



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

CASE NO: 133295/2024

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 29 May 2025

Signature: _____

In the matter between:

JAN SMALL

Applicant

And

THE CENTURION COUNTRY CLUB (PTY) LTD

First Respondent

**(THE CENTURION RESIDENTIAL ESTATE, SPORTS
AND SOCIAL CLUB)**

THE CENTURION HOMEOWNERS ASSOCIATION

Second Respondent

JUDGMENT

NYATHI J

- [1] This is an urgent application to interdict and restrain the first respondent from reverting the 12th hole of the Centurion Golf Course to a par 5 instead of a par 4 and to have this relief operating as an interim interdict with immediate effect pending the determination of the final relief to be heard under part B hereof subsequently.
- [2] The application is launched urgently premised on the need to protect the safety of life and property of the applicant as well as adjacent 12th fairway homeowners.
- [3] The dispute pertains to whether the playing conditions of the 12th hole, par 5, create unreasonable dangerous risk to life and property to adjacent fairway homeowners, especially the applicant, from stray shots hit from the tee box which have a landing zone on or near applicant's house or other houses in the vicinity.
- [4] The first respondent oppose this application and its urgency submitting that the factual issue relevant to this matter is whether there is an imminent danger to the applicant being struck by stray golf balls should the 12th hole not be reverted back to a par 4.
- [5] The first respondent submits that there is no such imminent risk because over the close to 28 years that the 12th hole of this course has been played as a par 5, there was only 1 incident on which a person was struck by a stray golf ball, which was to the left of the 12th hole fairway, whilst the applicant's property is situated on the right. There is no basis to claim that there is an imminent risk that the applicant would be struck by stray golf balls. Further, similar to any risk associated with properties situated immediately next to a golf course, the current statistics show that there is a low percentage of balls which currently land on the applicant's property. On average around 0.4 balls a day, which is very reasonable.

[6] The first respondent thus counters the application as follows:

6.1 On urgency, the first respondent submits that there is no imminent risk of harm and thus no basis for urgency whatsoever.

6.2 On the relief sought by the applicant, the first respondent submits that the applicant himself accepts that the 12th hole should not be played as a par 4. Thus, the applicant's own submissions militate against the relief he seeks in the urgent application.

[7] In response to the launch of the application in the last quarter of 2024, the first respondent gave the applicant a formal undertaking from 25 November 2024 to 31 January 2025 in which the contentious 12th hole would be played as a Par 4 layout pending negotiations between the parties.¹

[8] The effect of the undertaking, it became common cause between the parties, is that the applicant and his neighbour Suren's properties were spared the stray shots because the houses further down the fairway became the landing zone of these stray shots.²

[9] The respondent has conceded that the 12th hole was conceptually flawed in design.³

¹ Confirmatory affidavit of Mr Pritchard, attorney for the first respondent at para 4.

² Applicant's replying affidavit para 5.2.

³ Annexure "JS 1" – a transcript of a meeting held on 2 February 2024, page 25 line 10 – referred to in replying affidavit para 5.6.

[10] The applicant has annexed volumes of photographic evidence to his founding affidavit (Annexures FA3 to 20) including physical injuries sustained (Annexure 8). The risk of bodily injury has thus far been realised in this instance.

[11] The requirements for an interim interdict are trite by now the applicant must:

11.1 establish a *prima facie* right even if it is open to some doubt.⁴

11.2 show a well-grounded (or reasonable) apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted.

11.3 show that the balance of convenience favours the granting of an interim relief. And,

11.4 there is no other alternative remedy available to him.

[12] It is the applicant's contention that he (and his family) confine themselves to his house out of fear of being hit by golf balls when going outside.⁵

[13] Mr Greyling referred to the Supreme Court of Appeal ('SCA') matter of *Allaclas Investments (Pty) Ltd and Another v Milnerton Golf Club and Others*⁶ where Counsel at the time, Mr Binns-Ward (as he then was), referred to Traverso DJP's quotation with approval in her *a quo* judgment in the matter, of Sheppard AJA in the New South Wales Court of Appeal in *Campbelltown Golf Club Ltd v Winton* 1998 NSWSC 257. Sheppard AJA was quoted as saying:

⁴ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

⁵ Replying affidavit para 21.

⁶ [2007] SA 167 SCA at para [16].

“But what they were not bound to accept was a situation such as was suffered by the respondents in which their property was peppered with golf balls on a daily basis, thus posing a threat, not only to the respondents’ property but also to their physical safety. The golf course was obliged so to construct the hole as to divert balls hit normally away from their property. This could be done by resiting the direction of the hole or by appropriate screens, whether natural or artificial, or a combination of both as indeed has apparently happened.”

[14] In *Allaclas Investments (supra)*, an important consideration that the SCA took into account in holding that the nuisance caused by the golf balls was unreasonable, was that although the neighbouring owners had known that their properties were prone to being struck by golf balls when they had bought property adjacent to a golf course, the specific hole had been designed so poorly that it created an unreasonable safety risk for the neighbouring owners.⁷

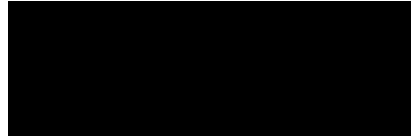
[15] From the above considerations, I am satisfied that the applicant has made out a compelling case for the relief he seeks. Accordingly, the applicant succeeds in Part A of his application, to wit, the interim interdict. Costs must follow the outcome as is the norm.

[16] The following order is made:

1. This application is heard as urgent in that the forms, service and time periods prescribed in terms of the Uniform Rules of Court were dispensed with in terms of Rule 6(12) of the Uniform Rules of Court.
2. The first respondent is interdicted and restrained from reverting and changing the 12th hole of the Centurion Golf Course to a par 5 instead of a par 4, as it is currently played.

⁷ Neethling Potgieter Visser – Law of Delict 7ed at 128 ft 695.

3. The relief set out in sub-paragraph 2 above, operates as an interim interdict with immediate effect pending the determination of the final relief set out in Part B of the application.
4. The first respondent to bear the costs of this application on a party and party scale B.



J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 20/02/2025

Date of Judgment: 29 May 2025

On behalf of the Applicant: Adv. PJ Greyling
Instructed by: Dreyer & Dreyer Attorneys, Pretoria

On behalf of the Defendants: Adv. R Bekker
Instructed by: Cox Yeats Attorneys, Sandto2

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 29 May 2025.