REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2025-112633**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

25 February 2026
DATE SIGNATURE

In the matter between:

EYE Of AFRICA HOMEOWNERS ASSOCIATION NPC Applicant

and

UBC HOLDINGS (PTY) LTD 1st Respondent

MIDVAAL LOCAL MUNICIPALITY 2nd Respondent

JUDGMENT

MODIBA, J

[1] This is an application for monetary judgment and an order declaring immovable property owned by UBC Holdings (Pty) Ltd (UBC) to be specially executable. UBC opposes the application. UBC's sole director is representing it in these

proceedings. UBC is a registered legal entity, and it may only be represented in these proceedings by a legal practitioner.[1] However, surprisingly, Eye of Africa Homeowner's Association NPC (The EOA) took no issue with this. The issues have been fully ventilated on the papers, and the matter is ripe for hearing.[2] Taking these factors into account, exercising a discretion to grant UBC leave to be represented by its director is proper, as that would lead to a speedy disposal of the matter.

[2] The EOA's claim for monetary judgment is for arear levies and building penalties (the monetary judgment). In July 2024. it obtained a judgment out of the magistrates' court for unpaid contributions and charges in the amount of R65 798.61 (the Magistrate's order). It seeks an order declaring the immovable property owned by UBC to be specially executable to enforce both the monetary judgment and the magistrate's order. UBC opposes the application on several grounds. First, it contends that this court lacks jurisdiction over the matter as it referred it to the Community Schemes Ombud Service (CSOS) on 26 August 2025. It seeks a stay of these proceedings pending the outcome of the CSOS matter.

[3] Second, it contends that its current director never signed the EOA's memorandum of incorporation (MOI) in terms of which it (the EOA) renders levies and other charges to it. It also contends that the penalties the EOA rendered to it are excessive and unreasonable and seeks relief in terms of the Conventional

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[1] *Yates Investments (Pty) Ltd v Commissioner for Inland Revenue* 1956 (1) SA 364 (A) at 170G - H.)

[2] *Manong & Associates (Pty) Ltd V Minister of Public Works and Another* 2010 (2) SA 167 (SCA) paragraphs 13-16.

Penalties Act 15 of 1962 and the Consumer Protection Act 68 of 2008.

[4] The background facts are largely common cause. UBC acquired the immovable property, and it was registered in its name on 24 February 2017. The immovable property is a partially built structure. UBC does not own any other property.

[5] THE EOA contends that UBC is bound to its MOI by virtue of its membership to it. Save for the issue set out in paragraph 3 above, UBC takes no issue with the provisions of the MOI. The EOA relies on provisions in the MOI that creates rights and obligations between the parties which I set out below.

[6] From time to time, The EOA directors may impose special levies upon members to make contributions in respect of all expenses necessarily incurred. Any amount due by a member by way of Levy or otherwise and interest shall be a debt due by such member to the EOA. The EOA directors and/or managing agent may impose a system of fines or other penalties, including litigation as they deem fit, to enforce any Estate Rules, Architectural Guidelines, landscaping, and gardening. Any fine so imposed shall be deemed to be a debt by the member of the EOA and shall be recoverable by ordinary civil process.

[7] Each member shall within a period of twenty-four months after the date of the first transfer of the Erf from the developer, commence building the dwelling on the Erf and shall complete such dwelling within a period of thirty-six months. These periods apply irrespective of whether the Erf has subsequently been transferred. Should a member fail to do so, The EOA may choose to repurchase the Erf or sell

the Erf to any third party. The defaulting member is required to pay the EOA an amount equal to double the normal levy per month after three years from the date of the first transfer of the Erf to the date of compliance. The amount so payable will increase to three times the normal levy after one year of non-compliance.

[8] The EOA contends that UBC failed and/or refused and/ or neglected to pay the arrear levies and other charges due and owing to it. As a result, it sought and obtained the magistrate's order. On 16 April 2025, the execution of the judgment was unsuccessful as the sheriff rendered a *nulla bona* return. Since then, and as at June 2025, UBC's indebtedness to it has increased to R261 198.77. It is for that reason that it seeks monetary judgment in the amount of that amount.

[9] UBC contends that substantial portions of the amount claimed are disputed and are subject to a *bona fide* referral to the Community Schemes Ombud Services dated 26 August 2025, the MOI may not be enforced without scrutiny under Conventional Penalties Act and potentially the Consumer Penalties Act and the Estate Rules and MIO were not validly communicated and brought to the attention of its current director.

[10] There is no merit to these contentions. As contended on behalf of the EOA, in terms of s 42 of the of the Community Schemes Ombud Service Act 9 of 2011 (CSOS Act) the CSOC *ombud must reject an application by written notice to the applicant if the relief sought does not fall within its jurisdiction and the ombud is satisfied that the dispute should be dealt with in a court of law or other tribunal of competent jurisdiction.* In terms of paragraph 12.3. of the CSOC Practice

Directive on Dispute Resolution 2019, in addition to the grounds set in s 42 of the CSOS Act, a dispute referred to the CSOS can be rejected if it is part of or closely related to the existing proceedings in a court.

[11] The EOA instituted the present application prior to the referral of the dispute to the CSOS. The EOA enrolled the application on the unopposed motion court roll of 27 August 2025. When UBC submitted the dispute to CSOS on 26 August 2025, litigation in respect of the same dispute was subject to the magistrate's order as well as the present application. Therefore, dispute referred to the CSOS falls to be rejected for want of jurisdiction in terms of 42 of the CSOS Act read with paragraph 12.3. of the CSOC Practice Directive on Dispute Resolution 2019.

[12] UBC alleges that the MOI provisions authorizing penalties may not be enforced without scrutiny under the Conventional Penalties Act, and potentially the Consumer Protection Act. However, it has not set out any factual averments in support of its defence under the Conventional Penalties Act or relief under Consumer Protection Act. As contended on behalf of EOA, it is bound by the contractual nature of the EOA rules and MOI. As the party seeking to avoid the enforcement of the MOI, it bears the onus to establish that enforcing the EOA would be unfair and unreasonable in the given circumstances. The respondent has not established the basis upon which the terms are unfair, unconscionable or unreasonable.

[13] UBC contends that The EOA has been charging building levies to it since 2021. As a new owner, UBC further contended, it is entitled to a 24-month moratorium. It is common cause that UBC is a registered owner of the property

since February 2017. The fact that its director only assumed that office later does not absolve it from its obligations in terms of the MOI. It is not subject to a new moratorium as there was no change of in the ownership of UBC. The penalties were levied under the MOI to which UBC was bound since it acquired ownership of the property in 2017.

[14] UBC alleged that the *nulla bona* return is defective as the sheriff did not make reasonable attempts to attach bank account or other movables. The sheriff served the warrant of execution at UBC's registered address where it found a Mr Makamu Ubisi (Mr Ubisi). Ironically, Mr Ubisi is the UBC's erstwhile director. He ceased to be UBC's director in July 2024. He advised the sheriff that all the assets at the premises belonged to Mihandzu Consulting and he does not know UBC. There is no obligation on the sheriff under the circumstances in which he rendered a *nulla bona* return to investigate whether UBC has bank accounts.

[15] For all the above reasons, UBC's defences are rejected and the application should succeed. I therefore issue the following order:

Order

[1] The First Respondent's immovable property known as Erf 2[…], Eye of Africa Ext. 1, Gauteng, situated within the Eye of Africa Gold & Residential Estate, 3[…] C[…] Road, A[…], E[…], Gauteng, Registration Division IR, registered under Title Deed T1[…] ("the immovable property") is declared specially executable.

[2] The First Respondent is ordered to make payment to the Applicant, in the sum of R261 198.77 owing as at 1 June 2025, together with interest thereon at the prime rate as from time to time, compounded monthly, *tempora morae*, to date of final payment.

[3] The Registrar of the above Honourable Court is authorised to issue a warrant of execution in respect of the immovable property referred to in 1 above.

[4] The First Respondent is ordered to costs of suit on attorney client scale.

LT MODIBA

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearances

For the Applicant:	Adv Sikithi
Instructed by:	Nicolene Cloete Rooseboom Attorneys

For the 1st Respondent:	In Person
For the 2nd Respondent:	No appearance

Date of hearing:	16 February 2026
Date of judgment:	25 February 2026

This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The time for the handing down is deemed to be 10am.