prejudice to the respondents by launching the appeal in the manner the applicant had done, that is by way of notice of motion. In

² 2020 (1) SA 651 (GJ)

³ 9 of 2011

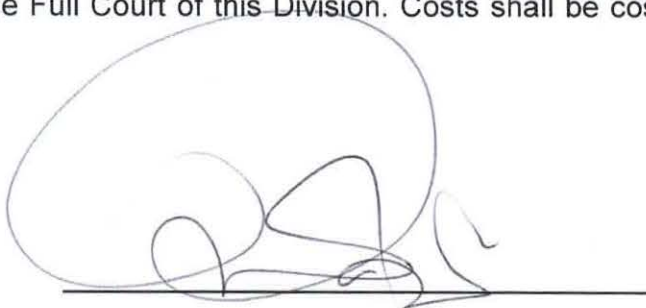
⁴ (A5044/09) [2010] ZAGPJHC 61; 2011 (1) SA 553 (GSJ) (18 August 2010) at paragraphs 30 and 31

any event, says the Amici, the appeal is only confined to issues of law, thus, there cannot be prejudice to the applicant.

8. The respondents submits that since the applicant admits that it did not follow the procedure set out in this court's decision of *Sternesen & Tulleken Administrators*, the applicant's filing of the notice of motion and record after close of pleadings, and in direct contradictions of the terms of the order made by this court, warrants that this reject both applications for leave on the basis that they lack merit and do not reach the threshold set out in section 17 (1) (a) (i) of the Superior Court Act.
9. I have considered the contentions by the parties. It is my considered view that another court would come to a different finding on the issues presented in the application in terms of Rule 30. Thus, leave to appeal should be granted.

Order

10. Leave to appeal is granted to the Full Court of this Division. Costs shall be costs in the cause.

A handwritten signature in blue ink, consisting of a large, loopy 'N' followed by 'BAM' and a horizontal line extending to the right.

NN BAM

JUDGE OF THE HIGH COURT, PRETORIA

DATE OF HEARING:

17 June 2022

APPEARANCES

APPLICANT'S COUNSEL:

Adv Else

Instructed by:

Thomas & Swanepoel Inc

% Delport van den Berg

Garsfontein

THIRD, FOURTH AND FIFTH

RESPONDENTS' COUNSEL:

Adv Botes SC

Instructed by:

Flip Coetzer Inc

% Dawie De Beer

Garsfontein

Counsel for the AMICUS CURIAE:

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Instructed by:

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