REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-072383

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
6/03/2026	[redacted]
DATE	SIGNATURE

In the matter between:

CILAOS BODY CORPORATE Applicant
(Respondent in leave to appeal)

and

SARAH SEBONGILE TSENGIWE Respondent
(Applicant in leave to appeal)

JUDGMENT

D'OLIVEIRA AJ

[1] This is an application for leave to appeal against the judgment handed down on 6 June 2025.

[2] The applicant in this application for leave to appeal was the respondent in the main application. The respondent in this application for leave to appeal was

the applicant in the main application. In this judgment, I will refer to the parties as in the main application.

[3] The respondent in written and oral argument pressed three grounds of appeal out of those set out in the application for leave to appeal on 2 July 2025.

[4] The first ground was that the Court had erred in finding the respondent liable for legal fees.

[5] The second ground is that the Court had erred in finding that the respondent is liable for default interest charged by the applicant.

[6] The third ground is that the Court had erred by failing to take into account a judgment obtained by the applicant against the respondent in the Magistrate's Court relating to the same debt.

[7] The main basis for the challenge to the Court's findings regarding legal fees was that the applicant was not authorised to do so. This was, so the submission went, because the trustee resolution on which the applicant had acted was only signed on 17 January 2023 and had only been signed by two trustees. The respondent argued that the Court, therefore, had erred in finding that the applicant was authorised to charge legal fees from 2 December 2021. In making these submissions, the respondent's counsel directed the court to annexure "FA1" to the founding affidavit, which is a resolution, signed by two trustees, dated 17 January 2023.

[8] But the Court's findings were not based on the resolution dated 17 January 2023 attached as "FA1" to the founding affidavit. The Court based its findings on 2 December 2021 attached as "FA7" to the papers, which authorised the applicant to charge the legal fees it did to the respondent's account. That resolution was signed by three trustees, although Rule 10(2) published under the Sectional Titles Schemes Management Regulations, 2016, provides that the signature of two trustees is sufficient.

[9] The other aspect of the respondent's argument, relating to legal fees, was that the Court had erroneously found that the respondent was liable to pay a stated amount of legal fees pre-December 2021. This is not what the Court

found in the judgment. In the judgment, the Court recognised that Regulation 25.4 of the Sectional Title Schemes Management Act Regulations required legal fees to either be taxed or agreed. Since the legal fees prior to December 2021 had not been taxed or agreed, the Court directed, in paragraph 5 of the order, that legal fees prior to 2 December 2021 should be taxed or agreed.

[10] The primary basis for the second ground of leave to appeal, relating to default interest, was the same as the first ground. Argument was made on the incorrect premise that there did not exist a valid resolution authorising the debiting of default interest because this had only come into existence on 17 January 2023. As I have already pointed out, this submission was without merit in view of the resolution dated 2 December 2021, which authorised the debiting of interest at 2% per month. As for the alleged lack of authority to debit default interest prior to 2 December 2021, this was not pertinently challenged in the answering affidavit.

[11] During the course of the oral submissions, however, it became clear that this ground of leave to appeal was not limited to the *entitlement* to charge default interest. The *correctness* of the default interest charged was put into question. In this regard, the Court was directed to paragraph 2.11 of the answering affidavit which reads as follows:

> "*The Respondent is of the opinion that the Body Corporate are overreaching with regards to Attorney fees and Interest charged in the Customers Statement. e.g. Within a period of 3 months, Between the month of Jul - Sep 2020 an estimated amount R9000 (NINE THOUSAND RANDS) in legal fees was invoiced on the customer account, In addition that, an Interest of 2% was charged monthly towards that.*"

[12] This point has merit.

[13] In the judgment, it was held that the respondent was liable for legal fees prior to 2 December 2021, but that it was necessary for such legal fees to taxed or agreed.

[14] I have reviewed the comprehensive statement of account of the respondent again. It shows that legal fees in the amount of R 37 236.61 were debited to the account between 1 December 2018 and 17 November 2021. Not only this, but default interest was charged on all overdue amounts, including the legal fees.

[15] The result was that, while the applicant made payments to reduce the outstanding balance on her account, the balance outstanding on 1 December 2021, the day before the 2 December 2021 resolution referred to above, was R 28 550.58.

[16] But on the reasoning in the judgment, and according to Regulation 25(4), a member is liable for "*reasonable legal costs, as taxed or agreed by the member*". At the time the pre-2 December 2021 legal fees were debited to the respondent's account, however, they were neither "*taxed or agreed*".

[17] It follows that, while the respondent may be liable in principle to pay pre-2 December 2021 legal fees as was held in the judgment, the applicant wrongly debited them to the applicant's account in the period prior to 2 December 2021. They were not yet "*taxed or agreed*".

[18] It follows that, even if the applicant was authorised to charge default interest, it wrongly charged default interest on the pre-2 December 2021 legal fees both prior to 2 December 2021, and post 2 December 2021 (to the extent that the balance outstanding of R 28 550.58 was carried forward).

[19] I have given thought to whether I should attempt to separate out the pre-2 December 2021 legal fees, and the interest thereon, and grant leave to appeal against part of the judgment only. But because default interest was charged both before and after 2 December 2021 on the balance outstanding on the respondent's account, I am not in a position to ascertain the indebtedness of the respondent, but for the wrong debiting of her account with legal fees.

[20] In the circumstances, I am satisfied that leave to appeal against the judgment as a whole should be granted.

[21] Having come to this conclusion, it is not necessary for me to consider the third ground.

[22] The following order is made:

1. Leave to appeal is granted to the Full Court.

2. The costs of the application for leave to appeal will be costs in the appeal.

[redacted]

D'OLIVEIRA AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

Heard: 2 December 2025

Decided: 6 March 2026

For the Applicant: Adv Simelane

For the Respondent: Adv R Smith
instructed by Heerschop Pienaar Attorneys