IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 10147 / 2019

In the matter between:

DIETLOF ZIEGFRIED MARE	First Applicant
WILLEM TOBIAS HANEKOM	Second Applicant
JACOBUS THEODORUS DU TOIT	Third Applicant
HENRIETTE CHRISTINE MARE	Fourth Applicant

and

AKARANA HOME OWNERS ASSOCIATION	First Respondent
LA BELLA VITA WINE ESTATE PROPERTY OWNERS ASSOCIATION	Second Respondent
MEMBERS OF THE FIRST RESPONDENT LISTED IN ANNEXURE 'A'	Third to Eighth Respondents
MEMBERS OF BOTH THE FIRST AND SECOND RESPONDENTS LISTED IN ANNEXURE 'B'	Ninth to Twenty Sixth Respondents
MEMBERS OF THE FIRST RESPONDENT, SECOND RESPONDENT AND THE SANTÉ WINELANDS BODY CORPORATE LISTED IN ANNEXURE 'C'	Twenty Seventh to Thirty Ninth Respondents

THE DRAKENSTEIN MUNICIPALITY Fortieth Respondent

Coram: *Wille, J*

Heard: *31st of January 2022*

Delivered: *28th of February 2022*

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This is an opposed application under and in terms of which the applicants seek an order for the appointment of an administrator to control the affairs of the first and second respondents. The application is piloted in accordance with the provisions of a municipality by-law.[1] In terms of this by-law, an administrator may be appointed to such an owners' association if that association ceases to function or does not carry out its obligations. It is not the subject of any dispute that the first and the second respondents are such owners' associations.

[1] Section 30(1)(c) of the 'Drakenstein Municipality By-Law on Municipal Land Use Planning (2018)' - (the 'by-law').

[2] The applicants are members of the first respondent and they are also members of the second respondent. Certain disputes exist between the members of both the first and second respondents in connection with issues that allegedly concern the management and the governance of the first and the second respondent.

[3] These disputes allegedly primarily involve a member of the first respondent and a group of her followers[2], who purport to be the validly appointed trustees of the first respondent. Moreover, they adopt the position that they have the right to conduct the management and governance of the first respondent.

[4] Inextricably linked to this dispute is the issue of certain wrangled voting rights in accordance with the various constitutions of the first respondent and the second respondent. This in turn goes to the issue of the validity of the appointment of certain members as the trustees of the first respondent and also the second respondent.

[5] These disputes no doubt triggered certain further discrete action proceedings by another disgruntled member of the first respondent and the second respondent[3], against, *inter alia*, the first respondent. These action proceedings are pending. These action proceedings are precisely connected with certain declaratory relief aimed at attacking, *inter alia*, the validity of some of the constitutional provisions of the first respondent.

[6] The purpose of this current application is solely to attempt to secure an interim holding pattern in order to achieve the proper management and governance of the affairs of

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[2] The 'active' respondents.
[3] In these action proceedings there are no fewer than (6) plaintiffs' (including Mr and Mrs Mare).

the first and second respondent. Undoubtedly, there are a number of factual disputes which are not capable of being resolved by way of these discrete application proceedings.

[7] On this score, it is contended that these disputes, although they exist, are not relevant to the determination of this application. This specifically because, the applicants seek an order that an independent third party be interposed only for a limited period of time, alternatively, *pendente lite.* The applicants contend for a specific statutory remedy in terms of the relevant by-law.

IN LIMINE

[8] The active respondents put up a shield in the form of a counter-claim to the effect that the enabling section[4] is *ultra vires* the powers of the local municipality. More specifically that the wording thereof is vague and irrational. This, *inter alia*, in the following respects, namely; that it does not address matters such as the duration of the appointment of the administrator; that the requisite qualifications for an administrator are not outlined; that the remuneration of the administrator and the payment thereof is not engaged with and the circumstances under which the administrator may be removed are not specified in any manner or form.

[9] In order to promote this argument, the active respondents applied to join the local municipality as a respondent. The said municipality is so properly joined and is before court. The local municipality has since delivered a detailed answering affidavit in which it challenges the active respondents' *ultra vires* contentions in this connection. The active respondents also challenge the grounds upon which the applicants seek to invoke the enabling

[4] Section 30(1)(c) of the by-law.

section. An argument is also chartered to the effect that the jurisdictional requirements set out in the enabling section have not been met.

[10] In addition, some collateral challenges are also indicated, namely, that the active respondents complain about the appropriateness of the entity that the applicants propose as the administrator. So too, are the terms of the appointment of the administrator contested.

FACTUAL MATRIX AND RELEVANT BACKGROUND

[11] Initially, a development application was granted in favour of the owner and developer for the sub-division of the portion of a farm into (7) portions of land in terms of the Act.[5] These sub-divided portions, in turn of necessity, stood exempt from certain other planning provisions[6]. In due course, the establishment of the first respondent ensued.

[12] Thereafter, certain other exemptions followed in connection with a change of the land use relating to a portion of this parent property and following upon this a re-zoning was authorized in connection with the parent property. However, this seemingly never materialized and only one portion was thereafter correctly and formally re-zoned.

[13] Besides, a number of processes then followed culminating in, *inter alia*, a resolution[7] that was adopted determining that a requirement for the ultimate approval was that of a constitution in respect of a homeowners' association. This, comprising the owners of all the separated erven that came about in consequence of the sub-division of the parent property. Thus, the second respondent came into being.

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5 The Subdivision of Agricultural Land Act, 70 of 1970.
6 The Land Use Planning Ordinance, 15 of 1985 ('LUPO') - now the Western Cape Land Use Planning Act 2014.
7 A resolution at the instance of the 'Winelands District Council'.

[14] Various zoning processes and procedures then followed a similar route in respect of what may be loosely described as the entire former parent property. Thus, the first respondent came into being. Similarly, a resolution was adopted determining that a requirement for the ultimate approval was that of a constitution in respect of a homeowners' association. This became the first constitution[8] of the first respondent. The re-zoning of a portion of the property over which the second respondent exercised control, also gave rise to the obligation that the members of the second respondent were also similarly, to be members of the first respondent.

[15] In the end result, six of the seven sub-divided portions of the land became individual commercial farms and continued to be used as such thereafter. The first respondent was, *inter alia*, accordingly made up of the following; the owners of the six commercial farms that had derived from the sub-division of the parent property; the owners of (32) sectional title units that arose from the further sub-divisions of portions thereof; these being the (20) erven forming part of the second respondent and, this together with the (12) sectional title units in the sectional title scheme that was subsequently established.[9]

[16] The third to eighth respondents are owners of the farm properties and are members of the first respondent. According to the minutes of the meeting[10] (and after the launching of this application), six of the trustees were representatives of the owners of the six farms. Only one of the trustees (Mrs Liebenberg), was not such a representative.

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[8] The 2001 Constitution.
[9] The 'Santé Winelands Sectional Title Scheme'.
[10] The Annual General Meeting that was held on the 29th of November 2019.

[17] The ninth to twenty-sixth respondents are the owners of the properties that form part of both the first and the second respondent. The twenty-seventh to thirty-ninth respondents are the owners of the properties that constitute some of the neighbouring properties.

THE ENABLING 'BY-LAW'

[18] A local authority exercises its legislative and executive authority by the implementation of national and provincial legislation and by its own by-laws. In addition, it also passes its by-laws in connection with matters contemplated in section 11(3) of the Local Government : Municipal Systems Act[11]. This, together with the involvement of the Western Cape Department of Environmental Affairs and Development Planning.

[19] The empowering provisions in MSA deal, *inter alia*, with the administration and regulation of the local government affairs of a local community and, also the monitoring of the impact and effectiveness of any services, policies, programmes or plans, in respect whereof a local authority is empowered to pass by-laws and in connection with its decision making process.

[20] A local authority fulfils this mandate to administer land use and planning in accordance with LUPO. This, together the applicable scheme rules. Section 29 of the enabling legislation[12], gives a local authority the power to impose conditions in respect of the compulsory establishment of an - '*owner's association'* – this, when approving the sub-division of the land in question.

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[11] Act 3 of 2000 ('MSA').
[12] The Drakenstein Municipality By-Law on Municipal Land Use Planning: 2018.

[21] Section 29(2), in turn, indicates that the constitution of an owners' association falls to be approved by the appropriate local authority before registration of transfer of the first unit of the land in question.

[22] There are in existence specific requirements so as to enable a local authority to exercise this oversight function for the proper administration of properties falling within its area of jurisdiction. It is incontrovertibly so that a local authority is vested with the power to effectively manage these developments after the initial approval of the owners' association's constitutions. The argument is that a local authority also specifically has this unbridled power in a case where an owners' association ceases to function or to carry out its obligations.

[23] It is contended by the applicants, that it is in these circumstances, that a local authority has three discrete powers, namely; to cause the owners' association to be dis-established, or; to take action so as to rectify a failure by the owners' association to meet any of its obligations, or; to request the appointment of an administrator who must have the powers of the owners' association by way of an order of court.

[24] By way of elaboration, the argument is made that the first two of these powers would not yield any fruit while the third would lead to a positive outcome. The applicants say this for, *inter alia*, the following reasons; that it is for a local authority to ensure that the constitution of the owners' association is properly and correctly implemented; that it is necessary that a local authority be afforded the mechanism to achieve this desired result where neither of the first two remedies will be appropriate or effective.

[25] Moreover, the position is taken that section 11(3) of the MSA empowers a local authority to pass a by-law such as that embodied in section 30(1)(c). Further, in terms of section 156(5)[13], a local authority has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.[14]

CONSIDERATION

'DISPUTES OF FACT' AND THE VARIOUS 'CONSTITUTIONS'

[26] There are a number of disputed versions of the 'constitutions' of the first respondent before me on the papers. In addition, at the time when this application was launched, the relevant version that was seemingly applicable was the 'constitution' adopted during the course of 2010. Further, on the papers, a new constitution was adopted during the course of 2021. No doubt, there is a dispute as to the validity of a number of these 'constitutions'. Inextricably linked to these disputes, are the disputes connected with the validity of the appointment of the persons currently acting as the 'trustees' of the first and the second respondent.

[27] Some of these disputes have been simmering since at least 2017. A number of the applicants responded to these disputes by simply refusing to pay some or all of their levies which were imposed upon them. Some of the current arrears by some of the applicants are not insubstantial. Thereafter, they initiated the current application during the middle of 2019.

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[13] The Constitution of the Republic of South Africa,1996.
[14] *Cape Metropolitan Council v Minister for Provincial Affairs and Constitutional Development,* 1999 JDR 0625 (C).

[28] The active respondents adopt the position in their opposing papers that the trustees and management of the first respondent have engaged in extensive and extended attempts, over a considerable period of time, to resolve all these rather unsavoury disputes between the parties, by, *inter alia*, the following; by the establishment of a task team; by conducting an investigation and by the appointment of a mediator.

[29] The majority of the owners in the first respondent, the second respondent and the body corporate have meaningfully engaged in resolving these various challenges, including the terms of a new 'constitution' for the first respondent. Many mediation meetings were held as a direct result of these concerted efforts at compromise and resolution of these many disputes.

[30] It is part of the active respondents' case that the second and third applicants have attempted to undermine this 'resolution-process' as none of the applicants have made any attempt to resolve these ongoing disputes. A further complaint is raised that while the current application was pending, the first and fourth applicants and certain other members of the first respondent, instituted an action in which they sought declarations about the validity of some of the 'constitutions' adopted after the initial constitution.

[31] These action proceedings are pending. The validity of the latest constitution which was 'adopted' is also now challenged in these action proceedings.[15] The applicants to a large extent concede that these are issues that fall to be dealt with in the pending action proceedings.

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[15] This by way of a belated amendment to the particulars of claim.

THE 'LEGAL' DISPUTE

[32] The argument is that the proposed 'administrator' will not be able to deal with and decide on the legal disputes, specifically as to which 'constitution' is valid which in turn is inextricably linked to the voting rights of the members, including whether the trustees have been validly appointed, or not. It is indicated that only a court can decide on these issues. The applicants do not take issue with the 'legal dispute' argument as they indicate that these disputes, to a large extent, fall to be decided in the pending action.

THE 'RELATIONAL' DISPUTE

[33] To the contrary, the respondents contend that an administrator will not be placed in a position to resolve the issue of the animosity, *inter alia*, that the second applicant harbours for one of the other members whom, he has allegedly attempted to have be arrested. It is argued that it is precisely this species of animosity which continues to fuel the bitterness between the opposing factions in this development.

[34] Furthermore, it is the case for the active respondents that the appointment of an administrator cannot and will not resolve the underlying relational dispute. Put in another way, the appointment of an administrator will not be able to achieve the purpose for which it is supposedly and primarily sought.

THE 'ULTRA VIRES' ARGUMENT

THE 'BY-LAW'

[35] Section 30(1)(c) of the Drakenstein By-law on Municipal Land Use Planning, indicates as follows;

'If an owners' association ceases to function or carry out its obligations, any affected person, including a member of the association, may apply … to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association'

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[36] Section 156(1) provides that a local authority has executive authority in respect of, and the right to administer, *inter alia,* the local government matters listed in Part B of Schedule 4. Section 156(2), in turn, provides that a local authority may make and administer by-laws for the effective administration of the matters of which it has the right to administer. One of the matters listed in Schedule 4 Part B is *'municipal planning'*. A local authority may therefore make by-laws for the effective administration of municipal planning.

[37] The next enquiry is to attempt to analyse and interpret, within the proper context, the meaning of the term municipal planning. The term '*municipal planning'* has been defined as follows:

'...It is clear that the word 'planning', when used in the context of municipal affairs, is commonly understood to refer to the control and regulation of land use, and I have no doubt that it was used in the Constitution with that common usage in mind'[16]

[16] *Johannesburg Municipality v Gauteng Development Tribunal and Others* 2010 (2) SA 554 (SCA) para 41.

[38] The active respondents contend for the position that a local authorities power to control and regulate the use of land, by mere definition, does not include the power to regulate the functioning and activities of a homeowners' association. They say this because on the ordinary meaning of the wording of the by-law, the local authority has purported to legislate to require that an association carries out *'its obligations'* in unqualified terms. I am not persuaded and I am not in favour of this reasoning.

[39] A local authority is vested with ancillary powers and accordingly has the right to exercise any power concerning a matter *'reasonably necessary for, or incidental to, the effective performance of its functions'*. It must be so that in certain circumstances, which are of necessity, fact dependent, a local authority may very well be constitutionally clothed with certain powers to regulate the affairs of a homeowners' association. These powers may indeed be reasonably necessary for, or incidental to, a local authorities effective performance of municipal planning in the control and regulation of land use.[17] I accordingly do not find favour with the argument that section 30(1)(c) is beyond the powers of a local authority in that it is *ultra vires* and invalid.

IS THE BY-LAW 'TRIGGERD' IN THIS CASE?

[40] It is a trite principle of constitutional interpretation that where it is reasonably possible to construe a statute in such a way that it does not give rise to constitutional inconsistency, such a construction should be preferred to another construction which, although also reasonable, would give rise to such inconsistency.[18]

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[17] *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC).
[18] *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) para [23].

[41] Further, a statute may be 'read-down' to save it from unconstitutionality. Put in another way, it may be given a limited meaning, in order to bring it within the bounds of constitutionality. 'Reading down' is an interpretive tool in that it is:

'...a way to save a statutory provision from constitutional invalidity by giving it meaning – on its wording – that is constitutionally compliant'[19]

[42] Accordingly, upon a proper construction and reading of section 30(1)(c), it is possible to save it from invalidity by giving it a restricted reading. This, by interpreting it to have reference only to an owners' association to where an such an association ceases to function or carry out its obligations in such a manner, or with the result, that the municipality is unable to carry out its municipal planning function effectively.[20]

[43] I say this because a 'reading-down' would also be consistent with LUPO. At the time when the initial application was made for the sub-division, LUPO authorised the council to approve this subject to a condition that a homeowners association be established. As a matter of logic, the object of a homeowners association must be to control and regulate the use of the land which in turn relates to the municipal planning function of a municipality.

[44] The applicants do not make out a case or aver that the failures[21], of which they complain, have impacted on the local authorities effective control and regulation of land use. The fortieth respondent also does not charter this argument in that it does not allege that the unsavoury disputes that exist in the homeowners' associations have had any negative impact on the local authorities effective control or regulation of land use. For these reasons, I take

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[19] *Tronox KZN Sands (Pty) Ltd v KwaZulu Natal Planning and Development Appeal Tribunal and Others* 2016 (3) SA 160 (CC) para [38].

[20] It seems to me that the main complaint is that there are 'Annual Financial Statements' outstanding for some years.

[21] These failures now seem to be connected primarily with outstanding financial statements of the first and second respondent.

the view that section 30(1)(c) falls to be read down and saved from invalidity by a restrictive interpretation.

IS THE BY-LAW OF ANY 'ASSISTANCE' TO THE APPLICANTS?

[45] The active respondents contend that the first and second respondents are fully functional and continue to carry out their day-to-day administration. By contrast, the applicants take the position as a general proposition that a homeowners' association cannot be said to be functioning and carrying out its obligations merely because certain members, who do not have authority to manage the homeowners' association, unilaterally carry out the day-to-day administration. This, purportedly on behalf of that association.

[46] What this really means is that the core complaint is that the persons acting on behalf of the homeowners' association in carrying out this administration are not authorised to do so. This is the very issue that falls to be decided in the pending action proceedings. In this connection, the active respondents take the position that notwithstanding these festering disputes, the first and the second respondents are functioning homeowners' associations that are effectively administering and taking care of their day-to-day operations. Employees are paid, maintenance is done and creditors are settled.

[47] In summary, the active respondents argue that section 30(1)(c) is limited in its operation to municipal planning matters. Accordingly, it is not triggered in this case, because factually the associations are fully functional with regard to those matters. Put in another way, the jurisdictional facts for the appointment of an 'administrator', namely that the

homeowners associations have ceased to function or carry out their obligations with regard to municipal planning matters, is notably lacking. On this, I agree.

WOULD THE APPOINTMENT OF AN ADMINISTRATOR BE 'IRRATIONAL'?

[48] The applicants seek a statutory remedy. The power to appoint an 'administrator' in terms of section 30(1)(c), is and remains, a discretionary power. The active respondents argue that it would be irrational to appoint an administrator when the undisputed facts demonstrate no purpose in such appointment.

[49] The evidence exhibits that the active respondents have made a number of repeated attempts to have the dispute resolved, including through the appointment of mediators. It is advanced that the applicants have persistently objected to and obstructed those attempts. Therefore, it is argued that the appointment of an administrator will not resolve either the underlying legal dispute or the underlying relational dispute.

[50] This notwithstanding, the applicants do not say that if an administrator was appointed, that this would result in an agreement being reached on the way forward. This, with the resolution of all the legal disputes. Rather, they seek an order that the administrator is to resolve the legal dispute by making a decision as to the respective rights of the parties.

[51] However, in the same breath, the applicants concede in their replying affidavit, *inter alia*, that the validity of the 2010 Constitution (and therefore the consequential appointment

of the trustees), has to be determined by the court in the pending action proceedings. In my view, the appointment of an administrator in these circumstances would serve no rational purpose.

THE 'OUDEKRAAL' PRINCIPLE

[52] In a voluntary association, the members constitutionally bind themselves to act in a particular way in their relationships with each other in relation to the objects of the association. This principle has been explained by the Constitutional Court as follows:[22]

'The rule of law requires that no power be exercised unless it is sanctioned by law, and no decision or step sanctioned by law may be ignored based purely on a contrary view. It is not open to any of us to pick and choose which of the otherwise effectual consequences of the exercise of constitutional or statutory power will be disregarded and which given heed to. Our foundational value of the rule of law demands of us, as a law-abiding people, to obey decisions made by those clothed with the legal authority to make them or else approach courts of law to set them aside, so we may validly escape their binding force'

[53] Put in another way, an association established by a constitution cannot function if its members are permitted to pick and choose which of its decisions they will comply with. The voluntary associations that we are dealing with in this matter have been established because the relevant local authority in the exercise of its constitutional and statutory powers, specifically required the establishment of a homeowners' association as a condition for its

[22] *Economic Freedom Fighters v Speaker, National Assembly and Others* 2016 (3) SA 580 (CC) para [75].

approval of the sub-division of the land in question. These homeowners' associations are not organs of state as they are merely created as part of a statutory scheme.

[54] As a matter of logic, the applicants simply cannot ignore the adoption of their various disputed constitutions and the subsequent election of trustees that followed. This, on the basis that in their opinion this was not validly done. These disputes cannot fall to be resolved by the appointment of an administrator.

THE COUNTER-APPLICATION

[55] The old section 46 of the Sectional Titles Act[23] (now section 20 of the Sectional Titles Management Act, 8 of 2011), together with paragraph 19 of the schedule thereto, indicates that a body corporate, a local authority, a judgment creditor of the body corporate (for an amount of not less than R500,00), or any owner or any person having a registered real right in or over a unit, may apply to a court for the appointment of an administrator.

[56] Here, a court is given the power to appoint an administrator for an indefinite or a fixed period on such terms and conditions as to remuneration as it deems fit. The administrator is to have the powers and duties, to the exclusion of the body corporate or such of those powers and duties as the court may order or direct.

[57] There is accordingly in existence a legislative precedent for a local authority being afforded the power to seek the appointment by a court of an administrator to a sectional title body corporate. This must be so as our courts are obliged to give meaning to legislation,

[23] Act 95 of 1986.

however obscure, vague or intractable the language of such a statute may be. Undoubtedly, our courts have the power to declare sub-ordinate legislation void for vagueness. This, however must be done as a last resort.[24]

[58] The core question is whether the legislation in question creates substantial uncertainty in the minds of those who have to apply it or those to whom it applies. Accordingly, in deciding whether there is such substantial uncertainty in certain sub-ordinate legislation, only reasonable and not perfect lucidity is required.[25]

[59] The active respondents adopt the position that the impugned section does not prescribe matters such as the duration of the appointment of an administrator, the requisite qualifications for an administrator, the remuneration of the administrator or the circumstances under which the administrator may be removed. I disagree with this reasoning. I say this because, these are precisely matters that the court has the power to determine. The court is vested with a wide discretion to deal with these matters depending on the circumstances of each case.

[60] We are dealing here with a discretion in the form of a 'hole in a doughnut'. In these circumstances it is precisely the function of the court dealing with an application for the appointment of an administrator, to craft an appropriate order dealing with these matters. This, in the exercise of its discretion, always judicially exercised.

[61] Further, section 30(3) of the by-law provides that the local authority may seek to recover from the members of the owners' association the amount of any expenditure incurred

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[24] *The Master v IL Back and Co Ltd,* 1981 (4) SA 763 (CPD) at 770-771.
[25] *The Master v IL Back, supra,* at 771A.

by the local authority in respect of any action taken in terms of sub-section (1). In these circumstances, in my view, the active respondents attacks upon the validity of section 30(1)(c) have no merit and fall to be dismissed. This brings me to the issue of costs,

COSTS

[62] In my view, caution falls to be exercised in connection with the issuing out of a costs order against the applicants in these peculiar circumstances. I say this because the litigation which has been pursued by way of action, may turn out to be successful. The trial court dealing with this action, will in my view, no doubt be in the position of having the 'benefit of hindsight' having heard all the *viva voce* evidence in connection with these disputes.

[63] That having been said, it would also be inappropriate for the trial court to 're-consider' the costs of and incidental to this application - *afresh* – as it were. In the circumstances, in my view, the most appropriate order would be that the costs of and incidental to this application and the counter-application (as between the applicants and the active respondents), shall become costs in the main action. Put in another way, these latter costs are not reserved, but are ordered to be costs in the main action.

[64] However, the costs incurred by the fortieth respondent, remain on an entirely different footing. The active respondents were unsuccessful in connection with their 'invalidity challenges' and these are separate and discrete costs as far as the fortieth respondent is concerned. In the circumstances, these costs are to be paid by the active respondents.

CONCLUSION

[65] Most significantly, at the time when the application was launched, the active respondents were purportedly governed by the constitutional provisions as set out in 2010. This remains the subject of a factual dispute that cannot be decided in these application proceedings. This dispute reared its head in 2007.

[66] This dispute also extends its tentacles as to whether or not the current trustees of the first and second respondents have been validly appointed. This too, cannot be decided without *viva voce* evidence to be adduced by way of the pending action proceedings. These actions proceedings (so I am told), are due to be heard towards the middle of 2022.[26] In the action proceedings, the purported appointment of the alleged trustees is also sought to be set aside. It would accordingly be inappropriate to appoint an administrator for this interim period.

[67] It is for all these reasons, that the following order is issued out in connection with this application and the counter-application thereto, namely;

1. That the main application is dismissed.

2. That the counter-application is dismissed.

3. That the costs of and incidental to the main application and the counter-application, as between the applicants and the active respondents (the third to the thirty-ninth

[26] A number of specific declarations are sought in connection with the 'constitutions' set them aside.

respondents), inclusive of the costs of two counsel (where so employed), on the scale as between party and party (as taxed or agreed), shall become costs in the pending action proceedings under case number 11867/2020.

4. That the active respondents (the third to the thirty-ninth respondents), jointly and severally, the one paying, the others to be absolved, shall be liable for the costs of and incidental to the counter-application, incurred at the instance of the fortieth respondent, on the scale as between party and party (as taxed or agreed).

E. D. WILLE
Judge of the High Court
Cape town