REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2025-111927

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

[redacted]

11/06/2026
DATE SIGNATURE

In the matter between:

DR STEFAN ANDREAS HELMUT POPRAWA	Applicant
and	
ART ICULATE (PTY) LTD	First Respondent
LETAMO GAME FARM (SHARE BLOCK) (PTY) LTD	Second Respondent
MOGALE CITY LOCAL MUNICIPALITY	Third Respondent
JOHANNES BAARTMAN N.O.	Fourth Respondent
PETER COTTON N.O.	Fifth Respondent
RICHARD HAWKSLEY N.O.	Sixth Respondent
PIETER JOUBERT N.O.	Seventh Respondent
GERHARD MEIRING N.O.	Eighth Respondent
JAN PODROUZEK N.O.	Ninth Respondent
CHRISTO VAN ASWEGEN N.O.	Tenth Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an urgent application in which the applicant, Dr Stefan Andreas Helmut Poprawa, seeks to restrain his neighbour from continuing with the construction of a dwelling on adjacent land within the Letamo estate (defined below), pending the resolution of a dispute as to whether that dwelling has been approved in accordance with the estate's governing Rules and Memorandum of Incorporation ("MOI").

[2] In Part A of the notice of motion the applicant seeks, on an interim basis pending Part B, an order interdicting and restraining the first respondent, Art Iculate (Pty) Ltd, from continuing with construction on Portion 299 of the Farm Honingklip 178 IQ, an order directing the second respondent, Letamo Game Farm (Share Block) (Pty) Ltd, ("Letamo") to take all reasonable and lawful steps to halt those works, as well as ancillary relief, including the production of prior versions of Letamo's constitutive and regulatory documents.

[3] In Part B the applicant seeks a final interdict pending the resolution of the dispute by the Community Schemes Ombud Service or the conclusion of a written agreement between the parties as to the specifications for, and siting of, the dwelling.

[4] The applicant is the registered owner of Portion 298, having taken transfer on 24 April 2024. The first respondent is the registered owner of the adjoining Portion 299, having taken transfer on 17 January 2025, and intends to erect a dwelling on it. The second respondent is a share block company that administers the estate as a community scheme under the Community Schemes Ombud Service Act 9 of 2011 ("the CSOS Act"). The fourth to tenth respondents are its directors.

[5] The application is opposed by the first respondent and by the second respondent (the latter jointly with the fourth to tenth respondents, who are its directors and against whom costs de *boniis propriis* are sought). The third respondent is the Mogale City Local Municipality, that abides the decision of the court.

The chronology of events

[6] On 22 October 2025, the second respondent's architect approved the first respondent's original plans

[7] On 27 October 2025, the applicant was duly given notice of the first respondent's intention to build

[8] During October and November 2025, the applicant became aware of the first respondent's intention to build on its property. He sent an objection to the second respondent's architect on 5 November 2025, who responded on 20 November 2025.

[9] The applicant addressed further objections to the first respondent and the municipality on 24 November 2025, and an on-site meeting was held on 27 November 2025, which did not resolve the objections raised by the applicant.

[10] On 19 January 2026, the third respondent approved the original building plans.

[11] On 28 January 2026 the applicant referred a dispute to the Community Schemes Ombud Service, and a notice under section 43 of the CSOS Act was issued on 3 February 2026.

[12] On 9 February 2026 earthworks on Portion 299 commenced. The applicant complained about those works on 15 and 16 February 2026.

[13] In an effort to satisfy the applicant, the first respondent revised its plans, which the second respondent approved on 18 February 2026. These revised plans are still awaiting municipal approval, but the first respondent has indicated that should it obtain approval, it intends to commence construction of the dwelling in accordance with those plans.

[14] On 27 February 2026, the applicant delivered a formal demand to the second respondent's Board.

[15] During March and April 2026, there was correspondence between the parties' attorneys.

[16] On 9 April 2026, the applicant demanded suspension of the works and construction did indeed cease.

[17] The second respondent responded on 21 April 2026.

[18] On 11 and 12 May 2026, construction resumed.

[19] The applicant deposed to his founding affidavit on 15 May 2026 and launched the application on 18 May 2026 for hearing on 2 June 2026. The matter was in fact heard on 1 June 2026.

Urgency

[20] The applicant contends that the urgency arose afresh from the resumption of works on 11 and 12 May 2026, in the face of an unresolved dispute. The respondents contend that the urgency, if any, is self-created as the very dispute the applicant seeks to ventilate has been known to him, and pursued by him through parallel processes since November 2025.

[21] The classic statement of the proper approach to urgency remains that in *Luna Meubel Vervaardigers (Edms) Bpk v Makin*, in which Coetzee J emphasised that urgency is not a self-defined indulgence and that practitioners must measure the degree of departure from the ordinary procedures against the degree of urgency genuinely demonstrated.[1]

[22] The test was refined in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*, where the court held that the question is not merely whether the applicant will suffer harm if relief is delayed, but whether the applicant will be afforded substantial redress at a hearing in due course. An applicant who can obtain such redress in the ordinary course may not approach the urgent court.[2]

[23] Rule 6(12) of the Uniform Rules permits a court to dispense with the ordinary forms and service and to dispose of a matter as to it seems meet. Rule 6(12)(b) requires the applicant to set out the circumstances said to render the matter urgent and the reasons why substantial redress cannot be obtained in due course.

[24] It is, by now, trite that urgency which is of an applicant's own making does not justify a departure from the ordinary procedures. Where an applicant delays in bringing proceedings after the facts founding the alleged urgency have become known, and then seeks to truncate the time periods afforded to respondents, a court will ordinarily decline to entertain the matter on an urgent basis.

---

[1] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F–138H.
[2] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paras 6-8.

[25] The respondents contend that the urgency is self-created, the dispute having been known to the applicant since November 2025. I am unable to accept that contention. The applicant did not sit on its laurels. From the moment he became aware of the proposed build he objected promptly, engaged the estate and its architect, attended an on-site meeting, and referred the dispute to the statutory dispute-resolution body. He pursued those avenues diligently before approaching this court.

[26] Crucially, the harm the applicant seeks to prevent is the continuing and, in material respects, irreversible erection of a structure. The nature of building works is that, with every week that passes, walls rise, foundations are cast and the *status quo* is altered in ways that are expensive and difficult to undo. An applicant in such a position is not required to launch proceedings at the first sign of a dispute, particularly where he is endeavouring in good faith to resolve the matter by agreement and through the statutory machinery. He is entitled to approach the court when those efforts fail and when the threatened harm becomes imminent.

[27] The resumption of works on 11 and 12 May 2026, after a period during which the applicant had reason to believe the works were suspended pending engagement, was the event that rendered the matter urgent. The applicant moved within days of that resumption. There was no culpable delay. A respondent who presses on with construction in the face of an unresolved dispute, and a pending CSOS referral, cannot be heard to complain that the neighbour's consequent approach to court is wanting in urgency.

[28] As to substantial redress in due course, the applicant would, if confined to the ordinary roll, be left to watch the dwelling rise while awaiting a hearing in due course. A subsequent claim for demolition is a blunt and uncertain remedy, and the prospect of it is no answer to urgency. A damages claim would also not suffice. I am satisfied that the applicant cannot obtain substantial redress at a hearing in due course, and that the matter was properly before in the urgent court.

The merits

a. The requisites for an interim interdict

[29] The requisites for an interim interdict are settled: The applicant must establish a *prima facie right*, though open to some doubt, a well-grounded apprehension of irreparable harm if interim relief is refused and the applicant ultimately succeeds, a balance of

convenience in favour of granting interim relief, and the absence of a satisfactory alternative remedy.[3]

[30] The standard for the establishment of a prima facie right is well known. The applicant's facts, together with such facts set out by the respondents as he cannot dispute, are taken together, and the question is whether, having regard also to the inherent probabilities, the applicant should on those facts obtain final relief at the trial or hearing of Part B. The right need not be shown on a balance of probabilities; it is enough that it is open to some doubt.[4]

[31] It is, however, necessary to bear in mind that these are motion proceedings. Where the respondents' affidavits raise real, genuine and *bona fide* disputes of fact, the matter must be decided on the respondents' version together with the admitted or undisputed facts averred by the applicant, unless those denials are so far-fetched or untenable that they may be rejected on the papers. That is the rule in *Plascon-Evans*, as explained in *Wightman v Headfour*.[5]

b. The asserted right

[32] The applicant accepts, correctly, that he has no right of veto over his neighbour's building, and that he cannot, simply by withholding consent, prevent a lawful structure from being erected. He likewise accepts that his right to privacy as an incident of his ownership is not absolute and must be weighed against his neighbour's competing right to the reasonable use and enjoyment of Portion 299. These concessions are properly made and they significantly narrow the enquiry. They do not, however, dispose of it.

[33] The applicant does not contend, and need not contend, that he has a free-standing right to approve or veto what his neighbour builds. His case, as reformulated in reply, is that he is a member of the scheme who is entitled to insist that the governance framework be lawfully altered before a less protective regime is applied to him.

[34] That asserted right is entirely consistent with the concessions: a member may accept that he cannot veto a neighbour's dwelling, and that his privacy is not absolute, while still insisting that the rules applied to him be those validly adopted by the members and

---

[3] *Setlogelo v Set*logelo 1914 AD 221 at 227; *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189; *Gool v Minister of Justice* 1955 (2) SA 682 (C) at 688.
[4] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189; as qualified in *Gool v Minister of Justice* 1955 (2) SA 682 (C) at 688.
[5] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) at para 13.

not those unilaterally substituted by the board. It is on that narrower footing that the matter must be approached.

[35] The real question, then, is whether the dwelling that the first respondent intends to construct has been approved in accordance with the governing documentation of the estate, and whether the applicant's legitimate interests, including his interest in privacy, have been dealt with in the manner that the rules and specifications of the second respondent requires. If the planned construction is otherwise than in accordance with the rules by which both neighbours are bound, the applicant has a clear interest, recognised by law, in restraining it pending proper resolution.[6]

c. The essence of the applicant's case

[36] To recap, the applicant became the registered owner of Portion 298 on 24 April 2024. It is common cause that, before transfer, and on 4 March 2024, the applicant was furnished with the suite of estate documentation, including the specifications and the confirmation documentation upon which he now relies.

[37] The first respondent is the registered owner of the neighbouring Portion 299, having taken transfer on 17 January 2025.

[38] The essence of the dispute is that the documentation that was provided to the applicant prior to transfer of his property to him on 4 March 2024, is different from that which the respondents contend now applies to the first respondent.

[39] When the applicant acquired Portion 298, the governance documents provided to him for signature included:

a. The Specifications for new dwellings and/or improvements on existing buildings 2023;

b. The Book of Rules 2023;

c. The Building Contractor Rules 2023; and

d. The Confirmation to Build 2023.

[6] Community Schemes Ombud Service Act 9 of 2011, ss 38, 39 and 43. On the binding nature of a scheme's governance documentation upon its members see s 13(1) read with the scheme rules.

[40] Those 2023 documents expressly contemplated neighbour sign-off/no objection and site-plan sign-off:

a. Clause 1.6 of the specifications referred to confirmation from neighbouring property owners to build;[7]

b. Clause 5.5.11.4 required adjacent neighbours to sign and date the neighbours' confirmation form; [8]

c. The Confirmation to Build 2023 recorded that neighbours had no objection and had signed off the site plan;[9] and

d. The building contractor rules prohibited deviation from the approved building site after sign-off by neighbours and resubmission.[10]

[41] In the specifications for new dwellings and/or improvements on existing buildings, one of the stated important documents was confirmation from neighbouring property owners to build (clause 1.6). In the general specifications, it was provided that "*every effort must be made to have living spaces (sitting room rooms, dining rooms, family rooms and bedrooms) facing north*" (clause 2.13). In addition, "*the privacy of surrounding properties must be considered, e.g. balconies not to overlook the living areas of adjacent properties*" (clause 2.14).

[42] It was, moreover, a requirement that for the approval of business plans, the party intent on building was to provide the "Neighbour's Confirmation Form" indicating that "the neighbours directly adjacent to all sides" had signed and dated the form. That form, annexed to the papers as "SP7", indicates the adjacent neighbours have no objection to the proposed building or alteration and had signed off on the site plan.

[43] This required confirming that the person intending to build a new dwelling on their property had pointed out to the adjacent neighbours "*the position of the planned house on the site plan*", that they "*have no objections against the proposed position of the dwelling as pointed out to [them] on site*", and that they "*have signed [off] the site plan*" (paragraph 1).

---

[7] Caselines 1-177
[8] Caselines 1-181
[9] Caselines 1-204
[10] Caselines 1-200

[44] It was also specified that the site plan must be part of the confirmation and must be signed by all affected parties, including "*Both Neighbours*". The Building Contractor Rules provided in clause 19b. that "*no deviation from the approved building site will be allowed after plans have been signed off by neighbours and new plans have been submitted for approval*."

[45] The applicant states that he was accordingly surprised when in October 2025, the first respondent presented him with a different form to sign headed: "*Confirmation that the adjacent neighbours have been notified of planned building activities*" (Annex "SP9"). This indicated that now all that was required was that the adjacent neighbours had been notified of the intent to build a dwelling and that the appointed architect "*confirmed that the design of the house is within Letamo's specifications*."

[46] The applicant's concerns were principally privacy concerns linked to the siting and orientation of the proposed dwelling, expressly tied to clause 2.14 of the specifications. This provided that "*the privacy of surrounding properties must be considered not to overlook the northern side (living areas) of adjacent prop*erties."

[47] It is common cause that the applicant's property faces south although it was specified that the properties should face south.

[48] Notwithstanding that pending dispute, construction-related activities commenced (in that building materials were delivered) in February 2026 and, critically, at a position which the Applicant says differed from the previously presented and approved position.

[49] The applicant insists that the 2023 instruments provided to the him formed part of the governance package which he was required to sign as incoming owner before transfer-related clearance would be issued by Letamo.

[50] The applicant seeks to prevent the continuation and resumption of construction related activity in the face of a pending CSOS dispute, the unresolved dispute concerning the applicable rules and internal processes and the unresolved issue of the deviation from the original approved site position.

The essence of the respondents' case

[51] The respondents insist that the consent and privacy provisions and the specifications for newly built dwellings were amended at the Annual General Meeting ("AGM") held on 25 November 2023 that were approved and ratified at the next AGM held the following

year that were distributed to all of the members. In these minutes the following was recorded:

"*EJ explained to the Members that the Book of Rules is referred to by the EMPr 2022 and if needed to be changed it must be approved by the Members at an AGM or SGM. The following documents are separate annexures to the Book of Rules and can be changed by the BOD without approval at an AGM or SGM, if bylaws changes, styles, colours, systems, etc:*

- *Specifications of a Dwelling.*
- *Access Control.*
- *Contractor Rules .*
- *Confirmation to build*.'

The applicant's response

[52] The applicant, however, disputes the validity of the amended provisions and specifications and the amendment to the prescribed form demonstrating that the adjacent neighbours had been shown the site plan and had no objection to merely indicating that the adjacent neighbours have been notified.

[53] The applicant, moreover, contends that the 2024 suite of documents does not exonerate the respondents in that clause 2.14 still protects privacy, [11] clause 2.4 still requires final approval from the Mogale City municipality before building operations commence[12] and the completed notification for Portion 299 itself records that the neighbouring owners did not sign and indicated that the first respondent was submitting without neighbours' confirmation.(Annex "AA8").

The preliminary objection to the case now formulated by the applicant

[54] Before turning to the substance of each parties' cases, it is necessary for me to dispose of a preliminary objection raised by the respondents. The respondents contend that the applicant's reliance on the absence of a valid resolution authorising the change, the point now founded on item 14 of the 2023 minutes, was not a point raised in the founding affidavit, and that the applicant should not be permitted to advance it. The objection

[11] Caselines 3-272
[12] Caselines 2-271

invokes the settled rule that an applicant must make out his case in his founding papers and may not make it out for the first time in reply or in argument.[13]

[55] I have examined the founding affidavit with this objection specifically in mind. The objection is, with respect, not well founded on the facts. The applicant pleaded the very point in his founding affidavit. He alleged that the change to the relevant document "*was not tabled for approval at the 2023 AGM*", "*nor at the 2024 AGM and SGM*" (paragraph 92); he put squarely in issue "*whether unilateral changes relied upon by the … Respondent… are valid and enforceable against me*" (paragraph 94.2); he contended that, in terms of the Memorandum of Incorporation, "*any amendments to the Rules must be approved at a General Meeting*" and that the notice requirements "*ha[ve] not been complied with*" (paragraph 102); and he averred that the board had "*removed a long-standing right … without the shareholder approval required by the … Memorandum of Incorporation*" (paragraph 109.2).

[56] Most directly, in answer to the second respondent's assertion (conveyed in the letter of 21 April 2026) that the rules had been changed at the 2023 annual general meeting and reconfirmed in 2024, the applicant stated in his founding affidavit that he "*could … not find any confirmation of such changes … from the minutes*", and he annexed the very minutes in question (annexures "SP40" to "SP43") "*in confirmation of the absence of resolutions in respect of the changes*" (paragraphs 163–165).

[57] The item 14 analysis is therefore not a new cause of action sprung in reply. It is the documentary substantiation of a ground the applicant pleaded from the outset, maintained in reply, and on which the respondents joined issue in their answering affidavit. The rule in *Mistry* and *Betlane* [14] is satisfied, and no question of prejudice arises.

[58] In any event, even had the point not been raised in the founding papers, the position would be no different. The contention is a point of law that is apparent *ex facie* the very minutes the respondents themselves rely upon, and its determination occasions no prejudice and requires no further evidence. A point of that character may be entertained at any stage of the proceedings, including by the court of its own accord.[15]

---

[13] *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A) at 635–636 and *Betlane v Shelly Court CC* 2011 (1) SA 388 (CC) at para 29.
[14] *Ibid*
[15] *Paddock Motors (Pty) Ltd v Igesund* 1976 (3) SA 16 (A) at 23; *CUSA v Tao Ying Metal Industries* 2009 (2) SA 204 (CC) at paras 67-68; shame love yeah yeah shame okay2007 (5) SA 323 (CC) at para

Whether the directors were authorised to dispense with consent

[59] The respondents' answer to the merits rests on the proposition that the 2023 specifications, which required the confirmation or consent of neighbouring owners, have been validly amended so that a neighbour need now merely be notified of a proposed build, and that the privacy provision restraining a dwelling from overlooking an adjacent property no longer applies. The respondents locate the directors' authority to make those amendments in the minutes of the annual general meeting held on 25 November 2023 (annexure AA11), and in particular in item 14 of those minutes.

[60] The minutes themselves, reveal a material difficulty for the respondents. The minutes are meticulously structured in that each substantive decision is recorded as a numbered resolution, with a motion tabled, a proposer, a seconder, a recorded resolution adopted, and a vote (for and against). Thus, for example, item 13 ("Resolution 5 - Book of Rules") records a motion that the changes to the revised Book of Rules 2023 be accepted, proposed and seconded, and carried by 95 per cent in favour to 5.5 per cent against.

[61] Item 14 is totally different from this. What it records is that "EJ explained to the Members" of his understanding of the position. An explanation of a perceived state of affairs, minuted under a discussion item, is not a resolution. The members did not, by any recorded decision, confer upon the board the power to amend the consent and specification documentation.[16] There is no recordal of their being a tabled resolution on this issue or a vote by members carrying the resolution.

[62] There is a further and related difficulty in the respondents' papers; nowhere in the answering affidavit does the second respondent identify when, or by what instrument, the directors are said to have resolved to abolish the consent requirement. The affidavit asserts, repeatedly that the rules "*were reviewed, amended and formally adopted in accordance with the applicable governance procedures*". But nowhere does the second respondent refer to the date of the board meeting, the terms of the resolution, the identity of those who proposed or carried it; it does not say what the quorum was at the meeting; and more glaringly, it fails to annex the relevant minute of the meeting or the written resolution recording the decision.

[63] When the applicant pointed to the absence of any such resolution, the second respondent's answer was not that a resolution exists, but rather that none was required.

---

[16] See ss 65 and 73 the Companies Act 71 of 2008, and the company's Memorandum of Incorporation.

In fact the response provided was rather extraordinary, having regard to the strict rules applicable to the corporate governance of companies: What was stated was: “The mere fact that the Applicant could not identify a specific resolution … does not establish that such amendment was unlawful".

[64] The existence and terms of any board decision to amend the documentation are matters peculiarly within the knowledge of the second respondent and its directors. A respondent faced with a serious challenge to the validity of an amendment is expected to engage with that challenge fully and unambiguously, and to produce the documentary record if it exists. A bare and abstract assertion that the rules were “*duly adopted*”, unsupported by the resolution said to embody the adoption, does not raise a real, genuine or bona fide dispute of fact capable of displacing the applicant’s case on this point; and the failure to produce the resolution permits the inference, at least at this stage, that no such resolution exists.[17]

[65] When the governing instruments are examined, the item-14 explanation is not merely unsupported, it is contradicted by the very document the respondents invoke. In terms of the MOI, the directors may only propose Rules (clause 6.5.1); it is the Company, “at a General Meeting”, that may “make, vary, or modify any Rules” which the board proposes (clause 6.5.2.1); and the Rules so made “will be contained in the Book of Rules and EMPr yeah shame love yeah who were being sent back to P6 of Letamo and forms part of this MOI” (clause 6.5.6). The board’s rule-making authority is, in terms, “limited or restricted as provided for in clause 6.5” (clause 1.7.2), and the Company “must publish a notice of any alteration to this MOI or the Rules … by delivering a copy of the alteration to each Member” (clause 1.7.3) - a step the applicant says was never taken in respect of the change relied upon.[18]

[66] The 2024 Book of Rules does not assist the respondents either: Its section dealing with the governance of the rules records, expressly, that “*[r]ules and regulations are governed in terms of paragraph 6.5 of the MOI*”, and its statement of the board’s “*Authority*” does no more than cross-refer to clause 5.2 of the MOI. Neither instrument

[17] Wightman t/a JW Construction v Headfour (Pty) Ltd 2008 (3) SA 371 (SCA) at paras 12–13; and see *Galante v Dickinson* 1950 (2) SA 460 (A) at 465 on the adverse inference arising from a party’s failure to furnish evidence peculiarly within its knowledge.
[18] Memorandum of Incorporation (annexure AA4), clauses 1.7.2, 1.7.3, 6.5.1, 6.5.2.1 and 6.5.6; Book of Rules 2024 (annexure AA5), section 3.1 and section 19, both of which cross-refer the governance of the Rules to clause 6.5 of the MOI.

confers upon the directors a free-standing power to strip members of a consent right, and to substitute a regime of mere notification, without the sanction of a general meeting.

[67] The distinction the respondents seek to draw between the Book of Rules, which they accept may be changed only by the members, and the "separate annexures", which they say the board may change at will, is not supported by the text of the MOI, which treats the Book of Rules and its specifications as a single body of Rules forming part of the MOI itself.

[68] It follows that, at least on a *prima facie* basis and on the papers as they stand, the foundation upon which the respondents seek to justify the transition from a regime of consent to one of mere notification is open to serious doubt. If the board had no validly conferred authority to dispense with the consent requirement, then the 2023 specifications, including the requirement of neighbour confirmation and the privacy provision, may well remain operative. This means that should the first respondent build on its plot in the manner contemplated, it may do so without the proper authorisation required and render its actions unlawful in terms of the scheme rules.

[69] I emphasise that I make no final finding on the point. Whether item 14 founds a valid amendment, whether the board enjoyed the power on some other basis, and whether the 2024 documentation was validly adopted and published, are precisely the questions that fall to be determined in Part B and, to the extent appropriate, by the Community Schemes Ombud Service. For present purposes, it suffices that the applicant has established a right that is, at the least, open to some doubt. That is all the first requisite for an interim interdict demands.

The architect's report and the privacy concerns

[70] The first respondent placed considerable reliance on the report of its architect (Annex "TM2"), contending that the applicant's concerns were fully considered. The report records that the adjacent neighbours requested that the house be moved 20 to 30 metres east and rotated, on the ground that the view across the landscape and the privacy of Portion 298 were compromised, that the architect entertained those requests, that three positions were pegged by a land surveyor; and that a viewing deck on the west façade was agreed on site as a satisfactory solution, while the north-facing deck was "to be kept for occasional access."

[71] However, the content of this report, far from establishing that consent was unnecessary, confirms a process in which the neighbours' confirmation was sought and their concerns

canvassed. This is the very regime the respondents now contend has been abolished. The report records that “the Plans were signed off by the estate” and that section 5.5.11.4 of the regulations “stipulates that the direct adjacent neighbours be informed”, and it proceeds on the footing that neighbour input was a material part of the approval. The document tends, if anything, to support the applicant's contention that a consent or confirmation regime was understood by all concerned to apply.

[72] More importantly, the report does not demonstrate that the applicant’s privacy concern has in fact been resolved. The retention of a north-facing deck “for occasional access”, overlooking the applicant’s living areas, is the very mischief at which the privacy provision of the 2023 specifications was directed. That the applicant felt obliged to plant a row of trees to screen his property is itself an indication that the concern was a valid one. Whether the agreed solution to position the dwelling 90 metres away adequately accommodates the applicant’s privacy is a disputed question of fact and degree, suited to determination in Part B. The architect’s report certainly does no place the question whether the applicant’s privacy concerns have been addressed beyond contention at this stage of the proceedings.

Is the validity point academic in light of the applicant’s concessions?

[73] It is necessary, before turning to the remaining requisites for interim relief to consider the question that applicant’s concessions squarely raise, namely, even if one assumes that the applicant is correct that the directors were not empowered to amend the documents, does that take his case any further, given that the applicant accepts he has no right of veto and no absolute right to privacy? In my view it does, but only on a narrow and carefully circumscribed basis.

[74] The concessions mean that the applicant cannot succeed on the footing that consent was withheld and overridden because his signature under the former regime was no more than an acknowledgement that he had no objection, and not a veto; he admittedly had no power to refuse to consent to the building. And they mean that the privacy complaint, taken on its own, cannot found a clear right, the more so because the architect’s report shows that the privacy concern was in fact considered and an accommodation attempted. If the applicant’s case rested on veto or on privacy alone, it would fail.

[75] What the validity point does is to keep alive a different and narrower right that survives the concessions, that is the right of a member to insist that the rules applied to him are

those validly adopted by the members, and not those unilaterally substituted by the board. This converts what would otherwise be an unsustainable claim to a veto into an arguable challenge to the lawfulness of the change in the governance rules. To that extent, and to that extent only, the point takes the matter further. It is what establishes the prima facie right, open to some doubt, that the first requisite for interim relief demands.

[76] However, this right is limited: Even at its highest, and even if it is found that the directors were not empowered to change the governance rules and the former consent regime revives, the applicant's own concession means that the most the former regime ever conferred upon him was the entitlement to record an objection and thereby to trigger the dispute-resolution machinery of the MOI; it did not confer a right to halt the build outright or to compel its demolition.

[77] The validity point, therefore, supports an interim interdict to preserve the status quo pending the determination of Part B and the CSOS referral; it does not, even on the applicant's best case, support final relief permanently preventing the first respondent to build on its property in the manner that it desires. Moreover, the validity point cannot rescue the veto and privacy complaints, which fail for the reasons already given. It is precisely because the matter rises no higher than this that the relief I grant is interim, and that the validity of the amendment is expressly left open for full ventilation under Part B.

Irreparable harm, balance of convenience and no alternative remedy

[78] The apprehension of irreparable harm is plain. Building works, once advanced, are not readily reversed. If the applicant is correct that the consent regime survives and that the privacy provision continues to apply, then every additional course of brickwork compounds a structure that may ultimately have to be altered or removed. Damages would be a poor and speculative substitute for the protection of the applicant's ownership interests pending the determination of the dispute.[19]

[79] The balance of convenience favours the grant of interim relief. The first respondent's own architect records that, as at the date of the report, the building had not yet been erected and that the amended plans remained subject to municipal approval. The prejudice to the first respondent in being required to pause works that are, on its own version, not yet lawfully cleared in their amended form, is materially less than the

[19] *Vogel v Crewe and Another* 2003 (4) SA 509 (T) at para 4

prejudice to the applicant in being made to stand by while a contested structure is completed. The greater inconvenience would be suffered by the applicant were interim relief refused and his rights in Part B ultimately vindicated.

[80] As to an alternative remedy, the referral to the Community Schemes Ombud Service does not, of itself, halt construction, and the applicant has no other means of preserving the status quo ante pending resolution.

[81] I am accordingly satisfied that each of the requisites for interim relief is met.

Caveat

[82] I add that this is not a case in which the relief sought trespasses upon an unchallenged administrative act so as to engage the principle that such an act stands until set aside. The applicant does not seek to undo the municipal approval; the revised plans are, on the first respondent's own version, not yet approved by the third respondent. The interim relief operates upon the conduct of the first and second respondents under the scheme's own rules, pending the determination of a genuine dispute as to whether those rules were lawfully changed by the directors of the first respondent.

[83] It thus matters not that the municipal manager responded to the applicant and informed him that only the municipality may accept or reject building plans and that even if the applicant wished to object, the municipality could, after considering his objection, nevertheless approve the plans. This does not impact the applicant's legality case at all; even were the municipality to approve the first respondent's amended building plans or not approve them and the first respondent wish to resort to its initially approved plans, this would not negate the applicant's right to insist that the rules regarding the building of new dwellings within the scheme be followed before the first respondent is able to proceed with building. *Ouderkraal* [20] thus does not apply.

Conclusion

[84] I fully understand the first respondent's frustration with the applicant as at the end of the day, the best he will be able to succeed in is forcing the first respondent to produce the required resolution or hold an AGM at which the proposed amendments will have to be

---

[20] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* (41/2003) [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA) (28 May 2004)

proposed, seconded and voted upon. Should this be passed, the effect will only be to delay the first respondent's construction.

[85] Ultimately, on the applicant's own version, he will not be able to dictate where and how the first respondent is able to build on the property as he has no right of veto and his privacy concerns have been considered and addressed, and this is all that was required under the 2023 regime. The applicant cannot force the first respondent to build on marshland, which is where he wanted it to build. And with his home facing south, when the rules require it to face north, he can hardly complain when the first respondent's north-facing balcony overlooks his property.

[86] In my view the applicant is acting needlessly obstructively and in an unneighbourly fashion in the face of extensive attempts to deal with his objections. I thus reluctantly find that a the requirements for an interim interdict have been established by the applicant. This decision has been taken by me by applying the legal principles to the facts before me and not because I necessarily feel that they advance justice. I say this also mindful that I was told in argument that the applicant has told the respondents that he is retired and has sufficient money and time to pursue the litigation to the end.

[87] I have been prepared to afford the applicant the interim relief to which he is entitled, purely because it is only interim relief and unless the applicant establishes a right on a balance of probabilities in due course, the most the first respondent will suffer is a delay in construction. Because of this, I am satisfied that justice will ultimately be served in this matter.

Costs

[88] The applicant has not sought costs in respect of the relief in Part A and has prayed that they shall be costs in the cause and considered in the determination of Part B.

[89] This is a sensible approach and I am in agreement with this.

Order

[90] In the result, I make the following order:

(1). The forms and service provided for in the Uniform Rules of Court are dispensed with and the application is heard as one of urgency in terms of Rule 6(12).

(2). Pending the final determination of the relief sought in Part B of the notice of motion:

2.1 the first respondent is interdicted and restrained from continuing with, or causing or permitting the continuation of, any construction works on Portion 299 of the Farm Honingklip 178 IQ; 2.2 the second respondent is directed to take all reasonable and lawful steps within its power to ensure that the construction works on Portion 299 are suspended.

2.2. The second respondent is directed, within ten (10) days of this order, to produce to the applicant the versions of its Memorandum of Incorporation, Book of Rules and associated specification and consent documentation in force during the period 2023 to 2024.

[91] The costs are reserved for determination with Part B.

[redacted]

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING

Date of the hearing:	1 June 2026
Date of the judgment:	11 June 2026

APPEARANCES

For the Applicant:	Adv P J Kok
Instructed by:	Petker & Associates Inc.
For the First Respondent:	Adv N J Horn
Instructed by:	EW Van Zyl Attorneys
For the Second and Fourth to Tenth Respondents:	Adv T Carstens
Instructed by:	Otto Krause Inc.