



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	
27 January 2026	
_____ Date	_____ Signature

In the matter between:

JENNIFER LYNNE KOSTER

Applicant

and

CENTURION HOMEOWNERS ASSOCIATION (NPC)

First Respondent

THE CITY OF TSHWANE

Second Respondent

METROPOLITAN MUNICIPALITY

VERSATEX TRADING 80 (PTY) LTD

Third Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

NEL, AJ:

INTRODUCTION

- [1] This is an application for leave to appeal against the judgment and order of this Court delivered on 11 November 2025. In that judgment, I dismissed the main review application as moot and made no order as to costs.
- [2] The application is brought in terms of Section 17(1) of the *Superior Courts Act* 10 of 2013. The test is trite: leave may only be granted if the Court is of the opinion that the appeal ‘*would*’ have a reasonable prospect of success, or if there is some other compelling reason why the appeal should be heard.
- [3] The grounds of appeal are set out in the Applicant’s Notice of Application for Leave to Appeal. In essence, the Applicant contends that this Court erred in finding that the principle in *Oudekraal* did not apply to the First Respondent, and misdirected itself by relying on Rule 34 to deprive the Applicant of costs.

THE MERITS AND MOOTNESS

- [4] The Applicant persists with the argument that the First Respondent, a Homeowners Association (HOA), exercises public power when approving building plans and that, consequently, the principle in *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) applies. The submission is that the initial refusals of the plans remain valid administrative acts until set aside.
- [5] This argument bears no reasonable prospect of success. In *Mount Edgecombe Country Club Estate Management Association II RF NPC v Singh* 2019 (4) SA 471 (SCA), the Supreme Court of Appeal clarified that the relationship between an HOA and its members is private and contractual, founded on the Memorandum of Incorporation. It has no public law content, and does not involve the exercise of public power or the performance of a public function.
- [6] Counsel for the Applicant submitted that *Oudekraal* applies equally to public and private powers. There is no authority for this proposition. The principle is a mechanism of public law designed to preserve the certainty of administrative acts. It does not apply to a contractual breach between private parties.

- [7] Furthermore, even if *Oudekraal* were applicable, the Supreme Court of Appeal held in that matter that the principle applies where the invalid act is a “*necessary precondition for the validity of consequent acts*” (at para [31]). In this matter, the refusals have been made ineffective. They are not the foundation for any subsequent act. The plans have since been approved and an occupation certificate issued by the Second Respondent municipality. These acts (by the municipality) do not depend on the invalidity of the First Respondent’s refusals for their legal force. There are no flowing consequences that require the setting aside of the initial decision. The review is undeniably moot.

COSTS AND THE APPLICABILITY OF RULE 34

- [8] The gravamen of the Applicant’s complaint is the costs order. The Applicant argues that Rule 34 does not apply to review proceedings and that an administrator cannot tender an unlawful decision. Relying on *Van Staden v Pro-Wiz Group (Pty) Ltd* 2019 (4) SA 532 (SCA), the Applicant contends that this Court committed an error of law which prevented the proper exercise of discretion.
- [9] This argument fails to distinguish between the reasoning of a judgment and the substantive order. As held in *Western Johannesburg Rent Board v Ursula Mansions* 1948 (3) SA 353 (A), an appeal lies against the order, not the reasons.

- [10] Even if another court were to find that Rule 34 is technically inapplicable to review proceedings, the result—the deprivation of costs—remains unassailable on common law grounds. If the First Respondent’s tender of 10 December 2024 fell outside Rule 34, it constituted a common law “*without prejudice*” offer of compromise. Whether analysed under Rule 34 or the common law, it was protected from disclosure, and the Applicant’s divulgence thereof was a breach of the privilege attaching to settlement negotiations.
- [11] The Respondent’s counsel correctly referred this Court to *Hotz & Others v University of Cape Town* 2018 (1) SA 369 (CC), where the Constitutional Court affirmed that an appeal court will not lightly interfere with the exercise of a lower court’s discretion in the true sense, such as regarding costs.
- [12] My judgment (specifically at Paragraph 40) was based on the Applicant’s conduct—specifically, the opportunism of appropriating the benefit of the tender while rejecting the condition as to costs. This was a judicial exercise of discretion based on the facts. An appeal court has no power to substitute its own discretion simply because it might have come to a different conclusion (*Knox D’Arcy Ltd and Others v Jamieson and Others* 1996 (4) SA 348 (A) at 360E-F).

CONCLUSION

[13] An appeal on the merits would have no practical effect as envisaged in Section 16(2)(a)(i) of the *Superior Courts Act*. Regarding costs, the order is sustainable on grounds independent of the Rule 34 finding. There are no reasonable prospects of success, nor are there compelling reasons to grant leave.

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

1. The application for leave to appeal is dismissed.
2. The Applicant is ordered to pay the costs of the application on scale B.

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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: 19 January 2026

Date of Judgment: 27 January 2026