REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-059686

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

12-June-2025 [redacted]

DATE SIGNATURE

In matter between

MJEJANE GAME RESERVE HOMEOWNERS' ASSOCIATION	Applicant
and	
COMMUNITY SCHEMES OMBUD SERVICES	**First Respondent**
ACTING CHIEF OMBUD	**Second Respondent**
THEMBELIHLE MBHATHA N.O	
COMMUNUTY SCHEME OMBUD SERVICES, KWA-ZULU NATAL REGIONAL OFFICE	**Third Respondent**
MJEJANE RIVER LODGE PROPERTY (PTY)LTD	**Fourth Respondent**
PETRUS ZELIE N.O.	**Fifth Respondent**

JUDGMENT ON LEAVE TO APPEAL

LESUFI AJ

Introduction

[1] This is an application for leave to appeal against my judgement delivered on the 3 February 2025. The leave to appeal is brought in terms of Rule 49 of the Uniform Rules read with section 17 of the Superior Act. The Applicant filed a notice for leave to appeal on the 11 February 2025. The application is opposed by the First to the Fifth Respondent.

[2] The parties will be referred to as they were in the review application. However, the First to the Fifth Respondents will be referred to collectively as "Respondents "

Background facts

[3] On the 21 April 2023, the Fourth Respondent made an application to the First Respondent, for dispute resolution by completing a form ("the dispute resolution form") setting out 17 disputes for conciliation or arbitration against the Applicant. In the application to the First Respondent, the Fourth Respondent sought the following relief in terms of Section 39 of the Community Schemes Ombud Service Act 9 of 2011(CSOS Act):

3.1 In terms of the financial issues;

3. 2 Scheme Governance issues;

3.3 Meeting issues;

3.4 General and other issues;

[4]. On the 18th of May 2023 the First Respondent, acting through the Second and/or Third Respondents accepted the application for the dispute resolution (under CSOS Application 1237 MP/23) initiated by the Fourth Respondent.

[5]. The Fourth Respondent to be assisted in the resolution of the dispute, was requested by the First Respondent to furnish written submission regarding the application by the 24th of May 2023. On the 25th of May 2023 the Fourth Respondent received an email from the First Respondent informing them that they failed to provide a response, accordingly the dispute is therefore referred directly to Adjudication in terms of Section 48 of the CSOS Act.

[6]. On the 25th of May 2023 the Applicant sent a letter to Fourth Respondent in response to Section 43 notice in terms of the CSOS Act, acknowledging receipt of the copy of the Fourth Respondent 's application for Dispute Resolution dated 21 April 2023.The Applicant further acknowledged request for submissions in response to the application made by the Fourth Respondent on or before 24 May 2023.

[7]. The Applicant informed the First Respondent that they are of the view that, based on the relief sought, the application should not have been entertained by the First Respondent and the First Respondent was obligated to reject the application in terms of Section 42 of the CSOS Act and therefore should have been rejected.

[8]. On the 27th of June 2023, the Applicant instituted a review application before this court seeking *inter alia* that the First Respondent's decision to accept and refer the Dispute for Adjudication be reviewed.

Applicant's grounds of Appeal

[9] Applicant's grounds for appeal can be summarised as follows:

9.1 The court erred in dismissing the application.

9.2 The court erred in finding that the Applicant did not adduce evidence of whether decisions of the Respondents adversely affected its rights. The court should have found that the Applicant provided facts that the reference to adjudication severely impacts its ability to enforce the Management Rules of the Applicant as a Homeowners Association for the benefit of its members.

9.3 The court erred in not considering that the CSOS Act constitutes public law remedies in circumstances where the Applicant's MOI and Management must be afforded preference in respect of private disputes governed by the Applicant's Constitution.

9.4 The court erred in not finding that the Fourth Respondents request for direct reference to adjudication should at the outset have been dealt with by a way of conciliation of the CSOS practice directive, alternatively private arbitration to the Constitution.

9.5 The court erred in making a finding to the effect that the reference to the adjudicator is appropriate manner to deal with the reference of disputes.

9.6 The court erred in selectively making a finding that the Applicant did not exhaust remedied but conversely did not hold the Fourth Respondent and Fifth Respondents, alternatively the CSOS and Ombud, to the same standard of test.

9.7. The court erred in not considering or finding that the disputes instituted by the Fourth and Fifth Respondents must be capable of resolution in terms of a section 39 order, if not the CSOS and /or adjudicator do not have jurisdictions to adjudicate,

9.8 The court erred by not considering that various disputes do not fall within the jurisdiction of the Ombud, as conceded by the First to Third Respondents.

9.9 The court erred in finding that direst reference to an adjudicator may be ordered if no conciliation has been invoked, which is contrary to the Practice Directive requirement in terms of Clause 21.5.

9.10 The court erred in finding that condonation should be allowed, although most of the disputes fell outside the 60 -day period in terms of the Act. The court ignored the rules of natural justice.

9.11 The court erred in making no finding that the matter should be stayed pending a report to be submitted by the Fifth Respondent regarding the verification process and the litigation instituted as a consequence thereof.

9.12 The court erred by not upholding the sanctity of contracts between the members to the MOI and Management Rules, thereby not promoting good governance of homeowners' associations and not complying with a pre-emptive dispute resolution clause contained in the MOI.

[10] The Primary legal question to be answered by the Appeal court is

10.1 Whether MOI or private agreement between the Applicant and the Fifth Respondent super cede the CSOS Act or whether the Fourth Respondents request for direct reference to adjudication should at the

outset have been dealt with by way of conciliation of the CSOS practice directive.

10.2 Whether CSOS has jurisdiction to refer the matter for adjudication.

[11] However the Appeal Court is not limited by my summary of legal questions.

Respondent's opposition to the Application for leave to appeal

[12] The application for leave to appeal is vehemently and vigorously opposed the application. The basis for opposing being that it is clear that there was no misdirection by the court *a quo*. In principle the Respondents abide by my judgement.

Issues for determination

[13] Whether this appeal has prospects of success.

Applicable principles/tests to the adjudication of an application for leave to appeal and analysis of the ground of appeal

[14] Rule 49 of the Uniform Rules of Court dictates the form and process of an application for leave to appeal and the substantive law pertaining thereto is to be found in section 17 of the Superior Courts Act 10 of 2013. The latter Act raised the threshold for the granting of leave to appeal, so that leave may now only be granted if there is a reasonable prospect that the appeal will succeed. The possibility of another court holding a different view no longer forms part of the test. There must be a sound, rational basis for the conclusion that there are prospects of success on appeal. The interpretation of the Rules and the Law has evolved in case law since 2013. In numerous cases, the view is held that the threshold for the granting of leave to appeal was raised with the inauguration of the 2013 legislation (Superior Courts Act 10 of 2013). The former assessment that authorization for appeal should be granted if *"there is a reasonable prospect that another court might come to a different conclusion"* is no longer applicable.

[15] The words in section 17(1) that: "Leave to appeal may only be given..." and section 17(1)(a)(i) that: "The appeal would have a reasonable prospect of success" are peremptory. "If there is a reasonable prospect of success" is now that: "May only be given if there would be a reasonable prospect of success." A possibility and discretion were therefore, in the words of the legislation and consciously so, amended to a mandatory obligatory requirement that leave may not be granted if there is no

reasonable prospect that the appeal will succeed. It must be a reasonable prospect of success; not that another Court may hold another view.

[16] The court *a quo* may not allow for one party to be unnecessarily put through the trauma and costs and delay of an appeal. In *Four Wheel Drive v Rattan N.O.*[1] the following was ruled by Schippers JA (Lewis JA, Zondi JA, Molemela JA and Mokgohloa AJA concurring):

> "[34] There is a further principle that the court a quo seems to have overlooked — leave to appeal should be granted only when there is 'a sound, rational basis for the conclusion that there are prospects of success on appeal'. In the light of its findings that the Plaintiff failed to prove locus standi or the conclusion of the agreement, I do not think that there was a reasonable prospect of an appeal to this court succeeding that there was a compelling reason to hear an appeal. In the result, the parties were put through the inconvenience and expense of an appeal without any merit."[2]

Analysis and Conclusion

[17] Lastly, I extensively considered the Heads of Arguments by the Applicant and the reply by the Respondents as well as submissions made. Having read further papers filed, I cannot exclude the possibility that another court might come to a different conclusion. I therefore conclude that there are reasonable prospects of success.

[18] In the premise, I find that the application for leave to appeal deserves to be successful and leave to appeal to Full Bench of this Division or Supreme court of Appeal is therefore granted.

Costs

[18] The standard rule in an application for leave to appeal is that the cost of the appeal is to be in the cause.

[19] I find no reason to deviate from the abovementioned standard principle.

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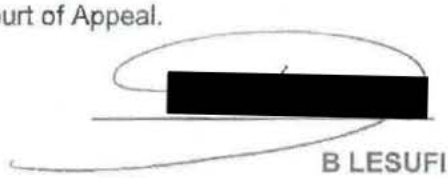
[1] 2019 (3) SA 451 (SCA).
[2] Id at para 34.

Order

[20] In the premise I make the following order:

1. Leave to appeal is granted.
2. The cost of the appeal is to be in the cause.
3. The Appeal be heard by the Supreme Court of Appeal.



B LESUFI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Applicant:	Adv. J De Beer SC
Instructed by:	JB Haasbroek Attorney
For the Respondents:	K. Mnyandu
Instructed by:	Lusenga Attorneys
Date of Hearing:	5 May 2025
Date of Judgement:	12 June 2025