

SOUTH AFRICA / JUDGMENT

AD v Minister of Home Affairs (2411/2019) [2021] ZAECGHC 45 (4 May 2021) [2021] ZAECGHC 45

COURT

Eastern Cape High Court, Grahamstown

BEFORE

R Kruger

CASE / FILE NUMBER

2411/2019

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO: 2411/2019

Date heard: 22 April 2021

Date delivered: 4 May 2021

In the matter between

A[...] D[...]

Applicant

Vs

MINISTER OF HOME AFFAIRS

Respondent

JUDGMENT

KRUGER AJ:

[1] The applicant in this matter is Mrs Adebisi Alabi David, a Nigerian

national who has lived in South Africa on a succession of relative's visas since 2009. The respondent is the Minister of Home Affairs.

[2] On 14 July 2019, the respondent, acting through the Acting Director-General of the Department of Home Affairs,[1] notified the applicant of the rejection of her application for review of an adverse decision in terms of section 8(4) of the of the Immigration Act 13 of 2002. This decision was a rejection of the applicant's request for what is commonly known as a 'good cause letter'.[2] It is this decision that is the subject of this review.

[3] The application is brought in terms of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'). The applicant requests the court to make an order in the following terms quoted in full and as filed:

"1. in terms of Rule 53 of the Uniform Rules of court, read with Section 6(2)(c) and 8(1)(b) of the Promotion of Administrative Justice Act 3 of 2000 "PAJA" and further read with Section 33 of the Constitution, Act 108 of 1996 (sic) that the decision of made by the

acting Director General of the Department of Home Affairs dated the 14th July 2019 rejecting the "good cause letter" which automatically declares the Applicant as an illegally foreigner in the Republic of South Africa be and is hereby reviewed, corrected and/or set aside on the basis of unfairness.

2. that in compliance with Rule 53(3) that the acting Director General of the Department of Home Affairs be and is hereby directed to make available to the Applicant and the Registrar the record of the proceedings that resulted in the order/decision that the Director General had made to declare the Applicant an illegal immigrant in term of Section 49(1) of the Immigration Act to warrant removal of the Applicant from the Republic within 14 days, within 15 days of receipt of the Notice of above Court
3. that in the event that the Honourable Court is with the Applicant in setting aside the actions of the Director General of the Respondent, that the aforesaid Director General be and is hereby directed to issue a permit to the Applicant that would enable the Applicant to access services that the Republic of South Africa could offer and that the Applicant would be able to be processed for travelling in and out of the Republic and that the Applicant is enabled to access banking facilities, with such permit, should the Applicant wants to.
4. that pending the final determination of the application, the officials of the Respondent be and are hereby interdicted and restrained from deporting the Applicant.
5. that the Respondent be and is hereby Ordered to pay for the costs of this application.'
6. further and/or alternative relief."

- [4] Where there are disputes of fact in motion proceedings, the facts as set out by the applicant that are common cause or undisputed, and the facts as set up by the respondent determine the factual matrix on which judgment is made.[3] The factual background which informed the decision under review is for the greater part based on facts that are not in dispute.

The applicant disputes that she had knowledge of the true state of affairs regarding Mr Sunny Alabi David's ('David')

status in terms of the law, both his marital status at the time of their purported marriage in July 2009, and his status as citizen of the Republic. Not much turns on these disputes as becomes evident from the judgment.

The factual background

- [5] The applicant and David, a Nigerian national like the applicant, have known each other for a long time. While they were both living in Nigeria, they had two sons together, born in 1986 and 1992 respectively.

- [6] During the early 2000s, David moved to South Africa and settled in King William's Town.

- [7] The applicant had visited South Africa in 2004, 2007 and 2008-2009 on visitor's visas.

- [8] D[...] entered into a civil marriage with Ms V[...] J[...]

S[...] ('S[...']'), a South African citizen, on 29 August 2002.

- [9] On the strength of his marriage to S[...], D[...] obtained citizenship through naturalisation on 3 March 2006. His obtaining citizenship was preceded by the status of permanent residence in terms of the Alien Controls Act 96 of 1991 and the exemption certificate allowed therein for a foreign national married to a South African national to obtain this status within six months of the granting of that certificate.

- [10] On 22 May 2006, D[...] submitted an application form to Dale College Boys' High School for the admission of his son, O[...] into the school the next year. On the application form, D[...] indicated that he was married and gave the name of his spouse as Mrs A[...] A[...] D[...], the applicant. Their son attended Dale College from 2007 to 2009 on a study visa.

- [11] The applicant and D[...] concluded a civil marriage on 27 July 2009 in King William's Town.

- [12] D[...] instituted divorce proceedings against S[...] out of the Southern Divorce Court on 23 October 2009 and applied at the same time for substituted service of the divorce summons by way of publication in the Daily Dispatch. A decree of divorce was granted on 17 December 2009.

- [13] The applicant applied for and was granted a number of successive relative's visas on the basis of her marriage relationship with D[...]. The most recent of her relative's visas expired on 30 September 2017. In July 2016, the applicant applied for a permanent residence permit. The outcome of this application was not known by the date of expiry of the relative's visa at the end of September 2017. The applicant did not apply for a renewal of her relative's visa before the date of its expiry.
- [14] On 6 February 2018, the applicant applied for the renewal of her expired relative's visa as she wished to travel to Nigeria to attend to family matters. The applicant requested the respondent to grant her a 'letter of good cause' which would allow her to remain in South Africa while finalising her application for renewal of her visa.
- [15] Following this request for renewal of the relative's visa, an immigration officer was tasked to investigate whether such a 'good cause letter' should be issued to the applicant, who at the time of the request had been in South Africa without the requisite permission for 4 months.
- [16] On the date of the request, the immigration officer noted that the applicant's expired relative's visa referred to her marriage to a South African citizen. This citizen referred to was D[...], who also accompanied the applicant on that day. D[...] informed the officer that he was previously married to a South African citizen and that he obtained citizenship on the basis of that marriage.
- [17] The officer's investigation led her to S[...]. S[...] stated under oath that she had entered into a marriage relationship with D[...] on 29 August 2002. The officer also interviewed the applicant and D[...] to ascertain whether D[...] and S[...] had a good-faith spousal relationship. The officer concluded that the marriage was a marriage of convenience to enable D[...] to obtain citizenship through naturalisation.
- [18] During her investigations the immigration officer further established that the applicant and D[...] were the parents of two children born to them in Nigeria, who both had since settled in South Africa.
- [19] It was also established that the applicant had visited South Africa on a number of occasions before the marriage ceremony that she and D[...] had undergone in July 2009. At the time of this marriage ceremony, D[...] was still married to S[...].
- [20] On the strength of her findings in a report dated 16 April 2018, the immigration officer recommended that a 'good cause letter' should not be issued to the applicant. This recommendation was supported by the officer's superiors in the Department of Home Affairs, and the District Manager further recommended that D[...]s citizenship should be revoked as it was obtained fraudulently.

- [21] The immigration officer issued a notice of the decision adversely affecting the rights of the applicant in terms of section 7(1)(g) read with section 8(3) of the Immigration Act, communicating the rejection of her request for a 'good cause letter' to the applicant. This notice is dated 20 December 2018. The applicant signed an acknowledgement of receipt of this document, dated 15 January 2019. The applicant filed an appeal to the adverse decision not to grant her a 'good cause letter residence permit' by way of affidavit dated 25 January 2019. In her appeal the applicant explained that D[...] had separated from his South African spouse in 2005 and did not know her whereabouts. D[...] and the applicant concluded their marriage thinking that D[...]’s marriage to S[...] terminated in 2005. However, D[...] instituted divorce proceedings later and obtained a decree of divorce after the date of his marriage to the applicant. The applicant contended that this was an innocent mistake and not intended to deceive the Department of Home Affairs.
- [22] A parallel process relating to the applicant’s unsuccessful application for a permanent residence permit unfolded at the same time. A review of that decision is not before the court and no further consideration thereof is necessary.
- [23] A request for placing a marker on the identity number of D[....] in the National Population Register was filed on 22 January 2019. This is indicated as a first step in the process to deprive D[...] of his citizenship in terms of the South African Citizenship Act 88 of 1995.
- [24] To enable the Acting Director-General to consider the adverse decision of the immigration officer on appeal as requested by the applicant, a report dated 1 July 2019 was submitted to the Acting Director-General. In broad terms it outlined the findings of the immigration officer who made the earlier decision to reject the request for a 'good cause letter.' This report and the applicant’s affidavit outlining her appeal to the decision of the immigration officer formed the basis of the Acting Director-General’s decision to reject the request and confirm that the applicant would not be authorised to remain in the Republic pending regularisation of her status.
- [25] This decision of the Acting Director-General was communicated to the applicant by letter dated 14 July 2019 which the applicant signed on 31 July 2019 as 'received'. The applicant also received a Form 21 'Order to illegal foreigner to depart from Republic, section 7(1)(g); regulation 30(4)' dated 31 July
2019. The date for departure on this form is indicated as 14 August 2019.
- [26] Following the receipt of this decision and the order to depart from the Republic, the applicant launched these review proceedings on 15 August 2019.

The submissions of the parties

- [27] Argument on behalf of the applicant in her heads of argument and in oral argument, in the main, concerned three aspects:

- a. The applicant was unaware of the fact that D[...] was already married at the time of the marriage ceremony on 27 July 2009. Significantly, the applicant contended that it was the failure on the

part of the respondent to point out to the applicant that D[...] was already married at the time of their purported marriage which caused her immigration status to be questioned. Particularly, Mr Maseti, who appeared for the applicant, emphasised the role of the Department of Home Affairs as the custodian of the status of citizens in the Republic. As such, he argued, the respondent had a duty through its marriage officer to inform the applicant and D[...] of the impediment, caused by D[...]’s existing marriage to S[...], to their intended marriage. The argument continued, but for the absence of an alert by the marriage officer, D[...] and the applicant would have postponed the date of their marriage to after the date of the decree of divorce from S[...]. If the respondent fulfilled its obligation, the applicant would not have had to approach the court with this review;

- b. That the applicant is being ‘punished’ by the respondent for alleged transgressions on the part of D[...]. The applicant maintains that her lack of knowledge of any wrongdoing justifies the setting aside of the decision of the Acting Director-General not to grant her ‘a good cause letter’.

c. That it would be unfair to the applicant whose children are in South Africa, to her business interests, including her properties and employees, if she were to be relegated to the status of an illegal foreigner required to leave the Republic.

[28] Mr Maseti did not submit argument in respect of the requested relief to direct the respondent to issue a permit to the applicant to allow her to remain in the Republic, or to interdict the respondent from deporting the applicant.

[29] Ms Appels, on behalf of the respondent, raised three points in limine, against an exposition of the legal framework regulating immigration in South Africa. The points in limine, counsel contended, would each on its own dispose of the matter. I return to the submissions on these points in more detail below.

[30] On the merits, counsel for the respondent argued that the decision of respondent was lawful, that is, in accordance with the provisions of the Immigration Act and its Regulations; and that the decision was taken in accordance with fair procedure. The applicant and D[...] were interviewed and granted opportunities to put forth information to demonstrate the good-faith nature of D[...]’s marriage to S[...], justifying his naturalisation as a citizen. Such information was not forthcoming from the applicant. The applicant further did not explain why she did not apply timeously for the renewal of her relative’s visa.

[31] In addition to the request for the application to be dismissed, the respondent requested that a punitive costs order be made against the applicant on the basis of falsehoods and contradictions contained in her founding affidavit.

The scheme of the Immigration Act

[33] The Act and its Regulations set certain requirements that must be met in order for a relative's visa to be granted to a foreigner.[4] First, the applicant for the visa must provide proof of kinship to a South African citizen or permanent resident, and in addition, proof of financial means on the part of the citizen or permanent resident to provide for the relative must be provided. It is only the first requirement that requires closer consideration for current purposes. Section 1 defines 'immediate family' as 'persons within the second step of kinship, where marriage or a spousal relationship is counted as one of such steps, but any common antecedent is not so counted'. Absent proof of such a relationship, the refusal of the application or its renewal[5] for such a visa is justified.

[34] A foreigner present in the Republic without a valid visa is, according to the Act, an illegal foreigner who shall depart or is liable for deportation.[6] Where a foreigner finds herself in a position where she is present in the Republic without the requisite visa, she may request

authorisation from the Minister of Home Affairs in accordance with section 32, read with regulation 30, to allow her to remain on condition that she can demonstrate in writing that:

- d. she was unable to apply for status (ie the relative's or other visa) due to reasons beyond her control; and
- e. that she is in a position to apply for such a visa immediately.

[35] Ms Appels correctly submitted that this authorisation, the 'good cause letter', does not confer status on the foreigner to whom it is granted; she remains an illegal foreigner present in the Republic in contravention of the provisions of the Act. But where such a letter is granted, the illegal foreigner is allowed to apply to regularise her status from inside the Republic. The refusal to grant the 'good cause letter' similarly does not affect the status of the illegal foreigner. Her presence in the Republic remains without the requisite permission. In accordance with section 32 of the Act, read with Regulation 30(4), an illegal foreigner must depart the Republic within 14 days of being informed thus, or she will be deported. Once the outcome of the application for status is known, the authorisation granted in terms

of section 32(1) read with Regulation 30, lapses.

The parties' submissions considered

[36] The respondent raised three points in limine which I consider together with the merits of the application for the sake of completeness.

[37] The first point in limine relates to the absence of a clear ground for review in terms of PAJA. Section 6 of PAJA sets out the different grounds on which administrative action may be reviewed by a court. In the current instance, the applicant indicated that she relies on section 6(2)(c) of the Act, contending that the decision of the Acting Director-General was procedurally unfair.

- [38] Section 3 of PAJA elaborates on the requirement of procedural fairness in administrative action. It explains that procedural fairness is determined by the circumstances of each case, and that it requires notification to the affected person of the purpose of the proposed administrative action, a reasonable opportunity to make representations, a clear statement of the administrative action, adequate notice of opportunities for appeal or internal review of the administrative action and adequate notice of the right to request reasons.[7] It is evident that procedural fairness relates not to the fairness of the decision itself but to the way in which the decision-maker arrived at the decision, and the opportunity of the affected person to influence the decision.
- [39] The applicant's arguments do not fit the description of procedural fairness. Her arguments do not relate to the lack of a reasonable opportunity to state her case. It was not contested that the applicant and D[...] were interviewed by the immigration officer investigating whether she had shown good cause, or she was not allowed or did not know of her opportunity to seek a review of the immigration officer's or Acting Director-General's decision. She also did not contend a lack of knowledge about the administrative action or not knowing about the right to request reasons.
- [40] The applicant's arguments relate to the respondent's failure to exercise its custodianship of status appropriately by alerting the applicant and D[...] of the impediment to their intended marriage as a result of D[...]’s status as married, secondly to its singling her out for punishment, and thirdly to the overall unfairness of the decision in her assessment, given that the applicant has established herself in the Republic. These contentions do not involve considerations of procedural fairness as they do not question the manner in which the Acting Director-General came to his decision. For this reason alone, the first point in limine should be upheld and the application dismissed. While this finding makes short shrift of the application, I also consider the remaining points in limine and the merits of the application as these are interrelated.
- [41] The second point in limine relates to the failure on the part of the applicant to satisfy the requirements for 'a good cause letter'. As pointed out in paragraph 34 above, the requirements for authorisation to remain in the Republic requires 'good cause' to be shown, and demonstration that the illegal foreigner applying for the indulgence is able to apply for a visa immediately.
- [42] It is common cause that the applicant's relative's visa was dependent on her marriage relationship with D[...].
- [43] South African law is clear on its requirements for a conclusion of a marriage in terms of the Marriage Act 25 of 1961. The existence of a civil marriage concluded in accordance with the Marriage Act is an absolute impediment to the conclusion of a second marriage in terms of civil rites. Any second purported marriage concluded while another subsisted is null and void.

[44] Accordingly, the marriage concluded between the applicant and D[...]

on 27 July 2009 did not lawfully come into existence. As a result, no kinship relationship between them flowing from the

purported marriage came into being. Thus, any relative's visa obtained on the basis of this purported marriage fails to meet the kinship requirement in terms of section 18 of the Immigration Act, and it is invalid.

[45] The applicant did not show good cause for authorisation to remain in the Republic while she applied for a visa. In particular, the applicant did not make any representations to convince the Acting

Director-General that her marriage to D[...] was a valid marriage which would have been an impossible argument to make. D[...]

was not in a position to sponsor her relative's visa as her spouse. The applicant also did not put forth any other possible

reason to explain why she did not apply in time for the extension of her relative's visa.

[46] Instead, the applicant argued that the blame for invalidity of her marriage to D[...] is to be placed at the door of the respondent whose officials failed to detect the existence of the marriage between D[...] and S[...] in July 2009. There is no merit in this argument. The law does not place a general obligation on marriage officers to investigate possible obstacles to intended marriages. Under the Marriage Act, a marriage officer is obliged to solemnize a marriage where all the legal prerequisites have been met, ie where parties presented themselves to be married with the requisite identification or affidavit.[8] Where an objection in writing is submitted to a marriage officer, he or she is obliged to enquire about the objection and may only proceed to solemnize the marriage if the objection was found to be without ground.[9] Furthermore, the marriage officer may refuse to solemnize a marriage in instances where he or she is not satisfied that the marriage may be lawfully contracted, including instances where the marriage officer suspects that a lawful impediment to the marriage exists such as an existing marriage.[10] The applicant has not placed any information before the court indicating that the marriage officer held any such suspicion or that a written objection to the marriage was submitted. The knowledge of the existing marriage between D[...] and S[...] was at least within the knowledge of D[...], who should have disclosed this information to the marriage officer. He failed to do so.

[47] It is rather disconcerting that applicant's argument amounts to

'but for' the mistake on the part of herself and D[...] to conclude their marriage before the granting of decree of divorce in his marriage to S[...], the applicant's unlawful presence in the Republic would have gone undetected. I find it particularly concerning that the applicant asserts that the officials owed her a duty to enable her to continue her unlawful presence in the Republic.

[48] The applicant was also not able to satisfy the second requirement for

the granting of a 'good cause letter'. She made no attempt to and was not able to demonstrate that she could immediately apply for a visa. Accordingly, the second point in limine should also be upheld.

[49] The applicant sought to review the decision of the Acting Director-General to refuse her authorisation to remain in the Republic pending regularisation of her permission to be present. The respondent's third point in limine relates to the effect of judicial review of this decision.

[50] The applicant's understanding of the effect of the refusal of permission to remain in the Republic in terms of section 32 ('good cause letter') of the Immigration Act is incorrect. Where authorisation in terms of section 32 is not granted, it does lead to the applicant to be declared an illegal immigrant. Rather, a 'good cause letter' is an indulgence granted to an illegal foreigner, who remains thus. The decision of the Acting Director-General of 14 July 2019 did not cause the applicant to become an illegal foreigner. The applicant is an illegal foreigner on the basis of her the expiration of her relative's visa at the end of September 2017 which she had obtained by representing that she was in a marriage relationship with D[...]. The respondent is correct in its argument that this court's setting aside the decision of the Acting Director-General not to grant the 'good cause letter' will have no practical effect. Whether that decision remains in place or is set aside, the applicant continues to be an illegal foreigner who must depart or who will be deported in accordance with the provisions of the Immigration Act. Accordingly, the third point in limine should also be upheld.

[51] There remains little of the merits of the application to be considered, and that which remains does not assist the applicant's case. The applicant maintains that she is an innocent victim

who has been singled out by the respondent for harsh treatment which will see her depart the Republic or be deported. The applicant, as is evident from that which I set out above, has been present in the Republic since 2009 on the basis of a succession of relative's visas that have been granted in error. The respondent granted these visas in good faith on the representation that the applicant was married to a South African citizen. No valid marriage came into being between the applicant and D[...] when they purported to marry on 27 July 2009. Additionally, the bona fides of D[...]’s marriage relationship to S[...], and thus his acquisition of citizenship on the basis of that marriage remains questionable. The immigration officer tasked with investigating the applicant's good cause, found the marriage between D[...] and S[...] to be one of convenience. But D[...]’s matter is not before this court. Rather, what I am required to consider is whether the Acting Director-General acted procedurally fairly when he denied the applicant's request to grant her 'a good cause letter'. She did not meet the requirements for that letter to be issued as outlined above. The relative's

visas which were granted to the applicant were issued on the basis of her and D[...]’s representation that a valid marriage

existed. This error on the part of the respondent does not provide the applicant with any excuse. Section 48 of the Immigration Act provides:

‘No illegal foreigner shall be exempt from a provision of this Act or be allowed to sojourn in the Republic on the grounds that he or she was not informed that he or she could not enter or sojourn in the Republic or that he or she was admitted or allowed to remain the Republic through error or misrepresentation, or because his or her being an illegal foreigner was undiscovered.’

[52] Whether or not the applicant had knowledge of the invalidity of her marriage, and thus of the validity or not of her relative’s visas does not affect her status in the Republic. Her lack of knowledge about the status of D[...] as married or not, and/or the validity of his South African citizenship, does not provide a ground for review and is of no consequence in this review application. The officials in the Department of Home Affairs are tasked, among other things, to implement and give effect to immigration legislation. In coming to the decision that she is not entitled to a ‘good cause letter’ for the reason that no valid marriage existed between the applicant and D [...], and because D[...] obtained his citizenship on the basis of a suspicious marriage, the Acting Director-General fulfilled his duty in terms of the legislation. The subjective experience of the applicant who did not meet the requirements set in terms of legislation does not affect the validity of the decisions of the officials of the Department.

[53] Based on the reasons set out above, the application is without merit and must be dismissed.

Costs

[54] Ms Appels urged me to dismiss the application with costs granted on attorney-client scale. She argued that the application was wholly without merit, and that the applicant’s papers were replete with contradictions and falsehoods. So, for example, did counsel point out that the applicant stated that she had lost contact with D[...] after he left Nigeria and moved to South Africa. Her version is she had no contact with him and that she

only met him again in 2009 in King William’s Town, shortly before they got married. However, counsel contended, the

evidence shows that D[...] and the applicant applied jointly for the admission of their son to Dale College in May 2006. The applicant denies that she applied with D[...] for her son’s admission to the school, and it is true that she did not sign the application form. But D[...]’s inclusion of her details on the application form as ‘Mrs A[...] A[...] D[...]’ to whom he ‘is married’, and his inclusion of her contact details at the time (May 2006), raises doubt as to the veracity of her version that she only met him again in

2009. It would seem that the truth about contact between them after he had left Nigeria, did not suit the narrative of the innocent applicant. However, the representation to the school was not made by the applicant.

[55] An award of costs on attorney and client scale is used by a court to mark its disapproval with the conduct of the party against whom it is award.[11] In this matter, the applicant approached this court with unclear grounds for review, based in part on a version of facts that is open to question, and challenging a decision that would make no difference to her status as an illegal foreigner in the Republic. It is true that her founding affidavit contained a number of contradictions, but I am not convinced that those justify a conclusion that the applicant set out to mislead the court. In the light thereof, a punitive costs order is not justified. The ordinary rule should apply and costs follow suit.

Order

[56] The application is dismissed with costs.

R. KRUGER

ACTING JUDGE OF THE HIGH COURT

Appearing on behalf of the Applicant: Adv. Maseti

Instructed by: Mgangatho Attorneys, Mr. Mgangatho

Appearing on behalf of the Respondent: Adv. Appels

Instructed by: Whitesides Attorneys, Mr. Barrow

[1] Duly authorised in terms of s 3 of the Act.

[2] Section 32(1) read with Regulation 30. The 'good cause letter' allows an illegal foreigner to remain in the Republic pending regularisation of his or her status. As such, the granting of such authorisation requires the applicant therefore to show that he or she was unable to apply for status due to reasons beyond his or her control, and that he or she is in a position to apply for status immediately.

[3] Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

(3) SA 623 (A) at 634E-I.

[4] Section 10(2)(b) read with section 18; Regulation 17.

[5] A relative's visa is valid for a maximum of 24 months and may be renewed on application in terms of section 10(7) of the Act. An application for renewal must be submitted at least sixty days before the expiry of the existing visa (see Form 10).

[6] Section 32(1) and (2).

- [7] See *Minister of Health v New Clicks South Africa (Pty) Ltd* [2005] ZACC 14; 2006
- (8) BCLR 872 (CC) para 153-154 emphasising the importance of context in relation to the determination of what procedural fairness requires.
- [8] Marriage Act 25 of 1961, section 12.
- [9] Section 23.
- [10] Sinclair *The Law of Marriage* Vol 1 (1996) 535.
- [11] *Koetsier v SA Council of Town and Regional Planners* 1987 (4) SA 735 (W) at 744J–745A.
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