

SOUTH AFRICA / JUDGMENT

Confident Concept (Pty) Limited v Member of the Mayoral Committee: Development Planning - City of Johannesburg and Others (617/2018) [2022] ZAGPJHC 982 (13 December 2022)

[2022] ZAGPJHC 982**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Adams

CASE / FILE NUMBER

617/2018

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REPUBLIC OF SOUTH
AFRICA
IN THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION,
JOHANNESBURG
CASE

NO: 617/2018**DATE:** 13th
december 2022**REPORTABLE:** NO
OF
INTEREST TO OTHER JUDGES: NO**REVISED:**

In the matter between: CONFIDENT
CONCEPT (PTY)
LIMITED
Applicant
and
MEMBER OF THE MAYORAL

COMMITTEE:	DEVELOPMENT PLANNING – CITY OF JOHANNESBURG First Respondent CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Second Respondent LEWISON, MARTIN Third Respondent LEWISON, SYLVIA Fourth Respondent THE SAXONWOLD & PARKWOOD RESIDENTS’ ASSOCIATION Fifth Respondent
Coram:	Adams J
Heard:	2 August 2022
Delivered:	13 December 2022 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 13 December 2022.
Summary:	Judicial review – Johannesburg Town Planning Scheme – application for the rezoning of a residential property – approved by Municipal Planning Tribunal – appeal against the approval upheld by the City Appeal Authority (the MMC – Municipal Planning) – that decision taken on judicial review in terms section 6(2) of PAJA – Incompetent for the Appeal Authority to have decided issues not before it – decision on appeal therefore invalid – administrative decision also cannot ignore previous administrative decision, which is still extant – <i>Oudekraal Estates v City of Cape and Others</i> – Decision also challenged on the basis inter alia of failure of the decision-maker to take into consideration relevant factors, as well as on the basis of unreasonableness and irrationality – Upholding of appeal reviewed and set aside – in terms of

s 8(1)(c)(ii)(aa) of PAJA decision
of decision-maker substituted with court decision –
ORDER

(1)

The decision of the first respondent dated
22 August 2017 ('the decision'), which decision reads as follows: -

'(1)

That the appeal be upheld.

(2)

That the owner of the Remainder of Erf 297
Saxonwold be directed to submit amended / deviation building plans to
the City as per
Regulation A25 of the National Building Regulations,
within 30 days from date of receipt of this notification, that
reflect a building
which is in accordance with 40% coverage
applicable to the said Erf.

(3)

The plans envisaged in 2 above shall also
show how the 2nd
and 3rd
storey balconies will be screened off, therefore limiting any
over-looking into Portion 1 of Erf 297 Saxonwold',
be and is hereby reviewed
and set aside in its entirety.

(2)

The appeal by the third, fourth and fifth
respondents against the granting of the applicant's rezoning
application and the
approval of same, is dismissed, and the approval
of the rezoning of Remaining Extent of Erf 297, Saxonwold Township,
by the Municipal
Planning Tribunal, is confirmed.

(3)

The first and second respondents, jointly
and severally, the one paying the other to be absolved, shall pay the
applicant's
costs of this review application, including the
costs consequent upon the employment of two Counsel (where so
employed).

JUDGMENT

Adams J:

[1]. The applicant ('Confident Concept') is the registered owner of Remaining Extent of Erf 297, Saxonwold Township, Gauteng Province, measuring 1 723 square meters in extent ('the applicant's property'), which was registered into its name on 5 February 2007. The third and fourth respondents ('the Lewisons') are the joint owners of the adjoining property, being Portion 1 of Erf 297, Saxonwold Township. The subdivision of Erf 297 during 1994 resulted in the creation of the two aforementioned adjacent properties, with somewhat unconventional and rather irregular topography and shape. This meant that, because of the unusual shape of the applicant's property, any dwelling that was to be erected thereon was to be located on a triangular portion of the property. During or about 2010, a new residence was erected by the applicant on its property pursuant to and in terms of a Site Development Plan ('SDP') and Building Plans, duly

approved by the second respondent ('the City of Johannesburg' or simply 'the City') on 23 February 2009 and 12 June 2009 respectively.

[2]. On the 18th of August 2010, the Lewisons addressed to Confident Concept a written complaint that the buildings on the applicant's property covered a larger square meterage than permitted by the Johannesburg Town Planning Regulations. In response inter alia to this complaint, Confident Concept submitted – according to them, *ex abundanti cautela* – a rezoning application to the City for the amendment of the Town Planning Scheme inter alia to provide for the actual coverage of its dwelling as built, inclusive of balconies. On 30 September 2016, the Municipal Planning Tribunal resolved to approve and in fact approved the rezoning application, as recommended by the Development Management Department.

[3]. However, on 22 August 2017, the first respondent ('the MMC – Development Planning' or simply 'the MMC') – as the internal Appeal Authority – upheld an appeal by the Lewisons and the fifth respondent ('the Residents' Association') of the decision to approve the rezoning application. In upholding the appeal ('the impugned decision'), the MMC directed the applicant to submit amended / deviation building

plans to the City, within thirty days, that reflect a building which accords with the maximum 40% coverage requirement applicable to the said Erf. Additionally, it was directed that the amended / deviation plans were to show how the second and third storey balconies would be screened off in order to limit any over-looking into the adjacent property of the Lewisons. It is this decision by the MMC to uphold the appeal which is the subject of the judicial review application by Confident Concept, which came before me as a Special Motion on 3 August 2022.

[4]. The core issues to be addressed in this review application are simply whether the City of Johannesburg, through its MMC, lawfully and validly upheld the appeals and whether the Directions issued by it were validly issued. Put another way, the question is whether the impugned decision stands to be reviewed and set aside on any of the grounds of review provided for in the Promotion of Administrative Justice Act[1] ('PAJA'). The third, fourth and fifth respondents do not oppose the application.

[5]. The foregoing issues are to be decided against the factual backdrop in the matter, with the facts, as summarised in the paragraphs which follow, being by and large common cause.

[6]. As already indicated, an SDP and building plans relating to the new dwelling and the outbuildings on the applicant's property were approved by the Building Control Department of the City during 2009.

According to the initial SDP, the ground floor of the three storey residential building structure (including the staff quarters) was to measure 674.67 m² in extent, therefore 39.15% of the total extent of the erf. As for the first and second floors, the dimensions were 635.70 m² and 635.70 m², therefore well within the allowable maximum coverage of 40% of the square meterage of the property, namely 689.20 m². The approved SDP and the Building Plans were at no stage, since being so approved by the City, taken on review nor set aside on review. The approval of the plans is therefore extant, remain in place and is in full force and effect. It bears emphasising that the applicant's SDP and building plans do not show coverage – also in respect of the first floor and the second floor of the three-storey building – which is at variance with the maximum coverage permitted in terms of the Town Planning Scheme applicable at the time. The approval of these plans by the City was accordingly lawful.

[7]. During or about 2010, after completion of the building of the new dwelling and the outbuildings on its property, Confident Concept applied to the City for a rezoning of the property with a view to regularising, insofar as may be necessary, the total surface of the property covered by the improvements thereon, including the balconies, which overhang by a meter or so. The applicant's rezoning application was approved by the City's Municipal Planning Tribunal ('MPT'), but on 22 August 2017 the decision to approve the rezoning application was overturned on appeal by the MMC, sitting as the internal Appeal Authority of the City. As emphasised by Confident Concept, the building and deviation plans, which were originally submitted and approved by the City were not the subject matter of the appeals by the Lewisons and the Residents' Association and therefore could not and did not form part of the impugned decision.

[8]. The Property is zoned 'Residential 1' and is located in 'Height Zone 0' in terms of clause 47 and Table 'K' of the Johannesburg Town Planning Scheme, 1979 ('the Town Planning Scheme').

This means that the maximum permissible coverage of the three storey dwelling is 40% of the area of the Erf. It is so that the dwelling shown on the Site Development Plan relating to the new residence erected on the applicant's property falls within the 40% coverage parameter. It may be apposite at this juncture to cite in full the provisions of clause 47 of the Town Planning Scheme, which reads in the relevant part as follows; -

'47. Coverage

- (1) No building shall be erected so as to cover a greater proportion of its erf or site than is permitted in terms of sub-clause (2).
- (2) The maximum permissible coverage of erven or sites in the various Height Zones is as indicated in Table K or in the schedule or in the annexures in Part IX, Table K; See pages 63 and 64.
- (3) (Deleted).
- (4)
- (a) The provisions of sub-clause (2) shall apply to every storey in a building, including any basement store;
- (b)
- (5) For the purposes of the foregoing provisions of this clause no account shall be taken -
 - (a) of an area not exceeding 20% of an erf or site in Height Zones 0 and 5 to 8 upon which a residential building or dwelling units, but excluding a dwelling house, has been erected where such area is used

for private garages and accommodation for domestic servants: Provided that this provision shall not be applicable to any erf or site in Use Zones II and III;

- (b) of the area covered by an open verandah or balcony in a dwelling house, a building containing two or more dwelling units, a residential building or institution: Provided that such verandahs and balconies may be enclosed if such area does not exceed 3% of an erf or Site;
- (c)'

[9]. Coming back to the facts in casu, it is not disputed that the coverage dimensions referred to in the original SDP and the Building Plans, relating to the applicant's property, did not include the balconies, which are not enclosed. They were accordingly lawfully excluded in terms of clause 47(5)(b) of the Town Planning Scheme. This much was admitted and accepted by the MMC and the City.

[10]. Notwithstanding the fact that the SDP and the Building Plan were compliant with clause 47(1) and (2) of the Town Planning Scheme (supra), Confident Concept, on the advice of its legal and other advisers, decided to nevertheless submit the rezoning application, which, in my view

and having regard to what is said above relating to the compliance with the applicable coverage requirement, was totally unnecessary. On 1 September 2015, the aforesaid rezoning application was submitted to the City of Johannesburg, and the Lewisons and the Residents' Association objected to the application, which objection, as indicated earlier, was upheld.

[11]. That decision (the impugned decision) was clearly wrong if, for no other reason, the fact that it was based on the wrong assumption that the buildings on the property did not comply with the provision of clause 47 of the Town Planning Scheme. For this reason alone, the said decision stands to be reviewed and set aside. There are additional reasons why the decisions should be set aside and those are set out in the paragraphs which follow.

[12]. From the Rule 53 Review Record it is clear that the rezoning application, which was submitted to the City's Municipal Planning Tribunal on 27 July 2016, was supported by and in fact approved by the Development Management Department. The report of the said Department stated that the proposed rezoning to permit the increase in coverage on the site, would be desirable and would make good sense from a town planning point of view and would maximise the potential of the site from a residential point of view.

[13]. The report further stated as follows: -

'It Is the Department's view that the proposed rezoning application be supported.'

[14]. This report by the Municipal Planning Tribunal and its approval of the rezoning application followed on an inspection of the property by its members and only after hearing the parties and taking submissions from them. This decision therefore appears to have been well motivated and based on sound rational grounds. So, for example, in their reasons for approving the rezoning application, the Municipal Planning Tribunal inter alia stated that the increase in coverage to the proposed 50% did not infringe on any standard building lines, nor amplify the possibility of overlooking experienced by any of the neighbouring properties. The MPT was therefore of the view that the issue of coverage would not have any impact on the risk of overlooking into the property of the Lewisons. There can be little doubt that the decision of the MPT was well-reasoned.

[15]. Not so, the impugned decision by the Appeal Tribunal (the MMC) in terms of which the approval by the MPT of the rezoning application, was overturned. What is more is that the Appeal Tribunal was only requested to consider and review the decision relating to the rezoning application. Neither the Lewisons nor the Residents' Association required any other specific relief.

[16]. The reasons given by the MMC on 9 October 2017 for upholding the appeal, were that an increase of the coverage from 40% to 50% on the applicant's property would adversely affect the adjoining properties, in addition to setting an 'adverse precedent' in the area of Saxonwold.

[17]. The MMC, in coming to his conclusion on the appeal, also had before him or at least ought to have had before him three reports, which would have assisted in a decision which is rational. The first report was by Mr David Mathinye, a Senior Town Planner at the Development

Management Department, which report dealt expressly with the consideration of the appeal submitted by the Lewisons and the Residents' Association, and concluded that the decision of the Municipal Planning Tribunal to approve the rezoning application was correct. The report also recommended that the appeals be 'turned down or refused'. This report was apparently completely ignored by the MMC seemingly for no lawful reason.

[18]. The second report gave a chronology and confirmed the approval of the Site Development Plan and the Building Plans, and that the plans have never been set aside. The Chronology report recommended that the appeals be upheld. There is no indication who the author of this entry / chronology is and no indication is provided relative to the facts on which such a recommendation was made.

[19]. The third report was prepared for the MMC by the Group Head: Legal & Contracts – Development Planning Department and was authored by one Mr Nortje long after the Mathinye report. The said report recommended inter alia that both the appeals be upheld and, so it was submitted on behalf of Confident Concept, was slavishly adopted by the MMC.

[20]. The very first point that needs to be made about the impugned decision is that a portion thereof was made notwithstanding the fact that the Appeal Authority was not asked to decide those issues. And that relates to the resubmission of the Building Plans, which, in any event, is of no practical consequence. Even if the plans were resubmitted, and reconsidered, the original decision that the plans were approved, in terms of which the dwelling was built, remains of full force and effect. No attempt has been made in the past twelve years to have those administrative decisions set aside. In that regard, *Oudekraal Estates v City of Cape and Others*[2] finds application.

[21]. The point is simply that the MMC, in the appeal process, could not and should not have made an order that overrides a previous and wholly separate administrative decision, but without such decision being reviewed and set aside. What is more is that the type of relief granted by the Appeal Authority was not sought by the Lewisons and the Residents' Association. This is therefore another reason why the impugned decision should be set aside.

[22]. I now turn my attention to the other PAJA grounds of review on the basis of which, according to Confident Concept, the impugned decision should also be reviewed and set aside.

[23]. The first ground is in terms of s 6(2)(e)(iii), that being that relevant considerations were not taken into account by the MMC and that relevant considerations were not considered. In other words, the failure of the decision-maker to take into consideration relevant factors, which, by itself, constitutes a ground of review. In that regard, see: *National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others*[3].

[24]. In his written Heads of Argument, Mr Daniels SC, who appeared on behalf of Confident Concept with Ms Kohler, submitted that the written reasons given by the MMC for the impugned decision, indicate that he took into account irrelevant information in reaching the decision and failed to consider other relevant considerations. I agree. The MMC had regard to the unusual

shape of the application site as well as the size of the site which is relatively small in comparison with most of the erven in the rest of Saxonwold. He concluded from this that an increase of the maximum coverage on the property from 40% to 50% would have an unacceptable adverse effect on the adjoining properties and that an adverse precedent in the area of Saxonwold would be set. How this conclusion follows, is a complete mystery. The reasons do not begin to explain how an increase in coverage would have an unacceptable adverse effect on adjoining properties. The only potential impact which had to be considered was the Issue of overlooking. However, this would only be an issue in respect of the third floor balcony, but, as rightly pointed out by

Confident Concept, that issue had already been addressed by the erection of a screen, which would prevent overlooking. The MMC also ignored the clear evidence that there would be no overlooking of the Lewison properly.

[25]. Even more telling is the fact that the statement that the size of the property is relatively small as compared to other erven in Saxonwold is totally irrelevant. The development capacity of erven in Johannesburg is determined by their floor ratio, height and coverage as prescribed in the Town Planning Scheme, and not by their sizes as compared to the sizes of other properties in the area.

[26]. The MMC failed to elaborate on the manner in which the increase in coverage would set an adverse precedent. More importantly, the rezoning application had no bearing on the validity of the original approval of the building plans, yet the MMC's decision directs Confident Concept to submit amended building plans, which supports an inference that he consistently failed to appreciate that the building plans were approved as far back as 2009, which, in turn, means, as submitted on behalf of the applicant, that he did not consider this relevant fact in reaching his conclusion.

[27]. Furthermore, in his written reasons, the MMC refers to s 19 of the Town Planning and Townships Ordinance, 15 of 1986 ('the Ordinance') and states that the rezoning application 'should promote the coordinated and harmonious development of an area to which the application relates, i.e. Saxonwold, which should effectively promote the health, safety, good order, amenity, convenience and general welfare of such an area'. How this reason fits into the rezoning application, is difficult to understand. There is no indication in the reasoning of the MMC that the principles in s 19 of the Ordinance were applied. In any event, it neglects to consider and to have regard to the applicant's submissions and all the evidence placed before the MMC, such as the Municipal Planning Tribunal's report and its recommendation.

[28]. For these reasons, I find myself in agreement with the contention on behalf of Confident Concept that the MMC took irrelevant information into account and rather turned a blind eye to the relevant information. If he had regard to the relevant information, such as the Mathinye report, it would have led him to a decision to dismiss the appeals.

[29]. The second PAJA ground on which, according to Confident Concept, the impugned decision should be reviewed is that the decision was not rationally connected to the information before the MMC. This review ground requires in essence that a decision must be supported by evidence

and information before the administrator, as well as the reasons given for it. The question to be asked is simply this: is there a rational objective basis justifying the connection made by the administrative decision-maker between the material made available and the conclusion arrived at? (*Trinity Broadcasting (Ciskei) v independent Communications Authority of South Africa*[4]).

[30]. From the Rule 53 Review Record, it is clear that, when he was deciding the rezoning application appeal, the MMC had before him the three reports referred to supra. The Nortje report was clearly requisitioned by the MMC for the sole purpose of countering the recommendations that were made when the rezoning application was first approved by the MPT – in particular the opinion expressed by the Mathinye report. The Nortje report makes a general reference to s 19 of the Ordinance, but, as already alluded to above, there is no correlation between what the said section envisages and the conclusion reached by the MMC. By all accounts, the Mayor, who is the one who appears to have made the final decision on the appeal, did not read the record of the appeal nor did he inspect the property. This then means that there was no information before the Mayor, and by extension, before the MMC, on which he arrived at his decision that the appeals should be upheld.

[31]. Moreover, in accepting the Mayor's directive, the MMC disregarded the rezoning application and the facts and information that served before him. Therefore, there is no rational link between the information before the MMC and the decision he ultimately took. The impugned decision accordingly stands to be reviewed on this ground as well and stands to be set aside.

[32]. The third ground of review, as per s 6(2)(e)(vi) of PAJA, is that the impugned decision was taken arbitrarily and capriciously. A decision is found to be arbitrary and capricious when it is irrational, senseless, without foundation or apparent purpose, in other words that the decision-maker failed to apply his mind to the matter.

[33]. It is common cause that the Mayor intervened in the decision-making process, without having had regard to the relevant information in the matter. He had clearly had a particular outcome in mind, and was resolute that that outcome should be achieved. The directive from the Mayor and the resultant decision, which were not based on any fact or evidence relating to the actual rezoning application, was, as submitted on behalf of Confident Concept, servilely accepted by the MMC without having regard to the facts and the information that served before him.

[34]. In the premises, the ineluctable inference to be drawn is that the MMC, in making the impugned decision, failed to apply his mind to the rezoning application, which is another ground on which the review and setting aside of the said decision can be based.

[35]. The fourth ground on which the decision should be set aside, as per the submissions on behalf of the applicant, is in terms of s 6(2)(a)(iii) of PAJA in terms of which an administrative action taken by an administrator who was biased or reasonably suspected of being bias, susceptible to review.

[36]. The Constitutional Court in the matter of *Turnbull-Jackson v Hibiscus Coast Municipality and Others*[5] held as follows:

Whether an administrator was biased is a question of fact. On the other hand, a reasonable suspicion of bias is tested against the perception of a reasonable, objective and informed person. To substantiate, borrowing from *S v Roberts*:

- (a) There must be a suspicion that the administrator might – not would – be biased.
- (b) The suspicion must be that of a reasonable person in the position of the person affected.
- (c) The suspicion must be based on reasonable grounds.
- (d) The suspicion must be one which the reasonable person would – not might – have.’

[37]. In this regard, it is submitted on behalf of Confident Concept that, given the non-existent link between the evidence and the facts before the MMC, and his decision and the reasons therefore, the irresistible inference is that the Mayor and, in turn the MMC, were biased towards them. I agree with this submission. There is at the very least a reasonable suspicion that they were biased in reaching the decision. There is no other conceivable reason why the impugned decision was taken.

[38]. For all of the foregoing reasons, I am of the view that, as contended by Confident Concept, the impugned decision stands to be reviewed and set aside.

[39]. The only question that remains is what form the relief to be granted should take. In its notice of motion, the applicant sought an order that the decision of the MMC be reviewed and set aside, but did not request the Court to substitute its decision for that of the MMC. However, during the hearing of the application on 3 August 2022, Mr Daniels submitted that there may very well be exceptional circumstances in this matter, which would justify the Court to substitute the impugned decision with its own. A draft order to that effect was presented by the applicants amongst the documents on CaseLines.

[23]. The applicant submits that exceptional circumstances exist which would entitle this Court, in terms of s 8(1)(c)(ii)(aa) of PAJA, to substitute its own decision for that of the City. Section 8(1)(c)(ii)(aa) reads as follows:

‘8 Remedies in proceedings for judicial review

- (1) The court or tribunal, in proceedings for judicial review in terms of section 6 (1), may grant any order that is just and equitable, including orders-
 - (a) setting aside the administrative action and-
 - (ii) in exceptional cases-
 - (aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or ...’

[24]. I find myself in agreement with the submissions on behalf of the applicant that there are indeed special circumstances in this matter which entitles me to grant a ‘substitution order’. I am of the view that I have before me all of the necessary information which would equip me to make

the decision which the first and the second respondents were required to make in terms of the By-Law. There are before me reports by experts on behalf of both parties. In the papers in the opposed application all of the issues in dispute have been thoroughly and extensively ventilated. Moreover, this matter has had a long and a tedious history, going back as far as 2009, when the SDP and the Building Plans relating to the improvements effected on the applicant's property, were approved.

[25]. What is more is that, as already indicated above, the impugned decision was clearly wrong and invalid at a fundamental level in that it decided an issue which was not before the decision-maker, namely whether or not the Building Plans complied with the coverage requirements of the Town Planning Scheme. Even more telling is the fact that, in deciding that issue the MMC also misdirected himself on the facts. That, coupled with the fact that the decision is, in my view, unlawful, are exceptional circumstances as envisaged by s 8(1)(c)(ii)(aa),

[26]. I therefore intend granting an order dismissing the appeal which served before the MMC.

Costs

[27]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[6].

[28]. I can think of no reason to depart from that general rule and it follows that an order for costs should be granted against the first and second respondents in favour of the applicant. Mr Daniels urged me to grant punitive costs against the respondents on the scale as between attorney and client. I am not persuaded that, in the circumstances of this matter, a case has been made out for punitive costs.

Order

[29]. In the result, I make the following order:

‘(1) That the appeal be upheld.

(2) That the owner of the Remainder of Erf 297 Saxonwold be directed to submit amended / deviation building plans to the City as per Regulation A25 of the National Building Regulations, within 30 days from date of receipt of this notification, that reflect a building which is in accordance with 40% coverage applicable to the said Erf.

(3) The plans envisaged in 2 above shall also show how the 2nd and 3rd storey balconies will be screened off, therefore limiting any over-looking into Portion 1 of Erf 297 Saxonwold’.

L R ADAMS

Judge of the High Court

Gauteng Division, Johannesburg

HEARD ON:

2nd August 2022

JUDGMENT

DATE:

13th December 2022 – handed down electronically

FOR THE APPLICANT:

Adv Phillips Daniels SC, together with Adv Antonia Kohler

INSTRUCTED BY:

Kuilman Mundell & Arlow Attorneys, Randburg

FOR THE FIRST AND

SECOND RESPONDENTS:

Adv Shaun Mitchell

INSTRUCTED BY:

Mojela Hlazo Practice, Florida, Roodepoort

FOR THE THIRD, FOURTH

AND FIFTH RESPONDENTS: No appearance

INSTRUCTED BY:

No appearance

[1] The Promotion of Administrative Justice Act, Act 3 of 2000;

[2] Oudekraal Estates v City of Cape and Others 2004 (6) SA 222 (SCA);

[3] National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others 2020 (1) SA 1150 (CC) at para 107;

[4] Trinity Broadcasting (Ciskei) v independent Communications Authority of South Africa 2004 (3) SA 346 (SCA) at para 21;

[5] Turnbull-Jackson v Hibiscus Coast Municipality and Others 2014 (6) SA 592 (CC);

[6] Myers v Abramson, 1951(3) SA 438 (C) at 455;

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