REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2026-077851

Delete whichever is not applicable REPORTABLE: YES / NO OF INTEREST TO OTHER JUDGES: YES/NO REVISED: YES/NO **28 April 2026** [redacted] DATE SIGNATURE

In the matter between:

KAGISO KHABENG 1st Applicant

A BODY OF MEMBERS OF THE
OVAL GARDENS BODY CORPORATE 2nd Applicant

and

W LABUSCHAGNE 1st Respondent

I SMITH 2nd Respondent

M YUSUF 3rd Respondent

A DLOMO 4th Respondent

PRETOR GROUP (PTY) LTD 5th Respondent

JUDGMENT

Mazibuko J

Introduction

[1] On 2 April 2026 on an urgent basis, the applicants launched an *ex parte* application seeking the following relief:

> *'1. …*
>
> *2. …*
>
> *3. That, pending the final determination of Part B of this application:*
>
> > *3.1. The first to fourth respondents are interdicted and restrained from convening, holding, or in any way proceeding with the meeting scheduled for 2 April 2026, purportedly as an Annual General Meeting of the third respondent;*
> >
> > *3.2. The Respondents are interdicted and restrained from taking any steps to elect, appoint, confirm or recognise any trustees pursuant to the said meeting;*
> >
> > *3.3. The Respondents are interdicted and restrained from implementing or giving effect to any resolutions purportedly taken at the said meeting;*
> >
> > *3.4. The status quo as at 19 March 2026, being the date of the Special General Meeting convened by the members of the third respondent, is preserved.*
>
> *4. That the relief in paragraphs 3.1 to 3.4 shall operate as an interim interdict with immediate effect.*

5. That the first to the firth respondent is directed pending the determination of part B, to:

5.1. acknowledge the Special General Meeting convened on 19 March 2026 as a meeting purportedly convened in terms of Regulation 17(4);

5.2. refrain from refusing, obstructing or interfering with the administrative consequences arising from the said meeting and.

5.3. refrain from representing to members that the said Special General meeting is invalid or of no force and effect.

PART B: FINAL RELIEF

5. That the Special General Meeting held on 19 March 2026 by the members of the first and second applicant is declared to have been lawfully convened in terms of Regulation 17(4) of the Sectional Title Management Act.

6. That all resolutions adopted at the said Special General meeting are declared valid and binding.

7. That the trustees elected at the said Special General Meeting, as reflected in annexure "F4" to the founding affidavit, are declared to be the lawful trustees of the first and second applicant.

8. That any meeting purportedly convened as an Annual General Meeting on or about to April 2026 is declared unlawful, invalid, and of no force or effect.

9. That the first to the firth respondent are directed to recognise and give effect to the resolutions adopted at the Special General Meeting on 19 March 2026.

10. That the respondents, jointly and severally, the one paying the others to be absolved, be ordered to pay the cost of this application, including the cost of Part A and Part B, on an attorney and client scale.

11. Further and/or alternative relief.' (sic)

[2] On the same day, 2 April 2026, in the absence of the respondents, an order on an urgent basis was granted in the following terms:

'3. That pending the final determination of Part B of this application:

3.1. The First to Fourth respondents are interdicted and restrained from convening, holding, or in any way proceeding with the meeting scheduled for 2 April 2026, purportedly as an annual general meeting of the third respondent;

3.2. The respondents are interdicted and restrained from taking any steps to elect, appoint, confirm or recognise any trustees pursuant to the said meeting;

3.3. The respondents are interdicted and restrained from implementing or giving effect to any resolutions purportedly taken at the said meeting;

3.4 The status quo as at 19 March 2026, being the date of the Special General Meeting convened by the members of the third respondent, is preserved.

4. That the relief in paragraph 3.1 to 3.4 shall operate as an interim interdict with immediate effect.

5. That the First to the Fifth respondent is directed, pending the determination of Part B, to:

5.1. acknowledge the Special General Meeting convened on 19 March 2026 as a meeting purportedly convened, in terms of regulation 17(4).

5.2. refrain from refusing, obstructing or interfering with the administrative consequences arising from the said meeting, and

5.3. refrain from representing to Members that the Special General Meeting is invalid or of no force and effect.

6. Cost of part A of the application are reserved for determination in Part B of the application.'

[3] Following that order of 2 April, the respondents had brought this application on 9 April, on urgent basis for its reconsideration and setting aside. They seek an order substituting the 2 April order in the following terms, that:

'[2.1] The application instituted by the applicants under the above case number be dismissed;

[2.2] The purported Special General Meeting allegedly held on 19 March 2026 was not validly requisitioned or convened in terms of the Prescribed Management Rules, including PMR 17(4);

[2.3] Any resolutions purportedly adopted at such meeting are of no force or effect; and

[2.4] The first to fourth respondents remain the duly appointed trustees of the Body Corporate.

[2.5] The applicants to pay the costs of the application on the scale as between attorney and client.'

<u>The Parties</u>

[4] The applicants in this case are respondents in terms of the interim order. For convenience sake, the parties will be referred to as cited and as in the main application.

[5] The applicant is Kagiso Khabeng ('Khabeng') in his personal capacity as an owner and member of Oval Gardens body corporate, and in representative capacity as secretary appointed by the Body of members who convened and participated in the Special General Meeting ('SGM') on 19 March 2026. The second applicant is the Body of members of the Oval Gardens body corporate

('The Body of members'). The first and second applicants will together be referred to as applicants.

[6] The first respondent is W Labuschagne ('Labuschagne') referred to as the current trustee of the Oval Gardens body corporate ('the body corporate'). The second respondent is I Smith ('Smith') referred to as the current trustee of the body corporate. The third respondent is M Yusuf ('Yusuf') referred to as the current trustee of the body corporate. The fourth respondent is A Dlomo ('Dlomo') referred to as the current trustee of the body corporate. The fifth respondent is Pretor Group (Pty) Ltd ('Pretor'), a managing agent of the body corporate ('Pretor'). Together they are referred to as respondents.

[7] In this judgment, reference to the status and positions held by Khabeng, the Body of members, Labuschagne, Smith, Yusuf and Dlomo, respectively, flow from their respective affidavits. This court is not called upon to pronounce on the legitimacy of their status, and appointment to such positions. Such will be a call for the court hearing Part B or any other related litigation.

<u>Background</u>

[8] In deciding the issues in this application, it is prudent to set out the relevant chronological sequence of events.

[9] The body corporate consists of 64 units. On 23 January 2026, the body corporate held an Annual General Meeting ('AGM'). The Body of members, through one Lesiba Mokete Malebana ('Malebana'), delivered a written request to Pretor to convene an SGM on 23 January. Acknowledging receipt thereof, Pretor informed them that they would await the trustees' feedback.

[10] On 20 February 2026, through their attorneys, the applicants dispatched correspondence attaching supporting documentation to Pretor concerning the SGM request process.

[11] On 23 February, the trustees and or Pretor were advised that the 14-day period for them to consider their request for the SGM had expired on 6 February, and

that the process had moved into the owners-convened stage under Regulation 17(4) of the Sectional Titles Schemes Management Act ('the Act').[1]

[12] On 25 February, the applicants' attorneys dispatched correspondence to Pretor for them to circulate the SGM notice and, inform Pretor that the AGM scheduled for 4 March would be unlawful. Seeing that the SGM notice was not circulated, the Body of owners circulated same directly to the owners.

[13] Following the SGM on 19 March, the applicants sought recognition from Pretor. On 25 March, they proposed the postponement or stand down of the proposed AGM of 2 April in order to properly ventilate the dispute in court. The applicants' attorneys requested Pretor for minutes reflecting a number of people in favour of pursuing litigation proceedings.

[14] On 30 March, the applicants demanded that the respondents not proceed with the AGM on 2 April, otherwise they would interdict same. Pretor informed them the SGM was not recognised and confirmed the AGM would proceed.

Issue

[15] The issue to be determined is whether the order granted *ex parte* on 2 April 2026 ought to have been granted in the absence of the respondents, and whether the reconsideration should result in its setting aside. Further, whether preliminary issues raised by the respondents, which include *locus standi* and authority, non-compliance with section 9 of the Act, abuse of court process, and misjoinder or non-joinder of the body corporate, ought to be upheld.

Assertions

[16] The applicants, through their counsel, argued that the urgency pleaded by the respondents was self-created. There is no merit in the reconsideration of the application, for whatever issues the respondents have with the order, would be

[1] Act No. 8 of 2011.

dealt with in the hearing of Part B of the application. Alternatively, the prejudice relied on is based on broad institutional discomfort or uncertainty; and generality, lacking particularity, regarding "governance paralysis", "uncertainty", inability to pay creditors and service providers, maintenance difficulties, levy collection, budgeting and financial administration.

[17] Conversely, on behalf of the respondents, it was argued that the application that brought about the 2 April order was not urgent as it was self-created urgency, in that the applicants were informed that their request for the SGM was non-compliant with the provisions of the Act. Further in their application they did not disclose all the relevant facts, including the disputes concerning the validity of the SGM, the prior correspondence rejecting its legality, and non-compliance with Regulation 17(4) of the Act.

[18] The respondents raised several points in limine that the applicants were abusing the court process as they lacked locus standi and authority to bring the application. The applicants did not comply with section 9 of the Act, and the body corporate was not joined as a party.

<u>The Law</u>

[19] Rule 6(12)(c) of the Uniform Rules of Court provides that a person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order.

[20] In terms of the Act, the following are defined as follows:

'Body corporate', in relation to a building and the land in a sectional title scheme, means the body corporate of that building referred to in section 2(1)[2];

'owner', in relation to a unit or a section or an undivided share in the common property forming part of such unit, means, subject to subsection (5), the person in whose name the unit is registered at a deeds registry in terms of the Sectional

[2] 2. (1)With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which the developer and such person are members, and any person who thereafter becomes an owner of a unit in that scheme is a member of that body corporate.

Titles Act or in whom ownership is vested by statute, including the trustee in an insolvent estate, the liquidator of a company or close corporation which is an owner …

[21] Section 2(1) provides: With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which the developer and such person are members, and any person who thereafter becomes an owner of a unit in that scheme is a member of that body corporate.

[22] Section 9 of the Act reads:

(1) An owner may initiate proceedings on behalf of the body corporate in the manner prescribed in this section—

(a) when such owner is of the opinion that he or she and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of a matter mentioned in section 2(7), and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit; or

(b) when the body corporate does not take steps against an owner who does not comply with the rules.

(2) (a) Any such owner must serve a written notice on the body corporate calling on the body corporate to institute such proceedings within one month from the date of service of the notice and stating that if the body corporate fails to do so, an application to the Court under paragraph (b) will be made.

(b) If the body corporate fails to institute the proceedings within the period referred to in paragraph (a), the owner may make application to the Court for an order appointing a curator ad litem for the body corporate for the purpose of instituting and conducting proceedings on behalf of the body corporate.

<u>Discussion</u>

[23] Rule 6(12) of the Uniform Rules requires applicants, in all affidavits filed in support of urgent applications, to set out the circumstances that render the matter

urgent and why they cannot be afforded substantial redress at a hearing in due course.

[24] When a matter is brought to court on an urgent basis, the question to be answered is whether or not the applicant will be afforded substantial redress in due course.[3] In the event that the applicant does not succeed to convince the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll.[4] The matter may also be struck from the urgent roll where the court finds that urgency was self-created.

[25] The threshold to establish the juristic fact of "absence of substantive redress" is lower than that of "irreparable harm" for the purposes of establishing an interim interdict.[5]

[26] The applicant must explicitly set forth the circumstances that render the matter urgent and the absence of substantial redress if not heard as a matter of urgency. This is not the equivalent of irreparable harm. Delay will not automatically result in the matter not being considered urgent.[6]

[27] Regarding the fact that the main application was brought *ex parte*. It became common cause that notwithstanding that it was brought *ex parte* on extremely urgent basis on 2 April, the applicants complied with the court directive that the application be served on the respondents. The respondents were served by email with the papers at 12H57 on the day of the hearing, for the hearing at 14h00. An email was sent at 15h01, informing the respondents that they were afforded an opportunity until 15h00 to read and consider the papers served at 12h57 on them. The court heard the application and granted the 2 April order.

[28] In my view, in issuing the directive regarding service of the application on the respondents the court hearing the main application was alive to the guidance

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[3] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).
[4] *SARS v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).
[5] *Several matters on the urgent court roll 2013 (1) SA 549 (GSJ).*
[6] *(Molosi and Others v Phahlo Royal Family and Others [2022] 3 All SA 160 (ECM).*

provided in dealing with urgent matters with regard to the principle of *audi alteram* rule.

[29] Considering the fact that the email informing the respondents that the matter had been stood down till 15h00 for them to consider the papers and decide whether they would oppose or not, was dispatched after 15h00. For that reason, this court is justified in considering the reconsideration application urgent. This is notwithstanding that the respondents only filed their notice of intention to oppose and brought the reconsideration application on 9 April, which was the third day after the 2 April order, given the holidays between 3 April and 6 April.

[30] The respondents contended that the 2 April order was granted without disclosure of the full factual matrix, for instance the dispute regarding the validity of the SGM, the prior correspondence rejecting its legality, and the absence of compliance with Regulation 17(4). In the replying affidavit, Khabeng confirmed that on 5 March, Pretor informed them that the documentation regarding the SGM on its face did not comply with Regulation 17(4), in that the list of supporting members did not contain identifiable signatures and did not constitute properly signed requisition.

[31] It is noted that prior the main application the correspondence, including the letters dated 5 March and 25 March exchanged between the parties, including the legal representatives annexed to the founding affidavit, read holistically, explicitly make clear the dispute regarding the SGM and AGM, and the related issues. The applicant must fully set out facts in their affidavit and not rely on attached documentation. However, in my reading of the papers together with the annexures, that served before the court that heard the main application, I cannot find that the relevant material facts were not disclosed.

[32] A reconsideration application is not an appeal in disguise, nor does it automatically entitle the respondents to final declaratory relief on disputed merits. The court has to determine, on the full record now before it, whether or not the interim order should stand, be refined, or be discharged.

[33] The points *in limine* raised by the respondents are at the heart of Part B of the main application. According to the main application, it is the court hearing Part B

that may declare whether the SGM held on 19 March 2026 was lawfully convened, and that all resolutions adopted at the said SGM are valid and binding. Further, that the trustees elected at the said SGM, are lawful trustees. The respondents are to recognise them as such and give effect to the resolutions adopted at the SGM. Also, that any meeting purportedly convened as an AGM on or about 2 April 2026 is declared unlawful, invalid, and of no force or effect.

[34] The respondents, through their counsel, implored the court to reconsider the application as the continued operation of the 2 April order has created an untenable and unsustainable state of legal uncertainty regarding the governance and administration of the body corporate. They further submitted that, in the absence of clarity as to the lawful trusteeship and governance structure, the body corporate is effectively paralysed in the day-to-day execution of its statutory functions.

[35] Notwithstanding the fact that the 2 April order made no provision for a return date, the main application and the order are specific, relating to the seating of the AGM and consequences thereof. The interim order does not cause an injustice to the respondents nor to the body corporate. To the extent that paragraph 3.4 of the 2 April order are clear that the status quo as at 19 March 2026 was preserved. Further, paragraph 4 stated that the operation of the order was interim pending the determination of issues under Part B.

[36] In my view, should this court make a determination regarding the *locus standi* and authority exercised by the applicants in bringing the main application, as well as the other points *in limine*, it will be pronouncing on matters to be ventilated under Part B, which is not the purpose of reconsideration. The status of the SGM and its resolutions, and any other ancillary matters regarding the SGM and the process followed leading to its seating are matters highly contested. Their determination is dispositive of the entire matter, and the declaratory relief thereof will be final in nature.

[37] The applicants obtained the interim order in the urgent court in the absence of the respondents. The grounds upon which they based their application are already set out and will not be repeated. I have considered the evidence adduced

on paper on 2 April, and the papers filed pertaining to the reconsideration application, including the issue of urgency. The order was interdictory in nature and prevented the AGM from convening. I could find no facts or evidence that suggest that the said order ought not to have been granted.

[38] It is noteworthy that both the applicants and the first to fourth respondents are members of the body corporate consisting of 64 units. Nothing impedes them, through the assistance and direction of the fifth respondent, the managing agent, from convening and ventilating the issues pending the hearing of Part B of the main application. All of them had impliedly claimed to be acting in the interests of the owners of the units in the Oval Gardens. I hold a respectful view that the reconsideration, if upheld, will bring an end to the matter. It follows that the reconsideration application must not succeed, and the order granted on 2 April ought not to be set aside.

[39] Concerning costs, the respondents were partially successful in respect of urgency. Nothing precludes the court from awarding the costs in favour of the applicants as the successful party in the substantial part of the application.

[40] Consequently, I make the following order.

Order:

a) The respondents' urgent reconsideration application is hereby enrolled as urgent.

b) The reconsideration application is dismissed with costs, including that of counsel, on scale B, the one paying the others to be absolved.

[redacted]

N G M MAZIBUKO

JUDGE OF THE HIGH COURT

Heard on:	17 April 2026
Judgment delivered on:	28 April 2026
For the applicants:	Mr K Choeu
Instructed by:	Abrams Madira Inc
For the respondents:	Mr I Du Pisane
Instructed by:	Schoeman, Esterhuizen & Gamberini Inc