**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG CIVIL DIVISION**

**PRETORIA**

CASE NO: 146271-2024

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| DELETE WHICHEVER IS NOT APPLICABLE<br>(1) REPORTABLE: ~~YES /~~ NO<br>(2) OF INTEREST TO OTHER JUDGES : ~~YES~~ / NO<br>(3) REVISED<br>.........[redacted]<br>SIGNATURE<br><br>DATE: 25 February 2026 |

In the matter between

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| **KPP INVESTMENTS (PTY) LTD** | First Applicant |
| **CMS MANAGEMENT SERVICE CC** | Second Applicant |
| **TSEPANG NARE** | Third Applicant |
| and | |
| **THE BODY CORPORATE OF ILLOVO CENTRAL** | First Respondent |
| **LANDSDOWNE PROPERTY MANAGEMENT (PTY) LTD** | Second Respondent |
| **JOHANNESBURG 4 Properties (PTY) LTD** | |

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**JUDGMENT**

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**NTLOKO AJ**

[1] The principal relief sought in the main application concerns the appointment of an administrator in terms of section 16 of the Sectional Titles Schemes Management Act 8 of 2011 ("the STSMA") in respect of the Body Corporate of Illovo Central.

[2] This judgment, however, is confined to a discrete preliminary issue raised by the Fifth Respondent: namely, whether the application is fatally defective for want of joinder of the individual trustees of the Body Corporate.

[3] The Fifth Respondent contends that the application is fatally defective for want of joinder of the individual trustees of the Body Corporate. It is argued that because the appointment of an administrator would suspend the trustees' powers and functions, they possess a direct and substantial interest in the relief sought and ought to have been cited in their personal capacities.

[4] The Applicants dispute this contention. They submit that the Body Corporate is a juristic person capable of suing and being sued in its own name; that the relief is directed at the Body Corporate as an institution; and that no personal relief or adverse finding is sought against the trustees individually.

[5] The issue for determination at this stage is therefore a narrow one: whether, on the settled principles governing joinder, the trustees have a legal interest in the subject matter of the litigation that may be prejudicially affected

by the order sought, such that their non-joinder renders the proceedings defective.

[6] The factual matrix relevant to this issue is largely common cause. The Body Corporate of Illovo Central is cited as the First Respondent. It is a juristic person established in terms of section 2 of the STSMA. The relief sought in the main application is directed at the governance and financial management of the scheme itself.

[7] It is not disputed that:

5.1. the Body Corporate is before this Court as a cited party;

5.2. the Body Corporate has been served with the application;

5.3. the Body Corporate has elected not to oppose the relief sought;

5.4. the Fifth Respondent has participated fully in the proceedings and has advanced opposition.

[8] The Applicants do not seek personal relief against any trustee. No declaratory, mandatory, or pecuniary order is sought against trustees in their individual capacities. Nor is any allegation made that would found personal liability on their part.

[9] The substantive relief sought concerns the administration of the scheme and, if granted, would operate at the level of the Body Corporate as a statutory entity. The effect of such relief would be to regulate how the Body Corporate discharges its functions under the STSMA.

[10] Against this factual background, the narrow question is whether the trustees possess a legal interest in the subject matter of the litigation that is direct and substantial in the sense required by our law of joinder — namely, an interest which may be prejudicially affected by the judgment of this Court.

## ***LEGAL PRINCIPLES***

*The legal test for joinder*

[11] The legal test for joinder is now settled. Joinder is required if it is deemed necessary,[1] and that is if a party has a "direct and substantial" interest in the relief sought.[2] The interest thereof is in the right of the subject matter of the litigation.[3] A legal interest in the subject matter of the litigation is that which may be affected prejudicially by the judgment of the court unless they have waived his or her right to be joined.[4] This was restated by the Supreme Court of Appeal ("SCA") in *Judicial Service Commission and Another v Cape Bar Council and Another.*[5]

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[1] *Eugene Prinsloo v Donovan Theodore Majiedt N.O and Another* (257/2024) [2025] ZASCA 74 (30 May 2025).
[2] See also *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* 1972 (4) SA 409 (C) at 415E-H; *Strydom v Engen Petroleum* 2013 (2) SA 187 (SCA) 198B (Strydom).
[3] *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) at 169
[4] *ABSA Bank Limited v Naude N.O* 20264/14 [2015] ZASCA 97 (1 June 2015) para 10.
[5] (818/2011) [2012] ZASCA 115 at para 12.

[12] The formulation in A*malgamated Engineering Union v Minister of Labour*,[6] sets out two tests:

i. Whether the third party would have *locus standi* to claim relief concerning the same subject matter (the *locus standi* test);

ii. Whether the third party who has not been joined can successfully raise the defence of res judicata concerning the same subject-matter in a subsequent case and obtain a conflicting decision to that made in the first instance (the *res judicata* test).

If both questions are negative, then it is reasonable to conclude that joinder is not required.

[13] In *Matjhabeng Local Municipality v Eskom Holdings Limited and Others*,[7] the Constitutional Court stated that:

> *"[92] … No court can make findings adverse to any person's interests, without that person first being a party … in the knowledge that there are personal consequences – including a penalty of committal ..."*

[14] The authorities therefore make plain that joinder is required only where a party's own legal rights may be prejudicially affected by the order sought, and not where the interest is indirect, derivative, or merely functional. In the present matter, the enquiry accordingly turns on the juridical nature of a body corporate and the status of its trustees within the statutory scheme. It is to that issue that I now turn.

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[6] 1949 (3) SA 637 (A) at p660-661. See *Inospace Services (Pty) Ltd v Morris and Another* (2025/124057) [2025] ZAWCHC 414 (8 September 2025); *Transvaal Agricultural Union v Minister of Agricultural & Land Affairs* 2005 (4) SA 212 (SCA) at para 66.

[7] 2018 (1) SA 1 (CC).

*Legal nature of the body corporate*

[15] In *Bam v Holtzhausen and Others*,[8] the applicant averred that all legal proceedings involving a body corporate must be issued against the trustees, as a body corporate is not a juristic person and cannot sue or be sued in its own name.[9] The court rejected this and held that a body corporate is a juristic person capable of suing and being sued in its own name, [10] as per Section 2(7) of the Sectional Titles Schemes Management Act ("STSMA").[11] The court described this as a well-settled principle and relied on *Harbour Terrace Body Corporate v Minister of Public Works and Others,*[12] where the nature and powers of a body corporate were comprehensively summarised:

> *"24. The body corporate is a juristic person with perpetual succession capable of suing and of being sued in its corporate name in respect of any matter in connection with the land or building(s) for which the owners therein are jointly liable, any matter arising out of the exercise of any of its powers or the performance of any of its duties under the Act, any contract made by it and any damage to the common property. The body corporate is required to control, manage, and administer the common property for the benefit of all owners and to properly maintain the common property in a state of good and serviceable repair. To carry out its duties in this regard it may require the owners to pay levies to a fund sufficient for the repair, upkeep, control, management and administration of the common property, and for the*

[8] (2024-097438) [2025] ZAGPPHC 601 (21 February 2025).
[9] Id at para 5.
[10] Id at para 5.
[11] 8 of 2011.
[12] (2556/2016) [2016] ZAWCHC 87

*payment of rates and taxes and any other local authority charges for the supply of utilities and services to the building(s) or land, as well as any insurance premiums which are applicable thereto."*

[16] In *Zikalala v Body Corporate of Selma Court and Another*,[13] the court cited Van der Merwe with approval that:

> *[25] "… In Van der Merwe Sectional Titles, Share Blocks And Time-sharing it is pointed out that:*
>
> > *'The body corporate is a juristic person created by statute. . . . being an artificially created legal entity, it can only have the legal status and powers conferred by it by the Sectional Titles Act and the Sectional Titles Schemes Management Act and nothing more. It can only operate within the legal framework of the legislation in question. If the legislation clearly and exhaustively deals with the matter concerned, anything done outside the framework of the statute is void ab initio and is likened to driving a coach and horses through the statute.'*
>
> The author further states the following regarding the power of trustees:
>
> > *'A person seeking to enforce a contract against the body corporate, which he contends was entered into by the trustees on its behalf, must first establish that the contract was within the capacity of the body corporate itself, because an act performed by the trustees in excess of the capacity of the body corporate is ultra vires and void.*

[13] (AR255/2020) [2021] ZAKZPHC 81.

*Secondly, he or she will have to establish that the act was not one reserved by the Act or the rules for the owners in general meeting.'*

[17] It follows that under a sectional title scheme, a board of trustees is comparable to a board of directors.[14] While trustees make decisions and act on behalf of the body corporate as per the statute, they do so in a representative capacity. Their powers and duties belong to the body corporate, not to trustees separately or jointly with the body corporate. Section 16 of the STSMA application is not directed against the trustees, but rather it affects the governance of the juristic entity. The order sought is to appoint an administrator over the body corporate's affairs, typically with the effect of curtailing the trustees' powers and functions for a period. The trustee/s interest is only in performing a function on behalf of the body corporate.

[18] The trustees would not have *locus standi* in their personal capacities to bring or oppose a section 16 application. Section 16(1) expressly identifies who may apply: "A body corporate, a local municipality, a judgment creditor of the body corporate or any owner or other person having a registered real right in or over a unit… ". Trustees are not included in this list unless they are also owners and act in that capacity. They therefore do not hold the statutory right that forms the subject matter. Their duties exist only on behalf of the body corporate; thus, they fail the first joinder test.

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[14] *L.A and Another v Body Corporate of London Place and Others* ( 11463 /2023) [2024] ZAWCHC 92 at para 11 citing C G Van der Merwe: Sectional Titles Share Blocks and Time-sharing At pp14-129 and 130.

[19] Trustees also could not raise *res judicata* in future proceedings. The order appointing an administrator would bind the body corporate as a juristic person, with a separate legal *persona* from the board of trustees. Not trustees jointly with the body corporate, for that matter. They therefore cannot obtain a conflicting judgment later. So, the second test also fails.

[20] The trustees consciously opted not to intervene. They could have sought leave to intervene or applied to be joined.

*Does the suspension of the trustees' statutory powers and functions create a direct and substantial interest?*

[21] The fifth respondent argues on the strength of a judgment in the *Cape division in New Garden Cities Incorporated Association Not For Gain v Adhikarie*[15] (accepted as not binding on this Court) that an order that would impact a person's statutory obligations, that person has a direct and substantial interest.

[22] The fifth respondent relies on *Dempa Investments CC v Body Corporate of Los Angeles ("Dempa Investments CC")*,[16] which stated:

> *"29. I mention in passing that the trustees were joined as respondents in Bouraimis' case, and I think properly so, since a trustee need not necessarily be an owner or the nominee of an owner which is a juristic person. The trustees were not joined to this application, but as no point was made of this apparent non-joinder, and it seems to me that it is in effect the trustees who are driving the opposition on behalf of the respondent, I also make no point of this."*

[23] However, as correctly argued by the applicant, *Bouraimis and Another v Body Corporate of The Towers and Others ("Bouraimis")*,[17] concerned

[15] 1998 (3) SA 626 (C).
[16] 07/16617,07/18122) [2008] ZAGPHC 438.
[17] 1995 (4) SA 106 (D&CLD).

Section 46 of the repealed Sectional Titles Act.[18] In *Bouraimis,* it was argued that existing trustees had committed several breaches of their statutory duties to the prejudice of unit owners. This explains why joinder of trustees was appropriate in that case, as their conduct was the subject of the inquiry, and the relief was justified because of their alleged breaches. The repealed Section 46, as correctly found in *Dempa Investments CC*, did not contain any provisions indicating in what circumstances the court may or should exercise its discretion to appoint an administrator.[19] It is for this reason, Booysen J in *Bouraimis* had to lay down the following test:

> *"It seems to me that the Court should not, where a duly constituted board of trustees is in existence, grant an order for the appointment of an administrator unless the applicant establishes on a balance of probabilities, firstly, that there have been breaches of the duties set out in s 39 read with ss 37, 38 and 40, and, secondly, that it is likely that the owners of units shall suffer substantial prejudice if an administrator were not to be appointed by the Court. Such breaches could take the form of a failure to perform duties or the improper performance of duties."*

[24] Indicatively, section 46 was broad compared to section 16, which is confined narrowly to the state of the body corporate, even ongoing, in relation to evidence of serious financial or administrative mismanagement of the body corporate (s16(2)(a)(i)). The consequences of appointing an administrator are that the body corporate's governance is placed under the administrator, and the trustees' powers are suspended as a result, not due to a finding of breach on their part. There are no penalties or findings made against trustees, as the order is sought against the body corporate. The suspension of their statutory powers and functions is a collateral consequence of the remedy.

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[18] 95 of 1986.

[19] See *Dempa Investments CC* at para 18.

[25] It goes without saying that the body corporate, as a juristic entity, must defend itself and be afforded *audi*. If the court were to find otherwise, that would erode the separate legal persona of the body corporate.

***CONCLUSION***

[26] I am of the view that the point raised by the fifth respondent bears no merit.

[27] Their interests are adequately represented through the body corporate, and they remain free to place evidence before the court, such as the affidavits deposed to on behalf of the body corporate. Only where the application seeks findings or orders against trustees, individually or collectively as a board, does joinder become obligatory. In the ordinary case, non-joinder of trustees is therefore not fatal.

[28] The point in limine relating to the alleged non-joinder of the trustees is dismissed. The costs occasioned by this interlocutory issue shall be costs in the main application.

[redacted]

**NTLOKO, AJ**

**JUDGE OF THE HIGH COURT**

This judgment was prepared by Acting Judge Ntloko. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 25 February 2026.

HEARD ON: 25 November 2025

DECIDED ON: 25 February 2026

For the Applicant: FJ LABUSCHAGNE

Instructed by EW SERFONTEIN & ASSOCIATES

For the Respondent: L Laughland

Instructed by SCHINDLERS ATTORNEYS