

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: **119605/2024**

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO
10/02/2026

In the matters between: -

**MIDSTREAM HOMEOWNERS ASSOCIATION
NPC**
(Registration Number: 2002/017983/08)

APPLICANT

And

MATOME SOLOMON RALEBIPI
(Identity Number: 7[...])

RESPONDENT

JUDGMENT

BAQWA, J

Introduction

[1] This is an application for leave to appeal incorrectly lodged as a notice of appeal regarding an order granted by this court on 24 June 2025, in favour of the applicant in the main application by Midstream Home Owners Association (Midstream).

Grounds

[2] Mr Ralibipi bases his application on the following grounds:

2.1. The granting of interdictory relief was incorrect as an alternative remedy existed in the form of a remedy pending before the Community Scheme Ombudsman in terms of the Community Schemes Ombudsman Services Act 9 of 2011.

2.2. There was a pending dispute which was referred to the Ombudsman on 20 June 2025, of which Midstream was aware.

2.3. The court erred in refusing condonation as well as the opportunity to file a supplementary affidavit.

2.4. The court erred in ignoring the notice of intention to oppose and the answering affidavit and proceeding with the matter as an unopposed application.

[3] The application for leave is opposed by Midstream on the basis that there are no reasonable prospects of success on appeal and no compelling reason for granting leave to appeal.

[4] The application fails to satisfy the test, which was dealt with by the SCA in *MEC for Health v Mkhitha*¹ as follows:

¹ 2016 JDR 2014 SCA at paragraph 17.

"[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect of realistic chances of success on appeal. A mere possibility of success, an arguable case, one that is not hopeless, is not enough. There must be a sound rational basis to conclude that there is a reasonable prospect of success on appeal."

Alternative remedy

[5] The first and second grounds demonstrate a lack of understanding of the purpose and nature of the third requisite for a final interdict set out in *Setlogelo v Setlogelo*² This requirement was further elucidated by Wallis JA (as he then was) in *Hot 2 and others v University of Cape Town*³

"[35] For the sake of clarity it is necessary to say something about this requisite. The appellant's submissions wavered between a contention that the court has general jurisdiction to withhold the remedy of an interdict and contending that various causes were open to the university to resolve its dispute with the protesters and that this constituted alternative remedies that were to be preferred to an interdict in order to deal with the university's concerns. All of these submissions were misconceived because they proceeded from a misconception as to the purpose of the interdict and as to the nature of this requisite for its grant."

[36] Firstly, the purpose of an interdict is to put an end to conduct in breach of the applicant's rights. The applicant invokes the aid of the court to order the respondent to desist from such conduct, and, if the respondent does not

² 1914 AD 221 at para 227.

³ 2017 (2) SA 485 (SCA) at para 35.

comply, to enforce its order by way of an action for contempt of court. Secondly, the existence of another remedy will only preclude the grant of an interdict where the proposed alternative will afford the injured party a remedy that gives it similar protection to an interdict against the injury that is occurring or is apprehended. That is why in many cases a court will weigh up whether an award of damages will be adequate to compensate the injured party for any harm they may suffer. Thirdly, an alternative remedy must be a legal remedy, that is, a legal remedy that a court may grant and, if need be, enforce, either by the process of execution or by way of proceedings for contempt of court. The fact that one of the parties, or even a judge, may think that the problem would be better solved, or ultimately only be resolved, by a strike or other means, is not a justification for refusing to grant an interdict."

[6] In the circumstances, the above pronouncement by the SCA puts paid to the applicant's Community Schemes Ombudsman submissions. The fact of the matter is that the alleged alternative remedy suggested by the applicant is simply not an alternative remedy to that of an interdict.

[7] What is trite is that an order obtained properly in terms of a proper procedures in terms of the Uniform Rules of Court cannot be upset by a defence raised late *ex post facto* without the timeous lodgement of an application for condonation to enable reconsideration of the default judgement or order granted by default such as in the present case.

[8] Rule 6(5)(d)(ii) provides that Mr Ralibipi's answering affidavit ought to have been filed within 15 days after the filing of his notice of intention to oppose, which was lodged on 28 March 2025.

[9] Instead, the applicant only filed an affidavit on 20 June 2025, without any application for condonation.

[10] It is an established principle of our law that condonation cannot be simply had for the taking. That is the principle which was applied by this court when the applicant's attempt to lodge the answering affidavit without an application was refused by this court. It is required by the Rules of Court that a party ought to give a full explanation regarding the non-compliance which explanation must be sufficient and reasonable.

[11] In this matter, the main application was served on 28 October 2024 after which Mr Ralibipi communicated to Midstream's attorneys on 28 October 2024 that further communication should be addressed to his attorneys. He thereafter delivered a notice of intention to oppose on 28 March 2025.

[12] In terms of Rule 6(5)(b)(i), Mr Ralibipi's answering affidavit was supposed to be delivered within 15 days after delivery of the notice of intention to defend. The answering affidavit was not enough to excuse the default. This, the applicant failed to do and only delivered it on 20 June 2025 without any application for condonation.

[13] In the circumstances, without a full explanation for the non-compliance with the Rules of Court, this court exercised its discretion to exclude the answering affidavit and deal with the matter as an unopposed application.

[14] In light of the absence of any reasonable and acceptable explanation for Mr Ralibipi's delay, it cannot be argued that the court had not exercised its discretion judicially or that it had misdirected itself in any way. It had instead acted in terms of established legal principles.

[15] I have not deemed it necessary to deal with the costs issue raised by the applicant as the order in that regard was consented to in the memorandum of agreement entered into between the parties. The applicant is bound by the terms thereof, which specifically refer to costs on an attorney and client scale in the event of litigation ensuing.

[16] In this regard I find it apposite to make reference to the remarks of the Constitutional Court in *Grootboom v National Prosecuting Authority and Another*⁴, when the following remarks were made:

"[34] One gets the impression that we have arrived at a stage where litigants and lawyers disregard the rules and directions issued by the courts with monotonous regularity. In many instances, the explanations are proffered. In others, there is no explanation at all. The prejudice caused to the court is self-evident. A message must be sent to litigants that the rules and the court's directions cannot be disregarded with impunity."

[17] Regarding the submission that the court erred in not granting Mr Ralebipi an opportunity to file a supplementary affidavit, the submission is equally not sustainable.

[18] It is trite that an applicant who wishes to file a supplementary affidavit must make the necessary application to do so. There was no such application by Mr Ralebipi. How such an omission is laid at the door of the court is simply mind-boggling, to say the least.

⁴ 2014 (2) SA 68 (CC) at paragraph 34.

[19] In the circumstances, there can only be one conclusion The application for leave to appeal is meritless, and I also find no compelling reasons to grant the same as the matter raises no novel issues or questions of law.

[20] I also found that the application is baseless and amounts to an abuse of the process.

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

21.1 The application for leave to appeal is dismissed with costs on the scale as between attorney and client.

SELBY BAQWA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 29 January 2026

Date of judgment: 10 February 2026

Appearance

behalf of the Applicant

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