



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

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: YES

Case A2023-126436

Date: 26 March 2025

In the matter between:

THE BODY CORPORATE OF CENTRAL SQUARE

Appellant

And

PENELOPE BECK-PAXTON N.O.

First Respondent

ANDRE ANDREAS N.O.

Second Respondent

**THE CHIEF OMBUD OF COMMUNITY SCHEMES
OMBUD SCHEMES**

Third Respondent

PHILIP IAN TILLMAN

Fourth Respondent

Coram: Du Plessis J, Sutherland DJP, Davis J

JUDGMENT

DU PLESSIS J (with whom SUTHELAND DJP and DAVIS J concurring)

Introduction

[1] This is an appeal against the judgment of Dosio J,¹ which dismissed the Body Corporate's application to review two adjudication orders issued by the Community Schemes Ombud Services adjudicators ("adjudicator(s)") under the Promotion of Administrative Justice Act ("PAJA").²

[2] This appeal proceeded on the premise that both adjudication orders ruled in favour of the fourth respondent, Mr Tillman, against the appellant, the Body Corporate of Central Square ("the Body Corporate"). In both instances, so was initially asserted, the adjudicators found that the Body Corporate's amendments were unlawful and that Mr Tillman's rights as a unit owner had been improperly affected. The Body Corporate submits that both adjudicators erred in law when interpreting the Sectional Titles Act³ ("STA") and the Sectional Titles Schemes Management Act⁴ ("STSMA").

[3] The High Court upheld the validity of the adjudication orders, and this appeal challenges that decision.

[4] On 4 May 2016, Mr Tillman entered into a sale agreement to purchase a residential unit in the Central Square sectional title scheme, a mixed-use sectional title scheme developed by Lushaka Investments (Pty) Ltd in phases. The agreement specified that upon the opening of the sectional title register, residential unit owners would collectively hold 50% of the voting rights and would be liable for 60% of the total

¹ *Body Corporate of Central Square v Paxton N.O* [2023] ZAGPJHC 24.

² 3 of 2000.

³ 95 of 1986.

⁴ 8 of 2011.

scheme expenditure. It also stipulated that the developer would retain the right to develop the scheme in phases, as contemplated in section 25 of the STA, and to allocate exclusive use rights over portions of the common property.

[5] On 2 October 2017, the developer amended the prescribed default management rules under section 10(2)(a) of the STSMA⁵ before opening the sectional title register on 27 October 2017. This amendment aligned the scheme with its anticipated mixed-use nature.

[6] In January 2019, the developer exercised its right of extension under section 25(1) of the STA,⁶ creating a non-residential component. It then further amended the management rules, altering the participation quota of the mixed-use scheme.

The first adjudication (2017 Amendment)

[7] In the first adjudication concerning the 2017 amendment, Ms Beck-Paxton concluded that Mr Tillman's written consent was not obtained before the amendment of the management rules as required by section 11 of the STSMA and that he was adversely affected by the rule. However, the application was dismissed because Mr Tillman did not bring it within the required time limit prescribed in section 41 of the

⁵ Section 10(2) "The rules must provide for the regulation, management, administration, use and enjoyment of sections and common property, and comprise- (a) management rules, as prescribed, which rules may subject to the approval of the chief ombud be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, to the extent prescribed by regulation, and which rules may be substituted, added to, amended or repealed by unanimous resolution of the body corporate as prescribed;"

⁶ Section 25. "Extension of schemes by addition of sections and exclusive use areas or by addition of exclusive use areas only.-(1) A developer may, subject to the provisions of section 4 (2), in his or her application for the registration of a sectional plan, reserve, in a condition imposed in terms of section 11 (2), the right to erect, complete or include from time to time, but within a period stipulated in such condition or such extended period as may be agreed upon (by unanimous resolution of the body corporate and with the consent of the bondholders existing on the date of the taking of the unanimous resolution, which resolution and consent must be obtained by the notary and filed in his or her protocol) prior to the expiry of the stipulated period, by way of a bilateral notarial deed, for his or her personal account-

- (a) a building or buildings;
- (b) a horizontal extension of an existing building;
- (c) a vertical extension of an existing building,

on a specified part of the common property, and to divide such building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more sections, or to delineate exclusive use areas on or in specified parts of the land and buildings in terms of section 5 (3) (f) and to confer the right of exclusive use over such areas upon the owner or owners of one or more sections."

Community Schemes Ombud Services Act ("the CSOSA").⁷ She ordered that the association had to, within 30 days of the order, call a general meeting of its members dealing with these issues.

[8] The Body Corporate applied to review the second adjudication order, but the court a quo dismissed the application.

[9] Initially, the Body Corporate sought to appeal the dismissal of both adjudication orders. However, since the first complaint was dismissed due to non-compliance with the time limit in section 41 of the CSOS Act, the Body Corporate erroneously sought a review in the court a quo, and will not be considered by this court. The effect of the dismissal is that the 2017 amendment to the management rules remained valid and binding. There is no basis for further review or setting aside the 2017 amendment.

[10] Furthermore, the adjudicator directed that a general meeting be convened to discuss the 2017 certificate and the composition of the Body Corporate. That meeting has already taken place. Consequently, any submission relating to section 39(3)(c) and (d) of the CSOS Act is moot and will not be considered by this court.

[11] As a result, the scope of this court's consideration is substantially narrowed. The only remaining issue before this court is the appeal against the dismissal of the second review application, which concerns the 2019 amendments.

The second adjudication (2019 Amendment)

[12] In 2019, the developer, exercising its reserved right to extend the scheme and create a non-residential component, issued a further certificate amending the management rules. Mr Tillman contends that this amendment altered the participation quotas and introduced a new levy apportionment method, which benefited the owner of the commercial section, namely, the developer itself. The Body Corporate submits

⁷ 9 of 2011.

that sections 32(2)⁸ and 11(2)⁹ of the STA grant the developer the authority to structure participation quotas as it did.

[13] In the second adjudication, concerning the 2019 amendment, the adjudicator, Mr Andreas, set aside the amendment, holding that it was inconsistent with statutory provisions, as it was not passed by unanimous resolution, as required, and that it unfairly shifted financial burdens onto residential owners, rendering it procedurally and substantively unlawful.

[14] The court a quo dismissed the Body Corporate's review application. It upheld the adjudicator's finding that the amendment was unlawful because it was not passed by a unanimous resolution, as required under section 10(2)(a) of the STSMA, and that it adversely affected residential owners without their written consent, contrary to section 11(2)(b) of the STSMA.¹⁰ The Body Corporate appeals this ruling, submitting that the court a quo misapplied these provisions by failing to consider the developer's reserved rights under section 25 of the STA read with section 10(7) of the STSMA,¹¹ and because Mr Tillman had consented to this in his sale agreement. The existence and exercise of the right of extension under section 25 of the STA is not in dispute.

[15] The court a quo also granted relief under section 8(1)(d) of PAJA. The Body Corporate submits that this was procedurally improper, as the court could not grant

⁸ "Section 32 (2) Subject to the provisions of section 17 of the Sectional Titles Schemes Management Act, in the case of a scheme other than a scheme referred to in subsection (1), the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer: Provided that-

(a) where a scheme is partly residential as defined in any applicable operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law, the total of the quotas allocated by the developer to the residential sections shall be divided among them in proportion to a calculation of their quotas made in terms of subsection (1);

(b) where a developer alienates a unit in such a scheme before the sectional title register is opened, the total of the quotas allocated to the respective sections and the participation quota of that unit must be disclosed in the deed of alienation; and

(c) where such disclosure is not made, the deed of alienation shall be voidable at the option of the purchaser and that the provisions of section 25 (15) (b) shall mutatis mutandis apply in respect of any such alienation."

⁹ Section 11 (2) "When making application for the opening of a sectional title register and the registration of a sectional plan, a developer may in the schedule referred to in subsection (3) (b) impose registrable conditions."

¹⁰ Section 11(2)(b) (b) "Where an owner is adversely affected by such a decision of the body corporate, his or her prior written consent must be obtained."

¹¹ Section 10(7) "A developer or a body corporate may make management or conduct rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate."

such relief without first declaring the amendment invalid under PAJA or without a counterapplication by Mr Tillman.

On appeal

[16] A sectional owner's dominium is inherently limited due to the nature of sectional titles as "fragmented land tenure".¹² Ownership of the section is limited by the enforcement of other real rights and restrictive conditions endorsed on the title deed or indicated on the sectional plan. What legislation does is to define the nature of the relationship between the developer, the body corporate and the owner. The dispute in the second adjudication is a good example of why this is necessary.

[17] The STA defines and regulates the relationship between the three key parties in sectional ownership: the developer, the sectional owner, and the body corporate. It is important to reiterate that when a sectional plan is registered at the Deeds Registry, an application for the opening of a sectional title scheme is lodged. As part of this process, and in terms of section 10(2) of the STSMA,¹³ a certificate by a conveyancer must be lodged to confirm whether the prescribed management rules have been substituted or amended.¹⁴

[18] In this case, such a certificate was filed in October 2017, introducing amendments to certain management rules, particularly those concerning participation quotas and levies. Since the first adjudication dismissed Mr Tillman's complaint regarding these amendments on procedural grounds, the 2017 management rules remain valid and binding.

¹² JG Horn *The legal effect of rights specific to sectional title property in South Africa, with reference to selected aspects of the Australian and Dutch law* (2018) LLD, NWU at p 81.

¹³ Section 10(2) "The rules must provide for the regulation, management, administration, use and enjoyment of sections and common property, and comprise- (a) management rules, as prescribed, which rules may subject to the approval of the chief ombud be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, to the extent prescribed by regulation, and which rules may be substituted, added to, amended or repealed by unanimous resolution of the body corporate as prescribed; and

(b) conduct rules, as prescribed, which rules may, subject to the approval of the chief ombud, be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, and which rules may be substituted, added to, amended or repealed by special resolution of the body corporate, as prescribed: Provided that such conduct rules may not be irreconcilable with any prescribed management rule contemplated in paragraph (a)."

¹⁴ JG Horn *The legal effect of rights specific to sectional title property in South Africa, with reference to selected aspects of the Australian and Dutch law* (2018) LLD, NWU at pp 84 – 85.

[19] Section 25(1) of the STA then governs the developer's right to extend the scheme, allowing for the construction of additional sections or the further development of the common property as initially envisaged in the sectional plan. This provision must be read together with section 10(7) of the STSMA, which empowers the developer to make rules conferring exclusive use rights over portions of the common property without requiring the consent of the Body Corporate or individual unit owners.

[20] When a developer exercises this right, it binds the common property of the sectional title scheme, meaning that all sectional owners' rights are inherently affected due to their co-ownership of the common property. The Body Corporate submits that the 2019 amendments were lawfully made in terms of section 10(7) of the STSMA, read with section 25(1) of the STA, submitting that the developer acted within its rights when making these changes.

[21] The right to extend a sectional title scheme by adding new units and/or exclusive use areas is established at the inception of the scheme, when the developer, who at that stage is still the sole owner of the land and applies for the opening of the sectional title register at the Deeds Registry. This right is then incorporated as a registered condition of the newly established scheme and is recorded in a certificate prepared by a conveyancer, which is submitted alongside the application to open the sectional title register.¹⁵ Once exercised, this right directly impacts sectional owners' co-ownership in the common property, as the extension of the scheme introduces new sections and may alter participation quotas or exclusive use allocations.

[22] For this reason, the legislation seeks to balance the developer's flexibility to expand the scheme in response to market demands or other considerations, and the purchaser's right to full disclosure, ensuring that they have sufficient information to make an informed decision when acquiring a unit.¹⁶

¹⁵ JG Horn *The legal effect of rights specific to sectional title property in South Africa, with reference to selected aspects of the Australian and Dutch law* (2018) LLD, NWU at p 103.

¹⁶ CG Van der Merwe *Sectional Titles, Share Blocks And Time-sharing* (2025) at 12-89

[23] To achieve this balance, the right of extension must be disclosed in the deed of alienation to every purchaser in the scheme.¹⁷ This includes details of exclusive use areas, which must be clearly indicated on a sectional plan.¹⁸ Nothing on the record suggests that this requirement was not complied with in this instance.

[24] Within this context, the sale agreement must be assessed, particularly in light of the statutory requirements governing the disclosure of the developer's right of extension and whether Mr Tillman was adequately informed of any potential changes to the scheme. Clause 25 of the sale agreement stated:

"It is recorded that the seller will develop the scheme in phases as contemplated in Section 25 of the Act and will reserve, on the opening of the Sectional Title Register, the right, in its favour, to erect and complete, from time to time, for its own account, further buildings on specified parts of the common property as indicated on annexure 4 read with annexure 8, and to divide those buildings into sections and common property and to confer the right of exclusive use over parts of the common property upon the owner or owners thereof." [own emphasis]

[25] This is then what the 2019 amendments did, by providing:

"1. In terms of Section 10(7) of the Act, the management rules have been added to by the allocation of exclusive use areas in terms of Section 10(8)(a) and (b) of the said Act as will more fully appear from the Lay-Out Plans attached marked annexures "A1" to "A5" and read with the Schedule annexed marked annexure "B".

2. In terms of Section 10(2)(a) of the Act, read together with section 25(1) of the Sectional Titles Act 95 of 1986, the management rules are added to by the insertion of the following additional rules:

2.1 In terms of section 3(1)(c) of the Act, the owners of the commercial units to which rights of exclusive use and enjoyment of defined parts of the common property allocated in accordance with these rules and, similarly, rights of owners of residential units to whom the rights of exclusive use and enjoyment of defined parts of the common property allocated in accordance with these

¹⁷ Section 25(14) of the STA.

¹⁸ Section 25(2)(b) of the STA.

rules shall be responsible, either singularly where such rights have been allocated to one section directly or jointly, where rights are allocated to one or two or more sections, be responsible for the costs of the insurance and maintenance of such parts of the common property. Such costs shall be allocated to the particular owners in accordance with the ratio that each section bears to the total area of all of the sections entitled to the joint exclusive use rights of that part of the common property.

This Certificate is made in terms of the Community Scheme known as CENTRAL SQUARE SS 661/2017 situate at Portion 1 of Erf 1735, Morningside Extension 170 Township." [own emphasis]

[26] Thus, the Body Corporate complied with the statutory requirements regarding the extension and exclusive use areas. The developer had disclosed its right of extension and its authority to determine exclusive use areas in the contract of sale. Mr Tillman was made aware of these provisions before purchasing his unit. He proceeded with the transaction, thereby binding himself to the 2019 amendment by virtue of the deed of sale, read with section 25(1) of the STA and section 10(7) of the STSMA. The 2019 amendment implements the developer's right to extend the scheme and to allocate exclusive use rights. Section 3(1)(c) of the STSMA permits the developer to apportion financial responsibility for maintenance and insurance to those benefitting from these exclusive areas.

[27] There appears to have been a conflation between the 2017 and 2019 amendments, particularly regarding the claim that levies nearly doubled due to the 2019 amendment, in both the adjudication and the court a quo. The 2017 amendment, which addressed, among other things, levies and participation quotas, aligned the provisions of the sale agreement with the mixed-use nature of the development.

[28] The 2019 amendment, therefore, did not alter the management rules governing levies or participation quotas, as those matters had already been addressed in the 2017 amendment. Any challenge to the 2017 rules in the second adjudication should be disregarded, as the validity of those rules was not before the second respondent.

Furthermore, the 2017 amendment remains valid and binding, for the reasons already discussed.

[29] For these reasons, I disagree with the findings and order of the court a quo regarding the 2019 adjudication. The adjudicator's decision was influenced by a material error of law and is accordingly declared invalid and set aside. Since the court a quo erred in setting aside the 2019 amendments, its order must be reversed.

Relief granted in terms of PAJA

[30] The Body Corporate submits that section 8(1)(d) of PAJA is only triggered once a declaration of invalidity has been made in terms of section 6(1) of PAJA. Since the court a quo did not make a finding of invalidity, the remedies provided under section 8(1)(d) were not available.¹⁹ No relief under section 8(1)(d) could lawfully be granted without such a declaration. Accordingly, the relief granted by the court a quo under section 8(1)(d) of PAJA is set aside.

Costs

[31] The Body Corporate sought an order for costs, including the costs of two counsel. Although the issues ultimately before this court were significantly narrowed, the complexity of the matter required a careful examination of multiple adjudication orders and an analysis of various statutory provisions. Given the legal intricacies involved, the engagement of two counsel was justified. Accordingly, the costs of two counsel are awarded on scale B.

Order

[32] The following order is made:

1. The appeal is upheld, with costs, including the costs of the application for leave to appeal and those occasioned by the employment of two counsel where so employed, to be taxed on scale B.
2. The order of the Court a quo is set aside and substituted with the following:

¹⁹ See *Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd* 2011 4 SA 113 (CC) at para 84.

- a. The 2019 amendment to the management rules is lawful and binding.
- b. The award of the Second Respondent is reviewed and set aside.


WJ du Plessis
Judge of the High Court
Gauteng Division, Johannesburg

Date of hearing:	5 February 2025
Date of judgment:	26 March 2025
For the appellant:	W Luderitz SC with S Mushet instructed by Hajibey Bhyat Mayet & Stein
For the respondent:	M Oppenheimer instructed by D'Arcy Herrman Raney Inc