



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

Case number: 2023-131988

2024-135959

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
6 June 2025 DATE _____ SIGNATURE	

In the matter between:

SPOTPROPS 34 (PTY) LTD

Applicant

and

BRIDGETOWN BODY CORPORATE

First Respondent

AMOS SHABA N.O.

Second Respondent

ANDREW MATAKE N.O.

Third Respondent

MTHULISI HLONGWANE N.O.

Fourth Respondent

SYDNEY LEKALAKALA N.O.

Fifth Respondent

MANDY QWABE N.O.

Sixth Respondent

BONGANI MASETI N.O. **Seventh Respondent**

BASETSANA NYONI N.O. **Eighth Respondent**

MUSA ICAN MASINGE N.O. **Ninth Respondent**

**[the 2nd to 9th respondent are cited in their capacities as the trustees of the
Bridgetown Body Corporate]**

In the matter between:

SPOTPROPS 34 PTY LTD **Applicant**

and

THE COMMUNITY SCHEMES OMBUD SERVICES **First Respondent**

THE ACTING CHIEF OMBUD:

KEDIBONE PHETLA N.O. **Second Respondent**

LUNGISWA TSHAKA N.O. **Third Respondent**

BLACKPEARL INVESTMENT PRIMARY

CO-OPERATIVE (PTY) LTD **Fourth Respondent**

THE BODY CORPORATE OF BRIDGETOWN **Fifth Respondent**

JUDGMENT

WINDELL J

Introduction

[1] The applicant, Spotprops 34 (Pty) Ltd, is the registered owner of 20 units in the Body Corporate of Bridgetown (the Body Corporate). Two applications serve before this Court. In the first, brought under case number 2023-131988 ('the 2023 application'), the applicant seeks, inter alia, an order rescinding and setting aside the appointment of the trustees of the Body Corporate. In the second, under case number 2024-135959 ('the 2024 application'), the applicant seeks an order reviewing and setting aside the decision of the First and Second Respondents (collectively referred to as 'the ombud') to appoint the Third and Fourth Respondents as the executive managing agent ('the EMA') of the Body Corporate (the fifth respondent).

[2] Both applications are opposed by the Body Corporate. In the 2024 application, the ombud have delivered a notice to abide by the decision of this Court. The EMA has not filed a notice of intention to oppose.

The 2023 application

[3] The second to ninth respondents in this application (the trustees) have since resigned, rendering the relief sought against them moot. The applicant nonetheless persists with the alternative relief sought against the Body Corporate, namely that the ombud be directed to provide the Court with the name of a suitably qualified and independent person, with appropriate experience in sectional title schemes, to be considered for appointment as administrator. It is further sought that the ombud furnish a report on the suitability of such person within 15 days of the order. Subsequently, the Body Corporate proposed the name of Andrew Swanepoel for consideration.

[4] The Body Corporate has raised a point in limine, namely *lis alibi pendens*. It contends that the alternative relief sought by the applicant in the present application is closely connected to, and substantially similar in nature to, the relief sought in a 2022 application instituted by the Body Corporate, in which the Body Corporate itself seeks the appointment of an administrator. In that application, the name of Andrew Swanepoel was likewise proposed for such appointment.

[5] It is trite that three requirements must be met for a successful reliance on *lis alibi pendens*: (i) the litigation must be between the same parties; (ii) the cause of action must be the same; and (iii) the same relief must be sought in both sets of proceedings. In *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others*,¹ Wallis JA explained the doctrine of *lis pendens* as follows:

“As its name indicates, a plea of *lis alibi pendens* is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It has been a plea that has been recognised by our courts for over 100 years.”

[6] It is common cause that the 2022 application, instituted by the Body Corporate, remains pending and involves the same parties as the present matter. That application similarly seeks the appointment of an administrator to manage the affairs of the Body

¹ 2013 (6) SA 499 (SCA).

Corporate, and in it, the same individual—Andrew Swanepoel—was proposed for consideration. As the relief sought in the present (2023) application is substantially the same, and no material distinction exists in respect of the cause of action or the remedy sought, the requirements for *lis alibi pendens* are met. Accordingly, the 2023 application falls to be dismissed on this basis.

[7] The defence of *lis alibi pendens* was raised as early as February 2024. Despite this, the applicant persisted with the 2023 application, denying the applicability of the defence in both its replying affidavit and its heads of argument. In doing so, the applicant unnecessarily prolonged the proceedings and caused the Body Corporate to incur additional costs in opposing relief that ought not to have been pursued. In the circumstances, the Body Corporate is entitled to a punitive costs order.

The 2024 application

[8] The background facts leading to the appointment of the EMA are largely common cause. The parties outlined how, over the years, internal conflict, factionalism, and personal vendettas among members of the Body Corporate have undermined its ability to function effectively. The Body Corporate has, at times, been deadlocked on key decisions and has generally been poorly governed and administered. As matters currently stand, the Body Corporate has no trustees, following the resignation of all trustees in March 2024.

[9] The Prescribed Management Rules ('PMR') of the Regulations to the Sectional Titles Schemes Management Act No.8 of 2011 ('the STSMA'), provides for the appointment of an executive management agent (EMA). PMR 2 (1)(g) defines an EMA

as a ‘managing agent appointed to carry out all the functions and powers of the trustees’ in terms of PMR 28.

[10] PMR 28 sets out the circumstances in which an EMA may be appointed. It provides, inter alia, that:

‘28 (1) The body corporate may, by special resolution, appoint an executive management agent to perform the functions and exercise the powers otherwise exercised by the trustees; (2) Members entitled to 25 per cent of the total quotas of all sections may apply to the Community Scheme Ombud Service for the appointment of an executive managing agent’ .

[11] The EMA was appointed by the ombud on 14 October 2024 in terms of the second regulation 28(2) of the Rules. On 21 October 2024, the applicant’s attorneys addressed a letter to the ombud requesting the documentation relied upon for the appointment. On 24 October 2024, the ombud requested that the applicant submit a form in terms of the Promotion of Access to Information Act (PAIA).² The PAIA form was completed and submitted on 29 October 2024. On 8 November 2024, the ombud provided all documentation except the resolution taken by 25 % of the total quotas of all the sections. The applicant was only able to inspect the resolution on 14 November 2024.

[12] It is the applicant’s case that the procedural requirements for the EMA’s appointment were not complied with. The applicant contends that the ombud erred in accepting that members holding the requisite 25% participation quota had validly resolved

² 2 of 2000

to seek the appointment of an EMA. It is therefore submitted that the resolution is invalid and insufficient to support the appointment of the EMA.

[13] Firstly, according to the Body Corporate, 32% of owner members supported the appointment. However, the applicant disputes this, alleging that the actual participation quota reflected in the signed resolution is only 30.1%, as detailed in annexure FA14. Secondly, the signatories to the resolution allegedly include 40 individuals who are not registered owners. Annexure FA15 sets out a comparison between the registered owners and the names and signatures on the resolution. Annexure FA16 contains the relevant Deeds search results for each unit. Upon excluding the non-owners and invalid signatories, the applicant calculates that only 14.9% of the participation quotas supported the resolution, falling short of the 25% threshold required by PMR 28(2). Thirdly, some signatories appear more than once on the resolution. There are instances where the same signature was used for different units, and there are no proxies or delegations of authority for units held in the name of trusts or companies.

[14] It is submitted that taking all of these discrepancies into account, the threshold of 25% was not met. Consequently, the decision of the ombud to appoint the EMA was unlawful and falls to be set aside.

[15] The Body Corporate submits that the applicant's case is without merit, frivolous, and constitutes an abuse of court process. It argues that the application is brought by a former developer who still owns units in the scheme and whose interests are misaligned with those of the broader Body Corporate. The appointment of the EMA, so it is submitted,

was properly made in terms of PMR 28(2) following a resolution which they claim was supported by owners holding over 25% of the participation quotas.

Evaluation

[16] During the hearing, it became apparent that the crux of the dispute concerns whether proxies were utilised in instances where the owners themselves did not sign the resolution, but another individual did so on their behalf. In the absence of proof that valid proxies were used, the legality of the EMA's appointment is called into question—a matter that raises issues of both procedural fairness and compliance with statutory requirements.

[17] PMRs 20(5), 20(6), and 20(7) make it clear that voting rights vest in registered owners, and where sections are jointly owned, votes must be exercised jointly or through a duly authorised proxy. The applicant raised detailed concerns that several individuals who signed the resolution were not registered owners and questioned the absence of documentation authorising signatories acting on behalf of juristic persons such as trusts or companies. If substantiated, these deficiencies are material—not merely technical—as they go to the validity of the resolution and the lawfulness of the EMA's appointment

[18] In its answering affidavit filed on 27 November 2024, the Body Corporate attached a spreadsheet marked “MH7”, which purportedly identifies proxy holders and records the delegation of authority for certain signatories to the resolution. Upon perusal of this document, the applicant disputed its evidentiary value, and in its supplementary affidavit, detailed the steps taken to verify its authenticity and origin. The issue of proxies, specifically the absence of valid authorisations and supporting documentation, was also

expressly raised in the applicant's replying affidavit, where it was contended that MH7 lacked the necessary formality and could not cure the underlying procedural defects.

[19] As part of this verification process, the applicant contacted Mr Ryan van der Westhuizen, legal advisor to the ombud, on 28 November 2024 to enquire whether annexure MH7 had formed part of the original application for the appointment of the EMA. Later that day, Mr van der Westhuizen responded that he would consult the relevant department. On 29 November 2024, he forwarded an email from Advocate Bululeni Gwebeni to the applicant's attorney, confirming that annexure MH7 had not been included in the application submitted to the ombud.

[20] This undisputed evidence supports the applicant's contention that the ombud acted on procedurally flawed information and that the resolution underpinning the EMA's appointment was materially defective. The Body Corporate's failure to engage meaningfully with or rebut this critical aspect of the applicant's case is, in the circumstances, fatal to its opposition.

[21] The evidence reveals a material deficiency in the process followed by the ombud. The EMA was appointed without requiring proof that individuals who voted—particularly those acting on behalf of trusts, companies, or jointly registered owners—were duly authorised to do so. There was no confirmation that those who supported the resolution had lawful authority to act on behalf of the registered sectional title holders. The ombud failed to verify the existence of valid proxies or supporting resolutions and instead relied on unverified and potentially misleading documentation. This omission disregarded a

critical consideration—whether the resolution was supported by persons legally entitled to vote—and seriously undermines the legitimacy of the voting process.

[22] Although the Body Corporate alleged that 32% of members voted in favour of the EMA, the applicant produced credible evidence (including annexures FA14–FA16) showing that this figure was overstated. Once non-owners and duplicate signatures were excluded, only 14.9% of participation quotas supported the resolution—well below the statutory 25% threshold required under PMR 28(2).

[23] In terms of its enabling legislation, the ombud bears a responsibility to act on accurate, reliable, and lawfully obtained documentation. By failing to verify the authenticity and sufficiency of the resolution and supporting material, the ombud did not discharge this duty. Given the flawed resolution and lack of supporting documentation, the decision to appoint the EMA was not rationally connected to the information before the ombud. No proper factual or legal basis existed for concluding that the 25% quota threshold had been met. The ombud's failure to oppose these review proceedings is telling and reinforces the inference that its decision cannot be meaningfully defended on the facts or the law.

[24] The applicant has shown that the appointment was based on a flawed and inflated resolution, unsupported by the necessary proxies or confirmation of valid authority. The ombud's failure to ensure procedural compliance renders its decision reviewable and unlawful.

[25] Accordingly, the decision to appoint the EMA falls to be reviewed and set aside in terms of sections 6(2)(b), (c), (e)(iii), and (f)(ii)(cc) of the Promotion of Administrative Justice Act 3 of 2000.

Costs

[26] In considering the issue of costs, I am mindful of the Body Corporate's precarious financial position, the broader dysfunction in its governance, and the protracted history of this dispute. Although the applicant has succeeded in the 2024 application, I am satisfied that it would not be just or equitable to burden the Body Corporate with a costs order in these circumstances. No order as to costs is therefore made.

[27] In the result the following orders are made:

Case number 2024-135959

1. The decision of the First and Second Respondents to appoint the Third and Fourth Respondents as executive managing agent of the fifth respondent is reviewed and set aside.
2. No order as to costs.

Case number: 2023-13988

1. The application is dismissed with costs on an attorney client scale.

L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 6 June 2025.

APPEARANCES

For the applicant	Ms De Wet
Instructed by:	Verton Moodley and Associates Inc.
For the fifth respondent:	Ms Gxogxa
Instructed by:	Mduzulwana Attorneys Inc
Date of hearing:	7 May 2025
Date of judgment:	6 June 2025