THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case 2025-171920

(1) REPORTABLE: Yes☐/ No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 07 May 2026 [redacted]

In the matter between:

WATERSTONE PARK HOMEOWNERS ASSOCIATION	Applicant
and	
EMMANUEL KANU	Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this application, the Waterstone Park Homeowner Association ("the HOA") seeks summary judgment against the respondent, Mr Kanu, for payment of arrear levies and related charges arising from his ownership of property within the HOA.

[2] The HOA states that, by owning property in the estate, Mr Kanu became a member of the HOA and is therefore bound by the Memorandum of Incorporation

("MOI"). The MOI (and subsequent resolutions taken) contains provisions relating to levies, special levies, interest, and the recovery of legal and collection charges.

[3] Mr Kanu's plea and opposing affidavit raise the following defences: 1) certain payments were not properly credited; 2) the applicant has continued to increase the respondent's arrears by debiting the respondent with unauthorised amounts; 3) the applicant has failed to issue a letter of demand; and 4) the applicant has failed to pursue settlement.

[4] Mr Kanu's legal representatives filed an affidavit resisting summary judgment and heads of argument. However, the attorneys of record withdrew before the hearing. Mr Kanu did not appear in court on the day. I informed the HOA's counsel that the matter would proceed on the basis that I would consider all the affidavits and the heads of argument.

Background

[5] In *Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh*[1], it was stated that when respondents purchase property within the estate and become members of the association, they agree to be bound by the rules. This creates a contractual relationship between the parties. In this regard, the signed MOI is instructive.

[6] In terms of the MOI, Mr Kanu is responsible for paying subscriptions, contributions, and levies as decided by the directors from time to time. He is also accountable for any special levies issued. These payments are due by the seventh day of each month, and interest will accrue at the maximum rate allowed under the National Credit Act. Additionally, Mr Kanu is also liable for any legal costs (on an attorney-and-client basis), collection fees, expenses, and charges the HOA incurs in recovering overdue levies or other amounts owed, along with applicable interest.

[1] [2019] ZASCA 30; 2019 (4) SA 471 (SCA).

[7] Mr Kanu does not dispute his liability to pay levies and other charges under the MOI, nor does he dispute the enforceability of the MOI's terms. He also does not challenge his ownership or his HOA membership.

Evaluation of defences

Payments made

[8] Three payments were relied on. The HOA explains as follows: the payment on 1 April 2025 reflects the statement; the payment of 2 February 2023 was made to a different account number; and the payment made in December 2025 falls outside the pleaded claim period. This is supported by the papers (running statement). This defence must therefore fail. This is all reflected in the running statement. This defence is therefore not *bona fide*.

Unauthorised debits and inflation of arrears

[9] Mr Kanu's defence is that the HOA has continuously increased the balance owing to it by debiting his account for unauthorised amounts, including interest, a handover letter, and debt collection fees.

[10] The HOA submits that the MOI shows that the HOA resolved to charge interest at 2% per month (subject to the maximum interest rate chargeable on overdue accounts under the NCA) and is therefore authorised. This is indeed so, which means this is not a bona fide defence.

[11] The HOA likewise submits that an owner whose account has been handed over for debt collection will be liable to pay the collection agent's fees, as set out in the MOI, which specifies the process and structure of those fees. This is indeed the case, which means this is not a bona fide defence.

[12] As for the attorney's fees, the agreement provides for attorney's fees on a scale agreed between the attorney and client as charged. By way of example, the statement reflects entries for "JUKES LEGAL FEES", "SHP LEGAL FEES", monthly interest on arrears, and monthly legal monitoring fees, while also carrying forward the running balance as a composite amount.

[13] In *Mannikin Close Body Corporate v Mrabalala*,[2] the Court cautioned against granting summary judgment for bundled balances in which levies, interest, legal fees, and monitoring charges are rolled together, and held that disputed legal fees and monitoring fees may not be sufficiently liquid for summary judgment where their basis and calculation are unclear. I maintain that, absent taxation or agreement, a member may have no proper opportunity to scrutinise the work done by attorneys, or the proportionality of the charges, or the basis upon which line-item legal and monitoring fees have been entered on a statement. Attorney's fees do not ordinarily constitute a liquid debt until they have been ascertained and determined by taxation.

[14] During argument, counsel for the HOA was amenable to an approach in which summary judgment is granted in respect of the other amounts, with an order that the legal fees be taxed. I agree that this is a sensible approach. Since the Magistrates' Court has concurrent jurisdiction, the appropriate approach is to tax the legal fees on the Magistrates' Court scale.

[15] A breakdown of the statement indicates the following amounts for the various items:

Levies:	R 93 385,18
Interest on arrears:	R67 459,85
Legal fees:	R42 154,13
Debt collectors fee:	R4 266,85
Admin fees:	R1 241,85
CSOS Levy:	R1 263,85
Click on fee:	R5130,59
Penalty fee:	R19 100,09
Legal monitoring fees:	R2 400,00
Payments:	R70 604,40

[2] [2025] ZAGPJHC 860.

[16] The total is R177 480,69, minus R11 683,50, a previous claim, giving R165 797,19. From the reasoning above, the legal fees of R42 154,13 can only be claimed once taxed on a Magistrates' Court scale. To the extent that "interest on arrears" relates to legal fees debited, that portion of the interest stands over with the legal-fees claim. It shall be recoverable to the extent allowed on taxation of the legal costs.

[17] A further difficulty is that the item “interest on arrears” (R67 459,85) was calculated on a running account in which the untaxed legal fees were also debited from time to time. To the extent that any portion of that interest is attributable to legal fees debited to the Respondent’s account, that portion should not be executable under a summary judgment order before the legal fees themselves have been taxed. The recalculation of interest is a mechanical exercise and a matter of arithmetic, and thus capable of speedy and prompt ascertainment.

[18] Therefore, although summary judgment is appropriate for the main claim, the legal-fees component and any related interest should be deferred and included in the legal-cost claim for later recovery after taxation. The amount is then R56 183,21, plus the recalculated interest, excluding the untaxed legal fees. Any interest on the legal fees can be dealt with at taxation.

Absence of a letter of demand

[19] The HAO states that it has transmitted the letter of demand to the specified email address and that it has been forwarded to Mr Kanu. The letter is attached. This is not a bona fide defence.

Absence of mediation

[20] Likewise, the complaint about the absence of mediation does not constitute a defence to a claim for contractual levies. The Applicant’s heads correctly note that it has no legal obligation to settle or mediate before enforcing arrears of levies.

Order

[21] The following order is made:

1. Summary judgment is granted for payment of the sum of R56,183.21 (fifty-six thousand one hundred and eighty-three rand and twenty-one cents).
2. Summary judgment is granted for the interest as is recalculated after excluding the legal-fees component from the account, and only to the extent that such recalculated interest relates to non-legal charges.
3. Interest shall run on the amounts in 1 and 2 above, at the rate of 2% (two per cent) per month, compounded monthly in arrears, from 30 September 2025 to the date of payment.
4. To the extent that the interest on arrears includes interest attributable to legal fees debited to the Respondent's account, that portion of the interest shall stand over with the legal-fees claim and shall be recoverable only to the extent allowed on taxation of the legal costs.
5. The Respondent shall pay the costs of the summary-judgment application, such costs to be taxed on the Magistrates' Court scale.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	4 May 2026
Date of judgment:	7 May 2026
For the applicant:	Y van der Vyver instructed by Heerschop Pienaar Attorneys
For the respondent:	No appearance.