

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

Case No.: 2024-091277

1. Reportable: **NO**

2. Of interest to other Judges: **NO**

3. Revised: **YES**

Date: **11 November**

Signature:

In the matter between:

JENNIFER LYNNE KOSTER

Applicant

and

CENTURION HOMEOWNERS ASSOCIATION (NPC)

First Respondent

**THE CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

Second Respondent

VERSATEX TRADING 80 (PTY) LTD

Third Respondent

JUDGMENT

NEL, AJ:

INTRODUCTION

[1] This matter comes before me as two interconnected applications. The first is a review application in terms of Uniform Rule 53 (*“the main application”*), instituted by the Applicant, Ms Koster, on 14 August 2024. The Applicant seeks to review and set aside two decisions made by the First Respondent, the Centurion Homeowners Association (NPC), which refused to approve her revised building plans.

[2] The second is an interlocutory application brought by the First Respondent in terms of Uniform Rule 30A (*“the interlocutory application”*). In this application, the First Respondent seeks to strike out the Applicant’s entire Rule 53(4) Supplementary Affidavit in the main application on the basis that it improperly discloses a ‘without prejudice’ settlement tender.

BACKGROUND

[3] The Applicant is the registered owner of Erf 1[...] Highveld Extension 7 within the Centurion Residential Estate and Country Club administered by the First Respondent, a homeowners association established under the Companies Act. The Second Respondent is the local authority with jurisdiction over the Applicant’s property. The Third Respondent is the Applicant’s neighbour, the owner of Erf 1[...]2.

[4] The dispute concerned the Applicant’s revised building plans. The Applicant had constructed her dwelling based on plans approved by the Second Respondent (plan number PL615/R4/R2404/22). However, the final construction omitted two elements: a timber slatted screen and a paint specification for a boundary wall. After the Third Respondent lodged a complaint, the Second Respondent advised the Applicant to submit revised, as-built plans reflecting these omissions. The Second Respondent confirmed that the omissions did not contravene any building regulations, but that its final approval of the revised plans was contingent on the Applicant first obtaining the approval of the First Respondent.

[5] The Applicant submitted these revised plans to the First Respondent for approval. On 21 May 2024, the First Respondent refused to approve the plans. The stated reason, provided on 22 May 2024, was that the Applicant had provided “*no substantial reasons*” for the amendments.

[6] Following correspondence from the Applicant's attorneys, the First Respondent on 31 July 2024 issued a second refusal. The new reason given was that the Applicant had failed to obtain "*neighbourly consent*" from the Third Respondent.

[7] The Applicant launched the present application on 14 August 2024, seeking various forms of relief including orders reviewing and setting aside both refusal decisions.

[8] On 9 December 2024, after the application had been launched but before the First Respondent filed opposing papers, the First Respondent stamped the Applicant's revised building plans as "*APPROVED*" with the date "*2024-12-09*" clearly endorsed on the plans.

[9] On 10 December 2024, the First Respondent delivered the approved plans to the Applicant under cover of a notice headed "*FIRST RESPONDENT'S OFFER AND TENDER IN TERMS OF RULE 34*". In relevant part, the notice stated as follows:

"KINDLY TAKE NOTICE that the First Respondent herewith offer and tender the approved building plans received from the Applicant, unconditionally and without prejudice as an offer of settlement without making any offer to contribute to pay all or only part of the costs of the Applicant or any other party cited by the Applicant in the application served on 14 and 15 August 2024, which offer and tender is made by way of settlement of both relief and costs sought in the application..."

[10] After receiving the approved plans from the First Respondent, the Applicant submitted them to the Second Respondent. The Second Respondent approved the plans on 13 December 2024.

[11] On 6 January 2025, based on the approved plans, the Second Respondent issued a new occupation certificate to the Applicant.

THE RULE 30A APPLICATION

[12] Turning first to the First Respondent's application in terms of Rule 30A, this application was procedurally misconceived. The Applicant's Supplementary Affidavit was filed pursuant to Rule 53(4), which explicitly provides for supplementary affidavits in review proceedings. The affidavit was, in principle, proper. Only specific portions relating to disclosure of the Rule 34 tender were potentially objectionable.

[13] The proper remedy for objectionable content in an affidavit is Rule 6(15), which empowers the court to "*order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant...*" This allows striking out impugned portions of an affidavit while preserving the rest.

[14] More fundamentally, Rule 34(13) provides the specific remedy for improper disclosure of 'without prejudice' tenders: "*Any party who, contrary to this rule, personally or through any person representing him, discloses such an offer or tender to the judge or the court shall be liable to have costs given against him even if he is successful in the action.*" The First Respondent could have simply relied on Rule 34(13) to seek a costs penalty, without bringing any application.

[15] By choosing to bring a Rule 30A application seeking to strike out the entire Supplementary Affidavit, the First Respondent pursued an inappropriate and unnecessary remedy using the wrong procedure. The Rule 30A application must be dismissed. The First Respondent must bear the costs of this misconceived application.

THE MAIN REVIEW APPLICATION

The Nature of the First Respondent's Approval

[16] A central dispute between the parties concerns the nature of the First Respondent's approval of the revised building plans and its relationship to the Rule 34 tender.

[17] The Applicant contends that the First Respondent's approval was an independent administrative decision made on 9 December 2024, before the plans were transmitted under cover of the Rule 34 tender on 10 December 2024. Relying on the date stamp of "2024-12-09" on the approved plans, the Applicant characterizes the situation as follows: *"prior to the tender already, the first respondent had made up its mind and revisited its earlier decision not to approve the amended building plans and did in fact approve it. That administrative decision to... approve the amended building plans, stands and is not affected by the subsequent rule 34 tender."* (Answering Affidavit in Interlocutory Application, para [21]). On this basis, the Applicant argues that the approval did not form part of the tender and was not conditional on its acceptance. The Applicant contends she was, therefore, entitled to use the approved plans and disclose the fact of approval to the court.

[18] This argument is unsustainable. It conflates the date on which the plans were stamped with the terms on which approval was granted. The stamp of 9 December 2024 merely records when the approval decision was made; it says nothing about whether that approval was conditional or unconditional. The conditionality of the approval is manifested by the manner in which the plans were delivered, namely, under express cover of a Rule 34 tender on 10 December 2024.

[19] The manner and terms of delivery demonstrate conclusively that the First Respondent's approval was conditional. The First Respondent did not simply approve the plans and notify the Applicant of that approval. Rather, it approved the plans on the basis that they would be tendered to the Applicant as performance under Rule 34(2).

[20] The date stamp on the plans is merely proof of when the approval decision was made. It does not convert a conditional tender of performance into an unconditional administrative decision. By delivering the approved plans under cover of a Rule 34 tender, the First Respondent made clear that the plans were being tendered conditionally as part of a settlement offer.

[21] The Applicant cannot accept the benefit of the tendered performance (the approved plans) while rejecting the terms on which that performance was offered

(settlement of both relief and costs, with no offer to pay the Applicant's costs). This is precisely the situation addressed in *Be Bop a Lula Manufacturing & Printing CC v Kingtex Marketing (Pty) Ltd* 2008 (3) SA 327 (SCA) at para [14], where the Court held: "*The respondent had to accept or reject the offer of compromise. It could not add any conditions to it and retain the money.*"

Was a Settlement Concluded Under Rule 34?

[22] Although the Applicant used the approved plans by submitting them to the municipality and obtaining municipal approval and an occupation certificate, neither party contends that a binding settlement was concluded. The First Respondent expressly stated that "*[t]he Tender was not accepted and withdrawn on 20 February 2025*" (Replying Affidavit in Interlocutory Application, para [2.6]). The Applicant disputes that any settlement occurred, arguing (incorrectly, as I have found) that the approval was an independent administrative decision unconnected to the tender.

[23] The question is whether, despite this lack of subjective consensus, the law should impose a binding settlement based on the objective manifestation of acceptance through the Applicant's conduct.

[24] The Supreme Court of Appeal in *Be Bop a Lula* held (at para [10]) that "*contractual liability can also be incurred in circumstances where there is no real agreement between the parties but one of them is reasonably entitled to assume from the words or conduct of the other that they were in agreement.*" However, this principle requires that the offeror was induced by the offeree's conduct to believe that acceptance had occurred (See *Sonap Petroleum SA (Pty) Ltd (formerly known as Sonarep (SA) (Pty) Ltd) v Pappadogianis* 1992 (3) SA 234 (A) at 238I-240B).

[25] The First Respondent was never induced to believe its tender had been accepted. It had no knowledge that the Applicant had submitted the approved plans to the municipality. It continued to believe that no settlement existed, as evidenced by its statement that the tender was not accepted, by its withdrawal of the tender on 20 February 2025, and by its bringing of the Rule 30A application on 20 March 2025.

[26] Without such inducement (i.e., without the First Respondent being led to believe acceptance had occurred), the reliance theory underlying *Be Bop a Lula* cannot apply. I, therefore, conclude that no binding settlement was concluded between the parties, despite the Applicant's objective use of the tendered performance.

The Application is Moot

[27] Although no settlement was concluded, the main application has nonetheless become moot. On 9 December 2024, the First Respondent approved the Applicant's revised building plans and tendered them to the Applicant on 10 December 2024. The Applicant submitted them to the Second Respondent, obtained municipal approval on 13 December 2024, and obtained an occupation certificate on 6 January 2025.

[28] The Applicant has obtained precisely what she sought through the main application: approved plans that have been accepted by the municipality and have formed the basis for an occupation certificate. Whether characterized as settlement or as voluntary provision of the relief sought, the substantive relief claimed in the main application has been rendered academic.

[29] Both parties acknowledged this reality. The Applicant stated in her replying affidavit that *"there can be no dispute between the parties about the fact that there was a decision taken on 9 December 2024 that makes the review application, save for costs, academic."* This position was reiterated by her counsel, Mr van den Bogert SC, in paragraph 11 of his heads of argument, and counsel for the First Respondent, Mr de Villiers, conceded at the hearing that the application is now moot.

The *Oudekraal* Argument

[30] Mr van den Bogert contended that despite the First Respondent's approval, it remains necessary for this Court to set aside the earlier refusal decisions because they continue to exist in law until formally set aside, relying on *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA).

[31] This reliance is misplaced. The *Oudekraal* principle applies to public administrative action by organs of state or entities exercising public power. It does not apply to decisions of private homeowners' associations, which are governed by the law of voluntary associations and contract. As this Court held in *Khyber Rock Estate East Home Owners Association v 09 of Erf 823 Woodmead Ext 13 CC* [2007] ZAGPHC 137, homeowners' association decisions "*do not fall within the purview of PAJA*" (at para [34]).

[32] In any event, the practical reality is that the Applicant now holds municipal approval and an occupation certificate based on the plans approved by the First Respondent. Whether or not a formal court order sets aside the earlier refusals is now academic; those refusals have been overtaken by subsequent events and have no continuing legal effect. The relief sought in the main application has been achieved.

THE JURISDICTIONAL ISSUE

[33] At the hearing, I *mero motu* raised the question of the Court's jurisdiction as a forum of first instance in light of the judgment in *Heathrow Property Holdings NO 3 CC and Others v Manhattan Place Body Corporate and Others* 2022 (1) SA 211 (WCC). That judgment held that the Community Schemes Ombud Service (CSOS) is the primary forum for such disputes and the High Court should only hear them in exceptional circumstances.

[34] Subsequent to the hearing, however, the Supreme Court of Appeal handed down judgment in *Parch Properties 72 (Pty) Ltd v Summervale Lifestyle Estate Owner's Association and Others* [2025] ZASCA 155. In that case, the SCA definitively held that the CSOS Act does not, either explicitly or implicitly, oust the High Court's inherent jurisdiction (para [18]). The SCA held that the High Court did not require "*exceptional circumstances*" to entertain such an application as a court of first instance (para [19]).

[35] *Parch Properties*, therefore, overrules the Heathrow approach. The jurisdictional concern I raised falls away, and this Court may properly determine the applications before it.

COSTS

[36] The First Respondent contends that the Applicant improperly disclosed its ‘without prejudice’ tender in violation of Rule 34(10). The Applicant disputes this, arguing that the First Respondent’s approval on 9 December 2024 was an independent administrative decision unconnected to the Rule 34 tender of 10 December 2024, and that she was, therefore, entitled to use the approved plans and to disclose the fact of approval to the court.

[37] For the reasons I have given above, the Applicant’s characterization must be rejected. The approved plans were delivered to the Applicant under express cover of a Rule 34 tender. The tender notice stated that the First Respondent “*offer and tender the approved building plans... as an offer of settlement.*” The approval was, therefore, made as part of, and conditional upon, the Rule 34 tender.

[38] By disclosing the tender in her Supplementary Affidavit—including by annexing the approved plans—the Applicant contravened Rule 34(10). This disclosure was not merely to record that the matter had become moot. Rather, it was used to contend that the First Respondent had “*conceded*” the matter and to manufacture a basis for pursuing costs while rejecting the “*no costs*” term of the tender.

[39] The determination of costs requires consideration of two factors. On the one hand, the Applicant obtained the relief she sought—approved plans accepted by the municipality and forming the basis for an occupation certificate. On the other hand, she did so by appropriating performance tendered conditionally as part of a settlement offer that expressly excluded any offer to pay her costs.

[40] Although no settlement was concluded, the Applicant objectively acted on a tender made to settle both the application and costs. Having appropriated the benefit

while rejecting the terms and improperly disclosing the 'without prejudice' tender, she should not be entitled to costs. This would reward opportunistic conduct and undermine the purpose of Rule 34. There will be no order as to costs in respect of the main application.

ORDER

[41] In the result, I make the following order:

1. The First Respondent's interlocutory application in terms of Rule 30A, dated 20 March 2025, is dismissed with costs on scale B.
2. The main review application is dismissed on the basis that it has become moot.
3. There is no order as to costs in respect of the main application.

E. J. J. NEL
Acting Judge of the High Court
Gauteng Division, Pretoria

APPEARANCES:

For the Applicant: Adv D. van den Bogert SC (Instructed by: LA Stuart Inc.)

For the First Respondent: Adv R. F. de Villiers (Instructed by: Prinsloo-van der Linde Attorneys)

Date of Hearing: 15 October 2025

Date of Judgment: 11 November 2025