



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

Case Number: 19069/2021

In the matter between:

ADRIENNE PERETZ

Applicant

and

THE CITY OF CAPE TOWN

First Respondent

**THE WESTERN CAPE PROVINCIAL
MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING**

Second Respondent

**THE PREMIER OF THE WESTERN
CAPE PROVINCE**

Third Respondent

**THE REGISTRAR OF DEEDS, CAPE
TOWN**

Fourth Respondent

OVH UNIT NO 6 CC

Fifth Respondent

**THE CAMPS BAY & CLIFTON
RATEPAYERS' ASSOCIATION**

Sixth Respondent

LINDIE NOVICK

Seventh Respondent

LESLEY DIANA SCOTT

Eighth Respondent

**TRUSTEES FOR THE TIME BEING
OF THE STING TRUST**

Ninth Respondent

Coram: Greig AJ

Heard: 3 December 2025

Delivered: 19 January 2026

JUDGEMENT

GREIG AJ

INTRODUCTION

- [1] This is an application to rescind, alternatively vary, an interim interdict granted the Henney J on 13 December 2021 in relation to Part A of the notice of motion in the main application under the above case number.
- [2] The interim interdict prevents the applicant from conducting further building work on her property in terms of plans approved by the City of Cape Town ('the City'). It was granted pending the outcome of an application to review planning approvals granted by the City at the instance of the seventh to ninth respondents (I will refer to these respondents, who make common cause in this rescission application, by the shorthand of 'the Camps Bay ratepayers').
- [3] In a related application under the same case number the City seeks relief reconsidering or setting aside the interim interdict. I will refer to this as 'the City's application' or the 'related application'.
- [4] The impugned planning approvals were granted some four years before the interim interdict was granted. There are various reasons advanced by the Camps Bay ratepayers for their delay in bringing the application for review and the associated interim relief. It is not necessary to canvass or consider

these reasons here, but it remains a fact that the impugned approvals were granted almost 10 years ago.

[5] The applicant, Ms Peretz, also complains of the ‘languid pace of the main application’ since the interim interdict was granted which, she says, benefits the Camps Bay ratepayers whilst preventing her from pursuing the development and posing a threat to the integrity of the existing half-built structure.

[6] In seeking to rescind the interim interdict Ms Peretz says that the ‘legal and factual substratum for this relief...has disappeared’. She therefore relies upon various authorities which allow courts to rescind or vary interlocutory orders under defined circumstances.

[7] The Camps Bay ratepayers deny that the substratum for the relief has disappeared, and contend that interim orders are rarely capable of discharge unless there is no longer a live issue between the parties in the application for final relief. They aver that a discharge of the interim interdict will allow Ms Peretz to commit an offence by deviating materially from approved building plans, by building without building plans, or by building in breach of the City’s Development Management Scheme.¹

[8] For reasons which will become clear from what follows, I was not able to hear the merits of this rescission application on the date it was set down on 3 December 2025. Instead, I was initially requested to adjudicate an application to strike the matter from the roll, or grant a postponement, brought by Camps Bay ratepayers. I will refer to this as the postponement/strike application (although the primary relief was to strike the matter from the roll, alternative

¹ In the City of Cape Town Planning Bylaw, 2015.

relief was claimed postponing the application, and the effect in either event would have been a postponement of the matter).

[9] The postponement/strike application was, however, withdrawn on the day of the hearing, after some interchanges during argument which I detail further below.

[10] After withdrawing postponement/strike application, the Camps Bay ratepayers thereupon handed up during the hearing an application to strike various paragraphs from a further affidavit filed by Ms Peretz. This judgement is directed at dealing with this application to strike out portions of the further replying affidavit (I will refer to this as ‘the strikeout application’), as well as the costs of the day on 3 December 2025.

PRELIMINARY ISSUE: RELATED APPLICATION BY CITY FOR RECONSIDERATION OF INTERIM INTERDICT

[11] There is one issue which I consider deserves mention at the outset which I perceived as a possible hindrance to the proper finalisation of this application, even absent the disputes around further affidavits. This pertains to the separate but related application by the City for reconsideration of the interim interdict which is apparently not yet ripe for hearing as the City has not filed a replying affidavit.

[12] In Ms Peretz’ practice note of 25 November 2025 she says that, at the screening roll meeting on 14 November 2025, Erasmus ADJP asked whether the hearing would be completed in one day. The Camps Bay ratepayers’ attorney raised the issue that the City had brought a similar application to reconsider the interim interdict. The practice note proceeds to record that

‘however, after confirmation that the hearing would be limited to Ms Peretz’ application, it was agreed that the hearing could continue.’²

[13] In light of the above the practice note advised me that I ‘need NOT read all the papers in the court file’,³ and that, ‘as the City of Cape Town is not participating, the dispute is narrow’.

[14] The above situation is in my view regrettable (though I see no reason why any of the parties to this rescission application should be held responsible for it). The original intention was always (sensibly) to have both applications heard together, as various prior court orders attest. Furthermore, it is apparent that, after their bifurcation, much of the further heat generated around the affidavits yet to be admitted arises from contentions by the Camps Bay ratepayers that the City, as the municipality charged with enforcing planning regulations, has tellingly lost its stomach for the fight; and by Ms Peretz, in her turn, adopting many allegations and contentions holus bolus from the City’s affidavits in the related application.

[15] It seems to me, therefore, that these two applications (the City’s and Ms Peretz’) should still - if possible - be heard together on the same day, as many of the issues are closely related. If nothing else this will prevent the speculation I endured as to the possible reasons for the City’s absence from the fray.

² In argument before me it seems that this agreement was disputed to the extent that the Camps Bay ratepayers’ attorney contends that he merely accepted that, if the City did not wish to proceed on the same day, then he had no alternative but to accept this.

³ The emphasis is not mine.

[16] On the other hand, if the City's related application has been withdrawn or will not be proceeding,⁴ this situation should be timeously confirmed before the matter is again set down.

[17] Save for these remarks, which are intended merely as observations to explain the order I intend making to try and prevent a possible further derailment of this application, I say nothing further as to the related application. In the same vein, I will also take the liberty of providing some directives in relation to the further conduct of the matter, in the order I make.

ALLOCATION OF THE MATTER FROM THE SCREENING ROLL

[18] It is first necessary to provide some background as to how the matter came before me on 3 December 2025.

[19] This rescission application, together with the City's application, came before Erasmus ADJP for allocation to a judge at a 'screening roll' meeting on Friday, 14 November 2025.

[20] Ms Peretz's practice note explains the situation thus:

(a) At the screening meeting on 14 November 2025 before Erasmus ADJP the parties confirmed that this rescission application was on the roll for Wednesday, 3 December 2025, a date obtained pursuant to an email to the Judge President's office on 21 September 2020.

(b) Erasmus ADJP asked whether the hearing would be completed in one day. However, after confirmation that the hearing would be limited to this rescission application, the matter was sent for the allocation of a judge.

⁴ If the City is dragging its feet there is nothing to prevent the parties from applying for appropriate relief to expedite the City's reconsideration application.

(c) The practice note then records that ‘without warning, after close of business on Friday, 21 November 2025, Mr van Rensburg (for the Camps Bay ratepayers) sent out a practice note suggesting that the matter should not be allocated to a Judge for hearing on 3 December 2025.’ This is described as a ‘strategic shift’ which the Camps Bay ratepayers justified by the fact that (1) were not in a position to file supplementary founding papers in relation to the final relief claimed in the main application and (2) the papers in the rescission application and Ms Peretz’s heads of argument were voluminous.⁵

THE POSTPONEMENT/STRIKE APPLICATION

[21] It is further necessary to provide some detail as to the genesis of the withdrawn postponement/strike application given its relevance to costs.

[22] The postponement/strike application was brought on notice of motion, without any supporting affidavit. Whilst it may be debatable whether an application to strike a matter from the roll would require a supporting affidavit, in general a postponement application does require a supporting affidavit. In any event, in this instance I have little doubt that a supporting affidavit was essential, whatever name or designation one may be inclined to give to the application. In the absence of any supporting affidavit many submissions from the bar traversed factual territory for which there was little proper basis.

[23] What is clear from the record is that the sequence of events in relation to the filing of further affidavits was as follows.

⁵ I should note that this Court was not provided with the above practice note filed by the Camps Bay ratepayers on 21 November 2025: the only indication of its existence and content is to be found in the practice note from Ms Peretz’s legal representatives

(a) Ms Peretz delivered a replying affidavit on 16 September 2022. She then delivered a further supplementary affidavit on 29 November 2023 (the matter had been set down on the semi-urgent roll for hearing on 20 February 2024 in terms of an order of Goliath AJP of 8 September 2023). This affidavit was unaccompanied by any application for its exceptional admission on the principles enunciated in *Standard Bank of SA Ltd v Sewpersadh and Another*.⁶ I will refer to this affidavit as the ‘2023 affidavit’.

(b) More than two years later, in the lead up to the hearing on 14 November 2025, the Camps Bay ratepayers’ attorney sent a letter to Ms Peretz’ attorneys stating:

‘We notice that you proceeded unilaterally to place a document on the court file and in the index referred to as a ‘Supplementary affidavit – Ivor Kaye – dated 29 November 2023’. A litigant is not at liberty to file an affidavit out of sequence, at will. We object to this conduct and demand that this document be removed from the court file immediately. If you wish to submit further documentation, please comply with the rules. If we do not receive confirmation from you as to this affidavit, by close of business on Monday, 17 November 2025, then we have instructions to proceed with an application to ensure that our clients’ rights are protected, together with an adverse costs order.’

(c) The proceedings threatened in the above letter were not launched and instead a further supplementary affidavit was filed by the Camps Bay

⁶ 2005 (4) SA 148 (C). Here it was held that a litigant is not entitled to file further affidavits without first obtaining the leave of the court, which retains a discretion to admit them only in special circumstances or where it considers it advisable. The party seeking to file an additional affidavit must provide a satisfactory explanation showing that the new material was not omitted earlier due to mala fides or culpable remissness and the court must also be satisfied that admitting the affidavit will not cause prejudice to the opposing party that cannot be cured by an appropriate costs order – see para [9].

ratepayers on 25 November 2025. This affidavit was accompanied by an application supporting its exceptional admission.

(d) On the following day, 26 November 2025, Ms Peretz filed a further affidavit in response, unaccompanied by any application for its exceptional admission. I will refer to this as the '26 November affidavit'.

[24] In supporting their application to postpone or strike the matter from the roll the Camps Bay ratepayers complain that, without leave or application, Ms Peretz has raises contentious new matter in the 26 November affidavit. They say that the affidavit requires a response but, if they are afforded an opportunity to respond, the prejudice will be assuaged. For this reason, they submit the hearing could not proceed on 3 December 2025.

[25] After some considerable time spent on argument on 3 December 2025, the postponement/strike application was however withdrawn without explanation or tender of costs. In its stead, the strikeout application was launched.

[26] I turn now to deal with the strikeout application before addressing the issue of costs.

THE STRIKEOUT APPLICATION

[27] As mentioned, during the hearing on 3 December 2025, the Camps Bay ratepayers launched a further application for an order striking out paragraphs 7 – 12, 14 – 17, 19 – 41, 34, 35 – 41, 42.2, 44 – 51, 53 – 72, 75, 77 – 80 and 83 – 93 of the 26 November affidavit.

[28] It is immediately apparent that this application to strike out the above paragraphs was launched in limbo. I had made no ruling on the extraordinary admission of any of the parties' preceding further affidavits which followed the replying affidavit, including those delivered by the Camps Bay ratepayers (albeit that the matter were accompanied by applications for their exceptional

admission). Possible agreement on these issues was explored during the hearing, but it was clear that the parties were not willing to agree to the admission of all their further affidavits unconditionally. Furthermore, to the extent that there was consensus on the admission of certain further affidavits, particularly those filed before the further affidavits of 25 and 26 November, any decision on their admission could only be made, in my view, as integral to a decision on the admission of all further affidavits which the parties have chosen to file. Furthermore, on the Camps Bay ratepayers' own showing, I can make no decision on the admission of affidavits when no accompanying application has been delivered.⁷

[29] Consideration as to whether the paragraphs referred to in paragraph [27] above should be struck out as being new matter in reply was therefore premature. The strikeout application was misconceived: I was not in a position to make any ruling on it.

[30] Nonetheless, argument in relation to the strikeout application consumed yet more time during the hearing and postponement of the matter became inevitable.

[31] In the circumstances, the only issue for me to determine is that of the wasted costs arising from the postponement of the matter, to which I turn below.

DISCUSSION: WASTED COSTS

[32] In argument I enquired why the issue with the 2023 affidavit was not raised by the Camps Bay ratepayers until shortly before the hearing, in their letter of 14 November 2025. Apparently, the reason was, as stated in that letter, that the 2023 affidavit had found its way into the index.

⁷ See further *Waltloo Meat and Chicken SA (Pty) Ltd v Silvy Luis (Pty) Ltd and Others* 2008 (5) SA 461 (T) at para 35.

[33] Despite the threat to launch proceedings in the letter of 14 November 2025, these were not initiated and instead a responding affidavit was delivered. This in turn engendered the 26 November affidavit from Ms Peretz.

[34] I am mindful of the cogency of the point raised by the Camps Bay ratepayers that delivery of further affidavits required a substantive application for the extraordinary admission of these affidavits. I am also mindful of the fact that only the Camps Bay ratepayers' further affidavits were accompanied by such applications.

[35] Nonetheless, as I raised with the Camps Bay ratepayers' counsel in argument, the period of over 2 years which elapsed after the delivery of the 2023 affidavit before these issues were raised is not properly explained. The fact that the 2023 affidavit appeared in the index was surely not the first time that it was realised by the Camps Bay ratepayers' attorneys that Ms Peretz' intention was to have the affidavit admitted, and rely upon it at the hearing. Whilst the fact that the 2023 affidavit was unaccompanied by any substantive application for its admission may have justified the proceedings threatened in the Camps Bay ratepayers' letter of 14 November 2025, those proceedings were not launched. Instead, the Camps Bay ratepayers elected to file yet a further responding affidavit on 25 November 2025, which was followed in short order by the further responding affidavit from Ms Peretz on 26 November 2025.

[36] It is obvious that the objection to the 2023 affidavit which was raised more than two years later on 14 November 2025, could have been raised far earlier. Furthermore, the decision to file an affidavit in response, and the filing of that affidavit, could likewise have been done years earlier. In other words, the issues with the admission of the further affidavits, whether they contained new matter, and so on, could have been dealt with long before the hearing, but were not.

[37] The response from the Camps Bay ratepayers was that they were entitled, in the absence of any application for the extraordinary admission of these affidavits, to treat them as *pro non scripto* and to ‘ignore’ them. This changed only after the index was filed and it became apparent that Ms Peretz intended to rely on the 26 November affidavit in argument.

[38] For three reasons, I am not persuaded by this argument:

- (a) Firstly, compliance with the rules is not akin to a game where, if a mistake is made, the forfeit is paid.⁸ The Camps Bay ratepayers were and remained entitled to write the letter of complaint after the 2023 affidavit was filed to suggest that an application was required for its admission; instead, this was only done on the threshold of the hearing more than 2 years later, in November 2025.
- (b) Secondly the irregular step mechanism in Rule 30 was available for 10 court days after the 2023 affidavit was filed (and for longer, subject to condonation), but was never utilised.⁹
- (c) Finally, whilst the filing of a further affidavit without a substantive application for its admission may have been irregular, and therefore the affidavit could notionally be treated as ‘*pro non scripto*’,¹⁰ ultimately this is not the approach which was taken. Instead, the letter eventually written on 14 November 2025 threatened unspecified proceedings, and then, without explanation, a choice was made to file a further responding affidavit delivered on 25 November 2025, a week before the hearing.

⁸ *Whittaker v Roos and Bateman* 1911 TPD 1092 at 1102-3.

⁹ I accept what was said in *Sewpersadh*, at para 11 viz. that, even if a party omits to exercise a right they had in terms of Rule 30, this does not change the law regarding the set of affidavits to be filed. But *Sewpersadh* is still clear that this Rule 30 right is available to a litigant.

¹⁰ See *Sewpersadh* at paras 12 – 13 as well as *Hano Trading CC v JR 209 Investments (Pty) Ltd and Another* 2013 (1) SA 161 (SCA) at para 13.

Thereafter a decision was made to apply to strike the matter from the roll or postpone it. I can only agree with the submission by Ms Peretz that this appears to have been a 'strategic shift' at the eleventh hour.

[39] Thus, whilst I am in agreement with counsel for the Camps Bay ratepayers that the failure to file substantive applications for the extraordinary admission of these several further affidavits is to be deprecated, the relationship that this bears to the fact that this matter was not ready for hearing on 3 December 2025, and the consequential responsibility for the wasted costs of the ensuing postponement, is a broader question. In exercising my discretion I must take other considerations, especially those arising from the delays in raising the issue in the first place, into account.

[40] Moreover, as I have said, for reasons which were not clear, the postponement/strike application was withdrawn during the course of the hearing, and in its stead the strikeout application was launched. This precipitate withdrawal, without any tender of costs, is again an issue I need to consider in assessing wasted costs of the hearing on 3 December 2025.

[41] The greater part of the day on 3 December 2025 was expended on arguing the postponement/strike application and later the strikeout application. The former, as I have mentioned, was withdrawn, whilst the latter was belated and misconceived. As the day had been expended on these interlocutory applications, and given that the state of the papers was still in flux, it was not possible to hear the merits of the rescission application.

CONCLUSION: COSTS

[42] Postponement having become inevitable, the only question remaining is as to costs. The wasted costs of the hearing on 3 December 2025 must lie where the responsibility for the abortive proceedings properly rests. The Camps Bay ratepayers elected, at a very late stage, and after more than two years of

inaction, to raise objections to the further affidavits and to pursue associated interlocutory relief. Those issues could and should have been addressed long before the allocated hearing date. Instead, they were raised on the threshold of the hearing, precipitating an inevitable postponement.

[43] Moreover, the postponement/strike application was procedurally deficient, having been brought without any supporting affidavit, and was ultimately withdrawn during the course of argument. The strikeout application that followed on its heels during the hearing was belated and misconceived, being launched before any ruling had been made on the admissibility of the further affidavits.

[44] The greater part of the hearing on 3 December 2025 was consequently consumed by eleventh hour interlocutory skirmishing for which the Camps Bay ratepayers must bear the primary responsibility. Whilst I cannot say that the Camps Bay ratepayers' primary motivation was delay, there can be little doubt that further delays were not inimical to their interests, given the interim interdict which has remained in place since 2021. No party could be ignorant of the fact that this interlocutory skirmishing during the hearing would inevitably lead to a further postponement.

[45] Accordingly, in the exercise of my discretion, and taking into account the lateness of the objections, the failure to utilise available procedural remedies timeously, and the withdrawal and reformulation of applications on the day of the hearing, I am satisfied that that the Camps Bay ratepayers should pay the wasted costs occasioned by the postponement of the matter on 3 December 2025.

ORDER

[46] I accordingly make the following order:

- (a) In the event that any party wishes to file a further affidavit in response to the applicant's affidavit of 26 November 2025, whether in preference to or as an alternative to any striking out application, they shall do so not later than 15 court days from the date of this order.
- (b) After:
- (i) The delivery of the affidavit or lapse of the period referred to in paragraph (a) above;
 - (ii) delivery of the required applications and all affidavits in relation to the admission of the parties' further sets of affidavits filed after the applicant's replying affidavit of 16 September 2022;
- the parties are given leave to approach the Judge President for the allocation of a further date for the hearing of this application.
- (c) This rescission application shall as far as possible be heard together with the related reconsideration application by the City of 23 May 2024 unless the latter application has been withdrawn or is not proceeding.
- (d) To the extent that further heads of argument are deemed necessary by any party, whether as to the admission of the parties' further affidavits, applications to strikeout, or otherwise, these shall be delivered not less than 10 court days prior to the postponed hearing.
- (e) The sixth to ninth respondents are to pay the wasted costs of the hearing on 3 December 2025, including the costs of two counsel (where so employed), on scale C.



Greig AJ

Acting Judge of the High Court

Appearances

For Applicant: Adv D Borgström SC, Adv M Basson

Instructed By: Johan Victor Attorneys

For Respondent: Adv DM Lubbe

Instructed By: Van Rensburg & Co