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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 20545/2024

In the matter between:

THE BODY CORPORATE OF THE PRIMAVERA

SECTIONAL TITLE SCHEME

Applicant

and

MICHAEL ADRIAN PATRIC GODBY

Respondent

Coram: **JONKER AJ**

Heard: 1 September 2025

(Further affidavits exchanged 9 & 18 September 2025)

Delivered: Electronically on 29 September 2025

JUDGMENT

JONKER AJ:

Introduction

[1] This is an application by a body corporate to declare invalid two management rules of the applicant, rule 70(2) and 71, which confer exclusive use rights over portions of the common property to the respondent, who is the owner of unit [...].

[2] The applicant also seeks declaratory and mandatory relief, including:

[2.1] That the respondent bears responsibility for the maintenance of the roof terrace (which he uses exclusively) forming part of his section;

[2.2] That the respondent is responsible for the maintenance of the roof and skylights above his section;

[2.3] That the participation quotas registered in the deeds office are to be used for the calculation of participation quotas in the scheme;

[2.4] That the respondent vacate and cease using certain areas of the common property, namely the parking bay, storeroom-garage, and stairwell cupboard;

[2.5] That the respondent be directed to submit approved as-built building plans for his section; and

[2.6] Costs of the application on scale C.

[3] The respondent appeared in person. At the hearing, he sought to rely on documents that had not been placed before the Court by way of affidavit. The Court directed the respondent to file the documents in affidavit form and afforded him the opportunity to do so. The applicant was, in turn, given the right to reply. These affidavits were duly filed and of considerable assistance to the Court.

Background

[4] The Primavera sectional scheme was established in 1984 in accordance with the Sectional Titles Act 66 of 1971 (“the 1971 Act”). The submitted sectional plan, reflects 9 units, the common property of the scheme and a roof terrace. The participation quota (“PQ”) is listed in respect of each section and forms part of the sectional title plans. The respondent’s unit, unit [...], is 268 square metres in size with a PQ of 0.320.

[5] After the scheme was opened, the developer sold eight units but retained section [...], which was the largest section in the scheme.

[6] At the inaugural meeting of the body corporate on 23 August 1990, amended management rules were unanimously adopted by the applicant. The amended rules included rules 70(2) and 71, which lie at the heart of this matter.

[7] Rule 70(2) provided that, although the roof terrace formed part of unit [...], the body corporate would maintain it at its expense, while the owner of unit [...] (who at

the time of adoption of the rules was the developer) would enjoy undisturbed use. It reads:

“(2) notwithstanding the fact that the roof terrace is depicted on the plans of Primavera filed with the Registrar as part of Unit [...], the said roof terrace shall be maintained by and at the expense of the Body Corporate. As if it were part of the common property although the owner of section [...] shall be entitled to the undisturbed use of the roof terrace.”

[8] Rule 71 provided that the developer had rights to allocate or let certain “depicted areas” of the common property, including carports, garden portions, and storage spaces, and that the body corporate was obliged to enforce such allocations.

[9] Rule 71 reads as follows:

“(1)(a) Notwithstanding the fact that the car ports, portions of the garden and undercover storage space depicted on the plan of Primavera filed in the minute book of the body corporate (hereinafter called “the depicted areas”) are part of the common property, the developer shall have the right:

- i) In its sole discretion but subject to compliance with any title conditions imposed by the local authority, to let for his own benefit any of the depicted areas which are not subject to any prior right of exclusive use to such person or persons, on such terms and conditions and for such period as it may deem fit;*
- ii) To allocate to so many of the owner(s) of residential units in the scheme as it, in its sole discretion, may deem advisable any such depicted areas for the use of such owner(s); and the body corporate shall ensure that the*

persons entitled to such use by virtue of the exercise of these rights, shall have such use.

(b) the developer shall submit to the body corporate a schedule setting out the person(s) entitled to the use of the depicted areas and the body corporate shall be obliged to give effect to and to maintain such a schedule. The schedule shall be available for inspection by owners and lessees of depicted areas on reasonable notice to the trustees.

(c) The body corporate shall be entitled to impose a levy in addition to any amounts payable in terms of rule 31 and such levy shall be paid by the person entitled to the use of the depicted area. Any levy so imposed shall be imposed in accordance with the provisions of these Rules and the Act.

(2) the Body corporate shall furthermore take all steps necessary and in its power to ensure that the rights of owners and lessees to any depicted area shall be maintained and enforced.

(3) the User of a depicted area shall be obliged to take all reasonable and necessary steps to keep such an area clean, hygienic neat and attractive condition, and such user shall not use any depicted area or permit the same to be used in such manner or for such purposes as are likely to impair the safety, appearance or amenity of other sections or the Parts of the common property.

(4) notwithstanding anything in these rules contained, a user, lessee of any depicted area, shall permit the body corporate or its duly authorised representatives and any other user/lessee access across any depicted area for any purpose reasonable required for the maintenance of any depicted area and/or for any purpose necessary and requisite for the maintenance of the common property and for the purposes of implementing Rule 70 should the body corporate so require.

(5) Should any person who has the right to use any depicted area desire to lease or sub-lease that right, such person shall be obliged to obtain the prior written consent of:

(a) the trustees of the body corporate in the case where the person who has such right is an owner of a residential unit to whom the use of the depicted area has been allocated(which consent shall not be unreasonable withheld0;

The developer where such person has obtained such right by virtue of an agreement of lease entered into with the developer (which consent shall not be unreasonable withheld)

(6) notwithstanding anything to the contrary set out herein owners of residential units shall be entitled to the written consent of the trustees (which consent shall not be unreasonable withheld) to exchange amongst themselves depicted areas allocated to them or to transfer their rights in such depicted areas to any other owner or to the body corporate. Such transfer may only be effected (and will only be considered to have been effected(by notification in writing to the trustees and registration of such transfer in the schedule kept in terms of sub-rule 71(1)(b).”

[10] Unit [...] was later sold to a third party and eventually to the respondent in 2006, who until today, has enjoyed entitlement to the exclusive use areas by virtue of these rules.

[11] The body corporate brings this application on the grounds that there was no legal basis for these rules, it is unlawful, void *ab initio* and established no legal entitlements.

[12] The respondent oppose the present application, relying on the principle that exclusive use rights created in the management rules endure until lawfully amended or cancelled.

Applicant's case:

[13] The applicant maintains that whilst there are drawings of the exclusive use areas which the developer identified in terms of the rules (this forms part of the applicant's minute book) no such amendments were ever incorporated into the sectional title plan filed at the deeds office and no such schedule has ever been maintained as required by rule 71(1)(b).

[14] The applicant states that, at the time that the rules were brought into effect in 1990, there was no basis for them, as the ability to create rule-based exclusive use areas had by this date not been established. It submits that the rules it adopted were unlawful, void *ab initio* and established no legal entitlements. The applicant requests this court to declare the rules invalid for non-compliance with the mechanisms provided for in the STA in respect of exclusive use areas.

[15] Despite the fact that no legal basis exists to award the exclusive use areas to the respondent's section, other owners are subsidising the maintenance of areas exclusively so enjoyed by the respondent.

[16] The applicant also requests the court to declare that the PQ in respect of the respondent's unit, as initially registered and currently reflected in the records of the deeds office, as 0.320, to be lawfully valid quotas to be applied by applicant.

[17] The applicant contends that the respondent has been allocated a storeroom-garage, is occupying a parking bay, and is using a cupboard beneath the stairs. However, no legally valid exclusive use rights were ever established through the management rules adopted in 1990. Furthermore, no levies were imposed in respect of these areas, and none have been imposed to date, which, according to the applicant, has caused prejudice to the other members..

[18] The applicant seeks regularisation of the rules of the scheme especially with relation to the unit owned by the respondent.

Respondent's Case:

[19] The respondent avers that the amended management rules were unanimously adopted by the applicant in 1990, submitted to the registrar of deeds, and remain binding. He contends that the rules entitle him to the exclusive use of the roof terrace, storeroom-garage, parking bay, and cupboard.

[20] He concedes that levies are payable in respect of exclusive use areas and accepts liability for such levies.

[21] He further states that the PQ of unit [...], as recorded in the applicant's minutes of 26 January 1993, is 31.4904. This figure reflects adjustments made over

time following the installation of a mezzanine floor and is accurate. It is also the PQ that the applicant has consistently applied to determine the levies payable by the respondent.

[22] The respondent has undertaken to obtain approved as-built plans and to maintain the skylights serving his section.

[23] The respondent disputes that the rules were unlawfully adopted and opposes the relief sought. He further seeks indemnification from costs, arguing that, as he has been compelled to contribute to the applicant's legal expenses through levies, an order directing him to pay costs would, in effect, require him to pay twice.

Issues

[24] The issues for determination are:

[24.1] Whether rule 71, which purports to grant exclusive use areas to the owner of Section [...], was lawfully created by the applicant and remains valid, thereby conferring on the respondent lawful exclusive use rights to the parking bay, storeroom-garage, and stairwell cupboard;

[24.2] Whether rule 70(2) unlawfully require other owners to subsidise the maintenance of the roof terrace and who is responsible for its maintenance;

[24.3] Who bears responsibility for the maintenance of the roof and skylights;

[24.4] Whether a mandamus should be issued directing the respondent to submit approved as-built plans in respect of the respondent's unit.

[24.5] Which participation quota is currently applicable to the scheme and, specifically, to the respondent's unit.

Applicable law and history

[25] Sectional titles were initially regulated under the 1971 Act. At the time of its promulgation, the Act made no provision for the creation of exclusive use areas, and owners were not permitted to appropriate any part of the common property for their exclusive benefit. It later became apparent, however, that owners required the ability to reserve portions of the common property for their own exclusive use. This was facilitated through agreements or rules adopted in terms of the 1971 Act.

[26] The Sectional Titles Act 95 of 1986 ("the STA") came into operation on 1 June 1988, repealing the 1971 Act. It expressly introduced a procedure for the creation of exclusive use areas under section 27. However, the STA gave rise to difficulties in regulating exclusive use areas, which ultimately led to the insertion of section 27A in 1997. In terms of section 27, exclusive use areas could only be created either by way of a developer's reservation in the sectional plan (section 27(1)(a)) or through a formal process initiated by the body corporate (section 27(2)).

[27] Exclusive use areas in a sectional title scheme are defined in the STA as "*a part or parts of the common property for the exclusive use by the owner or owners of one or more sections.*" The common property comprises "*the land included in the*

sectional title scheme together with such parts of the building or buildings that are not included in a section."

[28] Crucially, there is a clear difference between an owner's undivided share in the common property and their right to the exclusive use of a part of the common property. An owner automatically has an undivided share in the common property if they are the owner of a section, but an owner does not necessarily have the same right to an exclusive use area.

[29] In 2011, two acts were passed to regulate the allocation of exclusive use areas, namely the Sectional Titles Schemes Management Act 8 of 2011 ("the STSMA") and the Community Schemes Ombud Service Act 9 of 2011 ("CSOS"). Both Acts were gazetted and signed by the President in June 2011, but came into operation only on 7 October 2016. In terms of section 10 of the STSMA, it is now permissible to confer exclusive use areas through the adoption of management and conduct rules

[30] The position regarding exclusive use areas was succinctly summarised in *Herald*¹ as follows:

"As matters stand at present therefore the Act recognises four different ways in which an exclusive use area can exist and an exclusive use right be enforced. Under the Act such rights can now be created only by way of registration under s 27 or a rule under s 27A. However by virtue of the transitional provisions of s 60(3) the Act continues to recognise such rights when created by an agreement in force when the

¹ *Herald Investments Share Block (Pty) Ltd and 4 others v Dr Meer and 8 others* 2010 (6) SA 599 (KZD) at paragraphs [12] to [18].

1971 Act applied or under rules produced in terms of the 1971 Act. There is nothing to suggest that the consequences of enjoying such rights vary depending upon their source save for the advantages expressly conferred by registration. Certainly there is nothing to indicate that its consequences in regard to contributing to the costs of maintaining the exclusive use area should differ from one instance to another. However s 37(1)(b) has not been amended to follow the other amendments bearing upon this issue.”

[31] The above was confirmed in *Biccari*², as follows:

“Extracted from the above, the four manners in which an exclusive use area, within the parameters of this application, can exist are:

- a. In terms of an agreement in force when the 1971 Act applied;*
- b. If it was acquired under rules produced in terms of the 1971 Act;*
- c. By way of registration under section 27 of the 1986 Act; and*
- d. In terms of a rule made pursuant to the provisions of section 27A of the 1986 Act (applicable between 3 October 1997 and 7 October 2016).”*

[32] Turning to the facts of this matter: The only manner by which exclusive use areas could lawfully be created, by the applicant in 1990, was in terms of sections 27(1)(a) and 27(2) of the STA.

[33] Section 27(1)(a) of the STA provides as follows:

“(1) (a) If a part or parts of common property is or are delineated on a sectional plan in terms of section 5(3)(f), the developer may, for a specific purpose when making application for the opening of a sectional title register and the registration of the

² *Biccari and 1 other v Body corporate of Shoreham and 1 other* 2018 (2018 (3) SA 462 at para [13].

sectional plan, impose a condition in terms of section 11(2) in the schedule referred to in section 11(3)(b), by which the right to the exclusive use of such part or parts of the common property delineated for this purpose on the sectional plan, is conferred upon the owner or owners of one or more of the sections.”

[34] Section 27(1)(b) of the STA stipulates that the developer may cede the right to the exclusive use of a part or parts of the common property to an owner or owners of sections in the scheme by registering a unilateral notarial deed in the owner or owners' favour.

[35] Section 27(2) of the STA reads:

“A body corporate, duly authorized thereto by a unanimous resolution of its members, may, subject to the provisions of section 5 (1), request an architect or land surveyor to apply to the Surveyor-General for the delineation on a sectional plan in the manner prescribed of a part or parts of the common property in terms of section 5 (3) (f) for the exclusive use by the owner or owners of one or more sections: Provided that no such delineation shall be made on the sectional plan in terms of this subsection if such delineation will encroach upon a prior delineation on the sectional plan of a part of the common property for the exclusive use by one or more of the owners.”

[36] Section 27(3) of the STA requires moreover:

“The body corporate, duly authorised thereto by a unanimous resolution of its members, shall transfer the right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (2) to the

owner or owners on whom such right has been conferred by the body corporate, by the registration of a notarial deed entered into by the parties and in which the body corporate shall represent the owners of all the sections as transferor.”

(My emphasis)

Application of the law to the facts

Validity of management rule 70(1) creating exclusive use areas (parking bay, storeroom-garage and stairwell cupboard):

[37] It is common cause that the rules the applicant now seeks to invalidate were adopted only in 1990. At that stage, STSMA and CSOS had not yet been enacted, and sections 10(7) and 10(8) of the STSMA did not exist. Accordingly, the only lawful methods available for the creation of exclusive use areas were the formal processes provided for in sections 27(1)(a) and 27(2) of the STA, as outlined above.

[38] It is not in dispute that no unilateral notarial deeds were registered to formally vest the alleged exclusive use rights. Section 27(1)(a) of the STA is therefore not applicable.

[39] The only remaining basis on which exclusive use rights could have been created was in terms of section 27(2) of the STA. This raises the question: Did the unanimous adoption of resolutions at the inaugural meeting in 1990, amending the management rules and accompanied by drawings reflecting the areas in issue, which were duly submitted to the registrar of deeds, amount to compliance with section 27(2) of the STA?

[40] If so, the exclusive use rights could be said to have been lawfully created. This warrants an in depth look at the documents filed by the parties.

[41] The record reflects the sectional title plan of the scheme dated March 1983. This plan depicts all the units together with their respective square meterage. Section [...] is reflected with a square meterage of 268m², which includes the roof terrace area. These plans were submitted at the time the scheme was opened, and a certificate establishing the body corporate was duly issued by the Registrar of Deeds on 2 May 1990.

[42] In addition, the record contains the minutes of an extraordinary general meeting held on 23 August 1990, which confirm the amendment to the management rules in issue. The amendment was adopted unanimously. The minutes further reflect that certain additions were made to the rules, recording the allocation of parking bays, a storeroom, an exclusive use garden area, and the roof terrace forming part of unit [...]. They also record the sectional plan, which delineates the roof terrace with the words “exclusive use section [...],” and attach a schedule in which the participation quota of unit [...] appears to be reflected as 0.200.

[43] Notably, the above amendments took place under the regime of the STA, which had replaced the 1971 Act. Following the adoption of the amended rules, the required notification was filed in terms of section 35(5) and Regulation 30(4) of the STA, and the amended rules were duly recorded by the Registrar of Deeds. This is confirmed by an endorsement of the Registrar dated 29 May 1991, as appears from the further affidavit filed by the respondent after the hearing of the matter.

[44] What is not apparent from the record is any application by an architect or land surveyor to the Surveyor-General for the delineation on the sectional plan of those parts of the common property intended for the exclusive use of the owners. Furthermore, there is no evidence of any transfer of the exclusive use areas by way of notarial deed of cession to the relevant owner in terms of section 27(3) of the STA.

[45] There is no evidence that this was ever done, nor that any schedule of exclusive use areas was maintained in terms of the STA. What does appear from the documents produced by the parties are plans containing markings and handwritten notes indicating exclusive use areas in favour of the respondent's unit. However, while the resolutions and drawings — however well-intentioned — were submitted to the Registrar of Deeds, no transfer was effected by way of notarial deed. As a result, legally enforceable exclusive use rights were not created and could not be transferred to respondent when section [...] was purchased.

[46] The creation of real rights, including exclusive use rights in sectional title schemes, requires strict compliance with the statutory procedures prescribed for that purpose. Real rights are rights *in rem*, enforceable against the world. Because of their far-reaching effect and their potential impact on third parties who may acquire interests in the property, the legislature has deliberately imposed rigorous procedural safeguards that must be meticulously observed. Where legislation, like section 16 of the Deeds Registries Act 47 of 1937, prescribes specific formalities for the creation of real rights, such as registration, delineation on approved plans, and execution of notarial deeds, those requirements are peremptory and cannot be satisfied by substantial compliance alone. These safeguards ensure that the public record can

be relied upon with certainty to establish the existence of real rights and who holds the rights.

[47] Accordingly, resolutions and arrangements, however well-intentioned or unanimously supported, cannot create legally enforceable exclusive use rights without full compliance with the statutory mechanisms. These safeguards exist to protect both current owners and future purchasers who are entitled to rely on the integrity of the sectional title register.

[48] The formalities required by sections 27(2) and 27(3) of the STA were not complied with. Rule 71, which purported to grant exclusive use area to the owner of Section [...], was therefore not lawfully created by the applicant and must be declared invalid.

[49] The respondent concedes that the exclusive use of the storeroom (which includes the left and right) was not registered but only allocated to the owner of unit [...] by virtue of the rules. The respondent acquired no lawful entitlement to the parking bay, the storeroom or stairwell cupboard by virtue of these rules when he became owner of section [...]. The continued enforcement of rule 71, since 1990, has had the consequence that the other members of the scheme subsidise the maintenance of areas enjoyed exclusively by the respondent, without legal justification. That position is untenable.

[50] While a declaration that the rule is invalid will bring an end to the respondent's entitlement to use the space, it remains open to the applicant to resolve unanimously to allocate the areas to the respondent for exclusive use, provided this is done in accordance with the procedures prescribed by the STSMA.

Validity of management rule 70(2) - the maintenance of the roof terrace:

[51] The roof terrace is depicted on the sectional title plans submitted to the registrar of deeds as part of unit [...]. This is also confirmed by rule 70(2) which provides as follows:

“Notwithstanding the fact that the roof terrace is depicted on the plans of Primavera filed with the Registrar as part of Unit [...], the said roof terrace shall be maintained by and at the expense of the Body corporate as if it were part of the common property although the owner or section [...] shall be entitled to the undisturbed use of the roof terrace.”

[52] The amended rules did not change the ownership of the roof terrace to that of common property. It only abdicated the maintenance thereof to the applicant as if it was common property.

[53] The roof terrace, like the balconies forming part of the units below, forms part of unit [...]. The owner of section [...] is accordingly responsible for its maintenance. This Court therefore concludes that rule 70(2) constitutes an invalid attempt to shift sectional maintenance obligations onto the body corporate.

The roof:

[54] A distinction must be drawn between the responsibility for maintaining the structural roof, which constitutes common property, and the responsibility for maintaining the alterations and fixtures that serve only the respondent's section. In

terms of the STA, the body corporate is responsible for the maintenance of the common property, which includes the roof structure.

[55] An undated document forms part of the record titled “*Proposed alteration of roof...*”. In it, the owner of section [...] undertakes, in exchange for approval of the proposed alterations to the roof, to maintain the roof area as if it were the property of section [...] and to register the exclusive use resolution at the deeds office. The respondent, however, does not accept that he is legally bound by this undertaking.

[56] This Court is inclined to agree with the respondent. The applicant is liable for the maintenance of the roof, which is common property. The undated document does not alter this position. The applicant has also, quite correctly, in its further affidavit, accepted responsibility for the maintenance of the roof.

Skylights:

[57] Where a part of the common property has been altered or changed for the exclusive enjoyment of a particular section, as in the present case, the owner who benefits from that alteration must bear the cost of its upkeep. The skylights serving only one section are to be treated in the same manner as doors and windows, which form part of the section and are maintained by the section owner. The respondent agrees with this position. The roof itself, however, constitutes common property, and its maintenance remains the responsibility of the applicant.

Mandamus:

[58] The respondent's undertaking to maintain the skylights, accept liability for levies on the roof terrace surface, and procure approved as-built plans are noted and well received. However, it does not cure the fundamental defect in the creation of the rights. The applicant is entitled to have the matter regularised by way of declaratory and mandatory relief that also follows from the invalidity of the management rules.

Current participation quota:

[59] PQ, as a concept, is defined in the STA as "*a percentage determined in accordance with the provisions of section 32(1) or (2)*" and "*shown on a sectional plan in accordance with the provisions of section 5(3)(g)*."

[60] Section 32(1) prescribes that "*the participation quota of a section shall be a percentage expressed to four decimal places, and arrived at by dividing the floor ream correct to the nearest square metre, of the section by the floor area, correct to the nearest square metre, of all the sections in the building or buildings comprised in the scheme.*"

[61] Section 5(3)(g) requires a draft sectional title plan to "*have endorsed upon or annexed to it a schedule specifying the quota of each section in accordance with section 32(1) or (2) and the total of the quotas of all sections shown thereon.*"

[62] Participation quotas in a sectional title scheme cannot be merely notional, as the respondent contends. The STA prescribes a precise method for their calculation and requires accuracy from the outset. It makes clear that participation quotas are

intended to be actual, measurable figures established at the inception of the scheme. A notional or provisional approach would contradict the express statutory framework, which requires accuracy down to the nearest square metre.

[63] The purpose of this precision is clear: participation quotas immediately determine each owner's share of the common property, levy obligations, and voting rights. If it is possible to regard initial PQ's as notional it would not only render the detailed calculation method meaningless but would also undermine the certainty and reliability of the sectional title registration system.

[64] It is common cause that the PQ originally registered with the Surveyor General recorded the PQ of respondent's unit as 0.320. Whilst it was submitted by respondent that over the years this was changed to 0.22 and then again, after the mezzanine building works were effected to respondent's unit, to 31.4904 (which appears from a minute dated 26 January 1993), only the quotas registered in the deeds office are legally binding and valid. This very issue confirms why certainty must be obtained on what the registered quotas are.

[65] Whilst it seems that there were attempts made to change certain aspects of certain sections (to show exclusive use to section [...]) it does not appear to have been formally solidified. The PQ currently registered at the deeds office, as recorded on the plans, must be regarded as the legally binding quotas for the scheme. That PQ figure in respect of the respondent's unit is 0.320.

Acquiescence by applicant and costs

[66] It is so, that for many years the applicant acquiesced in the respondent's sole occupation and enjoyment of the roof terrace and other areas on the basis of the rules adopted in 1990. That acquiescence, however, cannot confer legality upon arrangements that were void from inception. Compliance with the statutory framework in section 27 of the STA was required for the creation of enforceable rights, and in its absence the rules conferred no lawful entitlements.

[67] At best, the applicant's long tolerance of the position explains the respondent's bona fide belief that he was entitled to the exclusive use areas, and may be taken into account in considering the equities and costs of the matter. It does not, however, alter the conclusion that the rights in question were never lawfully established.

[68] It is in the interests of good governance and certainty that the applicant regularises the position regarding the areas historically enjoyed by the respondent. The STSMA provides a lawful mechanism for the creation of exclusive use areas through management rules, provided that a unanimous resolution is adopted and the requisite plans and schedules are prepared and approved.

[69] The Court recognises that the continued harmony of the scheme depends not only on legal regularisation but also on the cooperation of its members. The applicant and respondent are therefore encouraged to address, in good faith, whether exclusive use rights should be created in accordance with the provisions of STSMA by way of management rules. In doing so, all members are urged to consider what is practical and equitable for the scheme as a whole, and to strive for

unanimity in any decision, so as to avoid further disputes and to promote stability and good governance within the scheme.

[70] Having regard to the history of the matter, the respondent should not be burdened with a costs order. He purchased his unit on the bona fide belief, fostered by the rules adopted in 1990 and acquiesced in by the applicant for many years, that his section was entitled to the exclusive use areas and the shifting of the maintenance of the roof terrace to the body corporate. The respondent has also, in any event, contributed to the applicant's legal expenses through his participation quota and his liability for levies.

[71] The present application serves the wider interests of all members of the body corporate by regularising the legal position and clarifying the true state of affairs. In these circumstances, fairness dictates that, in exercising the Court's discretion, each party must bear its own costs.

Order

[72] In the result, the following order is made:

1. It is declared that:
 - 1.1 management rules 70(2) and 71 of the applicant are invalid and of no force or effect.
 - 1.2 the respondent bears responsibility for the upkeep and maintenance of the roof terrace forming part of section [...].

- 1.3 the participation quotas registered in the deeds office constitute the valid and applicable participation quotas of the members of the applicant scheme.
2. The applicant is responsible for the maintenance of the roof as part of the common property.
3. The respondent is responsible for the upkeep and maintenance of the skylights that serve only respondent's section.
4. The respondent is directed to:
 - 4.1 vacate and cease using the parking bay, storeroom-garage, and stairwell cupboard forming part of the common property within 30 (thirty) days of this order, and to deliver up any keys or access devices relating to those areas to the trustees upon vacation.
 - 4.2 submit to the applicant approved as-built building plans in respect of section [...] within 90 days of this order.
5. There shall be no order as to costs.

E JONKER
ACTING JUDGE OF THE HIGH COURT

Appearances:

For applicant: Adv A Brink

For respondent: In person