



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

JUDGMENT

**Not Reportable
Case No: 2025-242003**

In the matter between:

**LIV PADEL (PTY) LTD
PERRY BRIDGE CITRUS ESTATE (PTY) LTD**

First Applicant
Second Applicant

And

THE EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY
(In his capacity as The Appeal Authority)
KNYSNA LOCAL MUNICIPALITY
THANDO CHARLES MATIKA

First Respondent

Second Respondent
Third Respondent

Coram: DA SILVA SALIE, J
Heard on: 17 December 2025
Delivered on: 18 December 2025

Summary:

Administrative law — interim interdict — municipal land-use decision — appeal decision imposing immediate prohibition on public use — delayed communication of appeal outcome — urgency — interim suspension pending review — non-joinder — residents as complainants acting through municipality — joinder assessed contextually with reference to nature and effect of relief — balance of convenience — interim relief granted — review to be instituted within 60 days — each party to pay own costs.

ORDER

1. The implementation and enforcement of the appeal decision communicated on 3 December 2025 is suspended, pending the determination of the review application to be instituted by the applicants.
2. The applicants shall institute review proceedings within 60 (sixty) days of the date of this order.
3. Each party shall pay its own costs.

JUDGMENT

DA SILVA SALIE J

INTRODUCTION

[1] This is an urgent application brought in two parts relating to Padel Courts situate in Knysna-Hollow. In Part A, the applicants seek interim relief suspending the implementation of an appeal decision taken by the first respondent, pending the determination of review proceedings to be instituted under Part B.

[2] Only Part A serves before this Court. The merits of the review fall to be determined in due course.

[3] The respondents oppose the application on several grounds, including urgency, non-joinder, legal standing, the absence of a prima facie right, lack of irreparable harm, the balance of convenience, availability of alternative remedies, and costs.

FACTUAL BACKGROUND

[4] The first applicant operates padel courts in the Knysna area trading as Liv Padel-Knysna Hollow ("the padel courts") situated on land owned by the second applicant, pursuant to a lease agreement concluded during 2022. The facility has been operational and open to the public since March 2023. Subsequent to a decision by the Municipality, the subject of this application, the padel courts have been shut since 4 December 2025 to the public.

[5] The property is zoned “Resort Zone”. Building plans, including those relating to the padel courts, were approved in January 2023.

[6] During 2023 a limited number of neighbouring residents lodged complaints, principally relating to noise and lighting. An independent acoustic report commissioned during that period concluded that no disturbing noise levels were present.

[7] A consent-use application was accepted by the municipality in April 2024. A planning report issued in November 2024 supported the continuation of the use, recommending mitigation measures such as reduced operating hours and operational management. Enclosure of the courts was not recommended.

[8] Owing to a non-quorate meeting and a request for postponement which the applicants believed had been acceded to, the consent-use application was determined in their absence on 3 December 2024.

[9] An appeal was lodged. The applicants contend that the appeal decision was taken on 27 November 2025. However, the notice provided to the applicants records that the decision was concluded on 15 August 2025. The appeal outcome was only communicated to the applicants on 3 December 2025, approximately 110 days later, notwithstanding a statutory obligation to notify the outcome of the appeal within 21 days.

[10] The appeal outcome upheld a requirement that the padel courts be enclosed within six months and, for the first time, imposed an immediate prohibition on public use pending enclosure, limiting access to resort residents only and restricting floodlighting. The resort residents make up about 5% of the padel court's revenue.

[11] The applicants wish to have the interim decision suspended pending the outcome of the review of the enclosure decision in due course. In terms of the respondent's decision, the first applicant is permitted to continue to operate the padel courts for guests of the Knysna Hollow but not for the public. The Knysna Hollow is small, and the first applicant will not survive if its business is limited to those guests which only account for a small portion of its revenue.

THE RELIEF SOUGHT IN PART A

[12] At this stage, the applicants do not seek to set aside the appeal outcome. They seek the interim suspension of its immediate implementation, contending that enforcement would cause irreparable harm and render the contemplated review nugatory.

URGENCY

[13] Where the immediate implementation of an administrative decision threatens to cause irreversible consequences before its lawfulness can be tested, urgency is established (*Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another 1977 (4) SA 135 (W)* at 137F–G). In this matter, the operative alleged prejudice arose once the appeal outcome was communicated on 3 December 2025 and implemented immediately at the commencement of the festive season. The applicants were required to shut down public operations, with the consequence that bookings already made had to be cancelled and reimbursed, giving rise to immediate and tangible prejudice.

[14] The applicants acted promptly thereafter in the launch of this application. It is submitted that the matter is urgent as substantial and meaningful redress in due course would not be available and without the anticipated revenue, they would suffer financial

loss to the extent that liquidation is inevitable and employees of the padel courts would lose their jobs. I pause to add that the applicants no longer seek relief against the third respondent.

[15] The matter was accordingly urgent.

NON-JOINDER

[16] The respondents contend that the application is fatally defective by reason of the non-joinder of residents who lodged complaints with the municipality.

[17] The principle is trite that a party must be joined where it has a direct and substantial interest in the order which the Court may grant.

[18] However, the rule relating to joinder is not mechanical. Whether non-joinder is fatal must be assessed contextually, with reference to the nature and effect of the relief sought.

[19] In ***Bester NO v Mirror Trading International (Pty) Ltd 2024 (1) SA 112 (WCC)*** paras 22–25, this Court reaffirmed that a practical and common-sense approach must prevail.

[20] The relief sought in Part A is interim in nature. It does not finally determine any land-use rights, nor does it confer or extinguish rights held by residents.

[21] The residents are not decision-makers. Their role was that of complainants invoking municipal oversight. Their concerns were ventilated within the administrative process and are relied upon by the respondents in opposition.

[22] The municipality, as the repository of the public power exercised, is cited and properly before this Court.

[23] To require the joinder of all affected residents in these circumstances would elevate form over substance and would be impractical. Even if joinder were desirable, it would not be just to non-suit the applicants (***Marais v Pongola Sugar Milling Co Ltd 1961 (2) SA 698 (N)*** at 702F).

[24] The non-joinder objection cannot be sustained.

LOCUS STANDI:

[25] The respondents further contend that the first applicant lacks standing to seek the relief claimed on the basis that it was not the formal applicant in the consent-use or appeal process. The submission is however misconceived. Legal standing does not depend on whether a party initiated the underlying administrative application but on whether it has a direct and substantial interest in the relief sought and is adversely affected by the decision in issue. The first applicant is the operator of the padel facility. It is the entity that conducts the business, contracts with members of the public, employs staff and bears the immediate consequences of the appeal decision, including the shutdown of operations and the cancellation and reimbursement of bookings.

[26] The appeal outcome has direct and immediate operative effect on the first applicant's existing activities. That is sufficient to confer standing to seek interim relief pendente lite.

[27] The second applicant is the owner of the property on which the padel facility is situated and the lessor under a subsisting lease. The impugned decision directly affects the use of its property and the viability of the lease arrangement.

[28] A landowner whose property use is curtailed by an administrative decision has a direct and substantial interest in seeking relief. The second applicant's interest is neither remote or indirect. A party whose proprietary or operational interests are directly affected by an administrative decision is not deprived of standing merely because another entity initiated the planning application. I am satisfied that it is sufficient that an applicant demonstrates a prima facie right deserving of protection and a material interest in preventing irreparable harm pending review.

SUBSIDIARITY AND SECTION 33

[29] The respondents contend that reliance on section 33 of the Constitution impermissibly bypasses PAJA.

[30] The submission misconceives the nature of Part A. The interim relief sought is ancillary to, and in support of, review proceedings to be brought under PAJA. The principle of subsidiarity does not preclude interim judicial intervention where immediate implementation may render review relief academic or moot.

[31] In relation to this submission counsel for the respondents herein relied on ***Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs 2004 (4) SA 490 (CC)***, however, this authority concerns the source of review rights, not the availability of interim protection as sought herein.

REQUIREMENTS FOR INTERIM RELIEF

Prima Facie Right

[32] An applicant must establish a prima facie right, though open to some doubt (***Setlogelo v Setlogelo 1914 AD 221*** at 227).

[33] The applicants do not assert an unqualified right to operate free of regulation. They assert a right to lawful and procedurally fair administrative action and to have a review determined before irreversible consequences ensue.

[34] Whilst I agree with counsel for the respondents herein that the prospects of the review do not come in to question in this application, I am however satisfied that a serious, non-frivolous challenge has been demonstrated. This suffices at the interim stage (***OUTA v SANRAL 2013 (4) SA 639 (CC)***).

Irreparable Harm

[35] The test is whether there is a reasonable apprehension of harm not capable of adequate later remedy.

[36] The immediate restriction of public operations during a finite peak period cannot later be reconstructed. Lost opportunities and disruption to contractual and employment relationships are not readily quantifiable. It was argued for the respondents that the applicants' reliance of loss of revenue over this period; inevitable consequent liquidation; that employees would have to be dismissed from their employment; and similar other grounds are not supported by financial statements, bank statements or confirmatory affidavits and thus the Court cannot accept their contention of irreparable harm. I am not persuaded that absent these supporting documents, the applicants must fail in their illustration of irreparable harm. I am satisfied that the festive season, especially in the Knysna area known for festive goers and tourists, is a revenue generating season for a business such as this type of leisure activities.

[37] The apprehension of irreparable harm is thus established.

Balance of Convenience

[38] The residents' interests are legitimate and were considered administratively. However, the Court is not required in Part A to determine whether those interests ultimately justify the impugned condition.

[39] Whilst the respondents retain regulatory powers, the applicants face immediate and irreversible prejudice absent interim relief. I am mindful of the fact that there was a delay in the issue of the notice, some 110 days later. Even if this time period is challenged as it is by the respondents in that they contend it was concluded on 27 November 2025, the timing as well as framing of the notice is pertinent. The notice requires the padel courts to be enclosed immediately (the interim decision). At the time of the notice (3 December 2025), the enclosure could not be constructed immediately given the close of business in the building industry and the municipal offices itself to approve the enclosure

structure. The notice was thus an effective and immediate shut down of the business as opposed to affording the applicants an opportunity to install the enclosures. It is also significant a fact that the initial decision, the enclosure decision, which was appealed against, afforded the applicants time to enclose the padel courts, whilst the outcome of the appeal against it was in practical terms substantially different. The decision stemming from the appeal amounts to an effective shut down.

[40] In assessing the balance of convenience, it is material that the applicants have operated the padel facility in its present form since March 2023. The interim relief sought from this Court does not introduce a new state of affairs or situation but preserves the position that has prevailed for a substantial period pending the determination of the review.

Alternative Remedy

[41] The submission advanced on behalf of the respondents that the applicants ought instead to have pursued an urgent review as an alternative remedy is misplaced. I agree with counsel for the applicants that an urgent review would, by its very nature, require substantially more preparation, a fuller record, and the compilation of extensive papers. To suggest this as an effective alternative at this stage is to overlook the very purpose of the interim relief sought, namely, to preserve the status quo and prevent irreparable prejudice pending the proper ventilation of the review. The existence of a more onerous and time-consuming process does not constitute an adequate alternative remedy in circumstances where immediate implementation threatens to render the review academic.

CONCLUSION: PART A

[42] The applicants have established all the requirements for interim relief pendente lite.

[43] The relief sought is limited and does not pre-empt the determination of the review process contemplated in Part B.

COSTS

[44] The applicants have succeeded in obtaining interim relief in Part A. The question of costs nonetheless remains one for the discretion of the Court, to be exercised judicially upon a consideration of all the relevant circumstances.

[45] The ordinary principle that costs follow the result is a useful starting point, but it is not a rigid rule. It yields where considerations of fairness, the nature of the proceedings, or the conduct of the parties justify a different outcome.

[46] This application was brought in a public-law context, implicating the exercise of statutory powers by a municipality, the interests of surrounding residents, and the regulation of land use. It raised issues of urgency, interim relief pending review, non-joinder, standing and the balance between competing interests.

[47] Importantly, the relief granted is interim and preservative in nature. It does not finally determine the lawfulness of the appeal decision, nor does it resolve the substantive rights of the parties. Those issues remain to be ventilated in the review proceedings under Part B.

[48] The respondents' opposition, although ultimately unsuccessful, cannot be characterised as frivolous, vexatious or unreasonable. The points raised were genuine, arose within a complex regulatory framework, and were advanced in the discharge of public functions.

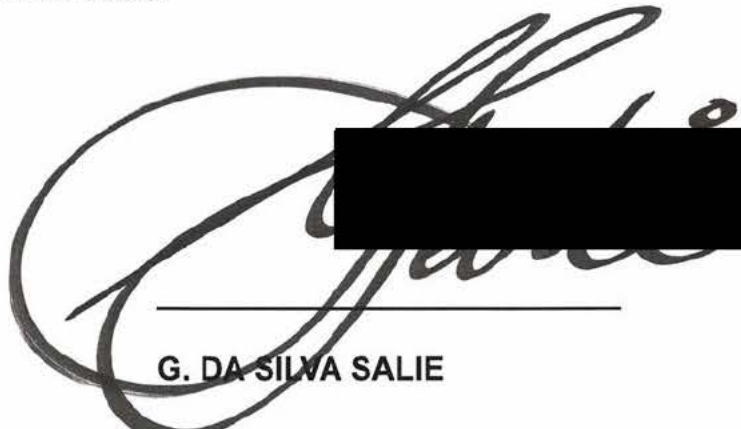
[49] Having regard to the nature of the dispute, the interim character of the relief, and the absence of conduct on the part of either side which warrants an adverse costs order, I am satisfied that it is just and equitable that each party bear its own costs.

ORDER

[50] Wherefore I make the following order:

1. The implementation and enforcement of the appeal decision communicated on 3 December 2025 is suspended, pending the determination of the review application to be instituted by the applicants.
2. The applicants shall institute review proceedings within 60 (sixty) days of the date of this order.

3. Each party shall pay its own costs.



[REDACTED]

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE

Appearances

For Applicant:	Adv. G Rüther
Instructed by:	Sohn and Associates Attorneys c/o Sohn and Wood Attorneys
For Respondent:	Adv. A Nacerodien
Instructed by:	Webber Wentzel Attorneys