IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No: 10228/04

In the matter between:

LOUIS JOHANNES RAUBENHEIMER
(acting in his personal capacity and as chairman of the Bloubergstrand Residents' Association) Applicant

and

THE TRUSTEES OF THE HENDRIK JOHANNES BREDENKAMP TRUST First Respondent

J C PAUW NO
(in his capacity as trustee for the time being of the Merit Trust) Second Respondent

W J PAUW NO
(in her capacity as trustee for the time being of the Merit Trust) Third Respondent

HERITAGE WESTERN CAPE Fourth Respondent

THE PROVINCIAL MINISTER OF THE WESTERN CAPE RESPONSIBLE FOR CULTURE Fifth Respondent

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JUDGMENT: 20 JULY 2005

VAN ZYL J:

Introduction

[1] The applicant, in his dual capacity as a resident of Bloubergstrand and as chairperson of the Bloubergstrand Residents' Association, brought an urgent application for an interdict directed at preventing the demolition or alteration of a house and other improvements ("the structure") on Erf 1216 (55 Stadler Street) Bloubergstrand. He sought this relief against the first three respondents pending an

appeal he proposed launching against the issue, by the fourth respondent, of a permit authorising the demolition of the structure.

[2] The first respondent is the Estate of the late Hendrik Johannes Bredenkamp, the registered owner of the property, which is now vested in a testamentary trust known as the Hendrik Johannes Bredenkamp Trust ("the Bredenkamp Trust"), of which the trustees are presently Susara Johanna Bredenkamp, the widow of the late Hendrik Johannes Bredenkamp, and Hendrik Johannes Bredenkamp, his son. The applicant sought the formal substitution of the trustees for the time being of the Bredenkamp Trust as first respondent in the place of the Estate. No objection was raised against this relief and, in so far as it was necessary, it was granted.

[3] The second and third respondents are Jacobus Cornelis Pauw and his wife, Wilhelmina Jacoba Pauw, who were cited in their capacity as trustees for the time being of the Merit Trust, registered as such and with main place of business at La Roca, 56 Stadler Road, Bloubergstrand. This was also their residential address, being a neighbouring property adjacent to, or in the immediate vicinity of, the property in question. They were hence also residents of Bloubergstrand. The second respondent was in fact a member of the Bloubergstrand Residents' Association which apparently, by way of telephonic communications between the applicant and various members of the association (not including the second respondent), mandated the applicant, as its chairperson, to bring the present application on its behalf.

[4] The fourth respondent is Heritage Western Cape, being the provincial heritage resource authority of the Western Cape Provincial Government. The National Minister of Environmental Affairs, alternatively the Provincial Minister of the Western Cape Responsible for Culture, the fifth respondent, has delegated to it the requisite powers, duties and functions set forth in the *National Heritage Resources Act* 25 of 1999 ("the Heritage Act"). The application was opposed by the first three respondents, as appears from the affidavit of the second respondent, who was duly authorised by both the Bredenkamp and Merit Trusts to depose to an opposing affidavit on their behalf. The fourth and fifth respondents have elected to abide the decision of this court.

[5] After considering the papers filed and hearing full argument presented by counsel for the applicant and for the first three respondents respectively, I dismissed the application with costs on 15 December 2004, on the basis that reasons would be furnished later. Such reasons appear from what follows.

[6] Mr G Walters appeared on behalf of the applicant and Mr J A Newdigate SC on behalf of the first, second and third respondents. The court wishes to express its appreciation to them for their useful presentations on behalf of their respective clients.

Background

[7] The property forming the subject of this application, according to the aforesaid permit issued by the fourth respondent, comprises Erven 236, 239 and 294 Bloubergstrand. According to the applicant the house and improvements upon the property dated back to some time before 1863, when the original structure was apparently built by resident fishermen who operated from, and plied their trade at, Bloubergstrand. The original cottage was said to appear on a Thomas Bowler

painting, dating back to 1863, of the American pirate ship, the Alabama, leaving Table Bay. It was also believed to feature in the story of Wolraad Woltemade who, in 1773, lost his life and that of his trusty horse after heroically bringing fourteen shipwrecked persons from the wreck to the beach. This was said to have taken place within sight and full view of the house. The second respondent has called this historical link into question, averring that the house was probably not yet built in 1773 while Woltemade's heroics were believed to have taken place in the vicinity of the Salt River mouth, some ten kilometres away.

[8] During the 1940's Helena J F ("Mollie") Lochner, a well known children's story writer and educator, bought the house and transformed it into what became known as "the large white house" ("die groot wit huis") or simply as the "Helena Lochner House". After her death in 1951 her ashes were said to be interred next to the steps on the northern side of the house. It was therefore regarded as having significant historical value, forming part of the rich cultural heritage of the Western Cape. The applicant averred that it had, in fact, become a local landmark, being the subject of numerous photographs taken by local residents and visitors or tourists over the years. He and many other residents in the area had developed an emotional attachment to the house over a long period of time. Its proposed demolition, he said, was "striking at the very heart and emotional core of Bloubergstrand and Cape Town residents". This was reflected in a petition, signed by a large number of local residents and visitors, calling upon the authorities to stay the demolition.

[9] The house was purchased by the Bredenkamp family some twenty years ago and has since then served as their family home. According to the second respondent, however, it was fundamentally changed by them during 1982 and again in 1996, with the result that it was effectively converted into a three-unit dwelling. In the meantime the Bredenkamp Trust (the first respondent) and the Merit Trust (the second and third respondents) reached an understanding that the house would be demolished and the property redeveloped by the construction of a new dwelling on it.

[10] The second respondent averred that the house had no external feature which could be said to be of any historical value reflecting the original fisherman's cottage. What might well date back to the original structure were the yellow-wood beams in the ceilings of some of the rooms, a wall in the attic made partly of sea shells, and certain of the walls inside the present structure. These walls, however, had been covered with fire- and damp-proof dry-walled partitioning. In any event none of these features was visible from outside of the property. In addition, since these changes had been effected the house had fallen into disrepair and would require considerable expenditure to be restored to its pristine condition. For these reasons the second respondent denied that the house had any significant historical value or that it formed part of the cultural heritage of the Western Cape, however emotionally attached the applicant and other residents might be thereto. In this regard he relied on a number of photographs and the opinion of an architect, Ms Kathryn Lochner, who inspected the property and came to the following conclusion in her report dated 30 November 2004:

> Any historical structure that remains as the core of the existing house has, over the years, been altered many times and evidence of old openings may well have been obliterated. If the evidence in the bathroom runs through the rest of the fabric, the deterioration of the structure is probably equally serious.

[11] It was clear from the papers and documentation that the original cottage was

no longer evident in that the structure on the property had, over the past more than one-and-a-half centuries, undergone substantial, if not radical, changes. The applicant suggested that it had grown "organically" to its present form, reflecting the cultural, social and environmental changes to Bloubergstrand over the years. The second respondent rejected this suggestion on the basis that the original structure had been replaced by what he described as a relatively modern house which bore no resemblance to the original cottage.

[12] Because the dwelling structure, however much it had been changed, was clearly older than sixty years, no part of it could be altered or demolished without a permit issued by the relevant provincial heritage resources authority, being the fourth respondent in the present case. It is common cause that a permit approving the demolition of the said structure was, in terms of section 34 of the Heritage Act, issued on 24 March 2004 by the fourth respondent in favour of the Bredenkamp Trust. This was subject to an appeal by persons or bodies with a *bona fide* interest in, or affected by, the granting of the permit. In terms of section 49 of the Act, read with regulation 12(1) thereof, such an appeal was to be lodged within fourteen working days after the decision of the fourth respondent had been made known to them in writing. This period has long since expired without any appeal having been lodged.

[13] According to the applicant he became aware of the issue of the permit for the first time on 25 November 2004. After making enquiries he established that the first and second respondents fully intended proceeding with the demolition of the structure, despite his request that they delay it pending an appeal he intended lodging in terms of section 49(2) of the Heritage Act. He likewise established that the fourth respondent was not prepared to stay or suspend the permit pending such appeal. This prompted him to bring the present application for an interdict directed at preventing demolition of the structure, failing which, he averred, he had a reasonable apprehension that he would suffer irreparable harm. In this regard he alleged that he had a clear right, or at least a *prima facie* right, to prosecute an appeal as aforesaid, and he could rely on no alternative remedy other than the present application. Furthermore the balance of convenience favoured the granting of the relief sought by him.

The Case for the Respondents

[14] The second respondent denied, *in limine*, that the applicant had any *locus standi* to bring the present application in that he did not have a *bona fide* interest in the granting of the permit, nor was he affected thereby, as required by regulation 12(1) aforesaid. Mere residence or property ownership in Bloubergstrand, or a

sentimental and emotional attachment to the structure, could not qualify him as an interested or affected person. As such he had no real, direct or material interest in the application for a permit.

[15] A further point raised by the second respondent regarding the applicant's *locus standi* was that he had appended no authority from the Bloubergstrand Residents' Association or, for that matter, from any other resident, to bring the present application. The second respondent was also a member of the said association and had received no notice requesting his authorisation. An alleged telephonic mandate from a number of individual members of the association could not constitute such authorisation.

[16] On the merits of the application the second respondent denied emphatically that the structure required to be demolished bore even the slightest resemblance to the original fisherman's cottage constructed on the property during the mid-nineteenth century (see par [10] and [11] above). It had changed radically and fundamentally, demonstrating no external sign of the original structure. As such it had no significant historical value and could not be said to form part of any cultural heritage. It was in fact in a state of serious disrepair. The only reason why it was necessary to apply for a permit in terms of the Heritage Act was that certain insignificant portions on the inside of the house, not visible from the outside, were older than sixty years and hence required a permit for their demolition.

[17] For the rest the second respondent denied that the applicant had made out any case at all for the relief claimed. He had not established a *prima facie* right, let alone a clear right. He had likewise not demonstrated that he would suffer irreparable harm or that the balance of convenience favoured the granting of the relief sought by him. In this regard the balance of convenience clearly favoured the respondents who had already, at great expense, arranged for the demolition work to be done and for the building of a new dwelling on the property. Furthermore, the second respondent averred, the applicant had no rights which he would be able to enforce by means of any alternative remedy.

[18] The second respondent refuted the applicant's suggestion that the envisaged appeal against the issue of the permit to demolish the structure on the premises, had a good chance of success. On the contrary, even if he should, at this late stage of the proceedings, be permitted to lodge an appeal, his prospects of success were remote.

The Applicant's Response

[19] In his replying affidavit the applicant's response to the case put forward by the second respondent was that he had not had sufficient time to do the necessary investigation into the matter and to consider the issues arising therefrom. He had been compelled to rely on hearsay evidence and hence accepted that there might have been inaccuracies in his version as set forth in the founding affidavit.

[20] At the outset the applicant averred that it had come to his knowledge that the permit in question had been irregularly issued in that the official purporting to issue it had not had the requisite authority to do so. The permit was hence invalid and should be set aside in a review application that the applicant proposed launching forthwith. In this regard he gave notice to amend his notice of motion to make provision for such judicial review. Furthermore he stated that he had not lodged an appeal against the issue of the permit simply because he had been unaware of it.
[21] On the merits of the application the applicant averred that the original fisherman's cottage had not been demolished in the process of repair, maintenance or improvement of the original building, but in fact remained incorporated within the present structure on the property. In this regard he relied in substance on the affidavit of Mrs S A Starke who had lived at 53 Stadler Street, a property directly adjacent to the premises in issue, for a period of almost twenty years, from her birth until her marriage in 1971. According to Mrs Starke the original structure remained the "central constituent part" of the house and even the changes and alterations effected thereto told a story and reflected the cultural and social changes that Bloubergstrand and its environment had undergone. She was hence of the firm belief that the house was of significant historical value, constituting "part of the rich cultural heritage of the Western Cape, in particular, and South Africa, in general". The proposed demolition of the structure, she opined, was "striking at the very heart and emotional core of Bloubergstrand and Cape Town residents". In the process her rights, and those of other Bloubergstrand, Cape Town and, indeed, South African residents "would be frustrated and in fact negated".
[22] The applicant suggested that the changes effected to the house by the Bredenkamp family had been cosmetic and ornamental, leaving the original components of the structure intact, even though they might not have constituted "external visual features" of the house in that they could not be seen or readily accessed.
[23] The applicant sought support in an affidavit by the architect Hannes Meiring, who had known and taken a personal interest in the house from as early as 1938. He averred that, to the best of his knowledge, the original nineteenth century walls still existed and formed "the basic structure" of the house as depicted on sketches appended to his affidavit. He believed that the house could in fact be restored to its pristine glory during the 1930's and 1940's.
[24] In addition the applicant relied on certain correspondence with another architect, Mr Gawie Fagan, relating to the redevelopment of the property, and a petition by residents and other interested parties seeking to prevent the demolition of the structure. For present purposes it is not necessary to deal with this since it constitutes, for the most part, new and quite irrelevant matter. For the rest the replying affidavit was, to a large extent, repetitious and argumentative.

Main Submissions on behalf of the Applicant

[25] In his argument on behalf of the applicant Mr Walters submitted that the applicant had made out a case for an interlocutory interdict pending appeal and review proceedings. On the facts, he argued, it was common cause that at least certain

portions of the structure were older than sixty years, in which event section 34 of the Heritage Act came into operation. This meant that none of those portions could be altered or demolished without a permit issued by the relevant provincial heritage resources authority. The permit issued by the fourth respondent was not brought to the attention of the applicant or other Bloubergstrand residents. They became aware of it for the first time when they observed steps being taken to demolish the structure.

[26] The applicant proposed to challenge the decision to authorise the demolition of the structure by lodging an appeal in terms of section 49 of the Heritage Act and, if necessary, to bring an application to review and set aside the permit or the issue thereof. Mr Walters relied in this regard on sections 9(3), 30, 31 and 235 of the Constitution, which deal with cultural resources in the form of environmental and cultural matters. These matters, he urged, were "concurrent in national and provincial competencies". Cultural resources, being movable or immovable, were considered to be of historical, archaeological, palaeontological or astronomical interest in terms of the Heritage Act.

[27] Inasmuch as there had been an infringement of the community's interest in the structure, Mr Walters argued, the applicant, as a resident, had a clear or *prima facie* right to prosecute an appeal on the basis of the case made out by him. In this regard he had a "general or objective administrative relationship" with the fourth and fifth respondents in terms of the Heritage Act. He hence had an interest in the observance of the relevant procedures without having to prove actual or potential prejudice. In support of this argument Mr Walters relied on the decisions in *Bamford v Minister 0f Community Development and State Auxiliary Services* 1981 (3) SA 1054 (C) and *Waks en Andere v Jacobs en 'n Ander* 1990 (1) SA 913 (T).

[28] On the issue of the applicant's *locus standi* Mr Walters submitted that the applicant had a direct interest in the move to prevent the demolition of the structure in that it formed "part of his social and cultural life" and he received "emotional and psychological satisfaction" from it. His interests had been sufficiently affected by the decision he sought to challenge. This was in accordance with the principles set forth in cases like *Wood and Others v Ondangwa Tribal Authority and Another* 1975 (2) SA 294 (A), the *Bamford* matter (par [27] above) and *Mgedle and Others v Administrator, Cape, and Others* 1989 (1) SA 752 (C) at 758D-759B.

[29] In addition, Mr Walters submitted, the applicant had the right, in terms of section 38 of the Constitution, to approach this court on the basis of a threatened infringement of one of his rights contained in the Bill of Rights. The right on which he relied in terms of the provisions of the Heritage Act was, Mr Walters suggested, founded in the Bill of Rights. At the very least the applicant had established that he was one of a group or class of persons whose rights would be detrimentally affected by the demolition of the structure, as provided in section 38(c) of the Constitution. This reflected an expansion of the *locus standi* requirement accepted in the *Bamford* case (par [27] above). It also illustrated the concept of "sufficient interest" as established in cases like *Fedsure Life Assurance Ltd and Others v Greater*

Johannesburg Transitional Metropolitan Council and Others 1998 (12) BCLR 1458 (CC), *Van Huysteen and Others NNO v Minister of Environmental Affairs and Tourism and Others* 1996 (1) BCLR 1 (C) and *Ngxuza and Others v Permanent Secretary, Department of Welfare, Eastern Cape, and Another* 2001 (2) SA 609 (E).

[30] As regards the validity of the issue of the permit, Mr Walters submitted that this was, and continued to be, a contentious issue in that the official who had issued the permit did not have the requisite authority to do so. In any event there was a procedural irregularity in that the permit had not been issued strictly in accordance with the relevant delegated authority.

[31] Finally Mr Walters argued that the applicant had made out a case for interim relief pending an appeal or review. He had, in this regard, complied with the requirements of a *prima facie* case, a reasonable apprehension of irreparable harm, a balance of convenience in his favour and the unavailability of any other satisfactory remedy to pursue the relief claimed by him. Inasmuch as the prospects of success in the appeal or review favoured the applicant, this court should exercise its discretion in his favour.

Main Submissions on behalf of the First, Second and Third Respondents

[32] At the outset Mr Newdigate submitted on behalf of the first, second and third respondents that the applicant's case was limited to an interim interdict pending an appeal, in terms of section 49 of the Heritage Act, against the granting of a permit to demolish the structure in question. No case had been made out in the founding affidavit for the judicial review of the permit on the basis of any alleged irregularity. The attempt to introduce a ground of review in the replying affidavit was quite irregular, in that it had never been the case that the respondents were called upon to meet. The amendment of the notice of motion sought by the applicant in this regard should, Mr Newdigate submitted, be refused outright.

[33] On the issue of the applicant's *locus standi* Mr Newdigate submitted that the applicant did not have a *bona fide* interest in, nor was he affected by, the decision to issue a permit for demolition of those parts of the structure which were older than sixty years. He hence did not qualify, in terms of section 49 of the Heritage Act as read with regulation 12 thereto, to lodge an appeal against such decision.

[34] In this regard it was indisputable, Mr Newdigate argued, that the structure in respect of which the permit was issued did not bear the slightest resemblance to the fisherman's cottage originally erected on the property. The house reflected modern architecture, a modern building style and the use of modern materials. Indeed, since 1982 the house exhibited no external feature, visible from outside the property, which could reasonably be considered to have any historical value. Those internal features

which were older than sixty years were totally invisible from the exterior of the property. Acquiring an interdict to preserve such invisible internal features could never restore the visible external features to the state in which they had been more than sixty years previously.

[35] Inasmuch as this appeared to be the real aim of the applicant and those persons who had signed a petition in support of the preservation of the structure, they had, Mr Newdigate submitted, clearly misconceived their remedies. If their true objection should be directed at the new structure to be erected, their remedy would be to approach the relevant authorities to prevent its erection, alternatively to prevent its erection in accordance with a particular design or plan.

[36] With reference to the authorities relied upon by the applicant to establish his *locus standi*, Mr Newdigate argued that they did not support the applicant. In his view they merely served to confirm the fundamental proposition that an applicant without sufficient interest in the subject matter of the litigation would not be able to establish the necessary *locus standi* for purposes of acquiring a right to interim relief.

[37] As for the provisions of section 38 of the Constitution, Mr Newdigate added, they were of no assistance to the applicant in that he had not demonstrated that any right contained in the Bill of Rights had been infringed upon or threatened. There was in fact no reference to the Constitution at all in the founding affidavit, while the passing reference thereto in the replying affidavit did not suggest any such infringement or threat.

[38] In the alternative Mr Newdigate submitted that, even if the applicant had succeeded in establishing *locus standi*, his right to appeal had lapsed in that more than fourteen working days had lapsed since the permit had been made known in writing to the applicant. No attempt was made in the founding affidavit to justify the failure to lodge an appeal within the prescribed period or at all. Only in the replying affidavit was an unpersuasive argument raised as to this lapse. Up to the present time, however, no appeal had been lodged and no suggestion had been made of any proposed condonation application to be brought for the late filing of such appeal.

[39] Finally Mr Newdigate argued that the applicant had not complied with the requirements for an interim interdict as authoritatively stated by Corbett J in *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 687-688. In this regard the applicant had not succeeded in getting over the first hurdle of establishing a *prima facie* right, even though open to some doubt.

Consideration of Counsel's Submissions

The nature of the structure

[40] At the outset I am constrained to associate myself with Mr Newdigate's submission that the structure which the first, second and third respondents have sought to demolish did not bear the slightest resemblance to the original building purportedly constructed on the property by fishermen plying their trade at

Bloubergstrand. The changes effected thereto by Ms Lochner, and subsequently by the Bredenkamp family, had the effect of creating a relatively modern structure that could never have been mistaken for a fisherman's cottage dating back to 1863 or earlier. There is a vast difference between the cottage reflected in the Thomas Bowler painting (par [7] above), and "the large white house" (die "groot wit huis") to which Ms Lochner allegedly converted the house that she purchased during the 1940's (par [8] above).

[41] In this regard I have some difficulty in accepting that the house that Ms Lochner bought has indeed been properly identified as the fishing cottage depicted in the said painting. Even if this be accepted as a fact, however, it has not been disputed that very little of the original building remained extant on the inside of the converted structure. It was likewise not in dispute that no single portion or feature of the original building was visible from the outside (par [10] above).

[42] The popularity of the substantially rebuilt house and the numerous photographs taken of it over the years were indicative of a romantic and emotional attachment to what was regarded as a monument to Ms Lochner rather than as part of the historical or cultural heritage of the Western Cape. No such attachment, however sincere and well-meaning, could recreate a structure that has long since disappeared, existing only as reflected in a painting, from which the original structure might conceivably be identified. The mere fact that the house could, as suggested by Mr Meiring (par [23] above), be restored to the pristine glory it enjoyed during the 1930's and 1940's, is irrelevant. The restored structure would still not be a reflection of the original fisherman's cottage dating back to the 1860's.

The appeal and proposed review relating to the issue of the permit

[43] The respondents quite correctly accepted that the house, however much it had been changed and restructured by successive owners, was indeed more than sixty years old at the relevant time and hence required a permit for its alteration or demolition. It is common cause that such permit was issued on 24 March 2004 by the fourth respondent acting in terms of section 34 of the Heritage Act. It is likewise common cause that there has been no appeal against the issue of the permit in terms of section 49 of the Act read with regulation 12(1) thereof (par [12] above). In this regard the applicant has not, up to the present time, lodged an appeal or sought

condonation for the late filing of an appeal. This would, of course, be fundamental for purposes of his acquiring the interim relief sought by him, namely an interdict staying the demolition of the structure pending the outcome of an appeal he intends lodging against the issue of the said permit (par [1] above).

[44] The applicant's attempt to introduce a new cause of action in his replying affidavit, and his subsequent application to amend his notice of motion, must be regarded with circumspection. Apart from raising suspicion as to the circumstances under which the permit was issued, the applicant has made out no case in his founding affidavit that the granting of the permit was irregular and should be set aside on review. On the contrary, he appears to have considered the irregularity of the issue of the permit merely as a possibility, in which regard he stated unequivocally that he had no reason to suspect that the permit was in fact irregular. In his replying affidavit, however, he averred that, after he had read the "explanatory statement" appearing in the affidavit of Ms H M J du Preez on behalf of the fourth and fifth respondents, his suspicion relating to the possible irregularity of the permit had been confirmed. This was certainly not the case the respondents were called upon to meet. In any event it was based primarily on mere suspicions and averments not justifying judicial interference on review. It follows that the application by the applicant to amend his notice of motion was without merit.

The *locus standi* of the applicant

[45] For purposes of establishing whether or not the applicant has *locus standi* to appeal against the issue by the fourth respondent of the permit in question, reference must be made to the regulations promulgated in terms of section 49(1) of the Heritage Act. Section 12(1) of such regulations, which were published under Provincial Notice (PN) 336/2002 on 25 October 2002, provides that "persons and bodies with a *bona fide* interest in, or who are affected by" a decision of the fourth respondent may appeal against it. This must be done within fourteen working days from the date on which the issue of the permit was made known in writing to the applicant.

[46] With reference to the relevant facts and circumstances, I agree with Mr Newdigate's submission (par [33] above) that the applicant did not have a *bona fide* interest in, and was not affected by, the demolition of those parts of the structure which were older than sixty years. His interest was based on a purely sentimental and emotional attachment to a house which he had known for many years as "the large white house" created by Ms Lochner during the 1940's. His attempt to represent it as a historical beacon forming part of the Western Cape's cultural heritage was, for the most part, based on vague, romantic and incorrect or exaggerated statements accepted at their face value without being properly or accurately researched. Even if it were possible to restore the house to its original state, or to its converted state as a result of Ms Lochner's efforts, the situation would not be changed. The house would remain that particular structure, in its particular state of repair or disrepair, to which the fourth respondent was referred for purposes of considering the application for its demolition.

[47] The various provisions of the Constitution relied on by Mr Walters (in par [26]

above) to bolster his argument on the *locus standi* of the applicant are interesting but, in my view, do not support his submissions in this regard. Sections 9(3), 30 and 31 of the Constitution all form part of the Bill of Rights contained in chapter 2 thereof. Section 9(3) is an equality provision requiring that the State should not unfairly discriminate against anyone on the grounds of, *inter alia*, his or her culture. Section 30 provides in turn that all persons have the right "to use the language and to participate in the cultural life of their choice", provided they do so consistently with the provisions of the Bill of Rights. Similarly section 31 provides for the protection of the language, culture and religion of persons belonging to particular communities, associations or other organs of civil society.

[48] Section 235 is a general provision contained in chapter 14 of the Constitution. It relates to "the right of the South African people as a whole to self-determination", including that of "any community sharing a common cultural and language heritage, within a territorial entity in the Republic, or in any other way, determined by national legislation". Quite clearly neither this section nor those mentioned in the preceding paragraph have any relevance in the present context.

[49] The applicant's so-called "general or objective administrative relationship" with the fourth and fifth respondents, as submitted by Mr Walters in his supplementary heads of argument, is incomprehensible in such context. It is certainly not elucidated by decisions such as those in *Bamford* and *Waks* relied on by him in this regard (par [27] above). Those cases, including the appeal in the *Waks* case, reported as *Jacobs en 'n Ander v Waks en Andere* 1992 (1) SA 521 (A), dealt with the right of public access to parks or public areas under circumstances totally distinguishable from those in the present case.

[50] Similarly distinguishable, and quite inapplicable in the present instance, are the principles set forth in the *Wood* and *Mgedele* cases referred to by Mr Walters (par [28] above). I am unable to see how these cases can serve as authority for his proposition that the applicant's interest in preventing the demolition of the house was that it formed "part of his cultural life" and gave him "emotional and psychological satisfaction". At best he had an indirect interest which would not vest him with the necessary *locus standi*. See *Ahmadiyya Anjuman Ishaati-Islam Lahore (South Africa) and Another v Muslim Judicial Council (Cape) and Others* 1983 (4) SA 855 (C); *Natal Fresh Produce Growers' Association and Others v Agroserve (Pty) Ltd and Others* 1990 (4) SA 749 (N); *Bellville Pharmacy CC and Another v T Nortje (Pty) Ltd and Others* 2004 (6) SA 442 (C) at 451A-D.

[51] Section 38 of the Constitution, on which Mr Walters likewise relied (par [29] above), provides for the enforcement of rights contained in the Bill of Rights, on the basis that the right in question has been infringed or threatened. Persons who may approach a court for relief under such circumstances include: (a) anyone acting in his or her own interest; (c) anyone acting as a member, or in the interest, of a group or class of persons; and (d) anyone acting in the public interest. I do not believe that this section has any relevance in the present context. The right to appeal against a decision of the fourth respondent in terms of the Heritage Act and its Regulations (par [45] above) cannot be regarded as a right encapsulated in the Bill of Rights. In any event the wording of the relevant right is clear and unequivocal: only persons with a *bona fide* interest in, or affected by, the decision in question may lodge an appeal against such decision. There is no merit in the submission by Mr Walters that the right to appeal was founded in the Bill of Rights and should, therefore, be given a more

flexible interpretation than appears from the said wording. The authorities on which he relies, such as that in the *Ngxuza* case (par [29] above) deal with a flexible interpretation of section 38 of the Constitution as such, and not with the interpretation of a statutory interest in general. See *Coetzee v Comitis and Others* 2001 (1) SA 1254 (C) at 1262B-1264C (par [17.6]-[17.9]) and the *Bellville Pharmacy CC* case (par [50] above) at 451D-G.

Prerequisites for interim relief

[52] Even if the applicant had succeeded in establishing his *locus standi* in the present matter, it would not have availed him in that he failed conclusively to comply with the requirements for an interim or temporary interdict. I refer in this regard to the principles set forth in a long line of authorities. See *Webster v Mitchell* 1948 (1) SA 1186 (W); *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C); *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v L F Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C) at 267B-E.

[53] On the facts and circumstances of the present matter, I agree with Mr Newdigate (par [39] above) that the applicant has been unable to establish a *prima facie* right (though open to some doubt) to the relief sought by him. And even if he were able to establish such a right, he would have to acquire condonation for the late filing of his appeal. Should be able to persuade a court to grant condonation, his prospects of success on appeal would be extremely slim, that is to say if there should be any such prospect at all.

[54] For the rest he has not established that he may suffer irreparable harm should the relief not be granted. Certainly the demolition of the building might temporarily cause him grave disappointment and provoke a feeling of psychological or emotional deprivation, but it would not lead to any loss, damage, injury or harm of a permanent nature.

[55] In assessing the balance of convenience the court must necessarily weigh up the relative inconvenience that the parties might have to endure should relief be granted or refused. In the present case the first three respondents had already incurred substantial expenses in acquiring a permit for the demolition of the structure and in arranging for the demolition to take place with as little delay as possible. By contrast the applicant had suffered no such inconvenience, nor had he incurred costs of a comparable nature.

[56] It is true that the refusal to grant an interim interdict would inevitably give rise to the demolition of the structure and hence deprive the applicant of any further means of acquiring the relief sought by him. In this regard I strongly doubt whether he would have an alternative remedy directed at claiming damages for his purported loss. Even if he should have such remedy, his prospects of success would, in my view, be non-existent.

Conclusion

[57] In considering all these facts and circumstances, I had no hesitation in exercising my discretion, as to whether or not to grant the interim relief, against the applicant. It is for these reasons that I dismissed the application with costs.

D H VAN ZYL

Judge of the High Court

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