**IN THE HIGH COURT OF SOUTH AFRICA**
(GAUTENG DIVISION, PRETORIA)

**Case No: 44689/2017**

In the matter between:

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| **BROOKLYN AND EASTERN AREAS CITIZENS ASSOCIATION** | First Appellant |
| **A CLASS OF PERSONS AFFECTED BY MUNICIPAL SERVICES** | Second Applicant |

and

| | |
|---|---|
| **UNIQON WONINGS (PTY) LTD** | First Respondent |
| **THE CHAIRPERSON OF THE MUNICIPAL APPEALS TRIBUNAL, CITY OF TSHWANE** | Second Respondent |
| **THE CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL, CITY OF TSHWANE** | Third Respondent |
| **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY** | Fourth Respondent |

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

4 July 2018
.....
DATE

.....
SIGNATURE

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**JUDGMENT**

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**ELLIS, AJ:**

(1) On 29 June 2017, applicants launched this application in the normal course of motion proceedings, seeking an interim order interdicting the first respondent from commencing with any form of construction, including building work, any structural changes or digging of foundations as defined in the National Building Regulations and Building Standards Act[1] ("*NBRBSA*"), on or at Portion 1 and the Remainder of Erf 35 Brooklyn and Portions 1, 2 and 3 of Erf 784 Brooklyn ("*the properties*"), pending the finalisation of a review application launched by applicants against respondents pertaining to a rezoning of the same Erven in Brooklyn.

(2) Although the aforesaid relief is clearly sought *pendente lite*, applicants on the same day i.e. 29 June 2017 also instituted the review application against respondents, albeit under a different case number and separate and distinct from this application.

(3) The fact that applicants launched this application separate and distinct from the review application, apparently prompted them to comprehensively repeat most, if not all the averments and annexures to the review application in this application, resulting in a set of papers of nearly 600 pages. Even first respondent referred to the obvious duplication of nearly the entire review application in applicants' founding papers. This is clearly an overburdening of the papers and in my view constitutes an abuse of process. Moreover, to require this court to deal with the full wake of the review

application, when called upon only to adjudicate on relief sought *pendente lite* that review, is in itself irregular. Applicants conduct in this regard can only be as a result of the procedural course adopted in this instance, which is not commensurate with the normal course of procedure followed in applications *pendente lite*.

(4) First applicant, a voluntary association, is vehemently opposed to the density of first respondent's residential development on the properties in the Brooklyn area. Although second applicant was also cited as a party, first applicant conceded during the hearing hereof that second applicant has no *locus standi* in this application. In my view, first respondent quite correctly raised the legal point that prior permission should have been obtained by applicants to have launched a class action, i.e. in order to clothe the second applicant with the necessary standing. It is common cause that no certification application was brought by applicants prior to the launch of this motion. I therefore agree that second applicant has no *locus standi* in this matter.

(5) In order to gain some perspective, it is necessary to relay certain historical background facts. However and before doing so, I confirm that first respondent's residential development of the properties is to be done in two phases, i.e. phase 1 and phase 2. It is common cause between the parties that this application only concerns phase 1 of the development. I am therefore not tasked to deal with any issue relating to phase 2 of first respondent's development.

(6) On 15 June 2016, third respondent conducted a hearing in respect of first respondent's rezoning application (phase 1) of the properties. First applicant objected to the rezoning and made certain representations during the hearing.

(7) Notwithstanding the objections raised against first respondent's rezoning application, third respondent decided to approve it. The decision and reasons therefore were communicated to first applicant on 26 July 2016.[2]

(8) According to first applicant, it was at that stage in a "catch-22" situation. The apparent conundrum was whether to appeal third respondent's decision in terms of the provisions of the Spatial Planning and Land Use Management Act 16 of 2013 ("*SPLUMA*"),[3] or the Town Planning and Townships Ordinance 15 of 1986 ("*the Ordinance*").[4]

(9) After having received advise from an attorney who specialises in town-planning, first applicant noted an appeal against third respondent's decision on 9 September 2016 in terms of the provisions of SPLUMA and the By-law's, i.e. within 21 days of delivery of the decision and before publication thereof in the Provincial Gazette.

(10) In response thereto and on 6 October 2016, first respondent raised various points *in limine* against the appeal, essentially arguing that first applicant's appeal was launched prematurely.

(11) Whilst the aforesaid appeal was still pending, first applicant on 3 November 2016, launched an urgent application against first respondent under case number 86138/16 out of this court, seeking interim relief to prevent the commencement of any construction activities of phase 1 by first respondent on the properties.

(12) On 23 November 2016, Prinsloo J granted first applicant the following urgent interim relief under case number 86138/16, namely:

> "1. Respondent [first respondent in this application] is interdicted from erecting any structures - as envisaged in its application for rezoning in terms of Section 56 of Ordinance 15 of 1986 which was approved on 26 July 2016 - at Portion 1 and the Remainder of Erf 35, Brooklyn and Portions 1, 2 and 3 of Erf 784 ("the properties") Brooklyn, pending all of the following events:
>
> 1.1 Publication of the approval of the rezoning application in the Provincial Gazette.
>
> 1.2 Finalisation of the pending appeal and any further appeal that may be launched against the aforesaid approval by applicant [first applicant in this application].
>
> 1.3 Approval of all relevant building plans by the City of Tshwane.
>
> 2. Respondent must give applicant 7 (seven) days' written notice prior to construction commencing at the properties at the following email addresses:
>
> 2.1 geertdev@iafrica.com
>
> 2.2 frike@lawcircle.co.za
>
> 2.3 cristieb@telkomsa.net
>
> 3. Costs of the application must be paid by respondent."[5]

(13) It is important to note that first applicant in its notice of motion in the aforesaid urgent application also sought an order preventing first respondent from commencing with construction on the properties, pending *"[f]inalisation of any review application which may be launched by Applicant subsequent to finalisation of the aforesaid appeal"*, which Prinsloo J declined to grant. However, the effect of the order granted, lies at the heart of this application as will become more apparent hereunder.

(14) On 7 December 2016, first respondent's rezoning application in respect of phase 2 of the development on the properties was apparently heard by second respondent. As already indicated above, this application only concerns phase 1 of the development and I therefore refrain from dealing with any decisions taken in respect of phase 2 of the development.

(15) On 17 February 2017, second respondent heard argument on the points *in limine* raised by first respondent against the appeal noted by first applicant, and on 10 May 2017 informed first applicant of its decision. In short, second respondent agreed with first respondent's argument that first applicant's appeal was launched prematurely and the appeal was accordingly dismissed. It is common cause that first applicant did not pursue any further internal appeal process in this regard.

(16) Thereafter and on 15 May 2017, first applicant, *inter alia*, sought a written undertaking from first respondent that it will not commence construction on the properties, pending certain events.

(17) First respondent on 9 June 2017 informed first applicant that it refuses to provide the requested undertaking. This only led to further correspondences exchanged between the parties, without any conclusive resolution of the various issues raised therein.

(18) On 21 June 2017, approval of first respondent's rezoning (phase 1) application was published in the Provincial Gazette.

(19) The first applicant on 29 June 2017, simultaneously launched this application together with its review application, which were both served on respondents on 4 July 2017.

(20) Thereafter and on 7 July 2017, first respondent gave first applicant 7 (seven) days written notice of its intention to commence with construction on the properties, which construction indeed commenced on 17 July 2017.[6]

(21) In view of the aforesaid chronological sequence of events, the following becomes apparent, namely:

(21.1) On 10 May 2017, taking into account that first applicant did not pursue any further appeal on this matter, the first applicant has exhausted its appeal remedies reserved in paragraph 1.2 of the court order dated 23 November 2016;

(21.2) First applicant's letter dated 15 May 2017, more particularly paragraph 2 thereof, confirms the aforesaid by stating first applicant's intention to review the second and third respondents' decisions. Moreover, the undertaking sought by first applicant from first respondent in this letter, confirms that first applicant considers the imminent commencement of construction of phase 1 as an urgent issue, which must be addressed due to the fact that Prinsloo J did not grant first applicant an order on 23 November 2016, preventing first respondent from commencing with construction pending finalisation of a review of second and third respondents' decisions;

(21.3) On 21 June 2017, publication of the approval of first respondent's rezoning application appeared in the Provincial Gazette, which satisfied the requirement stipulated in paragraph 1.1 of the court order dated 23 November 2016;

(21.4) On 7 July 2017, first respondent gave first applicant 7 (seven) days written notice of its intention to commence with construction on the properties, strictly in accordance with the provisions of paragraph 2 of the court order dated 23 November 2016. It is trite that

construction can only commence once approval of all relevant building plans has been obtained (paragraph 2.3 of the court order dated 23 November 2016).

(22) The upshot of the aforegoing is that first applicant must have been, (at the very least since 15 May 2017), acutely aware that construction on the properties was imminent. Moreover, the fact that first applicant has failed to procure an order on 23 November 2016, preventing first respondent from commencing with construction on the properties pending a review application, should have prompted first applicant to act with haste in this regard. First applicant does not provide any reasonable explanation for the delay between 15 May 2017 and 29 June 2017, before launching this application.

(23) Notwithstanding and even after having received first respondent's notification of its intention to commence construction on the properties on 7 July 2017, first applicant persisted in keeping this application in the normal course of motion proceedings.

(24) In the result, first applicant as *dominus litis* has through its own conduct abided by the fact that first respondent has lawfully commenced with construction on the properties, and unabatedly continued with said construction for more than 8 (eight) months prior to the hearing of this application. The mere suggestion by first applicant that first respondent is to blame for employing dilatory tactics[7] in delaying the hearing of this application, does not in itself entitles first applicant to the relief it seeks.

(25) In fact, during the hearing hereof counsel for first applicant attempted to argue that the application is now "urgent" and first respondent should be prevented from continuing with its construction on the properties. On the other hand, counsel for first respondent submitted that the relief sought by first applicant is moot and academic in view of the fact that construction has already commenced on 17 July 2017, in that first applicant seeks relief preventing the commencement of construction (a *fait accompli*) as opposed to preventing the continuing of the construction.

(26) Although I will deal with the question of whether the relief sought by first applicant is moot and academic more fully hereunder, I am convinced that first applicant's argument for urgency must be rejected on the bases that first applicant did not make out any case for urgency in its papers and neither did first applicant deemed it necessary nor appropriate to approach the urgent court for interim relief prior to the commencement of construction, or at least as soon as possible after 15 May 2017.

(27) The aforesaid scenario immediately rings true the words of Van Wyk J in *Juta & Co Ltd v Legal and Financial Publishing Co (Pty) Ltd*:[8]

> "There is such a thing as the tyranny of litigation, and a Court of law should not allow a party to drag out proceedings unduly. In this case we are considering an application for an interdict *pendente lite*, which, from its very nature, requires the maximum expedition on the part of an applicant."

(28) This application was clearly not brought with the maximum expedition on the part of first applicant. To this end, first applicant's attempt to

explain why it did not launch this application as an urgent application, is that it *"...was advised at the outset of this application that it is a notoriously risky exercise to proceed on an urgent basis and that the prudent way to move the current application was to forewarn First Respondent of the risks it ran should it commence with construction in the face of a pending review."* This is a feeble excuse. All litigious proceedings are notoriously risky, i.e. in most cases there is a winner and a loser, regardless of the urgency of a matter. The "urgency" of a matter is a procedural election made by the *dominus litis* in view of the facts of the matter and the relief claimed thereupon. In any event, a lack of urgency does not mean the end of the road for an applicant. The application may be set down again on the normal motion court roll. Clearly, first applicant did not follow this route. Moreover, in view of the order granted on 23 November 2016, first respondent lawfully commenced with construction on the properties and I fail to comprehend first applicant's reference to the "risks" it apparently ran in doing so. Accordingly, first applicant must stand and fall by the procedural course that it elected to follow in this instance.

(29) It is with the aforesaid in mind that I have to adjudicate on whether first applicant is entitled to the interim relief that it seeks in this instance.

(30) The requisites for the right to claim an interim interdict are:

(30.1) A *prima facie* right, i.e. proof of facts that establish the exercise of a right in terms of substantive law;

(30.2) A well-grounded apprehension of irreparable harm if the relief is not granted and the ultimately relief is eventually granted;

(30.3) The balance of convenience favours the granting of an interim interdict; and

(30.4) The applicant has no other satisfactory remedy.[9]

(31) It is trite that the aforesaid requirements should not be considered separately or in isolation but in conjunction with one another in order to determine whether the court should exercise its discretion in favour of the grant of the interim relief sought.[10]

(32) First applicant contends that it has a *prima facie* right to review the second and third respondents' decisions based on various grounds of review. In this regard, first applicant strenuously argues that the judgment of Tuchten J in the matter of *Brooklyn and Eastern Areas Citizens Association and Another v Chairperson of Municipal Appeals Tribunal, City of Tshwane and Others,*[11] applies equally to the decision made by the second respondent in this matter. It is common cause that the development in the Caliber-matter is adjacent to the development of the first respondent in Brooklyn and also subject to first applicant's objection to its rezoning.

(33) In short, Tuchten J held that the points *in limine*[12] raised by the developer (Caliber) against the Municipal Appeals Tribunal's (second respondent in this matter) decision to dismiss BEACA's (first applicant in this matter) appeals[13] were bad in law and consequently upheld the BEACA's review thereof, setting that decision aside and referring the matter back to the Municipal Appeals Tribunal to deal with the merits of BEACA's appeals.

(34) First applicant accordingly submitted that its grounds of review of second respondent's decision *in casu* will most likely succeed because it is similar to those raised in the *Caliber*-matter, hence the establishment of its *prima facie* right. In addition, first applicant contended that it has also established a *prima facie* right that third respondent's decision ought to be reviewed and set aside by second respondent, once it deals with the merits of the first applicant's appeal.

(35) Counsel for first respondent did not ask me, sitting as a single Judge, to depart from Tuchten J's decision in the *Caliber*-matter on the ground that it is clearly wrong. I therefore accept that first applicant may well have a right to pursue a review of second respondent's decision. However, the approach to be adopted in determining whether a *prima facie* right has been established for purposes of interim relief is as follows:

> "[T]he right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "*prima facie* established though open to some doubt" that is enough. ...

> The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, **the applicant could on those facts obtain final relief at the trial**.[14] The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief."[15]

(36) In *Gool v Minister of Justice*[16] Ogilvie Thompson J commented as follows on the above passage:

> "With the greatest respect, I am of the opinion that the criterion prescribed in the statement for the first branch of the enquiry thus outlined is somewhat too favourably expressed towards the applicant for an interdict. In my view the criterion on an applicant's own averred or admitted facts is: **should (not could) the applicant on those facts obtain final relief at the trial**.[17] Subject to that qualification, I respectfully agreed that the approach outlined in *Webster v Mitchell* ... is the correct approach for ordinary interdict applications."[18]

(37) In this regard, it was argued on behalf of first respondent that the *Caliber*-matter bears specific relevance herein, albeit for differing reasons to those proffered by first applicant.

(38) First, the *Caliber*-matter is subject to an appeal to the Supreme Court of Appeal, with leave of Tuchten J. Second, first applicant on two occasions attempted to procure interdictory relief against the continuing construction of the Caliber development, once before and after the judgment by Tuchten J, without success.

(39) After being prompted to do so, counsel for first applicant admitted that it failed to obtain interim relief against the continuing construction of the Caliber development, without tendering any distinguishing factors in this matter from the facts in the *Caliber*-matter, that could convince me to grant the relief sought.

(40) Instead, first applicant simply argued that the further the building advances, the less chances there are that another court will grant a demolition order. To demonstrate this point, first applicant refers to the decisions in *Van der Westhuizen and Others v Butler and Others*[19] and *BSB International Link CC v Readam South Africa (Pty) Ltd and Another.*[20]

(41) However, in my view first applicant's reliance on the aforesaid decisions are misplaced. In the *Van der Westhuizen*-matter the applicants sought urgent interim relief pending review of the legality of the local authority's decision to approve their neighbours' building plans and the *BSB International*-matter concerns an application brought by the local authority in terms of section 21 of the NBRBSA, which section specifically provides for the demolition of buildings under certain circumstances.

(42) The distinguishing factor in this matter is that first applicant's review is not premised on the legality of first respondent's building plans, but as stated in the founding affidavit: "*First Applicant is not against densification per se, but against the extent proposed in* [first respondent's] *rezoning*".[21]

(43) From the aforesaid statement, it is quite apparent that first applicant, in my view, reconciled itself with the fact that construction of first respondent's residential development will take place on the properties, albeit to a lesser extent. The same might be said of the Caliber development.

(44) Accordingly, it cannot be said that first applicant should obtain final relief on review. The most that first applicant can expect is that the matter be remitted to second respondent to be heard on the merits of its appeal, subject of course to the Supreme Court of Appeal's decision on similar issues (the *Caliber*-matter). Should second respondent dismiss first applicant's appeal on the merits (i.e. third respondent's decision), it is only then that first applicant should be entitled to obtain final relief on review. In my view, first applicant has not satisfied the criterion by indicating on its own averred and admitted facts that it should (not could) obtain final relief in the pending review application, hence it cannot be said that first applicant has established a *prima facie* right for purposes of the interim relief claimed. Although not required to do so, I will succinctly deal with the remaining requirements.

(45) As a second requirement, first applicant has to prove that there is a reasonable apprehension that the continuance of the alleged wrong will cause it irreparable harm.[22] The test for irreparable harm is objective and the question is whether a reasonable man, confronted by the facts, would apprehend the probability of harm.[23]

(46) First applicant's submissions on irreparable harm are, *inter alia*, that first respondent's development will create a dangerous precedent; that it will dwarf surrounding properties; that a review court will be reluctant to set aside the second and third respondents decisions' once the buildings have reached an advanced stage; and the mere allegation of "*disastrous consequences which may follow once the development is partially or fully completed*," without stating what those consequences may be for its members.

(47) At first glance, the aforesaid submissions on irreparable harm appear more emotive than substantive. Clearly, I must consider all the evidence before me in deciding whether the first applicant's apprehension of harm is reasonable. To this end, it is reasonable and fair to conclude from the course of these proceedings discussed above, that any apprehension that first applicant may have had that the commencement of first respondent's construction will cause it irreparable harm, has disappeared through time. Moreover, as stated before, first applicant's main objective is to convince second respondent to set aside the rezoning application (density ratio) of first respondent's development, and not to prevent the development *in toto*.

(48) However, the requirement of irreparable harm is closely related to the balance of convenience. This consists of weighing the prejudice first applicant will suffer if the interim relief is not granted, against the prejudice the first respondent will suffer if it is.[24] The first applicant's prospects of success influences the consideration of the balance of convenience. The

stronger its prospects of success, the less the need for the balance to favour first applicant. The weaker the prospects of success the greater the need for the balance to favour the first applicant.[25]

(49) As I already indicated above, first applicant's prospects of success in its review application is now made subject to an appeal on similar issues before the Supreme Court of Appeal (the *Caliber*-matter). In the event that the Supreme Court of Appeal upholds the order granted by Tuchten J, first applicant may only expect that second respondent's decision on its appeal in this instance, be set aside on review and referred back to second respondent to be dealt with on the merits, i.e. first applicant's objections against third respondent's decision on the rezoning of first respondent's development. Any adverse finding by second respondent on first applicant's appeal on the merits will be subject to yet a further review application. This does not indicate strong prospects of success for first applicant in its endeavours to ultimately invalidate third respondent's decision, hence the greater the need for the balance of convenience to favour first applicant.

(50) It is common cause that first respondent on 17 July 2017 commenced with construction on the properties with full knowledge thereof by first applicant. This matter was only heard on 22 March 2018, more than 8 months after construction has commenced. It behoves no argument that first respondent must have incurred vast amounts in instruction costs[26] in respect of the development, which if halted at this stage, may well lead to a significant economic loss for first respondent and may impact the rights of innocent

parties, for example sub-contractors and the like working on the development. The mere fact that first applicant allowed construction to commence and continue unabated, without taking expeditious action to prevent same, unfortunately swings the balance of convenience in favour of first respondent. In this regard, I am of the view that first respondent's contention that the interim relief sought by first applicant has become moot and academic is premised on first applicant's delay in having this application heard expeditiously. This argument merely indicates that the balance of convenience favours first respondent as opposed to first applicant and no further discussion necessitates on this issue.

(51) Even in the event that first applicant succeeds in its review application, such will be nothing more than crossing the first hurdle towards its main aim, namely setting aside third respondent's decision. Accordingly, first applicant's prospects of success in the pending review is purely technical and no indication of its prospects of success in obtaining final relief (the setting aside of third respondent's decision).

(52) Moreover, first respondent followed the prescripts of the 23 November 2016 court order to the tee, before commencing with construction on the properties. I have already dealt with the court order above. In fact, first respondent on 7 August 2017, extrapolates on its fulfilment of the various statutory requirements enabling it to commence with construction.[27] Although first applicant in reply hereto refuses to accept that the section 7(6) approval, the site development plan approval or the building plan approval, was done in a

regular fashion,[28] this clearly forms no part of the relief claimed by first applicant in this application, or its review. In any event, whilst I have the power to restrain the exercise of a statutory power, I may only do so when a proper and strong case has been made out for the relief and, even so, only in the clearest of cases.[29] This application is clearly not such a case.

(53) This brings me to the requisite of no alternative remedy. It is accepted that a court will generally not grant interim relief if an applicant can obtain adequate redress through some or other form of ordinary relief. First applicant, in its attempt to satisfy this requirement merely repeats the historical sequence of events, concluding that it had no option but to have launched this application. However, no evidence is tendered by first applicant indicating that it has no alternative legal remedy in the event that the interim relief is not granted. For instance, a possible claim for damages against first respondent. Moreover, first applicant's assertion that it will not be able to obtain a demolition order of first respondent's development, if the relief is not granted, flies in the face of the fact that the relief in its pending review application will not entitle it to obtain final relief, as discussed above. I am therefore not convinced that first applicant has proved that it has no other satisfactory remedy at its disposal, other than the interim relief claimed.

(54) It is further trite that I have a discretion on whether to grant the interim relief or not. In exercising my discretion, I am entitled to have regard to a number of disparate and incommensurable features in coming to a decision, which does not mean that I have a free and unfettered discretion.[30] Some of the

factors that I must take into account are the relative strengths of the parties' respective cases[31] and whether any other adequate remedy is available.[32] I have already dealt with these factors above. However, I have no discretion to grant an interim interdict if the requirements have not been established,[33] but more importantly, I may exercise my discretion against first applicant where there was an undue delay in launching the interim proceedings or the main proceedings in which final relief was sought. [34]

(55) During the hearing hereof, counsel for first applicant was specifically requested to address my concerns raised above, more particularly on the procedural choices made by first applicant, the eventual delay in the hearing, and the possible prejudice to first respondent should the relief be granted. In this regard, counsel for first applicant strenuously argued that the *ratio decidendi* in *Camps Bay Residents and Ratepayers Association v Augoustides*[35] applies equally in this instance.

(56) I do not agree with first applicant. First of all, the facts that presented itself in the *Camps Bay*-matter differs substantially from the facts *in casu*. In the *Camps Bay*-matter, the applicants approached the court requesting interim relief pending an application for the judicial review of the first and second respondents' building plans and a final interdict. The property acquired by the first and second respondents in August 2007, consisted of a three-level dwelling house. During December 2007, the local authority approved building plans submitted by the first and second respondents for a five-level dwelling.[36]

(57) The chief complaint in the Camps Bay-matter was the erection of the fourth floor of the dwelling. The applicant's alleged that the respondents were busy building the dwelling otherwise than in conformity with the building plans approved, and they should be interdicted from carrying out any further work which constituted a deviation from such approved plans. The building work was far from finished and the building activities could therefore still be stopped so as to embark on a legal process to verify the legality thereof.[37]

(58) Secondly, Dlodlo J was guided by a series of decisions in the Western Cape Division, as to the manner in which applications for the interim cessation of building work pending review proceedings are to be addressed. From the line of decisions referred to by Dlodlo J in the *Camps Bay*-matter, it is clear that they all relate to interim relief pending review of the legality of the relevant building plans.[38] This is clearly not the case in this application and the decision in the *Camps Bay*-matter consequently does not address my concerns.

(59) Having regard to all the evidence in this matter, I am of the view that first applicant has failed to satisfy all the requirements for interim relief and I therefore have no discretion to grant the relief. However, even in the event that first applicant has satisfied all the requirements, I would still have exercised my discretion against first applicant in refusing the interim relief, due to the inordinate delay in the hearing of this matter as well as the fact that the circumstances in this case do not warrant me to grant the interim relief claimed, subject to the provision of security or an undertaking to pay

damages in the event of the ultimate decision being adverse to the first applicant.

(60) Regarding costs, I am guided by the principle that costs should follow suit, without any punitive elements to consider. However, I am not convinced that it was necessary for first respondent to employ the services of two counsel and therefore believe it just and equitable under the circumstances to only award first respondent the costs of one counsel.

**ORDER:**

1. In the result I make the following order:

1.1 The application is dismissed.

1.2 First applicant is ordered to pay first respondent's costs on a party and party scale, including the costs of one counsel.

**I. ELLIS**
**ACTING JUDGE OF THE HIGH COURT**

**APPEARANCE ON BEHALF OF APPLICANTS: Adv F J Erasmus**

**APPLICANTS ATTORNEYS: MOTHLE JOOMA SABDIA INC.**

**REF: Mr Jooma / Mr Sabdia / BR02.0001**

**APPEARANCE ON BEHALF OF 1ST RESPONDENT: Adv J P Daniels SC**
**Adv D J Van Heerden**

**1ST RESPONDENT'S ATTORNEYS: ADRIAAN VENTER & ASS**

**REF: JA Venter/WS/AU0017**

**Date of hearing: 22 March 2018**

**Date of judgment: 4 July 2018**

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[1] 103 of 1977

[2] Although the decision is dated 26 July 2016, first applicant apparently only received the letter via postal services on 29 August 2016.

[3] In terms of SPLUMA and the City of Tshwane's By-law an appellant has to launch its appeal within 21 days of delivery of the decision and before publication thereof in the Provincial Gazette to the MAT (second respondent).

[4] In terms of the Ordinance an objector could appeal a decision within 28 days after publication of the relevant decision in the Provincial Gazette to the Gauteng Townships Appeal Board.

[5] Annexure "FA16" to the applicants' founding affidavit.

[6] Annexure "AA4" to the first respondent's answering affidavit.

[7] Third respondent served a Rule 7 notice contesting the authority of applicants' attorney of record to act as such, as well as a Rule 35(12) notice requesting documents referred to in applicants founding papers. Moreover, third respondent delayed the filing of its answering affidavit.

[8] 1969 (4) SA 443 (C) at 445F.

[9] *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691C-E.

[34] *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*, [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA).

[35] 2009 (6) SA 190 (WCC).

[36] *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at [2].

[37] *Camps Bay Residents and Ratepayers Association v Augoustides* supra at [20].

[38] *Camps Bay Residents and Ratepayers Association v Augoustides* supra at [10].