

SOUTH AFRICA / JUDGMENT

Hetherington and Others v Boat House Langebaan (Pty) Ltd and Another (15777/2022) [2023] ZAWCHC 132 (24 May 2023) [2023] ZAWCHC 132

COURT

Western Cape High Court, Cape Town

BEFORE

Meer

CASE / FILE NUMBER

15777/2022

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In the High Court of South Africa

(Western Cape Division, Cape Town)

Case Number: 15777/2022

In the matter between:

CLAYTON JAMES HETHERINGTON First Applicant SALLY LUCY HETHERINGTON Second Applicant ETTIENE DE WET VISSER Third Applicant KARIN VISSER Fourth Applicant ISABEL DE WET Fifth Applicant And THE BOAT HOUSE LANGEBAAN (PTY) LTD First Respondent THE SALDANHA BAY LOCAL MUNICIPALITY Second Respondent

Date of hearing: 9 May 2023

Date of Judgment: 24 May 2023

Before: The Honourable Ms Justice Meer

JUDGMENT DELIVERED THIS 24th DAY OF MAY 2023

MEER, J

Introduction

- [1] The Applicants seek to interdict the First Respondent from using a property it owns at [...] P[...] Crescent L[...] [1] (“the property”), in contravention of the applicable land use legislation and regulations. In its notice of motion, the Applicants seek inter alia the following order:
1. That it be declared that the First Respondent’s use of the property, being erf 5[...] situated at [...] P[...] Crescent, Langebaan (“the property”) is unlawful and in contravention of the applicable land-use legislation and regulations.
 2. That the First Respondent be interdicted and restrained from using the property for any purpose other than a “Dwelling House” / “Dwelling Unit” and / or in conflict with residential zone 1 as defined by the relevant planning and zoning by-laws.
 3. That the First Respondent be interdicted from conducting any business, office and / or commercial accommodation facility at the property other than what is lawful for purposes of a “Dwelling House” and / or “Dwelling Unit”, whilst and until an application to amend the land use and / or zoning of the property has been approved by the second respondent.
 4. That all further interim uses of the property which are for any purpose other than for a “Dwelling House” / “Dwelling Unit” and / or which may be in conflict with single residential zone 1 as required in terms of the zoning of the property, be interdicted until application for departure and / or amendment of consent use has been approved by the second respondent;
 5. That the First Respondent be interdicted and restrained from hosting or organising or form allowing to be hosted or organized any future events and or gatherings at the property which may be in conflict with the relevant public nuisance, noise nuisance and events by-laws and which take place in the absence of necessary consent by the second respondent in respect of any such future events or gatherings.
 6. That the First Respondent be ordered to pay the applicant’s costs of this application and/or, in the event that the second respondent opposes this application, that it be ordered that the respondents, jointly and severally, pay this applicant’s costs of the application.
 7. Such further and / or alternative relief as the Court may deem appropriate.
- [2] The Applicants live in neighbouring houses to the property. The First and Second Applicants’ house is across the road from the property at [...] P[...] Crescent. The Third and Fourth Applicants live diagonally across the road from the property at [...] P[...] Crescent. The fifth Applicant’s house is adjacent to the property, at [...] P[...] Crescent. The First Respondent, a private company opposes the application. The Second Respondent is the Municipality responsible for the implementation, monitoring and enforcement of the zoning and planning by-laws under whose jurisdiction the property falls. The Second Respondent is cited in its official capacity, no relief is sought against it, and it abides the decision of this Court.

- [3] The use of the property is regulated by the Saldanha Bay Municipality Integrated Zoning Scheme By-Law (“the Zoning

Scheme By-Law”). The property is zoned Single Residential 1. It is a seven bedroomed renovated house furnished to a high standard. When not in use by the First Respondent’s members, the First Respondent lets the property as luxury accommodation on a short-term basis to guests. The First Respondent markets the property for inter alia corporate getaways and socializing. It has been used for weddings, a bachelorette party, film shoots and corporate getaways, uses which the Applicants complain have been a nuisance and disturbance. The Applicants contend that the First Respondent is using the property for purposes other than as prescribed by the Zoning Scheme By-law in terms of which the only prescribed use of the

property is that of a dwelling house used for the living accommodation and housing of one family.

- [4] The First Respondent’s stance is that a purposive and contextual interpretation of the Zoning Scheme By-law permits its use of the property as short-term rental accommodation to guests, and furthermore as such use and activities are not specifically or by necessary implication prohibited by the Zoning Scheme, they are allowed. It is not a contravention of the zoning scheme, it contends to let out the property on a short-term basis irrespective of its zoning as the property, is let out in its entirety and as a single residential dwelling regardless of the size of the group to which it is let, their relationship or the intended use of the property by the occupants.

Vague and unenforceable

- [5] The First Respondent alleges that the orders the Applicants seek are vague and unenforceable as the notice of motion does not specify the actual use which they seek to have declared unlawful, nor the legislation they seek to enforce. The interdictory relief sought is also characterized as vague. I do not agree. It is clear from the notice of motion, pleadings and arguments, that what the Applicants are seeking is for the First Respondent to bring its use of the property within the permitted uses for a dwelling house that is zoned Residential Zone 1 in the Zoning Scheme By-Law, even though the Zoning Scheme By-Law is not named in the notice of motion. It is also clear what ongoing use of the property they seek to have declared unlawful. So too the interdictory relief, which is anything but vague.

- [6] Mr De Wet for the Applicants, pointed out that the notice of motion and the relief that the Applicants

seek has been based on similar orders that were granted for zoning scheme contraventions in *Du Toit NO & others v Coenoe* 90 CC case no: 1584/2017 Free State High Court ,Bloemfontein; *Port Elizabeth Municipality v Radman and another* 1999(1) SA 665 (SE); *City of Johannesburg v Nair and Another*

[2021] JOL 52553 (GJ) case no: 4532/2020. This was not disputed.

- [7] Nor has any doubt or confusion been expressed that the crisp issue for determination is whether in terms of the Zoning Scheme By-Law, a property which is zoned Single Residential 1, which is a dwelling house and consists of a dwelling unit as defined in the zoning scheme, may be let out as an entire unit for short term holiday accommodation to guests who pay a daily rate who are not one family. Furthermore to guests who may use the property, for inter alia, weddings, bachelor parties, film shoots and corporate getaways, as has occurred, and as appears more fully below. The First Respondent has answered to this case.
- [8] Accordingly, the First Respondent's opposition on the basis that the orders sought are vague and incapable of enforcement, is rejected.

Applicable legislation:

- [9] The Saldanha Bay Municipal Integrated Zoning Scheme By-Law is a land use scheme contemplated in Section 24 of the Spatial Planning and Land Use Management Act 16 of 2013 ("SPLUMA") and was adopted by the Municipality on 26 October 2021.
- [10] The following sections of SPLUMA are of relevance to this application:

Section 2 states as follows:

"2. Application of Act

- (1) This Act applies to the entire area of the Republic and is legislation enacted in terms of-
- (a) section 155(7) of the Constitution insofar as it regulates municipal planning; and
- (b) section 44(2) of the Constitution insofar as it regulates provincial planning.

"24. Land use scheme

- (1) A municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of this Act."
25. Purpose and content of land use scheme
- (1) A land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates in order to promote-
- (a) economic growth;
- (b) social inclusion;
- (c) efficient land development; and
- (d) minimal impact on public health, the environment and natural resources.
- (2) A land use scheme must include-

- (a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;
 - (b) a map indicating the zoning of the municipal area into land use zones; and
 - (c) a register of all amendments to such land use scheme.
26. Legal effect of land use scheme
- (1) An adopted and approved land use scheme-
 - (a) has the force of law and all land owners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;
 - (b) replaces all existing schemes within the municipal area to which the land use scheme applies; and
 - (c) provides for land use and development rights.
 - (2) Land may be used only for the purposes permitted-
 - (a) by a land use scheme;
 - (b) by a town planning scheme, until such scheme is replaced by a land use scheme, or
 - (c) in terms of subsection (3).

Section 58 Offences and Penalties

Section 58 (1) (b) states that:

“A person is guilty of an offence if that person-

uses land contrary to a permitted land use as contemplated in section 26(2);

- (2) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 20 years or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No.101 of 1991), or to both a fine and such imprisonment.”

[11] The Zoning Scheme By-law is legislation passed by the Municipality to give effect to SPLUMA and any zoning scheme contemplated in section 24 thereof. Section 86 of the zoning Scheme By-law provides that it is an offence to utilize land in a manner other than prescribed by a zoning scheme without the approval of the municipality. Such offence is punishable with a fine or imprisonment not exceeding 20 (twenty) years. Section 6 stipulates that the zoning scheme has the force of law and all owners are bound by it.

[12] The By-Law zoning scheme applies to the entire Saldanha Bay municipal area and has as its objective the co-ordinated and harmonious development of the municipality's area of jurisdiction, in such a way as will most effectively tend to achieve sustainable development and promote the health, safety, order, amenity, convenience and general welfare of the inhabitants of the area in which it applies[2].

[13] Table A of Schedule 1 of the Zoning Scheme By-Law lists, of relevance to this application, inter alia, Dwelling House and Additional Dwelling Unit amongst the primary uses of properties zoned Residential Zone 1. The Table lists Tourism as one of the uses of Residential Zone 1 Properties for which consent must be obtained, or consent uses. It is common cause that no such consent has been applied for and obtained. The following definitions of relevance to this application, are listed:

"Dwelling house" means a building containing only one dwelling unit, together with such outbuildings as are ordinarily used with a dwelling house, including:

- (a) A storeroom and garaging;
- (b) A braai room,
- (c) A green house,
- (d) Renewable energy structures for household purposes;
- (e) Occupational practice, subject to the provisions of schedule 3;
- (f) Letting to lodgers subject to the provision of schedule 2; and
- (g) Home childcare, subject to the provisions of schedule 3.

"Dwelling unit" means a self-contained, inter-leading group of rooms with not more than one kitchen, used for the living accommodation and housing of one family.

"Family" means:

- (a) A single person maintaining an independent household;
- (b) Two or more persons directly related by blood or marriage maintaining a common household, or
- (c) At most four unrelated persons maintaining a common household.

"Primary use" means any land use herein specified as a primary right without any further permission or consent from the Municipality having to be obtained in terms of this Scheme.

"Tourism accommodation" means the use of individual bedrooms in a dwelling house to provide formal short term stay opportunities characterized by the charging of daily or weekly tariffs and/or the advertising of such opportunities in the general and travel media, where the rooms rented out for such purposes is restricted to a maximum of 8, the rooms do not contain kitchen or cooking facilities but can contain on-suite bathrooms, the owner or a manager is resident in the dwelling, meals can be served to

guests for whom lodgement is provided, includes a bed-and-breakfast establishment, and an air b&b and a guest house and complies with the provision of schedule 3 of this bylaw.

“Use right” in relation to land, means the right to utilise that land in accordance with its zoning, a departure, consent use, condition of approval or any other approval granted in respect of the rights to utilise the land.”

“Lodger” means a person who pays rent in return for accommodation.

“Lodging” means the provision of bedroom or bed accommodation that is made available for payment and the services ordinarily related to such

accommodation.”

[14] Paragraph 13.2 of the Zoning By- Law provides for Special Zone 13 as follows:

“Holiday Housing: Means a dwelling house which can be used on an intermittent basis by the owner and includes the use of the dwelling house for holiday accommodating, where the house as an entity is let for short term stay opportunities characterised by the charging of a daily or weekly tariff, but the letting of individual bedrooms on such basis is not allowed as of right.”

This use is specifically limited to the property listed in Special Zone 13, which is a portion of a farm in the West Coast National Park.

Common cause facts and the Applicants’ complaints

[15] The following facts are common cause:

15.1 The First Respondent advertises bookings for the property on its website, on Facebook, AirBnB; Travelground, Google and Instragram.

15.2 The First Respondent markets and advertises the property as “conducive to socializing with friends”, an “Entertainers’ Dream”, “the perfect sanctuary for a group of friends or large family to enjoy a holiday together” and further that the property is “a good place for people to gather to have a party with music, beers and cocktails.” It also markets and advertises the property for corporate events and getaways.

15.3 The First Respondent allows the property to be used for events such as film shoots, weddings and bachelorette parties.

15.4 The First Respondent collaborates with commercial partners in prize giveaways to promote and advertise the property. It has recently collaborated with Sun Camino Rum and JEFF fitness for this purpose, as evidenced by the following Facebook posts of 12 January 2021 and 3 and 10 February 2021 respectively:

“We’ve teamed up with @suncamino_rum to give away 2 nights at the Boat House with all your mates. Head over to @suncamino_rum to enter!”

“We’ve teamed up with @jeff_fitness_official...Join @johnomeintjes and @jeff_fitness_official this Saturday the 13th of February 2021 for a Tough Love workout and stand a chance to win ! . . .We’re giving away a one night stay @boathouselangebaan

valued at R10000!”

15.5 The First Respondent employs one member of staff who wears a company branded uniform and is advertised on Air BnB as “the house helper”. In addition, the First Respondent sells branded merchandise including T-shirts; shirt; bags and caps. It has painted its logo, name and website on its outer wall, which is an advertising sign.

15.6 On 13 February 2021 and 30 August 2021, two filming events as part of marketing campaigns for a commercial company and the First Respondent took place on the premises. From 7 to 9 August 2022, there was a three-day wedding and on 10 to 13 September 2022, there was a bachelorette party on the property.

[16] The Applicants have set out in detail in the founding affidavit numerous instances of disturbances and nuisances caused by the occupants of the property. They have also attached photographs and documents evidencing their experiences and their communications and complaints to the Municipality’s officials, and directors of the First Respondent. The incidents complained about include, inter alia, loud music, loud and excessive shouting, noise and rowdy behaviour, all late at night, drinking alcohol in the street and overcrowding of Panorama Crescent due to an excessive number of parked cars on the sidewalk.

[17] The Applicants allege that the disturbances and nuisances are a direct consequence of the First Respondent’s unlawful use of the property and note that the municipality issued a compliance notice to the First Respondent regarding the Applicants’

complaints.

[18] The founding affidavit states that the incidents have caused the Applicants great distress and severely impacted their right to the undisturbed use and enjoyment of their homes. They have in addition sought reprieve from the unlawful use of the property from the municipality, but to no avail.

[19] Whilst the First Respondent disputes the disturbances on the basis that it constitutes inadmissible hearsay evidence, and challenges their veracity, it does not deny that the property was occupied by its guests on the dates of the incidents. The founding affidavit states that all the allegations and evidence pertaining to the incidents were witnessed by at least one of the Applicants and in reply, the first applicant sets out which of the Applicants experienced and documented each incident.

Argument

- [20] Mr Porteous contended that the First Respondent is entitled to let out the property in terms of leases of any duration and that doing so is not prohibited by the zoning scheme. Whilst accepting that the property may only be developed and used in accordance with its residential zoning, he argued that uses and activities, which are not specifically or by necessary implication prohibited by the zoning scheme are allowed on the property. Hence, the various uses for which the property is let on a short term basis, are, by implication allowed. The First Respondent's interpretation of the words "used for the living accommodation and housing of one family" contained in the definition of dwelling unit includes, he contended, the use of the property for short term uses as employed by the First Respondent. These uses are not specifically or by implication prohibited by the words "used for the living accommodation and housing of one family." Reading into the definitions any prohibition or injunction in respect of the occupation and use of a dwelling unit, he contended, would lead to an absurdity not intended by the Zoning Scheme.
- [21] Apropos the words "one family" in the definition of dwelling unit, he argued that the definition of family in the Zoning Scheme By-law makes it clear that it is not aimed at ensuring that people, who reside in a single dwelling house, are related to each other by blood or law. It is, he suggested, aimed at describing persons who would ordinarily occupy a single dwelling house as a household, irrespective of their relationship to one another. There is moreover, he submitted no indication that the definition is intended to contain a prohibition of any nature whatsoever.
- [22] He further contended that the Applicants' stance that the zoning scheme prohibits the occupation of a property zoned

Residential 1 by persons who are not part of the same family, fails to consider the definitions of "dwelling unit" and "family" with regard to their purpose and context in in the zoning scheme. If those definitions are read purposively and contextually, the word "family" would be understood to mean no more than household.

- [23] The First Respondent's own interpretation of family as a group of persons who would ordinarily occupy a single dwelling house as a household irrespective of their relationship to one another, is not in sync with the groups of tenants it rents the property to. Corporate guests and groups of friends do not fall into this category, nor was any evidence presented to demonstrate that they did. It simply cannot be said that the property is rented to a family, and neither a purposive nor contextual consideration brings the occupants within the definition thereof.
- [24] Mr Porteous' argument that uses and activities that are not specifically or by necessary implication prohibited by the zoning scheme are permitted, begs the question as to why then, the Zoning Scheme By-Law specifically provides for primary uses and a separate category of consent uses which are not specifically provided for, and for which uses, consent has to be obtained. In the instant case, the primary use of the property is dwelling house/dwelling unit and if one wanted to use it for example for tourist accommodation, a consent

use which approximates the First Respondent's use of the property, the zoning scheme specifically provides for consent to be obtained therefore. The same applies in respect of the use of a Residential Zone 1 property for the letting of rooms to lodgers as referred to above. Why then one must further ask, if any use not specifically prohibited is permitted, does the scheme provide for a special zone as in Special Zone 13 for holiday accommodation, which has to be applied for, if uses similar to those employed by the First Respondent are required?

[25] On the First Respondent's argument, an indeterminate number of all manner of uses would be permissible by virtue of the fact that they are not specifically excluded. This could not have been the intention of SPLUMA and the Zoning Scheme By-Law, which records that the purpose of Residential Zone 1 [3] is to make provision for:

"The use of land for the purposes of low density, single residential development where the neighbourhood is characterized by single dwelling houses spaced apart from each other through the imposition of building lines that is generally more extensive than in other residential zones.

Limited allowance of uses that can be implemented ancillary to the primary residential use without detracting from the residential character of the provision the prominent use remains residential".

[26] An argument similar to that of the First Respondent was put paid to by the Supreme Court of Appeal in *Rustenburg Local Municipality v Mwenzi Service Station CC* 2015 (1) ALL SA 315 (SCA) which in essence found that only specified ancillary uses if applied for, are permitted in a zoning scheme. Ponnann JA, in finding that the planned construction of a bus station was not authorized by the relevant zoning scheme, stated as follows in paragraph 16:

"[16] The Municipality contends that plans to build the CBS are incidental to or legitimately part of the expressly sanctioned use. In Coin Operated Systems v Pty Ltd & another Johannesburg City Council 1973 (3) 856 (W) at 860E Margo J stated:

'The test of whether the use claimed by the applicants is lawful or unlawful is therefore not simply whether the premises are being used for business activities. The test is whether the use in question is legitimately part of, or incidental to, one or other of the uses or activities included in the definition of "residential building".

(See also *Clarensville (Pty) Ltd v Cape Town Municipality* 1974

(4) 974 (C) at 978G)

The Scheme, however, expressly states when a particular use is to be regarded as incidental to or legitimately part of the main use as defined. Thus for example: (a) 'agriculture' is defined as 'land that is used or intended to be used for buildings and land uses associated with farming practices . . .'; (b) builders yard includes 'administrative offices incidental to [the mentioned uses]'; (c) 'commercial use' includes 'offices that are subordinate and complementary to the commercial use of the land'; (d) 'dwelling unit' includes 'such outbuildings and servants quarters as are ordinarily incidental therewith; and (e) 'funeral parlour' includes 'such other buildings

designed for use in connection therewith and is normally ancillary to or reasonably necessary for the business of a funeral undertaker'. It must follow from this that an express permission could easily have been provided for had that been intended. Moreover, the multi portal CBS encountered could hardly be described as being incidental to or legitimately part of the main use of a taxi rank as defined. In addition, the Scheme caters elsewhere for the transportation of passengers”.

[27] It is clear from the approach in Rustenburg supra, that where a zoning scheme expressly provides for ancillary uses, and the use contended for is not expressly provided for, it cannot be a permitted ancillary use. If the use was intended to be permitted it could easily have been provided for. A use not provided for, cannot be regarded as permitted, where the zoning scheme specifically caters for the specific use elsewhere. In the instant case, the Zoning Scheme specifically caters for the uses to which the Applicant is putting the property, elsewhere, as in the ancillary consent use for Tourism, the letting to lodgers, and special zoning for holiday accommodation as in Special Zoning 13. By using the property as it does without obtaining the requisite approval in respect of any of these categories of use, the First Respondent is circumventing their restrictions. From the definitions above it is evident that Tourism consent use, for example, is permissible if the owner or manager is resident in the dwelling. Lodging is allowed with a maximum of 3 lodgers residing with the family residing at the dwelling house. There may also be restrictions attached to Special Zoning, similar to Special Zoning 13, which closely approximates the First Respondent's use of the property.

[28] I now turn to consider the import of the terms dwelling unit and dwelling house in the context of the prescribed use for “living accommodation and housing” in the definition of dwelling unit. In *Educated Risk Investments 165 (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality and others* 2016(6) SH 434 SCA (17)-(18) the definitions of dwelling house and dwelling unit as set out in the respondent's zoning scheme were considered. At paragraph 18 Wallis JA said:

“In their ordinary sense as reflected in dictionary definitions, ‘house’ and ‘dwelling’ tend to overlap. Thus in the Shorter Oxford English Dictionary, the first definition of a house is that it is:

‘a building for human habitation; a dwelling, a home’ and the corresponding definition of a dwelling is:

‘A place of residence; a habitation, a house.’

In combination it is said that a ‘dwelling house’ is:

‘used as a residence, not for business purposes’ and a ‘dwelling place’ is:

‘a place of residence, an abode, a house.’

[29] I am inclined to agree with the Applicants that if the definition of dwelling house and dwelling unit is considered congruously with the objective and purpose of Residential Zone 1, it is clear that the primary purpose of properties in such zone is to provide residential

living accommodation to one family. This entails that the use of the property is only for an occupier or owner to live in with his household. This is in keeping with the land use for Residential Zone 1, which is to provide low-density single residential development and that limited ancillary uses can be implemented without detracting from such use.

- [30] The First Respondent clearly does not use the property for living accommodation and housing as discussed above, when it lets out the property to short-term guests who only occupy it for a few days at a time and are then replaced by other guests and tourists. I am inclined to agree with the Applicants that none of these guests would refer to the property as their place of residence or their home.
- [31] In view of all of the above, the First Respondent's argument that it is allowed to let the property for commercial gain to transient guests without a consent use application is devoid of merit and clearly inconsistent with the Zoning Scheme By-law. That which the First Respondent contends it is entitled to do without any consent use approval or rezoning by the municipality, is specifically provided for and prescribed by the zoning scheme. The First Respondent seeks to use the property for one of the provided consent uses, without applying therefore and in doing so, it circumvents the applicable provisions of the Zoning Scheme.

Interdict Requirements

- [32] The Applicants as neighbours who allege contravention of the applicable zoning scheme have a clear right to enforce compliance

with the zoning scheme by way of interdictory relief without proof of actual harm. See *Chapmans Peak Hotel (Pty) v Jab and Annalene Restaurant CC t/a O'Hagans* 2001(4) All SA 415 C par 12-15.

- [33] The Applicants have however, in my view shown, that there is a reasonable apprehension of harm arising from the First Respondent's use of the property. Whilst the First Respondent disputes the incidents of nuisances referred to above, it does not deny that the property was occupied by its guests on the dates of the incidents. The Applicants correctly, in my view aver that the First Respondent is not in a position to materially dispute the facts regarding the incidents of nuisance and disturbance, as its directors were not present at the property when the incidents occurred.

I am satisfied that the applicants have no alternative remedy. See *Chapmans Peak Hotel* supra paragraph 17-19. The Applicants are accordingly entitled to the relief they seek with costs.

I order as follows:

1. It is declared that the First Respondent's use of the property, being erf 5[...] situated at [...] P[...] Crescent, Langebaan ("the property") is unlawful and in contravention of the Saldanha Bay Municipal Integrated Zoning Scheme By-Law.

2. The First Respondent is interdicted and restrained from using the property for any purpose other than a “Dwelling House” / “Dwelling Unit” and / or in conflict with Residential Zone 1 as defined by the Saldanha Bay Municipal Integrated Zoning Scheme By-Law.
3. The First Respondent is interdicted from conducting any business, office and / or commercial accommodation facility at the property other than what is lawful for purposes of a “Dwelling House” and / or “Dwelling Unit”, whilst and until an application to amend the land use and / or zoning of the property has been approved by the Second Respondent.
4. All further interim uses of the property which are for any purpose other than for a “Dwelling House” / “Dwelling Unit” and / or which may be in conflict with single Residential Zone 1 as required in terms of the zoning of the property, are interdicted until application for departure and / or amendment of consent use has been approved by the Second Respondent;
5. The First Respondent is interdicted and restrained from hosting or organising or from allowing to be hosted or organized any future events and or gatherings at the property which may be in conflict with the relevant public nuisance, noise nuisance and events by-laws and which take place in the absence of necessary consent by the Second Respondent in respect of any such future events or gatherings.
6. The First Respondent is ordered to pay the Applicants’ costs.

Counsel for Applicants: M de Wet Instructed by Dingley Marshall Lewin Inc per M Thomson

Counsel for First Respondent: G Porteous Instructed by Guthrie Colananni Attorneys per C

Guthrie Counsel for Second Respondent: G Gagliano (abiding) Instructed by Enderstein Van Der Merwe Inc per SD Smith

[1] Erf 5[...] Langebaan

[2] Zoning scheme by law Chapter 2 paragraphs 2 and 3

[3] Schedule 2 para 3.1

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