

SOUTH AFRICA / JUDGMENT

Peacanwood Estate Homeowners' Association NPC v Ntsanwisi and Another (2066/2020) [2025] ZANWHC 144 (22 April 2025)

[2025] ZANWHC 144

COURT

North West High Court, Mafikeng

BEFORE

J T Maodi

CASE / FILE NUMBER

2066/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION -

MAHIKENG

Case No.: 2066/2020

Reportable: YES / NO

Circulate to Judges: YES

/ NO

Circulate to Magistrates:

YES / NO

Circulate to Regional

Magistrates: YES / NO

In the matter between:

THE PEACANWOOD
ESTAT
PLAINTIFF
HOMEOWNERS'
ASSOCIATION NPC
and
VONGANI TITI RAYMOND
NTSANWISI
FIRST DEFENDANT
[ID No. 5[...]]
SHIRLEY MARIAM
NTSANWISI
SECOND DEFENDANT
CORAM: MAODI AJ

Date

judgment reserved: 06 February 2025

The judgment was handed
down electronically by circulation to the parties'
representatives via email. The date and time for
hand-down is deemed
to be 22 April 2025 at 10H00am.

ORDER

1. The
first and second defendants' special plea of non-compliance
with the Community Schemes Ombud Services
is dismissed.
2.
Costs shall be costs in the cause.

JUDGMENT

MAODI AJ

Introduction

- [1] The plaintiff issued summons against the first and second defendants (the defendants) for levies due and payable by the defendants to the plaintiff as members of the home owners association (HOA). The defendants delivered two special pleas to the plaintiff's particulars of claim. The first special plea is prescription whilst the second special plea is for jurisdiction. It is contended that the matter should be referred to the Community Schemes Ombud Services as it is convenient and cost effective to refer it thereto.
- [2] The matter was set-down for both merits and quantum on the 26th February 2025. On the date of hearing, I directed that the special plea of jurisdiction be dealt with first. Thereafter, the special

plea of prescription which will be dealt with together with the merits and quantum, since it goes to the root of part of the plaintiff's claim. The matter proceeded with arguments on the special plea of jurisdiction only.

The particulars of claim

[3] The plaintiff's claim, as captured in the particulars of claim, is as follows:

1. The plaintiff is the Peacanwood Estate Homeowners Association NPC [Registration number: 1997/012330/08], an association incorporated not for gain according to the company laws of the Republic of South Africa which is situated at Peacanwood Estate, Peacanwood Extension 10, Hartbeespoort, Brits.

2. The defendants are:

2.1 Vongani Titi Raymond Ntsanwisi, identity number 5[...], an adult male employed at Kgatelopele Wellness Clinic, 2[...] H[...] P[...] Avenue, Unit 4 Mmabatho;

2.2 Shirley Meriam Ntsanwisi, identity number 5[...], an adult female employed at Kgatelopele Wellness Clinic, 2[...] H[...] P[...] Avenue, Unit 4 Mmabatho.

3. The defendants are the owners of erf 3[...], Peacanwood Ext 11. The plaintiff was duly incorporated on the 29th of July 1997 under Section 21 of the Company's Act, Act 61 of 1973.

4. The plaintiff has, at a duly constituted Special General Meeting held on the 30th of July 2011, accepted with amendments, a new Memorandum of Incorporation as per the terms of the Companies Act, Act 71 of 2008.

5. A true copy of the Memorandum of Incorporation is attached hereto marked as Annexure "A", the contents of which are incorporated herein and which inter alia expressly, alternatively impliedly stipulate the following:

5.1 In terms of paragraph 5.1.1, any person, inclusive of the defendant, who is the registered owner of any residential stand shall become members of the plaintiff.

5.2 Paragraph 6.1 of the plaintiff's memorandum of incorporation sets out that the plaintiff's directors shall, from time to time, but will annually be obliged to establish and maintain a levy fund for the purpose of meeting all the expenses which the plaintiff has incurred, or which the directors reasonably anticipate the plaintiff will incur (which may include a reasonable provision for contingencies), for the ensuing financial year, in the furtherance of the plaintiff's business and objects as stated in paragraph 4 of its memorandum of incorporation.

5.3 In terms of paragraph 6.2 of the plaintiff's memorandum of incorporation, contributions to the levy fund shall be made by the members in accordance with the following formula and in the following proportions:

5.3.1 upon the inception of each and every financial year of the plaintiff, the directors of the plaintiff will determine the number of residential stands;

5.3.2 the budget as prepared in terms of paragraph 6.1 of the plaintiff's

memorandum of incorporation, will be divided by 12 (twelve) months and be divided again by the number of residential stands calculated

in terms of paragraph 6.2.1 of the plaintiff's memorandum of incorporation together with an additional 20 (twenty) stands (for the Boat Club and Golf and Country Club). This will be the monthly levy payable by each member of a residential stand.

5.3.3 The Golf and Country Club and Golf course as members of the plaintiff will be deemed to constitute a total of 15 (fifteen) residential stands and will monthly contribute 15 (fifteen) times the monthly levy payable by each member of a residential stand.

5.3.4 The Boat Club will be deemed to constitute a total of 5 (five)

residential stands and will monthly contribute 5 (five) times the monthly levy payable by each member of a residential stand.

5.4 Paragraph 6.4 of the plaintiff's memorandum of incorporation sets out that contributions to the levy fund of the plaintiff by its members shall be made in accordance with paragraph 6.2.2 of the plaintiff's memorandum of incorporation.

5.5 In terms of paragraph 6.5 of the plaintiff's memorandum of incorporation, the directors of the plaintiff may from time to time make impose special levies upon the members who are liable in terms of paragraph 6.2 to pay levies or call upon them to make special contributions in respect of all such expenses as are mentioned in paragraph 6.1 of the plaintiff's memorandum of incorporation (which are not included in any estimates made in terms of paragraph 6.1) as per the formula set out in paragraph 6.2 of the plaintiff's memorandum of incorporation or in such proportions by the members as the directors of the plaintiff in their sole discretion may determine

and such levies and contributions may be made payable in one sum or by such instalments, with or without interest and if with interest,

at such rate as may be determined by the directors of the plaintiff, and at such time or times as the directors of the plaintiff shall think fit.

5.6 Members who have not commenced building on a residential stand within 5 (five) years of such stand being transferred from Peacanwood Holdings (Pty) Ltd, shall be liable to contribute monthly double to his contribution in respect of each such stand owned by him for the first year following the expiry of such five year period, thereafter monthly 3 (three) times his contribution in respect of each such stand owned by him for the second year following the expiry of the five year period, thereafter, contribute monthly 4 (four) times his contribution in respect of each stand owned by him in the third year following the expiry of the five year period and thereafter contribute monthly 5 (five) times his contribution in respect of each such stand owned by him in the fourth year following the lapse of the

five year period and which 5 (five) times contribution shall annually thereafter apply until building work commences and is finalised on his stand as per the Architectural Rules and Guidelines accepted by the directors from time to time as per Article 6.

5.7 Paragraph 6.6 of the plaintiff's memorandum of incorporation sets out that a member shall not be entitled to withhold payment for any reason whatsoever of any levy or special levy or contribution due by him to the plaintiff.

5.8 In terms of paragraph 6.7 of the plaintiff's memorandum of incorporation, interest shall be payable on arrear levies at such rate and at such intervals as may from time to time be determined by the directors of the plaintiff.

5.9 Paragraph 6.8 of the plaintiff's memorandum of incorporation sets out that any amount due to it by a member by way of a levy, special levy, contribution or interest thereon shall be debt due by him to the plaintiff.

5.10 Paragraph 6.13 of the plaintiff's memorandum of incorporation sets out that a member shall be liable for and pay all legal costs, including costs as between attorney and his own client, and collection commission, expenses and all other charges incurred by the plaintiff in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such member to the plaintiff or in the event the plaintiff imposes its rules adopted from time to time by the directors.

6. The defendants became members of the plaintiff upon the transfer of erf 3[...] and then became bound by the memorandum of incorporation.
7. The defendant is a member of the plaintiff and is accordingly bound by the memorandum of incorporation.
8. The plaintiff has, through its directors, established a common levy fund, alternatively a levy fund, by estimating the anticipated income and expenditure of the plaintiff for the ensuing financial year and imposed the levies upon the members.
9. The plaintiff has imposed levies on the defendants in terms of its memorandum of incorporation and the defendants as at date of summons, were in arrears in the sum of R 1 849 749, 65. Since date of summons the defendants have fallen further in arrears with an additional R 2 107 960, 84 as at 1 July 2023. The total owing amount, as at 1 July 2023 is R 3 957 710, 49 schedule of the levies, with the dates thereof, is attached as annexure "B" hereto.
10. Accordingly the plaintiff claims from the defendant the amount of R 1 849 749, 65.
11. On or about 8 March 2019 the directors of the plaintiff resolved that the interest rate for arrear accounts would be 7.5% effective 15 February 2019. A copy of the resolution is attached hereto marked "C". on or about 31 May 2021 the directors of the plaintiff resolved that the interest rate for arrear accounts would be 3.5% above the prime rate, effective 1 June 2021. A copy of the resolution is attached hereto marked "D".

12. Notwithstanding receipt of duly monthly levy statements and receipt of demand, the defendant has failed, refused and/or neglected to pay such sum to the plaintiff.

Special pleas and plea

[4] The defendants delivered a special plea which reads as follows:

FIRST SPECIAL PLEA – PRESCRIPTION:

1. The period of prescription in respect of any other debt than debt provided for in Section 11(a),(b) and (c) of the Prescription Act 68 of 1969 is 3 years.
2. Section 12 on the other hand provides that prescription shall commence to run as soon as the debt is due.
3. In 2014 the defendant bought the stand with erf number 3[...] Peacanwood, Extension 11.
4. Based on the plaintiff's particulars of claim, the defendants owe the plaintiff an amount of R 1 849 749, 65. The debt arose a month after the failure by the defendants to settle the first monthly levy and/or contribution account. As such, prescription commenced to run in 2014 and ran for a period of three years.
5. The plaintiff failed to institute the action within three years of the prescription period, as required by the Prescription Act.
6. The plaintiff only instituted action in November 2020, which is more than three years after the debt arose and/or the debt became due.

Wherefore, the defendants pray that the plaintiff's claim be dismissed with costs.

SECOND SPECIAL PLEA – NON-COMPLIANCE WITH THE PROVISIONS OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT 9 OF 2011:

7. The first and second defendants plead that the plaintiff's cause of action is regulated by the Community Schemes Ombud Service Act 9 of 2011.
8. In terms of section 38 – 47 of the aforesaid Act, the Communities Schemes Ombud Services a statutorily body to resolve disputes pertaining to inter alia levies charged.
9. The dispute should have therefore first been referred to conciliation, and if it does not succeed, an adjudicator should adjudicate upon the dispute.
10. The plaintiff could have therefore not resorted to litigation, prior to complying with section 38 – 47 of Act 9 of 2011.

Wherefore the first and second defendants pray that the action be stayed, pending the plaintiff's compliance to Act 9 of 2011.

Submissions

by the parties

- [5] As I have stated earlier, the matter proceeded only on the special plea dealing with non-compliance with the Community Schemes Ombud Service Act 9 of 2011 (the act). The defendants submitted that they are not challenging the jurisdiction of this court, but that this court has concurrent jurisdiction with the Community Schemes Ombud Services. The defendants submitted that this court is clothed with a discretion to decide whether it wants to hear the matter or refer it to the said forum (Community Schemes Ombud Services). Further, that the defendants pay money into the coffers of the Community Schemes Ombud Services but are not utilising it in terms of adjudication of disputes, which should not be allowed.
- [6] The defendants submitted that this is a matter that should be dealt with in terms of section 39 of the act and that the adjudicator at the Community Schemes Ombud Services is better positioned to deal with the matter as it involves a debatement of an account. Further, that whoever approaches the Community Schemes Ombud Services and is not satisfied with the outcome can appeal to this court. The defendants therefore requested that the matter be stayed pending referral to the Community Schemes Ombud Services. The defendants referred at length to the case of Heathrow Property Holdings No 33 CC and others v Manhattan Place Body Corporate and Others 2022 (1) SA 211 (WCC) [The Heathrow Property case) and the case of Wingate Body Corporate v Pamba and Another (33185/2021) [2022] ZAGPPHC 46 (21

January 2022) [The Wingate Property case].

- [7] The plaintiff objected to the matter being referred to the Community Schemes Ombud Services on the basis that there is no real dispute between the parties. The plaintiff referred to the case of PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Ltd 2009 (4) SA 68 (SCA), that failure to pay does not imply that there is a real dispute. Therefore, it would not be proper to follow alternative dispute resolution mechanism like arbitration. The plaintiff submitted that the defendants do not plead that the amounts should not have been levied or that the committee was not properly constituted.

The authorities and reasons for judgment

- [8] Chapter 3 (Sections 38 to 48) of the act deals with applications which involves, amongst others, prayers for relief, rejection of applications, notice to affected persons, conciliation and referral to adjudicator. Chapter 4 (Sections 49 to 51) of the act deals with investigations and legal representation, whilst chapter 5 (Sections 53 to 57) deals with adjudicator's orders. I agree with the defendants that the act does not contain any provision that the Ombud has the sole and exclusive jurisdiction in matters of this nature. There is no ouster of the courts on this matter. The High Court as well as the Magistrates' Courts retain concurrent jurisdiction with the Community Schemes Ombud Services on matters falling within

the act, depending on other jurisdictional requirements.

- [9] The Supreme Court of Appeal has indicated that, except where an act of parliament contains an ouster of the jurisdiction of the High Court, the High Court retains and has to hear matters falling within its jurisdiction, in which it has concurrent jurisdiction with the Magistrates' Court or any other forum. A distinction should be made on the issue of (a) – concurrent jurisdiction between or enjoyed by two tribunals or forums and (b) – concurrent jurisdiction between or enjoyed by a Tribunal and the High Court.
- [10] The High Court can order that a matter be heard at the Magistrates' Court or a specific forum if the circumstances of a specific case so warrant. Each case has to be decided on its own merits. The High Court cannot refuse to hear a case because of workload or lack of resources. However, a party approaching a High Court in a matter where it should have approached another forum, given the circumstances of that case, bears the risk of being punished with a cost order despite its success. See: *Standard Bank of SA Ltd and Others v Thobejane and Others*; *Standard Bank of SA Ltd v Gqirana N O and Another* 2021 (6) SA 403 (SCA).
- [11] Therefore, plaintiffs, when choosing which court to approach, in instances where the High Court enjoys concurrent

jurisdiction with the Magistrates' Court or any other forum like the CSOS, should be careful not to abuse that right, or they might be faced with an adverse cost order. This approach was stated in the case of *Standard Bank of SA Ltd and Others v Thobejane and Others*; *Standard Bank of SA Ltd v Gqirana N O and Another* 2021 (6) SA 403 (SCA) [The *Standard Bank v Thobejane/Gqirana* case] as follows:

- [25] Self-evidently, litigation begins by a plaintiff initiating a claim. Axiomatically, it must be the plaintiff who chooses a court of competent jurisdiction in just the same way that a game of cricket begin by a ball being bowled. The batsman cannot begin. This elementary fact is recognised as a rule of the common law, founded, as it is, on common sense.

...

- [27] It is also law of long standing that when a High Court has a matter before it that could have been brought in a Magistrates' Court, it has no power to refuse to hear the matter. In *Goldberg v Goldberg*, the point was taken that as a Magistrates' Court had jurisdiction (in respect of contempt proceedings concerning the non-payment of maintenance) the Supreme Court should refuse to hear the matter. After referring to a statutory provision that was unique to Natal at the time, that allowed for the transfer of cases where there was concurrent jurisdiction, Schreiner J held:

“But apart from such cases and apart from the exercise of the Court’s inherent jurisdiction to refuse to entertain proceedings which amount to abuse of its process (and that, in my opinion, is not the case here) I think that there is no power to refuse to hear a matter which is within the Court’s jurisdiction. The discretion which the Court has in regard to costs provides a powerful deterrent against the bringing

of proceedings in the Supreme Court which might more conveniently have been brought in the Magistrates' Court. Not only may a successful applicant be awarded only Magistrates' Court costs but he may even be deprived of his costs and be ordered to pay any additional costs incurred by the respondent by reason of the case having been brought to the Supreme Court. In all normal cases these powers should suffice to protect the respondent against the hardship of being subjected to bring unnecessarily expensive proceedings."

- [42] The Gauteng Court's finding that a court may refuse to hear matters in order to reduce its workload is also wrong.
- [12] The paragraphs clearly addressing the issues in casu are best captured at paragraphs 46 to 50 of the *Standard Bank of South Africa v Thobejane/Gqirana* case supra which held as follows:
- [46] In *Bester*, Van der Walt J said that while it would be 'unwise to endeavour to formulate an all-encompassing definition of "abuse of process", because that would encroach upon the exercise of the discretion of a court', an abuse of process could be said, in general terms, to occur when a court process 'is used by a litigant for a purpose for which it was not intended or designed, to the prejudice or potential prejudice of the other party to the proceedings'. Interestingly, the reasons given by the bank in that case for instituting proceedings in the Supreme Court are essentially similar to the reasons given in the two cases with which this appeal is concerned; and Van der Walt J held that those reasons did not constitute an abuse of process.
- [47] *Bester's* definition was endorsed by Mahomed CJ in *Beinash v Wixley*, who said:
- 'What does constitute an abuse of the process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of "abuse of process". It can be said in general terms, however, that an abuse of process takes place where procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.'
- [48] There was no evidence before the court to even suggest that by instituting proceedings in the High Court the banks were using a procedure for an extraneous or improper purpose. Indeed, the banks gave a full explanation of why they follow this procedure. Their reasons include the saving of time and money as a result of a greater efficiency in disposing of these matters in the High Court as opposed the Magistrates' Court; the saving of costs through the centralisation of litigation; and the benefit of judges, rather than magistrates, overseeing bond which, they say, is an inherently complex decision-making process. In cases falling within the monetary jurisdiction of the Magistrates' Court, the banks usually only seek a costs order on the Magistrates' Court scale. In any event, it is difficult to see how litigants can be accused of abusing process by exercising a choice that the law gives them.
- [49] Section 34 of the Constitution reads:

‘Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.’

For present purposes, the controversy is confined to access to a court. Care must be taken not to impose on s 34 work that it is not designed to perform. Its role is that of a grundnorm and does not implicate the peculiar organisation of a litigation system in which respect for this value must exist. The guarantee is solely that there must be a forum with competence to address any and every dispute about a legal right and it must be presided over by persons who can render a fair process.

[50] It is the task of statute law, in this case, the SC Act and the Magistrates’ Court Act, to establish a system that is consistent with the guarantee. Nothing in either statute contradicts the provisions of s 34. Therefore, the invocation of s 34 as a basis for an interpretation of national legislation (or the common law) to conclude that one of the two courts with concurrent jurisdiction ought to be preferred over the other is misconceived. Where the statute offers alternative fora, it is a matter of sheer practicality that the initiating party may choose one or the other.

[51] The irony that lies within the notion that, in a democratic society, a litigant is denied access to a High Court of competent jurisdiction in the absence of an express ouster ought not to be overlooked; and as rightly argued on behalf of the banks, no analysis as contemplated by s 36 of the Constitution took place in this regard. Accordingly, the policy choice favoured by the Court a quo, cannot be founded on the provisions of s 34 because the objective of the section is realised regardless of which court hears the matter.

[13] In casu, the defendants’ main argument for requesting referral to the Community Schemes Ombud Services is that the matter involves a debatement of an account and that the adjudicator in the Community Schemes Ombud Services is better positioned than a judge to

deal with the matter, as adjudicators deal with these matters frequently. My understanding of the defendants’ argument is

that it is convenient for the matter to be heard by the Community Schemes Ombud Services. I find this argument misplaced and without

basis. I do not see how a quasi-judicial officer, except in specialised fora, can be better positioned than a Judge of the High

Court, more so since the defendants argue that any party aggrieved by the findings of the adjudicator at the Community Schemes Ombud Services still have an opportunity to approach this court for relief.

- [14] Further to the above, convenience should not be an issue as our law does not recognise the principle of forum non conveniens. See: Agri Wire (Pty) Ltd and Another v Commissioner of the Competition Commission and Others 2013 (5) SA 484 (SCA) [The Agri Wire case] at paragraph 19 thereof, which reads as follows:
- [19] The argument that the high court's jurisdiction was excluded in favour of an exclusive jurisdiction conferred on the Tribunal under the Act was therefore incorrect. Counsel then submitted that nonetheless the high court should defer to the Tribunal and allow the challenge to be dealt with by that body. For this they relied upon two passages in the judgment of this court in Competition Commission of South Africa v Telkom SA Ltd and Another. The first, in which it was observed that the legislature had established the competition authorities as the primary regulator in competition matters, is disposed of quiet easily. The court there dealt with the concurrent jurisdiction of different regulatory agencies and not with concurrent jurisdiction between the Tribunal and the high court. The second merely indicates that, where the legislature has created specialist structures to resolve particular disputes effectively and speedily, it is best to use those structures. The court went on to hold, on the facts of that case, that the court before which the review proceedings were brought should have exercised its discretion to decline to grant relief by way of review and left the issues in the case to be dealt with by the Tribunal in the course of the referral. That is a different matter from the court declining to exercise the jurisdiction with which it is vested by law. Save in admiralty matters, our law does not recognise the doctrine of forum non conveniens, and our courts are not entitled to decline to hear cases properly brought before them in the exercise of their jurisdiction.
- [15] I am of the view the Wingate case cited by the defendants is distinguishable, because nothing in the Community Schemes Ombud Services act provides that disputes arising are the sole prerogative of the adjudicator appointed in terms of the said act. There is not even an implied ouster of jurisdiction of the High Court. The act does not provide for the aggrieved party to first exhaust the provisions of the Community Schemes Ombud Services before approaching a court. An example of a statute containing an ouster of jurisdiction of the High Court is Section 31 (1) of the Skills Development Act 97 of 1998, which reads as follows:
- "Subject to the jurisdiction of the Labour Appeal Court and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act."*
- [16] The Heathrow Property case referred to the Standard Bank v Thobejane case (Gauteng Division) and the Standard Bank v Gqirana case (Eastern Cape Division), and further stated that there was no Supreme Court of Appeal case on this subject. Perhaps this is because the Heathrow Property case was delivered on the 1st June 2021, whereas the Standard Bank v Thobejane/Gqirana SCA case was delivered on the 25th June 2021. However, the Agri Wire case was already in place as it was delivered on the 27th September 2012.

- [17] The Heathrow Property case, at paragraphs 52 to 59, seems to have approached the matter on the basis that it would be cost effective to approach the Community Schemes Ombud Services and that the adjudicator is better positioned as they can investigate the matter and call for affidavits or documents from the parties and also has powers which a court does not have. I disagree with this approach because the act is clear that in proceedings before an adjudicator, legal representation is not automatically required. See section 52 of the act. Hence the adjudicator has to do that which is in courts done by the legal representatives of the parties.
- [18] At the High Court, the parties' legal representatives have a duty to ensure that the pleadings set out precisely and concisely their cases (the claim and defence). The parties have the advantage of further particulars, discovery processes and pre-trial conference where all issues are ascertained and narrowed before the hearing of the matter. At the hearing of the matter, the court has the benefit of evidence led by specialist legal practitioners which will cover the legal as well as factual issues to enable the court to make a finding. Therefore, the criticism that Judges or the High Court is in a less advantageous position than an adjudicator is without merit.
- [19] The above-mentioned should not be construed as if it is to say that the High Court should be approached on all aspects relating to the Community Schemes Ombud Services act. In some instances, the adjudicator or the ombud would be the primary point of contact, but that should be determined on a case by case basis. Therefore, given the principles enunciated in the Standard Bank v Thobejane/Gqirana case and the Agri Wire cases referred to above, I find that the act does not oust the jurisdiction of the High Court. It remains the discretion of the court, given the circumstances of any case, to decide whether to hear the matter or refer same to the Community Schemes Ombud Services. This Court retains concurrent jurisdiction with the Community Schemes Ombud Services.
- [20] Having dealt with the circumstances of this case at paragraphs, I find no exceptional circumstances that warrant referral of the matter to the Community Schemes Ombud Services, more so, since the claim is for payment of money (arrear levies). The parties have already discovered and have held two pre-trial conferences.
- [21] In so far as costs are concerned, it remains in the discretion of the court. I find that at this stage it would be premature to make a costs order, given the established principles as stated in the above-mentioned cases. In matters of this nature, should the trial court find that the plaintiff should have gone to the tribunal, the plaintiff, despite its success, might be ordered to pay the costs or any other appropriate costs order can be made. I am further mindful of the fact that the defendants have raised a special plea of prescription, which is tied to the merits of the case itself and I do not know how much success, if any, will the defendants achieve in that respect or in the main action itself. This is for the trial court to decide. In my view, costs should be costs in the cause.

Order

[22] Therefore, the following order is made:

J. T. MAODI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

FOR THE PLAINTIFF: ADV. L KOTZE

Instructed by:

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