

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: <i>nc</i>
(2)	OF INTEREST TO OTHER JUDGES: <i>nc</i>
(3)	REVISED: ☒
DATE	<i>17/5/2026</i>
SIGNATURE	

CASE NO.: 2024/144047

In the matter between:

**EAST OF EDEN TRADING 760 CC t/a NGALA
LODGE**

Applicant

And

PRIDE OF AFRICA NATURE RESERVE (PTY) LTD

First Respondent

**PRIDE OF AFRICA HOMEOWNERS' ASSOCIATION
NPC**

Second Respondent

**PRIDE OF AFRICA LANDOWNERS' ASSOCIATION
NPC**

Third Respondent

And

Case number: 2024/148572

In the matter between:

**EAST OF EDEN TRADING 760 CC t/a NGALA
LODGE**

Applicant

And

PRIDE OF AFRICA NATURE RESERVE (PTY) LTD	First Respondent
PRIDE OF AFRICA HOMEOWNERS' ASSOCIATION NPC	Second Respondent
PRIDE OF AFRICA LANDOWNERS' ASSOCIATION NPC	Third Respondent

And

Case number: 2025/017354

In the matter between:

PRIDE OF AFRICA NATURE RESERVE (PTY) LTD	First Applicant
PRIDE OF AFRICA HOMEOWNERS' ASSOCIATION NPC	Second Applicant

And

EAST OF EDEN TRADING 760 CC t/a NGALA LODGE	First Respondent
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Second Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] Three applications were enrolled to be heard together. In two of the matters the applicant and the respondents were the same. In the third application, the first and second respondents in the aforementioned two applications were the applicants and the respondents were the applicant in the first two applications. The second respondent in the third application was the City of Tshwane Metropolitan Municipality.
- [2] I shall refer to in this judgment to the parties as Ngala Lodge, the applicant in the first two applications, and the respondents therein collectively as the Association.

- [3] The relief in the first application related to the restoration of access to the applicant. In the second application, the relief related to an interim interdict against the respondents to prohibit them from interfering with the commercial lodge activities of the applicant as well as a spoliation order against the respondents. In the third application, the relief sought related to an interdict preventing the first respondent from operating a commercial guest lodge on the premises together with ancillary relief.
- [4] In the third application, the first respondent, Ngala Lodge, brought a counter application prohibiting the first applicant from operating a commercial lodge on premises known as *Die Skoen* and ancillary relief. After the first respondent in the third matter filed its answering affidavit and counter application, the applicants sought an amendment to their notice of motion and filed a supplementary affidavit. The first respondent did not oppose the amendment and alleged that the amendment was not effected timeously and hence of no value and the relief sought thus remained unchanged.
- [5] The theme common to all the applications relates *inter alia* to the Homeowner's Association's General Management and Specific Management Rules (the rules).
- [6] Although the matters were not consolidated, they were argued simultaneous by the parties. The applications are in a sense interrelated. This is a composite judgment in respect of all three applications due to the common theme.
- [7] The relevant properties concerned, are generally situated within the Dinokeng Game Reserve or adjacent thereto. The properties were part of a development that provided separate ownership of subdivided portions of a particular development within the Dinokeng Game Reserve and certain common areas. The properties share common rights in and to access to the greater Dinokeng Game Reserve. A Homeowners' Association was established to organise and manage the development and the exercising of the rights derived from such homeownership

including the access to the Greater Dinokeng Game Reserve. Membership of the Homeowners' Association resulted in such member being bound by the rules of the Association. The relationship between a Homeowners' Association and its members is contractual in nature. The rules and restrictions are private rules entered into voluntarily.¹

- [8] The Rules of the Association included *inter alia* restrictions to the type of building that may be erected on each separate portion of the development, and restrictions in respect of the material that may be utilised. To extend beyond that which was permitted, required an application to the board of the Association for written permission to do so. This procedure led to the disputes raised in the applications.
- [9] Ownership in the separate properties allowed for the operation of a commercial lodge thereon. This too was the subject of restrictions. Non-compliance with the rules, and or restrictions, could result in a member of the Association being suspended from exercising its rights, and in particular that of access to the Greater Dinokeng Game Reserve.
- [10] It was alleged that the applicant in two of the matters, who trades as Ngala Lodge, flaunted its obligations to the Association and hence its rights to operate as a guest lodge, and consequently access to the Greater Dinokeng Game Reserve was suspended by the Association. That suspension irked Ngala Lodge and the latter retaliated by launching an urgent application for a *Mandament van Spolie* which was struck off for want of urgency.
- [11] Following that attempt, Ngala Lodge launched a second application and the two were set down together. The respondents, the Association, *inter alia*, launched the third application, which was, by arrangement with the Deputy Judge President of this Division, set down to be heard together

¹ *Mount Edgecombe Country Club Estate Management Association IIRF NPC v Singh et al* 2019(4) SA 471 (SCA)

with the other two applications. In the third application Ngala Lodge filed a counter application.

- [12] Ngala Lodge contended that its suspension was an effective spoliation action which warranted an application to court for an appropriate order interdicting the Association from suspending the operation of a commercial lodge and refusing access to the Greater Dinokeng Game Reserve. It was contended on behalf of the Association, that in view of the contractual relationship between Ngala Lodge and itself, the attempt at obtaining an order restoring the status *quo ante*, was nothing more than to resolve a contractual dispute. That procedure is not permitted under the *Mandament van Spolie*.²
- [13] It was further contended on behalf of the Association that access to the Greater Dinokeng Game Reserve is for the public in general, and not exclusively to the members of the Association. As such, Ngala Lodge was never in possession of the Greater Dinokeng Game Reserve as alleged.³ Neither the first, nor the second respondents, “deprived” Ngala Lodge of its access to the Greater Dinokeng Game Reserve. Furthermore, neither Ngala Lodge, nor its members and Mr Vermaak and his family in their respective non-commercial or private capacities have been deprived of access to the property and remained to have the same rights and privileges prior to the suspension of the commercial business. Granting such relief would not be effective, nor enforceable.⁴
- [14] For all of the foregoing, the first application, i.e. of alleged spoliation, cannot succeed and stands to be dismissed.
- [15] The second application that was launched by the Ngala Lodge, was similarly launched as a urgent application. In that application, Ngala Lodge sought an interim order pending arbitration proceedings,

² *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003(5) SA 309 (SCA)

³ See in regard to “possession” for purposes of spoliation, *De Beer v Zimbali Estate Management Association (Pty) Ltd* 2007(3) SA 254 (NPD)

⁴ *Steytler N.O. v Fitzgerald* 1911 AD 295 at 346

alternatively interdicting the respondents from interfering with Ngala Lodge's business of operating a commercial guest house, pending a return day. Included in the relief sought was a spoliation order to restore Ngala Lodge's use and enjoyment of the game viewing in the Greater Dinokeng Game Reserve. That application was similarly struck off for want of urgency.

- [16] It is to be gleaned from the relief sought that the basis for the spoliation order was the same as that sought in the first application. Consequently, that relief stands to be refused for the reasons recorded above.
- [17] In the second application, Ngala Lodge sought that the status *quo ante* that existed since 2019 be returned to. Ngala Lodge contended that since 2019 it conducted business as a commercial lodge having complied with all the requirements and have obtained all the required approvals to do so. It was alleged that during 2024, the Association sought compliance by Ngala Lodge with a resolution relating to an agreement which Ngala Lodge alleged was one-sided, draconian and oppressive. The said resolution effectively struck through previous requirements relating to the conducting business of operating a commercial lodge where there has been complete compliance with those requirements for a substantial period of time. Ngala Lodge contended that the vexed new resolution sought to retrospectively impose further conditions in that regard. Those gave rise to disputes which could apparently not be resolved and an ultimatum was issued to Ngala Lodge that until the latter complied with all the imposed conditions, it was not permitted to continue with its commercial business.
- [18] One of the disputes related to the obtaining a certain consent use from the Tshwane Municipality. Ngala Lodge contended that it had already obtained such consent use, and that none of the other commercial lodges had obtained such consent use from the municipality. It further contended that it was not open to the Association to withdraw its consent, on which the consent use was premised, at this stage.

- [19] The Association contended that Ngala Lodge had breached a number of its obligations in terms of the Association rules. Those breaches required sanctions to be imposed. The sanctions now imposed upon Ngala Lodge emanated from it aforesaid breach of the rules. The Association further contended that Ngala Lodge provided certain undertakings to comply with its obligations, but failed to do so. That failure resulted in the imposed suspension to conduct a commercial lodge.
- [20] Despite Ngala Lodge's undertakings to comply with its obligations and its failure to comply therewith, it contended that those issues were subject to arbitration under the rules. It further contended that until such arbitration proceedings were concluded, the Association could not suspend its commercial activities. Hence the request for the relief sought in the second application.
- [21] Whether Ngala Lodge is entitled to the relief sought in the second application, depends on whether a valid arbitration agreement existed between the parties. It is trite that the Arbitration Act requires the existence of a written arbitration agreement providing for the reference to arbitration of an existing dispute, or any future dispute relating to a matter specified in the agreement. It is not required that an arbitrator is to be designated.
- [22] It is gleaned from the correspondence that passed between the parties that no agreement to arbitrate existed, or was entered into, between the parties as required by the Arbitration Act. Furthermore, no such agreement was alleged by Ngala Lodge in its founding papers.
- [23] It follows that Ngala Lodge is not entitled to the interim relief as sought pending an arbitration process. Should such relief be granted, it would not be effective or enforceable.
- [24] The applicant further sought in its notice of motion as alternative relief, the issuing of a return date. That relief was apparently sought in terms of the provisions of section 168 of the Companies Act. In that regard, the

first respondent, Pride of Africa Nature Reserve (Pty) Ltd, is the owner of the land upon which the development is situated. It does not enforce the rules, which is the obligation of the Association, that was incorporated, to manage the development scheme on behalf of the first respondent. Consequently, no relief could be granted against the first respondent that may relate to the provisions of section 168 of the Companies Act.

- [25] In view thereof that Ngala Lodge is a member of the Association, it is obliged to adhere to the rules and is bound thereby. As recorded earlier, the relationship between a Homeowners' Association and its members is contractual in nature. Breaching of the rules permits sanctions to be instituted.
- [26] It follows that Ngala Lodge is not permitted to contend that the contract entered into between it and the Association, constitutes unfair or prejudicial conduct as provided in the provisions of section 168 of the Companies Act. Further in this regard, Ngala Lodge is not a shareholder nor a director of the Association and thus the provisions of section 168 of the Companies Act cannot be invoked against the Association.
- [27] Consequently in this regard, the applicant is not entitled to relief under section 168 of the Companies Act. The second application stands to be refused.
- [28] In the third application, the applicants (collectively referred to as the Association for ease of reference) seek relief of interdictory nature, to prohibit Ngala Lodge from operating a commercial lodge and/or other tourism business from its property within the development scheme until or unless Ngala Lodge has complied with its obligation under the rules.
- [29] In its answering affidavit to the third application, Ngala Lodge contended that in the notice of motion in this application, the applicant sought final interdictory relief, which relief was not supported by any evidence to that

effect. The applicant gave notice of an intention to amend the relief to provide for interim relief, pending the institution of an action to be instituted within a stipulated period. No opposition was filed to the intended amendment. However, Ngala Lodge contended that in the absence of the filing of the amended pages in respect of the intended amendment, the amendment was not effected. The applicants responded by filing a supplementary affidavit indicating that the amendment had in fact been effected and that there was no disconnect between the notice of motion and the evidence filed in support thereof in the founding affidavit. It is apparent that the amendment to the notice of motion of the third application was effected and that the application was properly before the court.

- [30] Ngala Lodge filed, as part of its opposition to the third application, a counter application seeking an order that the Tshwane Municipality be directed to act in terms of its by-laws against the first applicant in respect of the conducting of a commercial lodge on property elsewhere in the greater Dikoneng Nature Game Reserve. It was contended on behalf of Ngala Lodge that the first applicant had not obtained the requisite permission from the Tshwane Municipality to conduct such commercial business.
- [31] The nature of the third application and the corresponding counter application thereto is no more than a tit-for-tat. It reflects the clash of personalities of the deponents to the respective affidavits.
- [32] The applicant in the third application sought to hold Ngala Lodge to the rules of the Association and compliance therewith by obtaining a "restraining order" pending compliance with the rules under threat of an action for a demolition order of certain structures. It is to be noted that despite the launching of the third application earlier in 2025, no action was instituted prior to the hearing of this application later in 2025. If the conduct of Ngala Lodge was so atrocious to warrant a demolition order, it is not clear why that action was not instituted earlier. The ineluctable

conclusion is that it was a mere threat to beat Ngala Lodge in submission in complying with the wishes of the applicant. It follows that the counter application is similarly an attempt to force the applicant to rethink its stance.

- [33] Ngala lodge submitted proof of the consent use as granted by the Tshwane Municipality to conduct the business of a commercial lodge. In order to have obtained that consent, the requisite consent from the applicants were obtained. Ngala Lodge contended that once the required consent by the Association was obtained, and the consent use was approved by the Tshwane Municipality, the Association could not withdraw its approval. Those facts were known to the Association when it launched the third application. Accordingly, the applicants have no right to prevent Ngala Lodge from operating a commercial lodge on its own property.
- [34] It follows that the applicants have not shown a *prima facie* right to interdict Ngala Lodge from conducting a commercial lodge. Ngala Lodge holds a valid consent use to conduct a commercial lodge.
- [35] Consequently, the third application stands to be dismissed.
- [36] The counter application has no merit for what follows. Ngala Lodge contended that the operation by the first applicant of the commercial lodge, the *Skoen*, on property within the Greater Dinokeng Nature Game Reserve, was contrary to the Tshwane Municipality by-laws, and as such constituted a criminal offence. No consent use for such commercial use was granted by the Tshwane Municipality.
- [37] Furthermore, the enforcement of the by-laws lies within the prerogative of the municipality. Particular procedures are provided in the by-laws in respect of applications, the opposition thereto, and any objections or complaints to the use of property other than those prescribed. The High Court has no jurisdiction to act as first instance upon matters that fall within the municipality's jurisdiction in that regard.

- [38] From all the foregoing, the counter application stands to be dismissed.
- [39] There remains the issue of costs. The applicants in the various applications were unsuccessful. There is no reason why the costs should not follow the result. The question of which scale, is posed. On behalf of the Association it was contended that a punitive cost order be granted in respect of the first and second applications, such cost orders to include the cost of two counsel where so employed. In respect of the third application, it was further contended that a punitive cost order also be granted as well as in the counter application thereto. Ngala Lodge employed a single counsel. It too sought a punitive cost order in all its matters.
- [40] In my view, punitive cost orders are not warranted.

I grant the following orders:

1. In application no. 144047/2024 the application is dismissed with costs to be taxed on Scale C, such costs to include the costs of two counsel where so employed;
2. In application no. 148572/2024 the application is dismissed with costs to be taxed on Scale C, such costs to include the costs of two counsel where so employed;
3. In application no. 017354/2025 the application is dismissed with costs to be taxed on Scale C;
4. In the counter application under case no. 017354/2025, the counter application is dismissed with costs to be taxed on Scale C, such costs to include the costs consequent upon the employment of two counsel where so employed.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Applicant: J A Venter
Instructed by: Machobane Kriel Attorneys

On behalf of Respondent: M C Maritz SC
J H Groenewald
Instructed by: Prinsloo Bekker Attorneys

Date of hearing: 18 November 2025

Date of Judgment: 19 May 2026