



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

NOT REPORTABLE

Case no: 751/2025

In the matter between:

CLASSY TRADE AND INVESTMENT CC
Party
t/a TECHNO PADEL
(Registration Number: 2006/056225/23)

Intervening

and

DEREK KENNETH KIBBLE

First Respondent

BENITA KIBBLE

Second Respondent

CLIVE SWANEPOEL

Third Respondent

BERNIE SWANEPOEL

Fourth

Respondent

DAVID PAXTON

Fifth Respondent

CARLA PAXTON

Sixth Respondent

THE WALMER GOLF CLUB

Seventh Respondent

NELSON MANDELA BAY MUNICIPALITY

Eighth Respondent

In re matter between:

DEREK KENNETH KIBBLE

First Applicant

BENITA KIBBLE

Second Applicant

CLIVE SWANEPOEL

Third Applicant

BERNIE SWANEPOEL

Fourth Applicant

DAVID PAXTON

Fifth Applicant

CARLA PAXTON

Sixth Applicant

and

THE WALMER GOLF CLUB

First Respondent

NELSON MANDELA BAY MUNICIPALITY

Second Respondent

JUDGMENT

Govindjee J

Background

[1] Padel's rapid ascent in South Africa – fuelled by the simplicity of the sport as well as its sociable nature and communal appeal – has led to a proliferation of padel courts across the country, from urban centres to neighbourhood clubs. The intervening party (Techno Padel) and the Walmer Golf Club (the Club) concluded an agreement in 2024. Techno Padel leased land from the Club and constructed three padel courts (the courts), which it operates for its own account since May 2024. The first to sixth respondents (the respondents) obtained an urgent interim interdict restraining the Club from, in essence, operating, conducting or permitting padel to be played on courts situated on its property, pending an instituted action for the demolition of the courts (the order).¹ The basis of the application was, inter alia, the

¹ The order was dated 11 March 2025. The relief sought in terms of the action is for the Club to demolish and remove all structures, fences constituting the three padel courts on the property and / or any other structures erected for such purposes on the property, together with incidental relief.

absence of approved building plans for the construction of the courts. Reliance was also placed on s 14 of National Building Regulations and Building Standards Act, 1977² (the Act), which prohibits use or occupation absent a certificate of occupancy.³ Techno Padel was not cited as a respondent and was unsuccessful in its attempt to postpone the Club's application for leave to appeal the order, to enable its intervention.⁴

[2] Techno Padel seeks to intervene in the application at this stage, post-judgment, to be joined as a respondent. Its aim is to rescind the order for the matter to be heard afresh. The main issues to be decided are whether Techno Padel has *locus standi* to intervene and, if so, whether there are grounds to rescind the judgment in terms of the common law.

Intervention

[3] Techno Padel argued that it had made out a prima facie case to demonstrate a direct and substantial interest in the subject-matter of the litigation. The case, in essence, is that the court took a decision that was manifestly prejudicial to Techno Padel without affording it a hearing, so that leave to intervene ought to be granted. Once intervention is granted, so the argument goes, rescission must follow since the purpose of the intervention is to engage the respondents on the merits. Techno Padel argues, in its papers, that it is both in the interests of justice, and that there are exceptional circumstances present, to permit its intervention,⁵ and that it should succeed on the proper application of the traditional test. The respondents, in opposing the application, highlight that more than a simple financial interest is required for purposes of intervention.

² Act 103 of 1977 (the Act).

³ S 14(4)(a): 'The owner of any building, or any person having an interest therein, erected or being erected with the approval of a local authority, who occupies or uses such building or permits the occupation or use of such building –

(i) unless a certificate of occupancy has been issued in terms of subsection (1)(a) in respect of the building ...

shall be guilty of an offence.'

⁴ Techno Padel's application to postpone the application for leave to appeal, pending this application, was dismissed with costs on 20 June 2025. Application for leave to appeal was dismissed with costs on 19 September 2025. It is my understanding that the Club has petitioned the Supreme Court of Appeal for leave, which the respondents have opposed.

⁵ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (*Zuma*).

The legal position

[4] Any person entitled to join as an applicant or liable to be joined as a respondent may, on notice to all parties, apply for leave to intervene as an applicant or respondent at any stage of the proceedings.⁶ The fact that an order has already been issued at the time of the application for intervention is immaterial.⁷ The question must be determined on the assumption that the allegations of fact relied upon by Techno Padel are true. Leave of the court is required and the court typically considers the same principles applicable to joinder. Determination of the issue does not involve the exercise of a discretion.⁸

[5] It must be noted from the outset that the usual test, discussed below, is distinct from cases where intervention is sought before the Constitutional Court. A different rule applies in that court, alongside Uniform Rule 12, so that the court considers whether it is in the interests of justice for a party to intervene in litigation.⁹ For present purposes, the test is whether the party applying to intervene has a direct and substantial (legal) interest in the subject matter of the proceedings 'which may be affected prejudicially by the judgment of the court'.¹⁰ Corbett J framed the position as follows:¹¹

⁶ Uniform Rule 12 read with rule 6(14).

⁷ *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC) (SA Riding) para 20; *United Watch and Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* 1972 (4) SA 409 (C) (*United Watch & Diamond Co*) at 415.

⁸ *Nelson Mandela Metropolitan Municipality and Others v Greyvenou CC and Others* 2004 (2) SA 81 (E) para 9. The intervening party must satisfy the court that their application is made seriously and is not frivolous: *Minister of Local Government and Land Tenure and Another v Sizwe Development and Others: In re Sizwe Development v Flagstaff Municipality* 1991 (1) SA 677 (Tk) (*Flagstaff Municipality*) at 678G–679B.

⁹ *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC); 72 SATC 135 paras 11–12. Also see s 167(6) of the Constitution, as discussed in *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as Amicus Curiae) In re: Masetlha v President of the Republic of South Africa and Another* [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC) paras 19–20. The Constitutional Court has noted that the question of direct and substantial interest in the subject matter of the proceedings 'will rank highly along with other relevant considerations', including explanation for any delay in seeking to be joined; the nature of the relief or opposition put up by the intervening party; whether the intervention would materially prejudice the case of any of the other parties to the litigation.' Also see *Gory v Kolver NO and Others* [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC) para 13. Cf *Snyders and Others v De Jager* [2016] ZACC 54 para 9: a person has a direct and substantial interest in an order that is sought in proceedings if the order would directly affect such a person's rights or interest (own emphasis).

¹⁰ *Bowring NO v Vredecorp Properties CC and Another* 2007 (5) SA 391 (SCA) para 21. See *Gordon v Department of Health, KwaZulu-Natal* 2008 (6) SA 522 (SCA) (*Gordon*) para 9, citing the two-

‘In my opinion, an applicant for an order setting aside or varying a judgment or order of Court must show, in order to establish *locus standi*, that he has an interest in the subject-matter of the judgment or order sufficiently direct and substantial to have entitled him to intervene in the original application upon which the judgment was given or order granted.’

[6] ‘Direct and substantial interest’ has also been held to connote ‘an interest in the right which is the subject-matter of the litigation and ... not merely a financial interest which is only an indirect interest in such litigation’.¹² This understanding was confirmed in *Standard Bank of SA Ltd v Swartland Municipality*¹³ (*Swartland Municipality*). The SCA held that a mortgagee (the bank), as the holder of a real right in property, which included buildings on the land, erected lawfully or otherwise, had more than a financial interest in the outcome of proceedings for demolition of those buildings.¹⁴ The reason for this was expressed as follows:¹⁵

‘...the bank had a clear and substantial interest in the outcome of the application ... The value of the property in which it had real rights would no doubt be affected by the demolition of structures erected on it. The bank’s ability to sell the property for the amount owed to it was placed in jeopardy. It was accordingly necessary for the municipality to join the bank as a respondent in the application.’

[7] Once the intervening party shows a direct and substantial interest in the subject matter of the case, which could be prejudicially affected by an order, the court ought to grant leave to intervene.¹⁶

‘It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court. This means that the applicant must show that it has a right adversely

pronged test formulated in *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) (*Amalgamated Engineering Union*) at 657.

¹¹ *United Watch & Diamond Co* above n 7 at 415B.

¹² *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) (*Henri Viljoen (Pty) Ltd*) at 169H; *United Watch & Diamond Co* above n 7 at 415–416; *Aquatour (Pty) Ltd v Sacks and Others* 1989 (1) SA 56 (A) at 62C. Cases involving right and title to immovable property have been held to fit the bill: see for example, *Mabuza v Nedbank Ltd and Another* 2015 (3) SA 369 (GP) para 16. So too cases involving the eviction of natural persons: *Snyders and Others v de Jager* [2016] ZACC 54 para 10.

¹³ *Standard Bank of South Africa Ltd v Swartland Municipality and Others* 2011 (5) SA 257 (SCA) (*Swartland Municipality*) para 9.

¹⁴ *Ibid.* Also see *Collin v Toffie* 1944 AD 456 at 464.

¹⁵ *Swartland Municipality* above n 13 para 10. Cf M Dendy and C Loots *Herbstein and Van Winsen: The Civil Practice of the Superior Courts of South Africa* (2025) OS 2021 p7-32.

¹⁶ *SA Riding* above n 7 paras 9–10, citing *Flagstaff Municipality* above n 8.

affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief ... If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a predecision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation.' (References omitted.)

[8] Case authority offers various useful approaches to determine the issue. In *Amalgamated Engineering Union v Minister of Labour*, the following two tests were employed to decide whether a third party had a direct and substantial interest:¹⁷

- (a) Whether the third party would have locus standi to claim relief concerning the same subject matter;
- (b) Whether a situation could arise in which, because the third party had not been joined, any order that the court might make would not be *res judicata* against it, entitling it to approach the court again concerning the same subject matter and possibly obtain an order irreconcilable with the order made in the first instance.

[9] It has also been held to be important to determine (a) what interest it is that the intervening party claims to have in the proceedings that led to the order and (b) what the issues in those proceedings were.¹⁸ The nature of the relief claimed before that court should therefore be considered in conjunction with the interest of the party who it is argued should have been joined. This will enable determination as to whether the intervening party has a direct and substantial interest in the subject-matter of the proceedings.¹⁹

¹⁷ *Amalgamated Engineering Union* above n 10 as cited in *Dendy and Loots* above n 15 at p7-28.

¹⁸ *United Watch & Diamond Co* above n 7 at 416H.

¹⁹ *Dendy and Loots* above n 15 at p7-42. See *Gordon* above n 10 para 10. The court held that a successful appointee would only have a legal interest in the proceedings where the decision to appoint them was sought to be set aside, which could lead to removal from the post. The person then became a necessary party to the proceedings because the order could not be effected without affecting their interests

[10] In *SA Riding*, for example, it was argued that the Association merely had a financial interest in the litigation.²⁰ In concluding to the contrary, the Constitutional Court relied squarely on the applicable legislative provision, which afforded lawful occupiers of state land the right to claim compensation when the land occupied was awarded to a claimant for restitution of land rights. It was the determination of the right to compensation, emanating from the entitlement to compensation conferred upon lawful occupiers in terms of the statute, that gave rise to a direct and substantial interest and an entitlement to be heard.²¹

‘The Association was therefore entitled to intervene and enforce its right to compensation. It is in this limited sense that it had a direct and substantial interest in the proceedings ... it had no legal interest in the transfer of the land [and] no direct and substantial interest in the property in question.’

Analysis

[11] The original papers reflect that the gravamen of the respondents’ complaint was that unlawful activities had created an untenable nuisance. The alleged unlawfulness was premised squarely on the absence of submitted or approved building plans for the courts.²² This was also the reason for the application to be brought on an urgent basis. Several paragraphs were devoted to the issue, including reference to the statutory obligation to obtain a prescribed certificate prior to occupation, and that non-compliance constituted a criminal offence and justified demolition.²³ The *prima facie* right relied upon by the respondents was described as follows:

‘... we have a clear right, or at the very least, a *prima facie* legal right to demand that the [Club] complies with the requirements of building regulations and town planning schemes, which serves the interests of the community.’

Similarly, statutory non-compliance was the sole basis for submitting that the balance of convenience for the granting of the interim interdict favoured the respondents. The respondents clearly did not rely on nuisance for the relief sought, although this featured, as may have been expected, in describing the respondents’ apprehension of harm.

²⁰ *SA Riding* above n 7.

²¹ *SA Riding* above n 7 paras 15, 18–19. Also see *Flagstaff Municipality* above n 8 at 679.

²² Cf *City of Tshwane v Ghani and Others* 2009 (5) SA 563 (T).

²³ See *Lester v Ndlambe Municipality and Another* 2015 (6) SA 283 (SCA) para 23.

[12] Does Techno Padel have a sufficient direct and substantial legal interest to intervene in an application that sought this relief? Techno Padel relies on its lease agreement, in terms of which it will operate the courts for its own account for a period of five years, with an option to renew. The rental payable to the Club is a percentage of the income. The papers deal with the cost of construction, the income generated between December 2024 and February 2025 and the estimated loss if the courts are closed. It is readily apparent that this constitutes nothing more than a financial interest, which is tantamount to an indirect interest in the litigation. As indicated above, the SCA has confirmed that this is an insufficient basis to establish locus standi.

[13] It may be added that Techno Padel's answering affidavit focuses predominantly on the respondents' complaints about the inconvenience caused to them by the courts, based on various factual disputes. It erred by approaching the respondents' case as one founded on nuisance, instead of a contravention(s) of the Act. It places no reliance on any obligations imposed upon it, as the party that seemingly erected the courts, in terms of the Act, maintains that compliance is an issue restricted to the Club and avers, in reply, that it does not have knowledge of what is, or is not, outstanding in respect of Municipal approvals. On that basis alone, and bearing in mind the nature of the relief claimed by the respondents, it fails to demonstrate a necessary entitlement for intervention. Viewed as such, its interests are purely financial. Put differently, if the respondents' complaints involving building regulations are truly a matter only involving the Club and Municipality, Techno Padel has no 'legal' interest in the matter on its own version, notwithstanding even a substantial financial or commercial interest which may be prejudicially affected by the judgment.²⁴

[14] Techno Padel does, however, suggest the following at one point in its papers: '...the issue has become academic because the Metro has now approved the building plans and ... the Golf Club, as the registered owner of the property on which the courts are situated, has complied, or is in the process of complying with all the necessary conditions

²⁴ *Henri Viljoen (Pty) Ltd* above n 12 at 167; *Dendy and Loots* above n 15 at p7-29; *Aquatour (Pty) Ltd v Sacks and Others* above n 12 at 62G.

and requirements set out therein ... the approval thereof puts an end to their cause of action.'

[15] As a result, I am prepared to assume in Techno Padel's favour that this is an additional basis relied upon for intervention. Indeed, s 4 of the Act provides that 'no person', rather than the owner alone, may erect any building in respect of which plans and specifications are to be drawn and submitted in terms of the Act.²⁵ Various concomitant rights flow from this, including the right to a decision in respect of the approval to erect a building, and an appeal against the decision of a local authority. Techno Padel could conceivably have exercised such rights. As for a certificate of occupancy, it is common cause that there was no certificate of occupancy issued at the time the application was argued.²⁶ At least notionally, this too appears to be a matter of concern to both an owner of any building and any person having an interest therein, such as Techno Padel.²⁷ Considering these dimensions of the application, and the relief claimed, Techno Padel could be said to have a direct and substantial interest that transcends a 'financial interest', as the party that was responsible for the erection of the courts, and as a party with an interest in occupying or using the courts. As indicated, these matters are both pertinent to the core issue that was before the court at the time the order was granted.

[16] There is, however, one further hurdle to cross. The approach in *SA Riding* is different to that adopted in *Swartland Municipality* in respect of the extent of the right to be demonstrated by the intervening party. In *Swartland Municipality*, the SCA held that the High Court erred in failing to order the bank's joinder, despite the court's remarks that good cause for rescission was unlikely because the bank lacked any defence to the claim for demolition. By contrast, In *SA Riding*, the Constitutional Court held that while the intervening party did not have to satisfy the court at the stage of intervention that it would succeed, it remained necessary to make allegations which, if proved, would entitle it to relief.²⁸ Dendy and Loots explain that a

²⁵ Cf *Richter v Waterfall Equestrian Estate WUQF (Pty) Limited and Others* [2014] ZAGPJHC 371; [2015] 1 All SA 695 (GJ) para 53.

²⁶ S 14 of the Act.

²⁷ S 14(4)(a), quoted above n 3.

²⁸ The Constitutional Court cited *Flagstaff Municipality* above n 8 at 679A with approval: in addition to demonstrating a direct and substantial interest, the applicant must satisfy the court that the application is made seriously and is not frivolous, and that the allegations made by the applicant constitute a

direct and substantial interest is a legal interest because it is premised on a legally enforceable right, which must constitute a prima facie right or defence.²⁹

[17] Applying *SA Riding*, I am satisfied that Techno Padel's intervention application is made seriously.³⁰ For different reasons to that presented in its papers, I am also prepared to accept that it has a direct and substantial interest in the subject-matter of the litigation. Techno Padel has, however, failed to make sufficient allegations to demonstrate a prima facie defence to the respondents' case for an interdict, which was based on alleged non-compliance with the Act. The high-water mark of the defence is that both the Club and Techno Padel believed 'at the time' that building plans were unnecessary, that this was 'the first time [as far as Techno Padel were concerned] that building plans have been required' for padel courts, that the requirement was 'debatable' and that the issue was 'academic' given that building plans had since been approved.

[18] These averments are, at best, equivocal. To compound matters, Techno Padel effectively admits, in reply, that matters pertaining to the building plan were left to the Club, as the registered owner of the property. As a result, it cannot comment as to any non-compliance with special conditions attached to the building plan approval. These allegations, taken together, fall short of what is required for purposes of intervention. Techno Padel also fails to address the lack of a certificate of occupancy. Occupation or use of a building, or permitting occupation or use, absent a certificate of occupancy constitutes an offence in terms of the Act.³¹ It is common cause that, as matters stand, no certificate of occupancy has been issued. This was a key aspect of the interdict application, together with the concern pertaining to the absence of building plans. While it was unnecessary for Techno

prima facie case or defence, although it is not necessary for the applicant to satisfy the court that they will succeed. See *Soorju v Pillay* 1962 (3) SA 906 (N): this means that the defence must be set up honestly, disclose fully the nature and grounds of it and, in so far as it relies upon facts, lay before the court facts which, if proved, will be a good defence. The question is whether, assuming those to be the facts, the defence is good in law.

²⁹ Dendy and Loots above n 15 at p 7-32. At common law, it was often held that a person applying for leave to intervene had to establish: (i) an interest in the suit, or that their interests would probably be affected; and (ii) a common cause of action or common ground with the party with whom joinder was being sought: at p7-53.

³⁰ See *Land and Agricultural Development Bank of South Africa v Lazercor Eight (Pty) Ltd and Others* 2024 (6) SA 267 (WCC); [2024] 3 All SA 273 paras 30-33.

³¹ S 14(4)(a)(i).

Padel to demonstrate that it would succeed in staving off the interdict application, assuming it were granted leave to intervene and that the order was rescinded, it was obliged to make allegations which, if proved, would be a good defence. Given the shortcomings with Techno Padel's allegations in respect of both the building plans and the certificate of occupancy, in my view it has failed to do so. As a result, applied to the present circumstances and absent a prima facie defence to the original relief sought by the respondents, no purpose would be served by granting Techno Padel the right to intervene.

Rescission

[19] If this analysis is erroneous, so that intervention ought to have been permitted, it may be added that I find that Techno Padel has failed to establish a common-law basis for rescission.³² While I accept that it had good reason not to oppose the application, on the basis that it had not been cited, it has failed to demonstrate a bona fide defence which prima facie carries some prospects of success. The reasons for this conclusion are apparent from the earlier analysis. In short, the interdict application was premised on non-compliance with the Act. Techno Padel's tentative suggestions that building plans were either unnecessary, or have now been approved, fall short of showing sufficient cause for the order to be rescinded. That aside, the lack of a certificate of occupancy, in contravention of the Act, has not been addressed and constitutes a separate basis for the interdictory relief obtained by the respondents. For this reason, too, the application must be dismissed.

Order

[20] The following order is issued:

1. The application is dismissed with costs, including the costs of counsel on Scale C.

³² See *Zuma* above n 5 para 71.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 13 November 2025

Delivered: 18 November 2025

Appearances

For the Intervening Party: Adv NJ Mullins SC

Instructed by: Francois Roux Attorneys
Gqeberha

For the 1st to 6th Respondents: Adv JG Richards SC

Instructed by: Friedman Scheckter
Gqeberha