



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

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

Case no A3130/2021

Date: 28 August 2026

In the matter between:

**GATESIDE MANOR HOMEOWNERS
ASSOCIATION**

First Applicant

and

KOZIBWA MICHAUX HAMISI

First Respondent

MRS NDIVHU RABULA NO

Second Respondent

ZAMA MATAYI

Third Respondent

JUDGMENT

DU PLESSIS J (with LIEBENBERG AJ concurs)

Introduction

[1] This appeal concerns whether the rules of the appellant homeowners' association entitled it to require the first respondent to remove synthetic grass laid outside his residence.

[2] The appeal is brought in terms of s 57 of the Community Schemes Ombud Service Act¹ (“the CSOS Act”). It is directed only against the portion of the adjudication order which refused the appellant’s application for an order requiring the first respondent to remove synthetic grass that he installed on his property. None of the respondents opposed the appeal.

[3] The appellant seeks condonation for the late lodging of its appeal. The application is unopposed. It explains the delay by reference, amongst other matters, to efforts to resolve the dispute. The delay is not so extensive as to preclude condonation, and the explanation is adequate. Condonation will accordingly be granted.

The appeal

[4] Section 57(1)² of the CSOS Act permits an applicant, association or affected person dissatisfied with an adjudicator’s order to appeal to the High Court, but only on a question of law.

[5] In *Stenersen and Tulleken Administration CC v Linton Park Body Corporate*,³ the Full Court held that an appeal under s 57 is an appeal in the ordinary strict sense. It is a rehearing on the merits confined to the evidence and information on which the adjudicator’s decision was made, and the enquiry is whether the decision was right or wrong in respect of a question of law. The Court may not receive new evidence or resolve factual disputes not determined on the material before the adjudicator. The appeal court is thus largely restricted to the facts on the record and to the question of whether the adjudicator interpreted and applied the relevant rules correctly before it.

¹ 9 of 2011.

² S 57 (1) An applicant, the association or any affected person who is dissatisfied by an adjudicator’s order, may appeal to the High Court, but only on a question of law.

³ 2019] ZAGPJHC 387 at 42 that states “an appeal to the High Court against a decision of the adjudicator contemplated in s 57 is an appeal in the ordinary strict sense – the second category of appeal mentioned in the *Tikly* case with the proviso that the right of appeal is limited to questions of law only. The court is limited to the record and the adjudicator’s order and reasons. In such an appeal, the question for decision is whether the order of the statutory body performing a quasi-judicial function was right or wrong on the material which it had before it.”

Background

[6] The appellant is the homeowners' association of Gateside Manor. It is governed by a memorandum of incorporation, conduct rules and architectural or building guidelines. The first respondent owns a unit in the estate. By virtue of that ownership, he is bound by those documents.

[7] The appellant's stated objectives are to promote and safeguard the collective interests of members, residents, and estate users, as well as to maintain a high standard of residential environment. The rules aim to achieve a pleasant streetscape, ensure safety, and foster "good neighbourliness".

[8] In 2019, the first respondent carried out several improvements outside his residence. These included installing solar panels, mounting lights on a boundary wall, and replacing natural grass with synthetic grass in the front area of his property (the precise location is not clear from the record). The appellant objected to each of those matters. It contended that the first respondent had proceeded without the necessary approval and did not comply with the rules, building guidelines, and the estate's aesthetic standards.

[9] The first respondent was told that the synthetic grass was not approved and did not comply with the look and feel of the estate. He was invited to meet with the directors, and did so, but indicated that he could not wait for the matter to be resolved at the annual general meeting. He proceeded with the installation of the synthetic grass despite the appellant's objection.

[10] The first respondent also gathered signatures from other residents in support of the synthetic grass, although the appellant did not regard that process as compliance with the requirements applicable to building works or as a basis for the first respondent to disregard the director's decision.

[11] At the annual general meeting held on 14 November 2019 (after the grass was installed), the members voted against the use of artificial lawn in spaces visible from common property.

[12] The dispute was referred to the Community Schemes Ombud Service. Conciliation did not resolve the matter, and it was referred to adjudication. The adjudicator held that the solar panels and boundary-wall light had been installed without the necessary approval and ordered their removal. In relation to the synthetic grass, however, the adjudicator held that the rules were silent; that the appellant had incorrectly sought to bring the matter under the rules relating to additions, alterations and building works; and that the later resolution could not apply retrospectively. The application to remove the synthetic grass was refused.

The appellant's submissions

[13] The appellant submits that the adjudicator adopted an unduly narrow approach to the rules. Counsel contends that the memorandum of incorporation, the conduct rules and the architectural or building guidelines must be read together, contextually and purposively.

[14] The appellant relies on the broader purpose of the scheme: to preserve the quality, coherence and aesthetic character of the estate. It submits that the directors are responsible for ensuring that alterations, improvements, and visible features are consistent with the complex's material and aesthetic standards.

[15] The appellant relies, in particular, on the following provisions:

- a. the rules governing additions, alterations and building works;⁴
- b. the requirement of directors' written approval for building works;
- c. the prohibition on permanent or temporary structures visible to neighbours without prior written approval;⁵

⁴ "Building Works" is defined in the Memorandum of Incorporation as "construction work of any sort including, but not limited to the erection of new structures, alterations to existing structures which are visible from the Common areas or from other Dwellings, within the Complex".

⁵ Rule 1.5 provides that: "No permanent or temporary structure including but not limited wendy houses, tool sheds, jungle gyms, satellite dishes, solar heating panels, chimneys, air conditioning units, etc. may be placed or erected, where visible to neighbouring homes unless with the approval by the Home Owner's Association as well as the neighbours concerned. The Home Owner's Association reserves the right to revoke at any time and for any reason any such permission granted."

- d. the requirement that owners maintain the area between the street kerb and their residences, and keep external gardens neat and tidy;⁶
- e. the obligation to keep visible parts of dwellings neat, tidy and in keeping with the general look and feel of an upmarket complex;⁷
- f. the prohibition on the damage to or removal of flora from any common property, area or open space;⁸ and
- g. the provision that the rules are binding on every person in the estate, as is any decision of the directors in interpreting them.

[16] The appellant submits that the first respondent's removal of the grass, excavation and preparation of the surface, and laying of synthetic grass amounted to building work or an alteration. It contends that he was required to obtain approval before proceeding and did not do so.

[17] The appellant further submits that grass is flora in the ordinary sense; that the removal of the natural lawn was accordingly prohibited; and that the relevant area was either common area or, at the least, visible from common property and part of the regulated streetscape of the estate.

[18] Finally, the appellant submits that the resolution of the annual general meeting did not create a new prohibition retrospectively. It contends that the directors had already determined that the synthetic grass could not be installed and that the meeting merely confirmed or ratified that decision.

Interpretation of the relevant documents

[19] The appellant is correct that the memorandum of incorporation, rules, and guidelines should be read together. Their interpretation must be established from the

⁶ Rule 7 of the conduct rules of the complex provides: "7.1 Every owner shall maintain the area between the street kerb and his residence and the external gardens of each property shall be kept neat and tidy at all times. In the event of an owner failing to maintain such sidewalk to the satisfaction of the association the association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge such member concerned."

⁷ Rule 1.7 provides: "All owners shall ensure that all parts of their Dwellings which are visible from the common property are maintained, kept neat and tidy and in keeping with the general look and feel of an upmarket Complex."

⁸ Rule 7.12 provides that: "Flora may not be damaged or removed from any common property or area or open space."

language employed, considering the context, the purpose of the documents, and the scheme they govern. These principles are well-established, as outlined in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.⁹

[20] The documents are part of the contractual governance framework that binds the appellant and its members. The Court should consider their purpose: ensuring the orderly administration of the estate, safeguarding the collective interests of members, and maintaining a harmonious and appealing residential environment.¹⁰

[21] Homeowners within Homeowners' associations retain ownership of their individual erven and, in principle, the ordinary incidents of ownership. However, by acquiring property within the estate, they accept restraints imposed on certain incidents of ownership by the memorandum, rules, and properly adopted guidelines in the interests of communal living.¹¹ The relationship between the association and its members is contractual.¹²

[22] The appellant is also correct that directors have a key role in implementing and interpreting the rules. It is also true that, in the nature of estate living, the rules do not leave the appearance and maintenance of each home entirely to individual preference.¹³ Instead, they are designed to maintain a harmonious and uniform streetscape, with directors responsible for enforcing and interpreting these rules. This role requires judgment regarding the scheme's collective interests, including its aesthetic and enforcement practices.

[23] The authority of a homeowners' association, including its power to impose sanctions or seek coercive relief, is derived from its memorandum, constitution and

⁹ 2012 (4) SA 593 (SCA) para 18.

¹⁰ As set out in the Memorandum of Incorporation.

¹¹ *Abraham v Mount Edgecombe Country Club Estate Management Association Two (RF) NPC* [2014] ZAKZHC 36 paras 23 and 46.

¹² See *Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh* 2019 (4) SA 471 (SCA) paras 19–20.

¹³ *Bushwillow Park Home Owners v Fernandes* [2015] ZAGPJHC 250 para 17.

rules. It has no inherent power beyond that framework.¹⁴ The extent of the association's power is thus dependent upon the language of its governing documents.

[24] Put differently, the rules they seek to enforce must be sufficiently clear from the documents themselves, and the interpretation of the rules must be a reasonably possible interpretation. A general objective of aesthetic coherence cannot replace the need for clearly articulated rules regarding what this entails.

[25] The balance is fine, however. This does not require the rules to specify every conceivable form of conduct, every material or every landscaping choice. General standards of neatness, safety, nuisance, architectural compatibility and aesthetic coherence may properly be enforced, provided that their content is reasonably ascertainable from the text, context and purpose of the governing documents. However, the more intrusive the relief sought (particularly an order compelling an owner to undo completed work at personal cost), the greater the need for a clear rule-based foundation.

[26] The balance must be struck in the governance of a homeowners' association, which must therefore accommodate both collective and individual interests. Its rules should provide for owners' responsibilities and duties, with due regard to their opinions on aesthetics and conduct within the scheme, together with appropriate enforcement measures. Community living and estate uniformity do not require eliminating all individual choice. An owner remains entitled to use and enjoy privately owned property within the boundaries which the contractual documents fairly and clearly establish.

[27] Van der Merwe,¹⁵ referring to *Kenrock Homeowners Association v Mewett*¹⁶, states that scheme rules need not be enforced with military precision to the finest detail, and that harmonious estate living may allow a measure of individualism, consistent with the governing documents.

¹⁴ *Kenrock Homeowners' Association v Allsop* [2012] ZAWCHC 31 paras 26 – 28.

¹⁵ CG van der Merwe *Sectional Titles, Share Blocks and Timesharing* vol 1 (2026) para 1.7.3.1.

¹⁶ [2010] ZAWCHC 12 para 11. See also GJ Pienaar and JG Horn *Sectional Titles and Other Fragmented Property Schemes* 2 ed (2020) p 522.

[28] The task in this matter is accordingly to give proper effect to both sides of the contractual arrangement. The appellant is entitled to enforce valid rules directed at the maintenance, appearance and common interests of the estate. The first respondent is correspondingly bound by those rules. But the first respondent may not be compelled to remove an installation merely because it is later regarded as undesirable. The appellant must identify a provision which, interpreted textually, contextually and purposively, supplied a sufficiently clear basis for that relief when the conduct occurred.

[29] It is against these principles that the appellant's reliance on the building-works provisions, the rule concerning flora, the streetscape requirements and the directors' decision must be considered.

Did the installation amount to "building work"

[30] The appellant's first contention is that the installation of the synthetic grass constituted building work or an alteration requiring the directors' prior written approval. "Building work" is defined in the Memorandum of Incorporation as:

"construction work of any sort including, but not limited to the erection of new structures, alterations to existing structures which are visible from the Common areas or from other Dwellings, within the Complex"

[31] It is accepted that installing synthetic grass was more involved than simply laying a surface over existing grass. Natural grass was removed, and the ground was prepared before the synthetic turf was laid. That does not, however, determine whether the activity was "building work" as that is set out in the rules.

[32] This is because the building-works provisions appear in a section headed "Additions, Alterations and Painting". The whole provision reads as follows:

1 ADDITIONS, ALTERATIONS AND PAINTING

1.1 Since all buildings / improvements in the Complex have been completed according to the architectural standards of the Complex the intention of these Rules is, inter alia

to protect such standards and all future building activity and Building Works will only be allowed under the following circumstances:

1.1.1 All proposed Building Works or alterations shall comply with the local authority's requirements in respect of, inter alia the submission and approval of building plans, and any other requirements the local authority may stipulate from time to time. The onus is on the Member in question to establish the parameters of such requirements;

1.1.2 The Directors' written consent is required for all Building Works. This consent shall not be unreasonably withheld.

[33] The provision thus contemplates building improvements and works which may require municipal approval and building plans. Understood in its context, "building works" refers to work of a structural or constructional character relating to buildings and improvements. From the wording and context, it is not intuitively directed at ordinary landscaping merely because it involves the removal of soil, excavation, or surface preparation.

[34] Interpreting the provision as the appellant suggests would extend the building-works approval process to many common landscaping tasks such as replacing lawns, preparing flower beds, planting shrubs, installing edging, laying garden surfaces, or changing soil levels. The rules do not support this view. Installing synthetic grass is properly characterised as landscaping rather than building work under the relevant regulations. Therefore, lacking written approval under the building-works rules does not grant the right to the relief the appellant seeks.

[35] Nor is synthetic grass a permanent or temporary "structure" within the ordinary meaning of the separate rule which prohibits visible structures,¹⁷ such as wendy houses, sheds, jungle gyms, satellite dishes, awnings, solar panels, chimneys and air-conditioning units, without approval. That provision is directed at physical structures and attachments, not the choice of ground cover.

¹⁷ As expressly provided for in paragraph 1.5.

Did the respondent remove flora?

[36] The appellant rightly states that grass is flora in the usual sense, since it is living plant material. The adjudicator's claim that grass cannot be considered flora is unsupported. Still, this does not resolve the appeal. Rule 7.12 states that flora must not be damaged or removed from "any common property or area or open space". The appellant argued that the synthetic grass was placed in a common area or, alternatively, in an area visible from common property. The adjudicator found that the natural grass had been taken from the first respondent's private garden, not the common area. It must be stated that the record contains no plan, title material or factual finding which permits this Court to determine whether the precise strip from which the grass was removed was common property, an "area" or an "open space" within the meaning of rule 7.12, rather than part of the first respondent's erf. There is thus some difficulty for this court to determine the factual issue, which it is, in any case, not entitled to do.

[37] Despite this challenge, the appellant faces an additional difficulty. The relief requested from the adjudicator and on appeal is an order to remove the synthetic grass. The appellant did not request a separate declaration that the first respondent violated rule 7.12, nor did it seek relief specifically aimed at restoring natural grass or rectifying its alleged removal.

[38] Rule 7.12 concerns the removal or damaging of flora. It does not prescribe the surface which may be placed in a particular area once grass has been removed. It does not say that natural grass is the only permissible ground cover, or that synthetic grass may not be used in a front or visible area.

The directors' discretion

[39] The appellant rightly emphasises that rule 7 is concerned with ensuring a pleasing streetscape, safety and good neighbourliness. The rule states:

"7 Ensuring a pleasing streetscape, safety and good neighbourliness

7.1 Every owner shall maintain the area between the street kerb and his residence and the external gardens of each property shall be kept neat and tidy at all times. In the

event of an owner failing to maintain such sidewalk to the satisfaction of the Association, the association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge such member concerned.”

[40] Rule 1.7 states

“1.7 All owners shall ensure that all parts of their Dwellings which are visible from the common property are maintained, kept neat and tidy and in keeping with the general look and feel of an upmarket Complex.”

[41] These provisions impose standards of maintenance and appearance. They empower the appellant to address neglected, untidy, unsafe or unsightly areas and, in appropriate cases, to require an owner to remedy a breach. They do not, however, prescribe natural grass as the only acceptable ground cover. Nor do they state that synthetic grass is prohibited in a kerbside or front-garden area.

[42] The “look and feel” of an upmarket complex must be given practical effect by the directors in a manner consistent with the rules and the scheme's legitimate interests. But it must be applied objectively, consistently, and by reference to intelligible standards contained in or properly developed under the governance documents, as explained above.

[43] It cannot mean that the directors may, after the event, create a binding prohibition against a material simply because they regard it as aesthetically undesirable. To hold otherwise would make the scope of an owner's contractual obligations depend entirely upon an unstructured and undefined aesthetic preference of the directors.

[44] The record does contain specific aesthetic standards. For example, it prescribes approved paint colours and specific paving colours, and it regulates the appearance of structures and external installations. In that regard, the adjudicator's award rightly ordered the removal of certain solar panels and a boundary wall light that did not comply with the prescribed list. However, no landscaping guideline, “plant palette”, or pre-existing flora rule was identified that required natural grass in the area

in question, prohibited synthetic grass, or specified that artificial turf was inconsistent with the look and feel of the estate.

[45] We are not called upon to decide whether natural or synthetic grass is more attractive. The question is whether the rules authorised the appellant to compel this first respondent to remove the synthetic grass. They did not do so clearly.

The directors' decision and the AGM resolution

[46] The correspondence shows that the first respondent knew the directors objected to the synthetic grass and nonetheless proceeded. He was not entitled simply to disregard the appellant's concerns. His conduct explains the appellant's understandable frustration and its concern with orderly governance within the estate.

[47] But the managing agent's communication that synthetic grass was "not allowed", and that the directors were entitled to demand its removal, cannot itself create the rule on which the appellant must rely. The question remains whether the objection was anchored in a pre-existing rule which clearly prohibited the installation or retention of synthetic grass.

[48] The appellant submits that the annual general meeting's resolution against artificial lawn in areas visible from common property did not retrospectively create a rule, but merely confirmed or ratified a decision already taken by the directors. It was open to the appellant, through its governance structures, to adopt a rule or resolution regulating artificial grass in areas visible from common property. The resolution may have a proper prospective operation.

[49] Still, the issue on this appeal is whether, before the resolution was taken, the governing documents already prohibited the relevant conduct. The resolution introduced a specific standard concerning artificial grass visible from common property. That standard was not expressed in the previous provisions upon which the appellant relies. Rather, the need to adopt a resolution expressly addressing artificial grass indicates that the earlier documents lacked a clear rule on the subject. It could

not retrospectively create a contractual prohibition which was not otherwise apparent from the pre-existing rules.

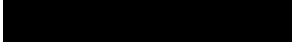
Conclusion

[50] Taking all this into account, the conclusion is that the appellant has not established an entitlement under the rules, as they stood at the relevant time, to compel the first respondent to remove the synthetic grass. The adjudicator's order was not wrong in law. The appeal must fail. The appeal was unopposed, which means no order as to costs need to be made.

Order

[51] The following order is made:

1. Condonation for the late lodging of the appeal is granted.
2. The appeal is dismissed.
3. There is no order as to costs.


WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	4 June 2026
Date of judgment:	28 August 2026
For the appellant:	WC Carsten instructed by Barnard Attorneys
For the respondent:	No appearance