IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case number: 19001/2020

In the matter between:

ROSEVEAN INVESTMENTS 0028 (PTY) LTD	Applicant
and	
The CITY OF CAPE TOWN	First Respondent
CHAPMANS PEAK HOTEL (PTY) LTD	Second Respondent
CARLOS DE NOBREGA	Third Respondent
KEITH WOOLL	Fourth Respondent
GREGORY FRANCOIS	Fifth Respondent
PATRICIA FRANCOIS	Sixth Respondent
DANIELA ISRAEL WILSON	Seventh Respondent

Coram: Acting Justice P Farlam
Heard: 14, 15 August 2024
Delivered electronically: 3 December 2024

JUDGMENT

FARLAM AJ

I. INTRODUCTION

[1] While the relief sought in the applicant's notice of motion is diffuse and wide-ranging, this case is, at its essence, about a sewerage pipeline, which the first respondent (the **City**) constructed over the property of the applicant (**Rosevean**), and which has been described by Rosevean as the "*Unsightly Pipe*", and by the City as the "*secluded pipe*". The key questions are whether the City constructed the sewerage pipeline across Rosevean's property in Hout Bay irregularly or unlawfully; and if so, what should be done about that at this stage, slightly more than four years' later.

[2] The application also chronicles disputes between Rosevean and its neighbours, the second respondent (the **Hotel**) and its manager, the third respondent (**De Nobrega**), and the fourth respondent (**Wooll**); but for various reasons those disputes are now academic or incapable of being pursued. This judgment accordingly focuses on the sewerage pipeline issue, before briefly addressing the remaining matters.

[3] It is also necessary to address the applicant's request for an inspection *in loco*, which was persisted with even in closing argument, but which, as the parties would have gathered, I was not inclined to accede to. I shall address that later in the judgment, after a summary of matters relevant to the various disputes

and an analysis of the facts and arguments germane to the applicant's sewerage pipeline claim.

II. THE BACKDROP TO THE PRESENT DISPUTES

[4] Rosevean owns immoveable property situated at 5 M[...] Road, Hout Bay (the **Rosevean property**). Wooll owns the property at 7 M[...] Road (the **Wooll property**). The Rosevean property and the Wooll property were created by the subdivision of Erf 1[…] Hout Bay on 19 December 1994, with the Rosevean property hence being Remainder Erf 1[…].

[5] The fifth and sixth respondents (Gregory and Patricia Francois) are the registered owners of 1 M[...] Road; while the seventh respondent (Daniela Wilson) is the owner of 3 M[...] Road. They have been joined in the application merely for any interest that they might have. They have not participated.

[6] The Hotel, which has been run by De Nobrega for almost 25 years, owns a property situated on Main Road, Hout Bay (the **Hotel property**), downhill from (and on the seaside of) the properties on M[...] Road.

[7] The location of the various properties, and the various sewers, can usefully be seen on a conceptual illustration which accompanied the second and third respondents' supplementary heads. A copy of that illustration, as slightly amended by Rosevean's legal team (to show an additional pipeline and, according to them, the precise configuration of an earlier, now disused, pipeline, which linked to the Hotel property), is accordingly annexed at the end of this judgment.

[8] The disposal of sewerage can be difficult in a road such as M[...] Road, located on the slope of a mountain. In December 1994, a few weeks before the subdivision, an agreement was concluded between the Hotel and the then owner of Erf 1[…], Mark Stein, in terms of which sewerage from Nos. 5 and 7 M[...] Road (i.e., the properties belonging to Rosevean and Wooll) would be

conveyed in a pipeline down to the Hotel property below. Although the parties have divergent versions as to the origin and precise route of the pipeline contemplated by that agreement (the **original pipeline**), it seems that it ran from the Rosevean property to Wooll's property, and then down to the Hotel property (potentially via the Rosevean property, though that is not material for present purposes).

[9] Around the middle of 2017, the Hotel (represented by De Nobrega) and Wooll reached an agreement in terms of which the sewerage from Nos. 5 and 7 M[...] Road would no longer be piped over the Hotel property, but would instead be conveyed in a pipe across Wooll's property (7 M[...] Road) and from there across 9 M[...] Road and then into the City's sewerage connection on, or next to, No. 9. After construction of that sewerage line had been completed (which according to De Nobrega was in December 2017), the original pipeline, running over the Hotel property, was no longer needed. Sometime thereafter that pipeline became severed at the boundary of the Hotel property, whether as a result of having been cut off (on Rosevean's version) or simply having broken and fallen down (on De Nobrega's version). Rosevean was not told about the rerouted pipeline at the time or in the months that followed; it was therefore still for a few years under the impression that its sewerage was being discharged via the Hotel property. It also did not know that the original pipeline was no longer intact.

III. THE DEVELOPMENTS IN 2020

[10] Rosevean may potentially still have been ignorant of the termination of the arrangement provided for by the 1994 agreement had there not been a discharging of sewerage on its property in May 2020, which caused it to investigate the sewerage system in place at that time. Rosevean then discovered that the original pipeline now ended, and was open, at the point where it entered the Hotel property. It also learned, through a plumber that it engaged to establish the cause of the sewerage spillage, that a "solid end cap"

had seemingly been placed in the pipeline which led from the Rosevean property into the Wooll property.

[11] Rosevean blames Wooll for the "solid end cap", and thus too for the egress of sewerage onto its property. Rosevean also accuses the Hotel, and De Nobrega in particular, of cutting off the original pipeline. These are the neighbour disputes to which I have referred in paragraph [2] above. They are however now merely of historical significance. For the Rosevean property is connected to the municipal sewerage system via a pipeline running over No. 7 and No.9 M[...] Road, and the sewerage discharge of mid-2020 is fortunately now a distant memory. Rosevean is also anyway unable to pursue these disputes meaningfully in these proceedings due to disputes of fact on the affidavits, which it was earlier refused permission to have referred to oral evidence.[1]

[12] What thereafter happened in October 2020 is of more long-lasting significance. For, in October 2020, the City installed a sewerage pipeline over the Rosevean property, which connected Nos. 1 and 3 M[...] Road to the pipeline which ran from the Rosevean property through to No. 9 M[...] Road (via the Wooll property) and from there into the municipal sewer. The new pipeline – while of considerable benefit to Nos. 1 and 3 M[...] Road, whose properties had previously not been connected to the municipal sewerage system, and also useful to neighbouring properties – has been constructed above ground on the Rosevean property and snakes across a portion of the property, affixed to the top of wooden poles (about 1.5 metres above the soil), clad in what appears to be a brown wrapping. It was therefore not welcomed by Rosevean, which also alleges that it impedes the future expansion of its buildings.

[13] Rosevean appears to believe that the sewerage spillage, the severance of the original pipeline and the construction of the new snaking pipeline were somehow all linked. At least in part as a result thereof, Rosevean has therefore

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[1] An interlocutory application by Rosevean to *inter alia* refer some disputes to oral evidence, which was argued on 3 August 2021 was dismissed on an attorney and client scale by Nyati AJ, in a judgment delivered on 21 June 2023.

sought relief in respect of all three events. In my view, they are not however necessarily connected. Nor, as I have mentioned, are the first two events (the sewerage spillage and the severing of the original pipeline) of any significance any longer. It is only the City's construction of the new above-ground sewerage pipeline, joining the properties from No. 1 to No. 9 M[...] Road on the same sewerage reticulation network, that still raises a live controversy.

IV. THE CITY'S CONSTRUCTION OF THE CONTENTIOUS PIPELINE

[14] Correspondence attached to the founding affidavit indicates that the impetus for the pipeline installed by the City in October 2020 was predominantly the sewerage problems at 1 and 3 M[...] Road, which as mentioned were not at the time connected to the municipal sewerage system (and were therefore reliant on a company collecting raw sewerage from tanks on their properties). Wooll and his wife, and De Nobrega appear to have been particularly concerned about the sewerage issues at the top of M[...] Road and to have been anxious for there to be a pipeline which accommodated all properties on the Main Road (Hotel) side of M[...] Road (i.e., Nos 1, 3, 5, 7 and 9).

[15] De Nobrega had in fact been corresponding with the City about such a sewer line back in August 2018, when he had informed the City that installing a segment of the sewer line on 5 M[...] Road would be "relatively easy and low cost" and that the City could "have easy access from hotel pool slope – the vegetation has been cleared to allow easy access". De Nobrega informed Ms Arlene Duval, the attorney for Rosevean, of this correspondence and the route which was proposed for the sewer line on 26 September 2020 in an email, which *inter alia* stated that the new line "might be secured to the face of the gabion retaining wall, which should be a secure structure that is unlikely to move" and that it "*will not be visible from your living areas*". De Nobrega also advised Ms Duval on that day that the City had a tender for the work which expired mid/end October 2020 and that they purportedly had to begin the construction in order to justify the extension of the tender (though correspondence from a few days earlier between De Nobrega and the City's Mr

Ishmail indicated that the City was proposing a temporary solution under the current tender, and then a new pipeline, accommodating all the properties on M[...] Road, under a new tender; but that De Nobrega was not prepared to entertain another temporary connection).

[16] There was a meeting between various affected property owners on 2 October 2020 at 3 M[...] Road. In attendance were De Nobrega, Wooll and his wife, the owners of the properties situated at 1 and 3 M[...] Road (i.e., the fifth to seventh respondents) and Oscar Chavez, the foster son of Rosevean's sole director, Mrs Storey (who lives in Arizona). No City official was present. De Nobrega apparently gave an overview of the sewerage issue and his proposed solution and impressed upon those present the need to solve the sewerage problem before the City's existing tender award expired. At least a couple of remedial options were seemingly discussed: a connection point on the Wooll property, and a temporary line connecting the properties to the municipal sewerage system until a permanent solution could be found. None was however supported by documentation or drawings, though De Nobrega avers that he walked Mr Chavez over the installation route that he proposed.

[17] Ms Duval states that she made various attempts to contact City officials and obtain relevant documents in the last week of September and the first three weeks of October 2020. An engineer engaged by Rosevean (a Mr Kelly) also wrote to the City's Mr Ishmail on 16 October 2020 and attempted to meet with him. Mr Kelly's letter to Mr Ishmail informed him, among other things, that Mrs Storey was surprised to learn of the correspondence between De Nobrega and Mr Ishmail, as she was unaware of the proposed work, and that, while Rosevean welcomed the formalisation of the new sewer system, it wanted an assurance that it would follow the route of what he believed to be the existing pipeline servitude on its property, as shown on a diagram which he attached. (According to De Nobrega – who seems to be correct on this score – Mr Kelly misunderstood the servitude diagram, as it in fact showed a pipeline servitude for water to the Hotel, and was in favour of the Hotel.)

[18] Mr Kelly did not receive a response to that letter (which the City states only came to the attention of Mr Ishmail the following week); but managed to speak to Mr Ishmail telephonically on 23 October 2020. According to Mr Kelly, Mr Ishmail told him – to his considerable surprise – that the installation of the new sewer line across the Rosevean property had been completed on 21 October 2020 and that the City was in the process of registering a servitude across the Rosevean property. On being asked for a copy of the drawings the contractor used to construct the sewer line and the proposed servitude diagram, Mr Ishmail apparently stated that there were no design drawings available. He also declined to provide the servitude diagram.

[19] Rosevean's version is to some extent disputed by the respondents. But there is not, in my view, material divergence on the key facts, the differences relating more to what one can be inferred, surmised or concluded from them.

[20] The City has confirmed that the tender award which permitted the City to address the sewerage problems in 2020, through an external contractor, expired on 20 October 2020. There was accordingly some urgency from its side in resolving the sewerage leakages, which were affecting Nos. 1, 3, 5 and 7 M[...] Road, as well as the Hotel property, once Mr Ismail (a Principal Technician, in the Water and Sanitation Services Department at the City) was advised of the problems in September / October 2020.

[21] According to the City, its appointed contractor, Nejeni Construction and Project Management CC (**Nejeni**), began preparatory work for the installation of the new sewerage pipeline on 8 October 2020, commenced the installation of the pipeline itself on 13 October 2020 and completed the pipeline by 15 / 16 October, allowing the City's officials and Nejeni to survey the completed works on 20 October 2020.

[22] As is common cause, Nejeni and the City officials did not access the Rosevean property through the front entrance of the property or with the express permission or acknowledgement of Rosevean when installing the new pipeline.

According to the City, Nejeni and the City officials accessed the Rosevean property through 3 M[...] Road (one of the immediately adjacent properties). The City is unapologetic about this: it contends that it had a "*statutory power*" to access the property in whatever way it wanted in order to undertake its statutory obligations; and that it was incumbent on Rosevean to have objected to Nejeni's actions at the time, had it wanted to take issue with them.

V. THE PARTIES' COMPETING CONTENTIONS ON THE SEWAGE PIPELINE ISSUE

[23] As will be apparent from the summary above, Rosevean asserts that the new sewer line was installed on, and across, its property without its knowledge or consent, and without any notification from the City. According to Rosevean, it also did not consent to anyone even accessing the Rosevean property for purposes of installing the sewerage line and that access was therefore gained by the contractor without permission in October 2020.[2] Rosevean alleges, too, that the location of the sewer line – which Ms Duval, Mr Kelly and Mrs Storey's foster son, Mr Oscar Chavez, noted, on visiting the property on 2 November 2022, closely aligned to De Nobrega's direction – would not allow the current dwelling on the Rosevean property to be extended.

[24] The City has contended, in response, that Nejeni's work could not have taken place without Mr Chavez's knowledge, given that he was, on his own version, at the Rosevean property until 15 October 2020. The City also submits that, as neither Mr Chavez, nor Ms Duval, nor any other representative demanded that Nejeni cease the installation (and for example, did not "*address correspondence to the [City] requesting that the work stop immediately*" or bring an "*application to interdict the [City] from carrying out these works*") this "*implies consent or tacit acquiescence by the applicant*". The City asserts, too, that at

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[2] Ms Duval stated in Rosevean's founding affidavit that she had no idea how Nejeni gained access to the Rosevean property for the purpose of the pipeline installation but could "*state unequivocally that access was gained without the permission of the applicant or anyone related in any manner to the applicant*".

the neighbours' meeting held on 2 October 2020, Mr Chavez purportedly "*agreed with the installation to be carried out by contractors deployed by the [City]*" – though no City official was present at that meeting and so the City has no firsthand knowledge of what Mr Chavez may or may not have indicated then; and the affidavits of De Nobrega and Wooll, when read with the affidavits of Duval and Chavez, do not in my view justify such an assertion.

[25] The City further alleges (somewhat undermining its tacit consent contention) that the pipeline was "*installed along an extremely steep slope and … is inaccessible to members of the public*" and is "*furthermore covered by dense bushes and not noticeable from the vantage point of the applicant's property or that of the neighbouring property owners*". The City also states that "*it seems extremely unlikely that the dwelling could be extended past the retaining walls*", and that "*the contractors left ample space for future extension*".

[26] The nub of the City's contentions is that it acted within the framework of its legislative powers and authority, as well as its rights under the subdivision conditions registered over the Rosevean property, and that it did not infringe Rosevean's property rights. In essence, it contends that, in terms of its statutory powers, as read with the subdivision conditions, its contractors and officials were entitled to access the Rosevean property from an adjacent erf without the express consent of Rosevean, and also without knowing whether any Rosevean representative was even aware that they were working on the Rosevean property. The City submits, too, that, in the light of the empowering legislation and the agreed servitude, they did not need to discuss either the route of the proposed sewerage pipeline over the Rosevean property, or the look, height and composition of the pipeline, with Rosevean.

[27] What needs to be decided for purposes of addressing the sewerage pipeline dispute is whether the City's understanding of the legal position is correct.[3]

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[3] The affidavits and submissions of the Hotel and De Nobrega, and Wooll, are largely irrelevant to this dispute. While De Nobrega sets out some useful factual background, he largely focuses on the

VI. WHETHER THE CITY COULD INSTAL THE SEWERAGE PIPELINE AS IT DID

[28] The City has placed some store on the various by-laws and other legislative provisions that allow (and require) the City to ensure that there are adequate sewerage systems. Those enactments do not however take the matter further. It is not in dispute that the City can (and should) install sewerage systems and ensure that suburban properties are connected to the municipal sewerage system. What is in issue is how the City may permissibly go about doing that, and in particular what obligations it has to property owners when intending to instal a sewerage pipeline over their properties. That question was not addressed by the statutory provisions to which I was referred by the City.

[29] More to the point was Rosevean's counsel's reliance on the law pertaining to servitudes over private property. For, as was common ground, the City's entitlement to instal a sewerage pipeline over the Rosevean property ultimately derived from a servitude imposed on the Rosevean and Wooll properties at the time of the subdivision of the original Erf 1[…] Hout Bay, in favour of the City and neighbouring properties. Absent that servitude, the City could not have sought to run a sewerage pipeline across privately-owned land; or at least would have had to follow a regulated process and pay compensation to the property owner. The key issue is therefore what the servitude allowed the City to do.

[30] The relevant subdivision condition (clause 3.5 of the conditions imposed by the Western Cape Regional Services Council, in terms of section 42(1) of Ordinance 15 of 1985, on 19 December 1994) reads as follows:

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allegations directed at him. Wooll's short affidavit is similarly concerned with the prayers and allegations against him (which mostly concern the question of whether Wooll capped Rosevean's sewer line, thereby causing sewerage to spill out onto its property).

'Subsequent to the granting of a subdivision in terms of the section 25(1) of the Ordinance, the person who at any time is the owner of any land unit directly involved in the subdivision shall be required, without compensation –

3.5.1 to allow gas mains, electricity, telephone and television cables and/or wires, main and/or other waterpipes and foul sewers and stormwater pipes, ditches and channels of any other land unit or units to be conveyed across the land unit concerned, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the Council, in such manner and position as may from time to time be reasonably required; this shall include the right of access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above'

[31] As I read it, that condition appeared to envisage a sewerage pipeline running underground, or at least on the ground, though it was not prescriptive on this score and in fact indicated that the "*manner and position*" of any sewer or stormwater pipe could be "*as may … be reasonably required*". The condition also made clear that the landowner must allow the municipality to access the property "*at any reasonable time*" for the purpose of constructing, altering or inspecting such pipes. It was made clear, too, that the landowner was not entitled to compensation for any pipe, wire, cable or ditch which was considered to be reasonably required.

[32] The rights and duties conferred by a statutory servitude which allowed the laying of pipes or conduits on private land were considered by the Constitutional Court in *Tshwane City v Link Africa*.[4] I agree with Rosevean's counsel that this case is relevant in the present context, even though the servitude in this case

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4 *Tshwane City v Link Africa and Others* 2015 (6) SA 440 (CC).

is not a statutory one, and there are consequently some material differences between the two scenarios.

[33] The provision at issue in *Link Africa* was section 22 of the Electronic Communications Act, 36 of 2005 (**ECA**), which provides in relevant part [with emphasis added] that, having due regard to applicable law (ss (2):

> *"(1)* ***An electronic communications network service licensee may —***
>
> *(a)* ***enter upon any land****, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic;*
>
> *(b)* ***construct and maintain an electronic communications network or electronic communications facilities upon, under, over, along or across any land****, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic; and*
>
> *(c) alter or remove its electronic communications network or electronic communications facilities, and may for that purpose attach wires, stays or any other kind of support to any building or other structure."*

[34] The minority in *Link Africa* would have found that this section infringes section 25 of the Constitution (the right to property). The majority disagreed. It held that "*the rights s 22 grants are similar to a general servitude*"[5] and must thus be exercised with due regard to the constraints to which general servitudes are subject. The majority then set out at some lengths what those constraints are.

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5 Ibid at para [142].

Because of its relevance to the present case, it is appropriate to quote a few paragraphs from the majority's exposition:[6]

> *'[142] … These [general servitude rights] allow the dominant owner to select the essential incidental rights of the necessary premises and to take access to them as needed for the exercise of the servitude. But the right is not unrestricted. The dominant servitude-holder cannot just barge in. A large part of the argument on behalf of the City of Tshwane and Msunduzi was premised on the outrageous notion of the licensee just barging in, brazenly disregarding municipal protections and duties and works. That can never be. It is alien to our law's conception of rights over another's property. As stated in* Hollmann [Hollmann and Another v Estate Latre *1970 (3) SA 638 (A) at 645D*]*, exercise of a servitude is subject to the important condition that incidental rights must be "exercised civiliter".*
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> *[143] This court has embraced the principle that rights over the property of another must be exercised civiliter modo. In* Motswagae [Motswagae and Others v Rustenburg Local Municipality and Another *2013 (2) SA 613 (CC) at para 14*]*, Yacoob J on behalf of the court stated that "the common law requires that a servitude be exercised civiliter modo". The court translated the Latin into plainer language. It said this meant that a servitude must be exercised "respectfully and with due caution".*
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> *[144] What does it mean to exercise a right to enter another's property respectfully and with due caution? Our existing law tells us. It is bound up with the facts. And the common law is amply flexible and adaptable enough to cater for the novel needs the statute creates. Electronic communications networks may be constructed over the land of others only with respect and due caution. This is the path away from consigning*

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6 Footnotes have been omitted; case citations have been added in full in square brackets.

important statutory provisions, serving a vital public function, to oblivion…

[150] From this it appears that the following general principles apply to our common law of servitudes:

(a) Servitudes may not be enforced on landowners, except in the case of a way of necessity. …

(b) The holder of the right of a general servitude may select the essential incidental rights to exercise the servitude, like the premises needed and the access thereto. This selection must be exercised in a civil or reasonable manner (civiliter). Disputes about this choice must also be determined in court if no agreement between the parties can be reached.

(c) Where changed circumstances require it, the common law of servitudes must be adapted to arrive at a solution that is just to the parties and does not prejudice them. In the case of enforced servitudes this must be done in a manner that least inconveniences the servient owner.'[7]

[35] The majority also summarised the requirements applicable to "*enforced general servitudes*" such as those imposed by section 22 of the ECA as follows:

"[152] This means:

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[7] In similar vein, the Supreme Court of Appeal stated in *Anglo Operations Ltd v Sandhurst Estates (Pty) Ltd* 2007 (2) SA 363 (SCA) at para [21] (in a passage quoted by the majority (at fn.114)): *'(i)n accordance with the principles applicable to servitudes, the owner of a servient property is bound to allow the holder to do whatever is reasonably necessary for the proper exercise of his rights. The holder of the servitude is in turn bound to exercise his rights civiliter modo, that is, reasonably viewed, with as much possible consideration and with the least possible inconvenience to the servient property and its owner.'*

(a) *Network licensees may select the premises and access to them for the purposes of constructing, maintaining, altering or removing their electronic communications network or facilities in taking action in terms of s 22(1);*

(b) *this selection must be done in a civil and reasonable manner. This would include giving reasonable notice to the owner of the property where they intend locating their works. The proposed access to the property must be determined in consultation with the owner;*

(c) *compensation in proportion to the advantage gained by the network licensees and the disadvantages suffered by the owner is payable in respect of the exercise of the public servitudes s 22(1) grants; and*

(d) *where disputes arise about the manner of exercising the rights under s 22(1) or the extent of the compensation payable, these must be determined by way of dispute resolution to the extent that it is possible, or by way of adjudication. Access to the property in the absence of resolution will be unlawful."*

[36] In the present case we are not concerned with a servitude imposed by statute; but instead with one imposed under subdivision conditions which the owner of the as then undivided erf was at liberty to accept or reject (albeit that a rejection would mean that the erf could not be subdivided). No question of compensation can accordingly arise – and the conditions could thus legitimately exclude it (as they did). Nor, in my view, must a dispute between the property owner and the City as to the manner of the City's exercise of the rights be resolved by adjudication. However, the general *civiliter modo* requirement would clearly apply, and indeed could be regarded as implied by the references to reasonableness in the clause 3.5.1. And, as noted in clause (b) of paragraph [152] of the majority judgment in *Link Africa*, the exercise of a right in a "*civil and reasonable manner*" would "*include giving reasonable notice to the owner*

of the property where they intend locating their works" and also mean that the "*proposed access to the property must be determined in consultation with the owner*".[8]

[37] The requirement of sufficient notification of and consultation with the landowner is also consistent with the fact that the City's decision to instal a sewerage pipeline over the Rosevean property would appear to constitute administrative action, with the result that the procedural fairness requirements in section 3 (and potentially, too, section 4) of the Promotion of Administrative Justice Act, 3 of 2000 (**PAJA**) would be applicable. As the Constitutional Court noted in *Link Africa*,[9] the Supreme Court of Appeal has, in *MTN*[10] and *Msunduzi*[11] held that action taken by a licensee under s 22(1) is administrative action for the purposes of the PAJA. In a section 22 context, the actor (the licensee) would, as the Constitutional Court noted, be a private entity wielding public power. In the view of the minority in *Link Africa*,[12] that was an important reason why the licensee's actions did not constitute administrative action. The City is, by contrast, an organ of state whose actions axiomatically involve the exercise of public power. The minority's concern is therefore not applicable in the present case; while I would anyway be bound by the Supreme Court of Appeal's decisions (which were expressly not overturned in *Link Africa*).[13]

[38] Rosevean did not rely on PAJA in its affidavits or heads of argument, though it embraced the notion that the City's conduct involved administrative action in supplementary written submissions which it handed up at the hearing, after the legal nature of the City's actions had been raised by the court. As the correct characterisation of the City's decision to construct a sewerage line over the

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8 As noted by the majority in *Link Africa* (at para 155), it was unnecessary for the relevant provision to have expressly included those requirements. That is all the more so in this instance as clause 3.5.1 expressly requires the municipality to act reasonably.

9 At para [158] (see also para [75]).

10 *Mobile Telephone Networks (Pty) Ltd v SMI Trading CC* 2012 (6) SA 638 (SCA) at para [21].

11 *Msunduzi Municipality v Dark Fibre Africa* [2014] ZASCA 165 at para [20].

12 At paras [65] to [76].

13 The majority held that it was unnecessary for the question of the applicability of PAJA to s 22(1) to be determined in the light of the various statutory provisions and common law principles to which it had referred (para [159]).

Rosevean property is a legal question, Rosevean's failure to raise this contention earlier cannot preclude the Court from taking cognisance of it. In any event, the City's notification obligations also arose under the common law, and PAJA thus reinforces the already existing position rather than imposing a materially different obligation.

[39] Rosevean's counsel also sought to rely on the Expropriation Act, 63 of 1975, as read with the City's Immovable Property By-law, 2015, in support of its argument that Rosevean had to be formally notified of the proposed sewerage line installation prior to seeking to construct it. Rosevean argued that this obligation arose pursuant to section 3(2) of the By-law,[14] read with section 7 of the Expropriation Act.[15] There was, however, no expropriation in this instance (nor any temporary taking of the right to use property); merely a deprivation of property, which, as section 25 of the Constitution (and the case-law thereon[16]) makes clear, is something different. While I am aware that the majority in *Link Africa* remarked that in certain circumstances a servitude may be treated "*as a kind of expropriation*",[17] the Expropriation Act thus did not, in my view, apply.[18] In any event, a notification requirement would, as explained above, exist under the common law, and so Rosevean's reliance on the Expropriation Act was unnecessary in this context.

[40] As will be apparent from the factual summary earlier in this judgment, there is nothing to indicate that the City notified Rosevean before installing the

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[14] Section 3(2) of the Immovable Property By-law states that: "*Subject to the provisions of the Expropriation Act, 1975 … the City may expropriate immovable property and rights in immovable property or may temporarily take the right to use immovable property*".

[15] Which is headed "*Notification that property is to be expropriated or is to be used temporarily*".

[16] See e.g., *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* 2002 (4) SA 768 (CC); and *Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bissett and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v MEC for Local Government and Housing, Gauteng and Others (KwaZulu-Natal Law Society and Msunduzi Municipality as Amici Curiae)* 2005 (1) SA 530 (CC).

[17] At para 149.

[18] It is accordingly irrelevant whether, as the City's counsel contended, the applicant was permitted to raise that argument for the first time in its heads of argument.

contentious sewerage pipeline.[19] That was also doubtless why the City officials and Nejeni entered the Rosevean property via a neighbouring property, rather than via the front entrance of 7 M[...] Road. There can consequently also be no suggestion that Rosevean was advised by the City of what it was proposing to do.[20] Whether deliberately or otherwise, the City officials did not contact Rosevean during September and October 2020 and were not even able to be reached by Rosevean's representatives (who made various outreaches) until after the pipeline had been constructed. The high-water mark of the City's position is that Rosevean should supposedly have been aware that the City's contractor, Nejeni, had entered its property via a neighbouring erf and was constructing a sewerage pipeline, but did not object. That is clearly insufficient to meet the notification and consultation requirements set out above. It is also anyway undermined by the City's reference to the pipeline as a "*secluded*" one which was not visible from the dwelling on the Rosevean property or generally observable.[21] At best for the City, its officials and contractor did not know whether Rosevean was aware that a pipeline was being installed or whether Rosevean was amenable to its contractor being on the Rosevean property, and had no idea whether the design and route of the proposed pipeline was objectionable to Rosevean.

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[19] It is common cause that, as the City's counsel acknowledged in argument, there was no written notice from the City. Nor was there even any verbal communication from the City to a Rosevean representative during the crucial period in 2020. The City was accordingly constrained to rely on the interactions at the neighbours' meeting on 2 October 2020; but as I have indicated in paragraph [24] above, the discussions there cannot avail the City, whose officials were not at the meeting.

[20] The City seeks to rely on the fact that De Nobrega states that he pointed out the route he proposed to Chavez during a neighbourhood meeting, but whatever was conveyed at that meeting can hardly constitute notice by the City. De Nobrega also in any event downplays his role at the meeting his affidavit, stating *inter alia* that: '*At the meeting I made suggestions having regard to my knowledge of the sewerage related issues but explained that I am not an expert in these matters and that the First Respondent [the City] was the responsible council to deal with sewerage related issues*.'

[21] The City placed some emphasis on this aspect, as shown by its definition of the pipe as the "*secluded pipe*". It was for example submitted in the City's supplementary heads of argument [underlined emphasis in original]:

'A better description of the pipe would be the 'secluded pipe' since it is <u>not visible to anyone</u> who attends at the applicant's property. This is substantiated by the fact that … Mr Chavez, who was on the property for at least 8 days whilst the secluded pipe was being installed, alleges that he did not even know there were workmen on the property.

The fact of the matter is that this secluded pipe runs across the dense and mountainous slope of the applicant's property. It is neither visible to the public nor visible to the owners from the vantage points of their respective properties.'

[41] Notwithstanding its powers under clause 3.5.1 of the subdivision conditions, the City could not proceed on that basis. Its installation of the sewerage pipeline over the Rosevean property between 8 and 20 October 2020 was therefore unlawful; and Rosevean is entitled to a declaratory order to that effect (as sought in prayer 1 of its notice of motion),[22] albeit that, as I discuss in the next section, the order should be suspended to prevent the dislocation that might otherwise ensue.

VII. THE APPROPRIATE RELIEF TO BE GRANTED IN RESPECT OF THE SEWERAGE PIPELINE DISPUTE

[42] It would clearly be disastrous for the owners and residents of 1 and 3 M[...] Road, as well as deleterious to Rosevean and the Hotel, if the sewerage pipeline which currently links 1, 3, 5, 7 and 9 M[...] Road to the municipal sewerage system below 9 M[...] Road were to be disconnected on the boundary of 3 and 5 M[...] Road. That would also be likely to cause a nuisance and a health hazard.

[43] I do not however agree with the City that the relief sought by Rosevean against the City would accordingly be "*incompetent*", or that it must be refused in order to avoid a "*sewage disaster*". While an order which was of immediate effect would have that consequence, a suspension of the order of invalidity for a suitable period to allow the City to correct the defect (as envisaged by section 172(1)(*b*)(ii) of the Constitution), and a directive which was synchronized with that suspension, should not cause harm to any of the affected property owners. There is no suggestion that the City could not construct an alternative pipeline (potentially underground or partly underground, or, if excavation is impractical,

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[22] In reaching this conclusion, I have considered and rejected the City's *in limine* objection that the applicant has relied on hearsay evidence. I have also, as indicated above, rejected the City's argument (also framed as an *in limine* objection, though in fact a point going to the merits) about the applicant supposedly being precluded from obtaining the relief it seeks against the City as a result of material disputes of fact.

at ground level[23]) that was less unsightly, and then connect the rest of the existing pipeline to that new section once completed; and it would also plainly be possible for the City to notify Rosevean about the pipeline and its position, and afford it an opportunity to comment on the proposal, before doing any further work.

[44] As the sewerage pipeline has by this time been in place for almost four years, and Rosevean has partly been to blame for the slow pace of this litigation, it cannot contend for any urgency with regard to remedial measures. There may anyway be complications from the City's side if there is no appropriate tender award in place. It is also necessary to provide for a reasonable period for Rosevean to provide its comments to the City, and for the City to evaluate them, and, potentially, too, for any experts that might need to be involved to provide input. Bearing in mind the importance of ensuring that the current functioning sewerage system is not disrupted until there is a new sewage pipe in place to convey sewerage over the Rosevean property, I shall therefore suspend the order of invalidity for a period of fifteen (15) months. The directive that the City remove the existing sewer line over the Rosevean property will also consequently only take effect fifteen months after the date of this judgment.[24]

[45] That period should be more than sufficient given the City's and Rosevean's respective rights and obligations in terms of clause 3.5.1 of the subdivision conditions, which, in the interests of clarity (and avoiding disputes during the suspension period) I summarise below.

[46] In summary, the finding in section VI. above is that (i) the City could not enter private property, to do work contemplated by clause 3.5.1 of the subdivision

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[23] Particularly if, as Wooll has stated, the pipeline on his property is above ground, it may be difficult for Rosevean to contend that its pipeline should be buried, though this would ultimately depend on factors such as the terrain and the gradient, and the effect on feasible future development.

[24] In *410 Voortrekker Road Property Holdings CC v Minister of Home Affairs and others* 2010 (8) BCLR 785 (WCC); [2010] 4 All SA 414 (WCC), this Court (*per* Binns-Ward J) suspended an interdict for a period of six months, alternatively four months to allow the Department of Home Affairs to regularize its operations. The declaration of unlawfulness that the Court also made in that case was not suspended. In my view, it would however be appropriate, as well in line with section 172(1)(*a*) of the Constitution, to suspend both orders in this case.

conditions, without expressly notifying the owners and advising when and where they will be accessing the property and for what purpose, and also making reasonable accommodations in response to requests or objections from the property owner; and (ii) the City was also obliged to advise Rosevean in this instance as to the route and design of its proposed pipeline, to give Rosevean an opportunity to comment thereon, and to thereafter take Rosevean's comments and all other relevant factors into account before making a final decision as to the nature and location of the pipeline.

[47] In terms of clause 3.5.1, as read with the common law and the Constitution, the City has the final decision as to the pipeline. Rosevean can neither refuse the City entry to its property for purposes of assessing, constructing and checking the pipeline, nor refuse to accept a reasonable route or design of the pipeline. Provided that the City respects and seeks to accommodate Rosevean's concerns where possible, and that its final decision regarding the pipeline is consistent is lawful, reasonable and procedurally fair, Rosevean must accept what the City has proposed. Rosevean cannot insist on the City doing what it (Rosevean) wants; and, as noted above, it also cannot – as it did previously through Mr Kelly – insist on the sewerage pipeline following the servitude of the water pipeline in favour of the Hotel.

VIII. THE APPLICANT'S REQUEST FOR AN INSPECTION *IN LOCO*

[48] As mentioned in the introduction, Rosevean's counsel requested at the hearing that there be an inspection *in loco*. The respondents did not agree to that request. I also expressed misgivings about it. I was not however asked to make an *in limine* ruling on the issue and the various parties then proceeded to argue their respective cases, as the applicant seemed to accept would happen. The applicant nevertheless did not abandon the request and repeated it in closing argument. It is therefore for necessary for me to address it.

[49] A party's right to apply for an inspection *in loco* during the hearing of an action (i.e., in a trial) is well-established.[25] The Uniform Rules also expressly contemplate an inspection *in loco* in the case of trials, with Rule 39(16)(*d*) (part of the rule headed "*Trial*") providing that "*[a] record shall be made of … the proceedings of the court generally (including any inspection in loco and any matter demonstrated by any witness in court*".

[50] The Uniform Rules do not mention the possibility of an inspection *in loco* in application proceedings, whether in Rule 6 (which is specifically devoted to applications) or elsewhere. Nor have I been able to find a judgment which holds, after a consideration of the issue, that inspections *in loco* can appropriately be ordered in application proceedings.

[51] There is an obvious difference between applications and actions in this context. In actions, the Court is enjoined to consider all evidence when deciding whether, on a balance of probabilities, the plaintiff has proved its case. Any evidence adduced by way of an inspection *in loco* would thus simply add (potentially powerfully) to the factual matrix which the Court must consider when deciding whether to accept the plaintiff's or the defendant's averments. By contrast, in applications, the Court is required to accept the respondent's factual version, unless it is unsubstantiated, or plainly implausible and contrived, and can therefore be dismissed out of hand. That approach to the assessment of evidence could not be applied to evidence produced pursuant to an inspection *in loco*. For an inspection in loco would produce "real evidence",[26] which could demonstrate definitively whether the applicant's or the respondent's version on a particular issue is correct; and, in the event of the incontrovertible physical evidence supporting the applicant's averments, the court would presumably be obliged the Court to accept the applicant's version, contrary to the usual

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[25] See Cilliers *at al Herbstein & Van Winsen: The Civil Practice of the High Courts and Supreme Court of Appeal of South Africa* 5th ed. Vol. 1 p 900.

[26] *R v Sewpaul* 1949 (4) SA 978 (N) at 980; *Newell v Cronje and Another* 1985 (4) SA 692 (E) at 697A-B.

position in applications (for otherwise the inspection would have been pointless).

[52] The position in this regard can be neatly illustrated in the present case with reference to a factual issue that was in dispute between the applicant (Rosevean) and the fourth respondent (Wooll). According to Rosevean, the new sewerage pipeline is underground when it traverses the Wooll property (7 M[...] Road), and thus does not raise the same concerns there as on the Rosevean property (5 M[...] Road), where it is affixed on poles well above ground level. Wooll denies the accuracy of that assertion, and insists that the sewerage pipeline is above ground on his property as well. Applying the usual test in application proceedings, I would have to accept Wooll's version. However, if an inspection *in loco* were to reveal that Rosevean is correct and that the sewerage pipeline is in fact below ground on the Wooll property, I could hardly then ignore the real position and proceed on the basis that Wooll's version must prevail.

[53] The High Court does of course have the "*inherent power*" under section 173 of the Constitution to "*protect and regulate [its] own process*". The Court would thus have the power to grant a request for an inspection *in loco* in an application, should it consider it appropriate. In my view, a court should nevertheless be cautious about doing so, given that granting an applicant's request for an inspection *in loco* would effectively mean allowing it to subvert the usual test applicable to the resolution of disputes of fact in motion proceedings. That concern has particular resonance in the present matter given that the applicant unsuccessfully sought at an earlier stage to refer issues to oral evidence in an attempt to get round the difficulties occasioned by the factual disputes on the papers. Affording Rosevean another way of circumventing a factual dispute with Wooll would accordingly seem inappropriate.

[54] In any event, an inspection *in loco* in this case appeared to me to be likely of limited utility, given that the dispute over the construction of the new sewerage pipeline is largely a legal one, while the factual disputes besetting the

applicant's claims against its neighbours would not have been addressed by a physical inspection of the property in the second half of 2024. Furthermore, were an inspection to have been held, the hearing would not only not have been able to be completed within the two days for which it had been set down, but might have had to be postponed to a later date, to allow a note on the inspection to be prepared[27] and supplementary argument to be submitted; and, given the delays that have already occurred in this matter, that would not have been in the interests of justice.

[55] For various reasons, I consequently did not accede to the applicant's request for an inspection *in loco* during the hearing and consider it appropriate to dismiss it.

IX. ROSEVEAN'S CLAIM AGAINST THE HOTEL AND DE NOBREGA

[56] Rosevean originally sought the following declaratory and mandatory interdictory relief against De Nobrega:

56.1. an order *'declaring that the removal of a section of the sewer pipe that connected the applicant's property to the sewer system on the property of the second respondent, by the third respondent was unlawful'* [prayer 3 of the notice of motion]; and

56.2. an order *'directing that the third respondent reconnect the sewer line from the applicant's property by replacing the section of the sewer pipe referred to in prayer 3'* [prayer 6 of the notice of motion].

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[27] See e.g., *Bayer SA (Pty) Ltd v Viljoen* 1990 (2) SA 647 (A) at 659I-660B, confirming what was stated in *Kruger v Ludick* 1947 (3) SA 23 (A) at 31.

[57] Rosevean subsequently sought to withdraw its claims against the second and third respondents, but without tendering costs. The Hotel and De Nobrega understandably insisted on their costs. Rosevean then decided to continue to seek relief against them, and to persist in seeking both of the prayers quoted above.

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[59] At the hearing of this matter, Rosevean's counsel abandoned the mandatory interdictory relief contained in prayer 6 of its notice of motion (correctly so, as it would not have obtained such relief), and merely asked that it be granted the declaratory order sought in prayer 3 of its notice of motion. A fundamental difficulty with that declaratory relief (aggravated by the abandoning of the related interdictory relief) is however that it is now entirely academic. Whether or not the original pipeline should have been severed where it entered the Hotel property back in 2017/2018 – if indeed it was – is of no continued relevance in 2024.

[60] Section 21(1)(*c*) of the Superior Courts Act, 10 of 2013 (the successor to section 19(1)(*a*)(iii) of the Supreme Court Act, 59 of 1959) provides that the High Court has the power *'in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination'*. That section, like its statutory predecessor, contemplates a twofold test: first, whether the applicant is a person interested in an "*existing, future or contingent right or obligation*"; and if so, whether the case is a proper one for the exercise of the discretion conferred upon it.[28] Even aside from the general principle that a court will not pronounce on academic issues or ones which will have no concrete effect,[29] a court should

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[28] *Durban City Council Appellant v Association of Building Societies Respondent* 1942 AD 27 at 32; *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA) at paras [15]-[17]; *Minister of Finance v Oakbay Investments (Pty) Ltd and others; Oakbay Investments (Pty) Ltd and others v Director of the Financial Intelligence Centre* 2018 (3) SA 515 (GP) at para [52].

[29] *Minister of Justice and others v Estate Stransham-Ford* 2017 (3) SA 152 (SCA) at paras [22]-[23] (where the Court *inter alia* stated: "*Since the advent of an enforceable Bill of Rights, many test cases have been brought with a view to establishing some broader principle. But none have been brought in circumstances where the cause of action advanced had been extinguished before judgment*

therefore not grant a declaratory order where the declaratory relief will have no utility or practical significance.[30]

[61] In the circumstances, the declaratory order sought by Rosevean against the Hotel and De Nobrega would neither be competent nor appropriate.

[62] In addition, there is a dispute of fact as to whether De Nobrega was responsible for the pipe being cut off, and indeed whether it was severed at all, or simply broke. While Rosevean's version strikes me as more plausible, that is not the test in motion proceedings. It would have been necessary for De Nobrega to have been cross-examined in order for that dispute to be resolved. Rosevean recognised this when seeking a referral of issues to oral evidence. Having failed in that endeavour, it must accept that its case against De Nobrega in this regard is unsustainable.

[63] A further problem with that relief is that, once there was an alternative sewerage line for the Rosevean property, there was no obligation on the Hotel to allow Rosevean to use its sewer. Under the agreement concluded between the Hotel (represented by De Nobrega) and Stein in 1994, the Hotel guaranteed the use of its sewer for a minimum period of ten years up to a maximum period of fifty years, from the date of the agreement, or such time as the land making up Erf 1070 was capable of being connected to the municipal system, whichever is the earlier. As De Nobrega has explained, the Rosevean property was not only capable of being linked to the municipal sewer by December 2017, but was in fact so connected. That being so, the Hotel was no longer required to grant the Rosevean property access to its sewer by means of a pipe extending from the Rosevean property into the Hotel property; and as a result, it was of no moment whether the original pipeline remained intact.

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at first instance. … It is a prerequisite for the exercise of the discretion that any order the court may ultimately make will have some practical effect either on the parties or on others."); *Radio Pretoria v Chairman, Independent Communications Authority South Africa* 2005 (1) SA 47 (SCA) at paras [39]-[46]; *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* 1997 (3) SA 514 (CC) at para [15] (and the cases cited at fn. 15).

[30] See e.g. *Herbstein & Van Winsen: The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* 5th ed. Vol. 2 at pp 1438–1440.

[64] The prayers directed at the second respondent (and indirectly the third respondent) must consequently be dismissed with costs.

X. ROSEVEAN'S CLAIM AGAINST WOOLL

[65] Rosevean also sought declaratory and directory (interdictory) relief against Wooll. More particularly, it sought orders:

65.1. *'declaring that the blocking of the sewer flow from the applicant's property, prior to [the] installation of the sewer line on or about 21 October 2020, as referred to in prayer 1, by the fourth respondent was unlawful'* [prayer 2]; and

65.2. *'directing that the fourth respondent remove any blockage of the existing sewer system referred to in prayer 4'* [prayer 5].

[66] Rosevean's counsel indicated at the hearing (correctly) that the interdictory relief was no longer needed, though he contended that Rosevean was nevertheless entitled to its costs in respect thereof, in light of Wooll's alleged capping of its sewerage line in mid-2020. Rosevean also continued to press for a declaratory order against Wooll.

[67] The difficulties with that declaratory relief are in many ways similar to the ones which beset Rosevean's claim against the Hotel and De Nobrega, though in reverse order. The first and most fundamental difficulty with Rosevean's claim against Wooll is that there is an irreconcilable dispute of fact as to whether the blockage of the sewerage system on the Rosevean property in mid-2020 was attributable to the actions of Wooll. In the light of its plumber's report, one can understand why Rosevean would have accused Wooll, but whether its suspicions were well-founded is something that could not be determined without oral evidence, which Rosevean has, as mentioned, been denied. That also disposes of any suggestion that a mandatory interdict could be granted

against Wooll, or that he could be mulcted with costs as a result of his alleged conduct in 2020.

[68] Furthermore, the declaratory relief, while still potentially raising a live issue in December 2020 when this application was brought, has long since become academic. For this reason, too, it cannot be granted.

[69] Rosevean's claim against Wooll must therefore be dismissed as well. As Wooll appeared in person, there are no legal costs for Rosevean to pay, and Wooll also did not ask for any other costs.

XI. CONCLUSION AND COSTS

[70] Fo the reasons given above:

70.1. Rosevean is entitled to declaratory and directory relief against the City in respect of the contentious sewerage pipeline, albeit that this relief is to be suspended to avoid the prejudice that would otherwise ensue to the properties in and around M[...] Road, Hout Bay;

70.2. Rosevean's claims against the third respondent (De Nobrega) and the fourth respondent (Wooll) should be dismissed.

[71] As it has been successful as against the City, Rosevean is entitled to its costs for that part of the application. Considerable portions of Rosevean's affidavits and argument were directed at Rosevean's claims against the second and third, and fourth respondents. The costs award in Rosevean's favour must reflect that. The City shall accordingly be ordered to pay only 50% of Rosevean's costs in the main application. (I refer to the main application to distinguish it from the interlocutory applications, which are subject to their own costs orders.)

[72] As to the scale on which counsel's costs should be taxed:

72.1. Given the relative complexity of Rosevean's case against the City, it is appropriate to order that the costs of Rosevean's counsel which are recoverable as against the City be taxed on Scale B.

72.2. As Rosevean's case against De Nobrega and the Hotel did not, by contrast, raise any difficult issues (and indeed, was effectively unarguable by the time of the hearing), a lower scale is warranted in that regard. Counsel's costs for that aspect should therefore, in my view, be taxed (in favour of De Nobrega) on Scale A.

ORDER

[73] I accordingly make the following order:

1. It is declared that the installation of a sewer line by the first respondent across the property of the applicant, situated at 5 M[...] Road, Hout Bay, between 8 and 20 October 2020, was unlawful.

2. The order in paragraph 1 above is suspended for a period of fifteen (15) months from the date of this order.

3. The first respondent is directed to remove the current sewer line, referred to in paragraph 1 above, from the applicant's property by the end of the period of suspension referred to in paragraph 2.

4. The applicant's claims against the second (and indirectly the third) and fourth respondents are all dismissed.

5. The applicant must pay the costs of the second and third respondents in the main application, with counsel's costs being taxed on scale A.

6. The first respondent must pay 50% of the applicant's costs in the main application, with counsel's costs being taxed on scale B.

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ACTING JUDGE P FARLAM

For applicant: Adv Paul **Tredoux**
Instructed by: Arlene Duval & Associates (Cape Town) c/o Mauritz Briers & Associates (Cape Town)

For first respondent: Adv S **Mahomed**
Instructed by: Marais Muller Hendricks Inc. (Cape Town)

For second and third respondents: Adv Andrew **Morrissey**
Instructed by: Smith Tabata Buchanan Boyes Inc. (Claremont) c/o Smith Tabata Buchanan Boyes Inc. (Cape Town)

Fourth respondent in person