



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable
Case no: 1568/2025

In the matter between:

23 LAUREL STREET PROPERTIES

APPLICANT

and

LETHABO VILLAGE BODY CORPORATE

FIRST RESPONDENT

PPA SOLUTIONS (PTY) LTD

SECOND RESPONDENT

Neutral Citation: *23 Laurel Street Properties v Lethabo Village Body Corporate and Another* (1568/2025) [2025] ZAFSHC 215 (14 July 2025)

Coram: Buys AJ

Heard: 19 June 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 14 July 2025.

Summary: Application for final interdictory relief – adopted resolutions void *ab initio* – requirements for establishing a clear right not met.

ORDER

- 1 The application is dismissed.
 - 2 The applicant shall pay the first respondent's costs of the application, counsel's fees to be taxed on scale B.
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JUDGMENT

Buys AJ

Introduction

[1] The applicant brought an application in terms of which interdictory relief is sought to compel the first respondent to 'provide the applicant with a R 0 [ZERO] clearance certificate in respect on Unit 13, Lethabo Village, within 7 days from date of the order'.

[2] The applicant is the original developer of the Sectional Title Scheme (the Scheme) known as 'Lethabo Village' situated in Bloemfontein who constructed numerous units in the Scheme in accordance with its rights of development and extension and had sold and transferred ownership of many of those units to purchasers thereof. It is common cause that the applicant still retains ownership of 16 units in the Scheme.

[3] The Body Corporate of the Scheme was established during September 2020 when the applicant transferred ownership of the first unit in the Scheme to the purchaser thereof as regulated by the provisions of s 2 of the Sectional Titles Schemes Management Act 8 of 2011 (the STSMA).

[4] At the inauguration of the Body Corporate at the first meeting arranged by the applicant, being the developer, on 28 September 2020, it was recorded in the minutes that the following resolutions had been passed:

'It was also decided that all the unoccupied units will not have a levy contribution by the developer [the Applicant].'

(Paragraph 6.10 of the minutes.)

'Developer [the Applicant] levy contributions:

As stated none on unoccupied units.'

(Paragraph 12.2 of the minutes.) (I refer to these resolutions *infra* as the 'impugned resolutions')

The applicant's case

[5] During February 2025, the applicant requested a levy clearance certificate in respect of Unit 13, Lethabo Village (the property) from the first respondent in order to pass transfer of the unit it intended to sell to a purchaser thereof. In response to this request, the first respondent provided the applicant with clearance figures in the sum R33 899.47 to be paid by the applicant.

[6] Aggrieved by the clearance figures provided by the first respondent, the applicant caused a letter of demand, which was sent to the first respondent, wherein the applicant's position in respect of the impugned resolutions adopted on 28 September 2020 was set out, namely that the first respondent was obliged to issue a R0-00 balance clearance certificate to the applicant in respect of the unoccupied unit, the same as the first respondent did in the past in respect of various other unoccupied units owned by the applicant in the Scheme.

[7] The applicant's above letter of demand was met with opposition based on the contention that the impugned resolutions adopted on 28 September 2020 relating to the 'R 0 [ZERO]' levy contribution by the applicant on all unoccupied units in the Scheme are invalid and contrary to the first respondent's statutory duty in terms of ss 3(1) and 7(1) of the STSMA.

[8] This contention by the first respondent sparked this application. The applicant relies on the following allegations in support of this application:

- (a) The impugned resolutions adopted at the inaugural meeting of the first respondent on 28 September 2020 referred to *supra*.
- (b) Contrary to what was resolved at the inaugural meeting, the first respondent has charged levies in respect of the property.
- (c) The first respondent's refusal to issue a R0-00 balance certificate is contrary to the first respondent's conduct honouring the agreement since it was reached until February 2025.

- (d) Since the inception of the Body Corporate the first respondent had no quarrel with the resolution that was adopted and the import thereof on the applicant.
- (e) Approximately 110 units owned by the applicant in the Scheme were sold and transferred without any issue regarding the impugned resolutions adopted on 28 September 2020 and without any levies claimed or levied by the first respondent from the applicant in respect of unoccupied units in the Scheme.
- (f) Only in its replying affidavit, despite being informed prior to the signing of the applicant's founding affidavit in support of this application of the position taken by the first respondent of the void *ab initio* decisions of the first respondent, for the first time raises the issue that the impugned resolutions adopted are administrative decisions in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and that such decisions cannot be ignored, unless set aside.

The first respondent's opposition

[9] The first respondent's opposition of the application is based on the following contentions:

- (a) The impugned resolutions are void *ab initio* since it offends the provisions of Sectional Titles Act 95 of 1986 (STA) and the STSMA, based thereon that a body corporate is not entitled to exempt an owner of a unit from payment of scheme levies.
- (b) The first applicant was only empowered to take the decisions specifically provided for in the STA and the STSMA. The power of exemption is not contained in these Acts.
- (c) The applicant's right to insist on non-payment of levies to the first respondent in respect of unoccupied units is in opposition to ss 3(1) and 7(1) of the STSMA read with Management Rule 25 published in terms of the STSMA.
- (d) The applicant could not have taken part in the vote during September 2020 to exempt it from payment of levies.
- (e) In the event it is found that the impugned resolutions were correctly and validly adopted, the said resolutions were rescinded on 14 February 2022.

The lawfulness of the impugned resolutions adopted by the first respondent on 28 September 2020

[10] In terms of s 3(1) of the STSMA:

'A body corporate must perform the functions entrusted to it by or under this Act or the rules, and such functions include-

(a) to establish and maintain an administrative fund which is reasonably sufficient to cover the estimated annual operating costs-

(i) for the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs);

(ii) for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;

(iii) for the payment of any insurance premiums relating to the building or land; and

(iv) for the discharge of any duty or fulfilment of any other obligation of the body corporate;

(b) to establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property but not less than such amounts as may be prescribed by the Minister;

(c) to require the owners, whenever necessary, to make contributions to such funds: Provided that the body corporate must require the owners of sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not such right is registered or conferred by rules, to make such additional contribution to the funds as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for such costs;

(d) to require from a developer who is entitled to extend the scheme in terms of a right reserved in section 25 (1) of the Sectional Titles Act, to make such reasonable additional contribution to the funds as may be necessary to defray the cost of rates and taxes, insurance and maintenance of the part or parts of the common property affected by the reservation, including a contribution for the provision of electricity and water and other expenses and costs in respect of and attributable to the relevant part or part;

(e) to determine the amounts to be raised for the purposes of paragraphs (a), (b) and (c);

(f) to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections;

...

(t) in general, to control, manage and administer the common property for the benefit of all owners.' (Own emphasis.)

[11] Section 7(1) of the STSMA provides further that:

'The functions and powers of the body corporate must, subject to the provisions of this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules.'

[12] Management Rule 25 contained as Annexure 1 of the Sectional Titles Schemes Management Regulations, 2016 and published in Government Notice R1231 in Government Gazette 40335 of 7 October 2016 (the Management Rules) provides as follows:

'(1) The body corporate must, as soon as possible but not later than 14 days after the approval of the budgets referred to in rule 17(6)(j)(iv) by a general meeting, give each member written notice of the contributions and charges due and payable by that member to the body corporate, which notice must-

(a) state that the member has an obligation to pay the specified contributions and charges; and

...

(4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.'

[13] Plainly put, in terms of the statutory provisions referred to *supra*, the first respondent must annually determine and pass a resolution pertaining to the payment of levies in the Scheme, which includes the recovery of legal expenses incurred to recover monies due to it.

[14] In *Zikalala v The Body Corporate of Selma Court and Another (Zikalala)*,¹ the court, in dealing with the powers of a body corporate/trustees in a scheme, held as follows:

'It follows therefore that, absent any express or implied power that is accorded to a body corporate in the STSMA, the trustees may not conclude an agreement outside the ambit of the powers given in terms of the STSMA. To the extent that an act is outside the powers given in the STSMA, the body corporate, as a creature of statute, will be construed to have acted ultra vires. Likewise, it would not be competent for the body corporate to sanction an act which is ultra vires by way of a special resolution.

Management Rule 25 expressly grants to the body corporate the power to impose levies and contributions on owners. Where an owner fails in the obligation to pay such amounts, the body corporate is empowered to take action to recover such amounts, including interest and costs. I am unable to find any power in the Management Rules or the STSMA that permits the body

¹ *Zikalala v The Body Corporate of Selma Court* [2021] ZAKZPHC 81; 2022 (2) SA 305 paras 19,20,24 and 26; see also *Body Corporate of Fish Eagle v Group Twelve Investments (Pty) Ltd* 2003 (5) SA 414 (W) para 9.

corporate to compromise its obligation to collect levies or contributions. To the extent that such amounts are owing, it is worth noting that the language employed in Management Rule 21(2)(b) precludes a body corporate from 'refund[ing] to any member a contribution lawfully levied and paid'. Although the rule speaks to the prohibition against excusing any owner from the obligation to pay levies, it may by implication be interpreted to prohibit a compromise on any sum lawfully due to the body corporate in terms of levies and contributions.

...
In *Fish Eagle* the court took into account the duty to collect levies as contained in ss 37(2) and 39(1) of the STA read together with Management Rule 31(4) of annexure 8 to the Sectional Titles Regulations, GN R664, GG 11245, 8 April 1988, as constituting the legislative framework against which the powers and functions of the body corporate must be measured. As noted in Van der Merwe Sectional Titles, Share Blocks and Timesharing, s 37(1)(d) of the STA (re-enacted under s 3(1)(f) of the STSMA) requires as one of the functions of the body corporate to raise money by levying owners, in proportion to their respective participation quotas. Section 39 of the STA (re-enacted in s 7(1) of the STSMA) requires this function to be performed by the trustees. The following is stated in Van der Merwe Sectional Titles, Share Blocks and Timesharing:

"In law a body corporate has no power to pass a resolution to the effect that it will not carry out one or more of the duties imposed on it by s 37 of the Sectional Titles Act (STSMA s 3) read with s 39. In short, collection of levies is a statutory duty, which cannot be circumvented by the making of a resolution."

...
As held in *Fish Eagle*, a resolution that a dispute about levies would be settled is ultra vires the powers of the body corporate, whose obligation is to raise amounts by levying contributions on owners. While the appellant may feel aggrieved that his offer of a settlement was unilaterally revoked by the first respondent as a result of an error on the part of its attorney and two trustees who accepted his offer (before the opinion of the managing agents was obtained), the fact of the matter is that neither the attorney nor the trustees had authority in law to compromise the amount due. *The statutory obligation imposed on the body corporate is to collect the full amount of levies and contributions due, together with interest and legal costs. No latitude is afforded to trustees to deviate from this obligation.* The fact that the trustees or their attorney may have 'failed to do their homework' before accepting the offer does not come to the assistance of the appellant in having his offer declared valid and enforceable. *To do otherwise would be to foist an agreement on the body corporate in circumstances where an errant or non-compliant owner is allowed a reduction or compromise on the amount of his levies in circumstances where this is plainly not permitted or contemplated by the legislative framework governing the affairs of sectional title developments. It would undermine the uniformity for the common burden that must be shared by all sectional owners to pay their levies, based on their participation quota. This is an intrinsic component of*

communal living envisaged in the STA and the STSMA.’ (Own emphasis.)

[15] The impugned resolutions, as with the resolutions considered in the matters of *Zikalala* and *Fish Eagle* referred to *supra*, are directly contrasting to the rights which an owner and a body corporate have, and the obligations they must implement in terms of the STSMA and the STA.

[16] Collection of levies is a statutory duty, which cannot be circumvented by the making of a resolution. Any such resolution is *ultra vires* the first respondent. Therefore, the impugned resolutions adopted on 28 September 2020 by the first respondent are unlawful and consequently void *ab initio*.

[17] The applicant’s contention that the first respondent previously issued R0-00 balance clearance certificates in respect of approximately 110 unoccupied units owned by the applicant in the Scheme which were sold and transferred without any issue regarding the impugned resolutions, does not provide the applicant with a right to escape the statutory obligations placed on the applicant by the first respondent referred to *supra*, nor is it a justification to place reliance on an unlawful resolution which is *void ab initio*.

Reviewability of the impugned resolutions adopted by the first respondent on 28 September 2020

[18] It is prudent to deal with the issue raised by the applicant for the first time in its replying affidavit, namely that the impugned resolutions are administrative actions in terms of PAJA, and, for that reason, the impugned resolutions cannot be ignored, unless set aside. It should also be mentioned from the outset that this court is not called upon to review and set aside any resolution adopted by the first respondent in terms of which the impugned resolutions have been rescinded.

[19] ‘Administrative action’ pertaining to a decision taken by ‘a natural or juristic person, other than an organ of state’, is defined in s 1 of PAJA, as a decision taken by such natural or juristic person ‘when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external effect . . .’.

[20] In *Grey's Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others*,² the Supreme Court of Appeal (SCA), in dealing with an administrative action, pointed out the following:

'Whether particular conduct constitutes administrative action depends primarily on the nature of the power that is being exercised rather than upon the identity of the person who does so. Features of administrative action (conduct of 'an administrative nature') that have emerged from the construction that has been placed on s 33 of the Constitution are that it does not extend to the exercise of legislative powers by deliberative elected legislative bodies, nor to the ordinary exercise of judicial powers, nor to the formulation of policy or the initiation of legislation by the executive, nor to the exercise of original powers conferred upon the President as head of State. *Administrative action is rather, in general terms, the conduct of the bureaucracy (whoever the bureaucratic functionary might be) in carrying out the daily functions of the State, which necessarily involves the application of policy, usually after its translation into law, with direct and immediate consequences for individuals or groups of individuals.*'

(Own emphasis.)

[21] In *Trustees for the Time Being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd (Trustees for the Time Being of the Legacy Body Corporate)*,³ the SCA considered whether a resolution adopted by the trustees of a scheme, namely, that an estate agent should be allowed to enter or be allowed in economic activities in the scheme, amounted to a decision which is an 'administrative action' in terms of PAJA. The resolution was based on a conduct rule which enabled the trustees to disallow specific estate agents to sub-let units in the scheme on a short term basis and the SCA held that the trustees' conduct did not fulfil the requirements of an administrative action reviewable under PAJA.

[22] The SCA held in *Trustees for the Time Being of the Legacy Body Corporate*, that: '... there is nothing bureaucratic about the trustees' decision; nor does it involve "application of policy". Instead, the decision seems more commercial or managerial in nature, rather than administrative. The trustees' decision was made in the course of running and managing the scheme. The nature of the power is thus managerial or business-related. Their decision is no

² *Grey's Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* [2005] ZASCA 43; [2005] 3 All SA 33 (SCA); 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA) para 24.

³ *Trustees for the Time Being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd* [2021] ZASCA 157; [2022] 1 All SA 138 (SCA); 2022 (1) SA 424 (SCA) paras 18-32.

different to a decision of a meeting of shareholders of a company.¹⁴

[23] As in *Trustees for the Time Being of the Legacy Body Corporate*, there is nothing bureaucratic about the impugned resolutions passed by the first respondent on 28 September 2020, nor does it involve 'application of policy'. The impugned resolutions seem more commercial or managerial in nature, rather than administrative. I therefore conclude that the impugned resolutions adopted by the first respondent on 28 September 2020 were not of an administrative nature, and therefore not reviewable under PAJA.

[24] The applicant raised the issue of common law review for the first time in the heads of argument filed on its behalf. I was referred to by Mr Sander, appearing on behalf of the applicant, to the matter of the *Trustees for the Time Being of the Legacy Body Corporate* referred to *supra*, and more specifically where the SCA held that:

'Decisions of private bodies are not immune from judicial review. The principles in this regard have mostly evolved from the so-called '*Jockey Club*' cases, where voluntary associations are required to afford their members a fair and impartial hearing before their domestic tribunals.

I turn now to consider the grounds on which a decision of a private body can be subjected to judicial review at common law. This would be the case where a decision-maker failed to comply with the elementary principles of justice, such as, for example, where the tribunal misconceives the nature and ambit of its powers, or where it acts capriciously or *mala fide*, or where its findings in the circumstances are so unfair that they cannot be explained unless it is presumed that the tribunal acted capriciously or with *mala fides*.¹⁵

[25] It was further submitted, on behalf of the applicant, that, whether there is a conflict or not, it does not render the impugned resolutions invalid or 'void *ab initio ex lege*', and the first respondent must review and set aside the impugned resolutions. I have difficulty with these submissions, especially considering (a) the impugned resolutions, as discussed and found *supra*, are void *ab initio* and furthermore not reviewable under PAJA; and (b) the first respondent's case in the alternative, namely, that the impugned resolutions have been rescinded on 14 February 2022, and as mentioned to *supra*, the application before me is not to review a subsequent decision taken by the first respondent,

¹⁴ Ibid para 18.

¹⁵ Ibid para 39 and 41.

but to enforce the impugned resolutions which are *ultra vires* the first respondent and consequently void *ab initio*.

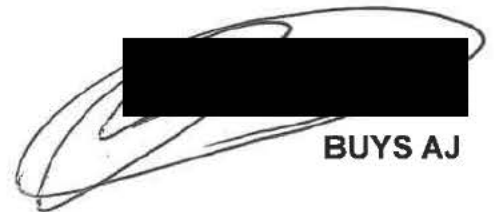
Conclusion

[26] In the premises, I am not satisfied that the applicant has made out a proper case for the relief it seeks, namely to compel the first respondent to issue and provide the applicant with a R0-00 balance clearance certificate in respect of the property.

Order

[27] Accordingly, I make the following order:

- 1 The application is dismissed.
- 2 The applicant shall pay the first respondent's costs of the application, counsel's fees to be taxed on scale B.



BUYS AJ

Appearances

For the applicant:

A Sander

Instructed by:

Blair Attorneys, Bloemfontein

For the first respondent:

JS Rautenbach

Instructed by:

Van Wyk Attorneys Inc, Bloemfontein.