

SOUTH AFRICA / JUDGMENT

Nedile Lodge (Pty) Ltd and Another v City of Tshwane Metropolitan Municipality (Leave to Appeal) (23/013897) [2025] ZAGPPHC 766 (21 July 2025)

[2025] ZAGPPHC 766

COURT

North Gauteng High Court, Pretoria

BEFORE

G J Scheepers

CASE / FILE NUMBER

23/013897

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:23/013897

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 21 July 2025

SIGNATURE:

In the matter between:

NEDILE LODGE (PTY) LTD

FIRST APPLICANT

WONDERBOOM HANGAR OWNERS

SECOND APPLICANT

ASSOCIATION

And

CITY OF TSHWANE METROPOLITAN

RESPONDENT

MUNICIPALITY

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and all be uploaded on Caselines. The date for hand down is deemed to be 21 July 2025.

JUDGEMENT:

APPLICATION FOR LEAVE TO APPEAL

SCHEEPERS AJ

1. The Respondent has applied for leave to appeal the orders granted in this application.
2. The intended grounds of appeal are set out in application for leave to appeal. I will not deal with each individual ground in this judgment and will only deal with the allegations in general.
3. I will deal with the "grounds of appeal" relating to my failure to explicitly deal with the Second Applicant's claim for relief, as well as the cost in that regard, and the cost orders in general.
4. It is apposite that I commence with the issue raised pertaining to my failure to explicitly deal with the application brought by Second Applicant and the appropriate cost order relating to the relief sought by the Second Applicant.
5. Although dealing with the refusal of the Second Applicant's claim for relief in the judgment, I did not specifically provide for a dismissal of Second Applicant's application for declaratory relief in the order. This was as a result of an oversight on my part. Neither party elected to seek clarification and the Applicant in the application for leave to appeal has, in my mind, opportunistically sought to include this as a ground of appeal.
6. The failure to accurately record my finding regarding the Second Applicant's relief does not render the order appealable, as I hold the view that I can correct this patent error *mero motu*, as provided for in Rule 42(1)(b) of the Uniform Rules of Court.
7. I am also mindful that Rule 42(1)(b) limits the extent of a variation to the ambiguity or mistake. (See: *Trencon Construction (Pty) Ltd v Public Investment Corporation Soc Ltd and others*, [2021] JOL 52698 (GP)).
8. The same applied to the criticism levelled against the failure to clarify the cost orders that I made against the Respondent both on the relief in convention and in reconvention, by not explicitly stating that the costs so ordered are in favour of the First Applicant.

9. Despite there not being a formal application by any party to correct the Order, Mr Maritz SC requested that the mistake and /or ambiguity be corrected to reflect it in the Court Order. Even absent a formal application the Court is entitled to correct the error mero motu.
10. I will accordingly correct the Order issued on 24 November 2024 at the end of this judgment and limit the variation of the Order to only provide for the failure to record the dismissal of the Application brought by the Second Applicant, the cost order in that regard and the failure to specify in the remaining cost order that such cost orders are in favour of the First Applicant.
11. I now move on the counterapplication brought by the Respondent and where the grounds of appeal are contained in paragraphs 2.7 and 2.9 of the application for leave to appeal.
12. The ground(s) of appeal are without any merit and fails to consider the fact that the judgment specially dealt with the absence of evidence supporting the alleged invalidity as well as the absence of a record to consider the alleged invalidity.
13. Even if, there were grounds in support of invalidity, which I found was not proven, the inexplicable delay in launching the review application, on its own sufficient to dismiss the counterapplication.
14. I accordingly find that there are no grounds on which another Court would come to a different conclusion regarding the counter- application.
15. Moving on to the remaining grounds of appeal, aimed against the declarators issued.
16. The findings made were based on the interpretation of the agreement and in line with the principles applicable to interpretation of contracts. It is further based on existing precedent on the interpretation of similar clauses as set out in Webb v Hipkin 1944 A.D. 95 and dealt with in Brink v Premier of the Free State and another (2009) 3 ALL SA 304 (SCA).
17. No contrary legal precedent on this interpretation was pointed out to me in legal argument by Mr Rip SC on behalf of the Applicant.
18. I therefore cannot find that there are prospects that another Court would come to a different finding.
19. The relief granted pertaining to the method upon which increases in rental needs to be determined is explicitly dealt with in the written agreement between the parties.
20. In this regard I also find that there are no prospects that another Court would come to a different finding.

THE FOLLOWING ORDER IS MADE:

1. In terms of Rule 42(1)(b) of the Uniform Rules of Court the Order granted on 13 November 2024 is corrected and varied to read as follows:

1. It is declared that the option exercised by the first respondent to renew the lease in terms of clause 29 of the lease agreement "on the same terms and conditions", affords to the First Applicant

an option to renew the lease for a further period or periods "on the same terms and conditions", which would include clause 29 thereof,

2. It is declared that should the respondent or the First Applicant call for a redetermination of the rent payable for the lease premises, in terms of clause 5 of the lease agreement, the market-related rental to be determined falls to be determined without having any regard to the nature or value of any improvements or structures which the lessee erected on the leased premises;
3. The Application by the 2nd Applicant is dismissed and there is no order as to costs.
4. The Respondent is ordered to pay the costs of the First Applicant on party and party scale, including the costs of senior counsel on Scale C and on a party and party scale.
5. The counter application by the Respondent is dismissed and the Respondent is ordered to pay the costs of the First Applicant, including the costs of senior counsel, where so employed, on Scale C and on a party and party scale.
2. The Application for leave to appeal is dismissed with costs, such costs to include the costs of Senior Counsel on Scale C.

G J SCHEEPERS

Acting Judge of the High Court

Gauteng Division; Pretoria

21 July 2025

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Prepared on 8 October 2026 · Esheria