



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

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED. **YES**

14 July 2025

Date

Signature

Case number: 30715/2021

In the matter between:

MALOSE C MOGASHOA

First applicant

MMAPULA L KEKANA

Second applicant

JACOB J MABASA

Third applicant

And

**ZWAVEL'S NEST HOMEOWNERS ASSOCIATION
(PTY) LTD**

First respondent

COMMUNITY SCHEMES OMBUD SERVICE, GAUTENG

Second respondent

KAREN BLEIJS (ADJUDICATOR)

Third respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

WILLIAMS, AJ

- [1] This is an application for leave to appeal by the applicants. It pertains to an appeal under section 57 of the Community Schemes Ombud Service Act, 9 of 2011 (“the CSOS Act”).
- [2] The applicants were penalised financially under the rules of the first respondent (“the Homeowners Association”) for not building on erven they own in the estate, within stipulated time periods. The third respondent (“the adjudicator”) was approached. She determined that the applicants are indeed liable for those penalties. The next resort for the applicants was to appeal to a High Court, under section 57 of the CSOS Act.
- [3] In my judgment of 26 September 2024 I dismissed the applicants’ application, which seeks to overturn the adjudicator’s decision.
- [4] A Full Court of the Gauteng Division, Johannesburg, in **Stenersen & Tulleken Administration CC v Linton Park Body Park Corporate & Another**¹ determined that a section 57 Appeal “*is an appeal in the ordinary strict sense ...*”. Further that such appeal “*... should be brought by way of a Notice of Appeal ...*”. The Full Court indeed said that the process that should be followed, is that “*... prescribed for all appeals ...*”. A copy of the **Stenersen** judgment is attached for ease of reference.

¹ 2020 (1) SA 65 (GJ).

- [5] The applicants brought their “appeal” under a notice of motion, supported by a founding affidavit. No notice of appeal, setting out the grounds of appeal, was filed.
- [6] I was obviously bound by the dictates of the Full Court in **Stenersen**. That Court was constituted specially to lay down the procedure for CSOS appeals in the Gauteng Courts. I thus dismissed the application not launched as an appeal. In effect, I held that the “appeal” brought as a motion cannot be salvaged.
- [7] There is much divergent authority in other Divisions of the High Court. Other provinces prescribe that appeals under section 57 of CSOS must be brought by way of notice of motion.² A copy of the unreported judgment in the **Allesio Body Corporate**³ matter is also attached for the convenience of the reader. It demonstrates the divide best. There a CSOS appeal, brought in the Western Cape under a notice of appeal, was held to not be properly before the Court. The purported “appeal” was struck off the roll.
- [8] I did not entertain the merits of the applicants’ “appeal”. Nor could I have, since such appeals are seemingly presided over by two Judges. In my view

² - See **Trustees for the Time Being of the Avenues Body Corporate v Shmaryahu & Another** 2018 (4) SA 566 (WCC);

- **The Body Corporate of Durdoc Centre v Singh** 2019 (6) SA 45 (KZP).

³ - **Trustees of Allesio Body Corporate v Lee Cottle & Another, Western Cape Division, Cape Town**, Case No A38/2022;

- **Jan Christian Ellis v Trustees of Palm Grove Body Corporate** (W 293/2020 P) [2021] ZAKZPHC 97 (7 December 2021).

the “appeal”, brought under notice of motion, was doomed. No application for condonation was made, nor foreshadowed, to convert the motion proceedings into an appeal procedure as required in Gauteng.

[9] It does not appear clearly from my judgment that the issue relating to procedure had been canvassed (and exchanges were made) under Rule 30. The applicant wished to argue that the Rule 30 proceedings must be determined first. The first respondent, in an attempt to get to the merits, withdrew its Rule 30 application shortly before the hearing date.

[10] My approach was that the wrong procedure (especially in the absence of an application for condonation) was fatal. I thus raised that point *mero motu*, as a single Judge. I mooted in my judgment that it was still open to the applicant to launch an appeal, by filing the prescribed notice of appeal in fresh proceedings. That would have to be accompanied by two applications for condonation. The motion proceedings had been filed a day or two late. That had been done, but I did not have to deal with it because of the view I took of the application. Also, the ensuing delay (caused by adoption of the wrong procedure) would also have to be condoned.

[11] The applicants have, however, as they are entitled, elected to forge ahead on the original papers, rather than start afresh. They now seek leave to appeal against my dismissal of their “appeal” brought on motion. They argue that I was wrong to dismiss the application/“appeal” – since it was still capable of

conversion into an appeal. They argue that I should not have regarded it as a nullity.⁴ They also contended that the appeal procedure prescribed in Gauteng, is not the end-all, nor the be-all. They argue that in the notice of motion the application was stated to be a section 57 appeal. The suggestion is that, at worst for the applicants, I would have struck the matter off the Roll. In essence that I should not have dismissed their application as abortive and incapable of being remedied.

- [12] 12.1. I am persuaded that, notwithstanding the absence of an application for condonation then, I may have been too formalistic, despite the clear and strict dictates of the Full Court in **Stenersen**. I am thus inclined to grant applicants leave to appeal. I also have cause to doubt whether – sitting as a single Judge – I should have dismissed their application/”appeal”. If it was to be construed already as an appeal before me under CSOS, then two Judges had to preside. This is the other side of the same coin.
- 12.2. In the ordinary course I would have granted leave to appeal to a Full Court of the Gauteng Division, Pretoria. However, since there are divergent Full Court judgments on this point, it seems prudent to grant leave to the Supreme Court of Appeal. Even if I may have been correct to dismiss the application/”appeal” as abortive, the applicants may, on the basis of strong divergent authority, wish to challenge the appeal procedure prescribed in Gauteng.

⁴ Para 1.1 of the notice of application for leave to appeal.

12.3. I am alive to the fact that different procedure, in regard to the same type of cases, may be prescribed in different Divisions of the High Court. The import of the divergent judgments, however, seems to implicate more than mere procedure. The divergence also impacts on substantive law. When one reads the judgment in **Trustees of Alessio Body Corporate v Lee Cottle & 2 Others**⁵ and the reasoning it repeats, it appears that motion proceedings may offer an appellant opportunity to give more evidence to elucidate on the point of law, than what an appeal record may offer.

[13] Leave to appeal is thus granted to the appellants to appeal to the Supreme Court of Appeal, against my judgment and the resultant costs order. Costs of the application for leave to appeal, are ordered to be costs in the appeal. The scale of costs is reserved.

J O WILLIAMS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date heard : 1 July 2025

Date of judgment : 14 July 2025

Representation for the applicants :

Adv C Korf

Instructed by Mphahlele & Masipa Inc.
Attorneys

Representation for the respondents :

Adv J Hershensohn SC

Instructed by Lombard & Partners Inc.

⁵ See fn 3.