

SOUTH AFRICA / JUDGMENT

Van Heerden v Van Niekerk N.O and Others (1231/2022) [2024] ZANCHC 89 (13 September 2024) [2024] ZANCHC 89

COURT

Northern Cape High Court, Kimberley

BEFORE

Stanton

CASE / FILE NUMBER

1231/2022

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IN THE HIGH COURT OF

SOUTH AFRICA

(NORTHERN CAPE

DIVISION, KIMBERLEY)

Case No: 1231/ 2022

Reportable:

YES/NO

Circulate

to Judges: YES/NO

Circulate

to Regional Magistrates: YES/NO

Circulate

to Magistrates:

In the matter between: -
JOHANN JONATHAN VAN
HEERDEN
APPLICANT
and
JACOBUS JOHANNES VAN
NIEKERK N.O.
FIRST RESPONDENT
JM
VAN NIEKERK N.O.
SECOND
RESPONDENT
ANDRIES
CHRISTOFFEL DU TOIT N.O.
THIRD
RESPONDENT
(In their official
capacities as trustees of the
Scheiding Trust (IT
181/2006)
RENOSTERBERG LOCAL
MUNICIPALITY
FOURTH RESPONDENT
MUNICIPAL PLANNING
TRIBUNAL OF
FIFTH
RESPONDENT
THE PIXLEY KA SEME
DISTRICT MUNICIPALITY
Neutral
citation: Van
Heerden v JJ van Niekerk N.O. and three Others
(Case number 1231/2022)

Heard:

02 August 2024

Delivered:

13 September 2024

Coram:

Stanton J
ORDER

1.

Condonation for the late filing of the first, second and third
respondents' answering
affidavit is granted;

2.

Condonation for the late filing of the applicant's replying
affidavit is granted;

3.

The application is postponed sine die,
pending the finalisation of the first, second and third respondents'
appeal in terms of section 51 of the Spatial Planning
Land Use

Management Act 16 of 2013;

4.

The fourth and the fifth respondents are directed to process and finalise the first, second and third respondents' appeal in terms of section 51 of the Spatial Planning Land Use Management Act 16 of 2013, the SPLUMA regulations, the Spatial Planning and Land Use Management By-laws, Northern Cape and the Renosterberg Local Municipality Land Use Scheme; and to provide affidavits pertaining to the progress of the appeal to the Office of the Registrar on a quarterly basis, the first affidavits to be filed on or before 13 December 2024 and thereafter until the finalisation of the appeal;

5.

A copy of this judgment and order shall be served on the fourth and the fifth respondents by the sheriff in terms of the Uniform Rules of Court; and

6.

No order as to costs is made.

JUDGMENT

STANTON J

Introduction:

-

[1] The applicant issued an application in which he seeks an order in the following terms: -

1.1 Declaring that the Municipal Planning Tribunal of the Pixley Ka Seme

District Municipality ("the Tribunal") had dismissed and rejected the second application dated 16 June 2016 and the third application dated 04 April 2020 lodged by the Scheiding Trust (IT 181/2005) ("the Trust") on 04 February 2021;

1.2 Declaring that the Trust's building plans dated 17 July 2008

had not been approved by the Renosterberg Local Municipality ("the Municipality") and/or the Pixley ka Seme District Municipality;

1.3 Declaring that the Trust's dwelling and other structures erected on Erf 3[...] V[...] Township, Northern Cape: -

1.3.1 Are unlawful and was constructed without any approved building plans;

1.3.2 Was constructed in contravention of the Township's Scheme Management Rules, the Title Deed of Erf 3[...] and the Municipal By-laws published ("the By-laws") in accordance with the Spatial Planning and Land Use Management Act 16 of 2013 as amended ("SPLUMA");

1.3.3 Encroaches upon the applicant's property situated at Erf 3[...]2, V[...] Township, Northern Cape and infringes on the building lines of Erf 3[...];

1.4 Ordering and directing the Trust and the trustees, within 90 days of this order, to: -

1.4.1 Demolish and/or destroy the dwelling and/or structures unlawfully erected on Erf 3[...];

1.4.2 In the alternative, to demolish the portion of the structures and/or dwelling encroaching on Erf 3[...]2;

1.4.3 Ensure that the destruction and/or demolition is done to such an extent that the structures and/or dwelling erected on Erf 3[...] is fully compliant with: -

1.4.3.1 The Scheme Regulations of the V[...] Township;

1.4.3.2 The By-laws;

1.4.3.3 SPLUMA and the SPLUMA regulations[1];

1.4.3.4 The National Building Regulations and Building Standard Act 103 of 1977 and its regulations;

1.5 In the event that the Trust and/or the trustees fail to demolish the structures encroaching onto Erf 3[...]2 within 90 days of the date of the order, the applicant is authorised to appoint a contractor to demolish such structures at the Trust and/or the trustees' costs; and

1.6 The Trust to pay the applicant's costs on an attorney and client scale.

[2] The Trust opposed the application and filed a condonation application in terms of Uniform Rule 27 on 25 August 2022, requesting condonation for the late filing of its answering affidavit. This condonation application is unopposed.

[3] On 19 October 2023 the applicant filed his replying affidavit. The Trust initially indicated that it would extend the same courtesy to the applicant and accede to the late filing of the replying affidavit, but withdrew this concession on 12 October 2022. A condonation application was thus filed on 20 October 2023, which application the Trust opposes.

[4] The Trust also oppose the application for declaratory and mandatory relief on the merits and raised a point in limine that the application is premature as the decision by the Tribunal, together with the condonation application for the late filing thereof, is pending.

[5] Neither the Municipality nor the Tribunal oppose the application.

Ad condonation application in respect of the replying affidavit: -

[6] The extension or abridging of time is governed by the provisions of Uniform Rule 27 that provides: -

‘(1) In the absence of an agreement between the parties, the court may upon application

on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

(2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.

(3) The court may, on good cause shown, condone any non-compliance with these rules.’

[7] It is trite that in the exercise of these powers a court is given a wide discretion, which must be exercised judicially on a consideration of the facts of each case.[2] The relevant circumstances must be assessed in a balanced fashion. The fact that the applicant is strong in certain respects and weak in others will be borne in mind in the evaluation of whether the standard of good cause has been achieved. Absence of prejudice has often been regarded as an element of good cause in the context of earlier legislation.

[8] Two principal requirements for the favourable exercise of the court’s discretion have crystallised: First, an applicant should file an affidavit satisfactorily explaining the delay. In this regard it has been held that an applicant must at least furnish an explanation of his default sufficiently full to enable the court to understand how it really came about, and to assess his conduct and motives. A full and reasonable explanation, which covers the whole period of delay must be given. The application must be bona fide and not made with the intention of delaying the opposite party’s claim. The second requirement is that the applicant should satisfy the court that his or her application is clearly not ill-founded.[3] In *Valor IT v Premier, North West Province and Others*, [4] Plasket JA said that ‘very weak prospects of success may not offset a full, complete and satisfactory explanation for a delay; while strong merits of success may excuse an inadequate explanation for the delay (to a point).’

[9] Furthermore, as stated in *Commissioner for Inland Revenue v Burger*, [5] an acceptable explanation should be provided not only in respect of the non-compliance, but also for the delay in seeking condonation.

[10] I now turn to the explanation proffered by the applicant for his default in filing the replying affidavit that was due by 08 September

2022. The applicant concedes that the replying affidavit was filed approximately 13 months out of time. The applicant's spouse, Mrs YS van Heerden, deposed to the founding and replying affidavits in support of the condonation and explains that the applicant has difficulty in scanning and printing documents as he was in Namibia. The Trust takes issue with this and submits that the two affidavits constitute hearsay evidence. The applicant, however, filed a confirmatory affidavit confirming the contents of the founding and replying affidavits. I am satisfied that the two affidavits do not constitute hearsay evidence and can be admitted into evidence.

[11] According to the applicant, the late filing of the replying affidavit is attributed to: -

11.1 The answering affidavit was served on the office of the applicant's attorney, Jacques Classen Incorporated ("JCI") on 25 August 2022 whereafter the applicant instructed JCI to employ counsel to prepare the replying affidavit. During the same period, the applicant had also instructed JCI to attend to an arbitration between the applicant and Total Namibia in respect of which arbitration proceedings the amount of R226 363,40, not disputed by Total Namibia, was paid into JCI's trust account for the applicant's benefit. The applicant instructed JCI to retain the funds on their trust account to ensure that there are sufficient funds available for the litigation in this matter. During November 2022 the applicant paid a further amount of R80 000,00 into JCI's trust account to cover legal expenses incurred. The attorney who attended to the applicant's matters at JCI, however, resigned and left the firm on 20 December 2022 whereafter a new attorney took over;

11.2 The applicant laboured under the incorrect impression that JCI was attending to the necessary because sufficient funds, in the applicant's view, were available to do so;

11.3 On or during 14 February 2023 the applicant attended to a telephonic discussion with his new attorney at JCI during which he provided the outstanding information to finalise the replying affidavit. He could not attend to same at an earlier stage as he was working in Namibia. After the consultation, the applicant assumed that the steps that needed to be taken had been complied with;

11.4 On or about 28 March 2023 the applicant received an "astronomical" account from JCI; and as a result a dispute pertaining to the legal fees ensued, which is evident from the email correspondence exchanged between the applicant and JCI during March and April 2023. The applicant refused to make payment. The new attorney who took over the applicant's files at JCI left the firm during March 2023. JCI instructed counsel to not proceed with any work on behalf of the applicant; and on 25 May 2023 JCI withdrew as his attorney of record in a related matter issued under case number 1522/2020. Needing assistance in the assessment of the way forward, the applicant contacted the Trust's attorney, Kramer Weihmann Inc. ("KWI")

and was informed that KWI will be able to assist the applicant as it no longer acted for the Trust. The applicant formally appointed KWI as his attorney of record on 22 June 2023;

11.5 On service of the notice of set down by the sheriff on 07 July 2023, the applicant instructed KWI to attend to the necessary work to ensure that the matter proceeds without delay as the applicant was under the impression that the replying affidavit had been filed. At the end of September 2023 KWI informed the applicant that the Trust's new attorney had taken issue with the fact that KWI came on record as the applicant's attorney as KWI previously acted for the Trust. On or about 20 September 2023 the applicant procured the services of his current attorney of record, Roodt and Co Attorneys Inc. ("Roodt"),

who advised him that requesting the file content from JCI would be futile in view of the ongoing dispute about fees;

11.6 On 03 October 2023 the applicant's attorney was able to consult with counsel who previously assisted the applicant. On the same day the applicant's attorney informed the Trust's attorney that the replying affidavit would be finalised and is intended to be filed on 13 October 2023. Unfortunately, the applicant's counsel had been briefed to appear in an urgent application and the replying affidavit was not filed on 13 October 2023. On 18 October 2023 Roodt addressed an email to the Trust's attorney explaining the delay in filing the replying affidavit; and also tendered the wasted costs for the removal of the application. The uncommissioned replying affidavit was served on 18 October 2023;

11.7 The Trust was not prejudiced by the late filing of the replying affidavit for the following reasons: -

11.7.1 The matter was postponed on 23 October 2023 with the applicant paying the wasted costs;

11.7.2 The Trust's allegation that the appeal to the Tribunal against its decision for the relaxation of the restrictive conditions is still pending; and

11.7.3 The Trust's point in limine that this application is premature.

[12] Mr JHF le Roux, on behalf of the applicant, added that the applicant has great success in the main application as the appeal against the Tribunal's decision is meritless as the Trust commenced and completed construction without approved building plans, with the result that the Trust's buildings encroach on the applicant's erf.

[13] The nub of the Trust's opposition to the condonation application is: -

13.1 The long period that had lapsed between 25 August 2022 and 19 October 2023, taking into consideration the fact that Mr W Pienaar, the same attorney employed by JCI, acted for the applicant at Roodt;

13.2 The applicant did not act with reasonable promptitude and also failed to explain why condonation was not sought earlier;

13.3 The chronology exposes that the applicant is not scrupulously accurate;

13.4 The applicant failed to disclose material email correspondence between in his and the Trust's attorneys;

13.5 No reasonable explanation has been advanced for not requesting a condonation during 2022 or thereafter; and

13.6 The applicant failed to provide a full and satisfactory explanation for the entire period of the delay.

[14] Mr N Snellenburg SC, on behalf of the Trust, emphasised that this Court should take note of the fact that the applicant, in response to the Trust's attorney's various enquiries as to when the replying affidavit would be filed, simply and continuously stated, without explanation or providing a date, that it would be filed 'in due course.'

[15] In addition he argued that the email of 19 December 2022 is telling. In this email the applicant advised that: -

"We are still awaiting the signed Replying Affidavit from our client as he is experiencing technical difficulties in Namibia sending same to our office. We will provide your office with the Replying Affidavit once same is received by our office."

[16] In support of his argument that the condonation application should be dismissed, Mr Snellenburg contended that this email unambiguously confirms that a replying affidavit had been drafted and sent to the applicant for signature in Namibia, long before the dispute over fees occurred; and that the only difficulty preventing the service and filing thereof is of a technical nature. According to his argument this email is significantly contradicted by Mr W Pienaar's email dated 20 September 2023, which states that "We will consult with Counsel on this matter next week and will in all probability file a Replying Affidavit in due course." He urged me to draw a negative inference to this discrepancy.

[17] Mr le Roux countered that this discrepancy is adequately clarified in reply where the applicant states that "Although counsel was ready to finalise the replying affidavit early in January 2023, due to a dispute between the Applicant and Jacques Classen Incorporated, counsel was instructed to halt work altogether." Moreover, he submitted that the applicant adequately explained, albeit in reply, that due to technical difficulties, consultation was problematic.

[18] I am prepared to condone the applicant's non-compliance to the Uniform Rules of Court for the following reasons: -

18.1 The Trust's argument that Roodt could merely proceed with the application as Mr Pienaar, now employed by Roodt, does not take cognisance of the fact that JCI had a retention right to the file, pending the resolution of the financial dispute;

18.2 The dispute between the applicant and JCI clearly resulted in the protracted delay;

18.3 On perusal of the court file, JCI did not withdraw as the applicant's attorney of record herein in terms of the Uniform Rules of Court;

18.4 In my view the condonation application is not mala fide as the applicant would not benefit by delaying the application;

18.5 The applicant provided at least a sufficiently full and reasonable explanation for delay, which covers the whole period;

18.6 The Trust initially indicated that it would not oppose the late filing of the replying affidavit;

18.7 The Trust received the replying affidavit well in advance of the hearing of the matter and no prejudice was caused in any way that cannot be compensated by a suitable cost order; and

18.8 The Trust's point in limine that the application is premature as a result of the pending appeal underscores that the Trust would not be prejudiced by the delay.

[19] I am not inclined to take the applicant's prospects of success into consideration as the appeal is still pending, but to my

mind the applicant, with reference to the rejection of the Trust's application by the Tribunal, at the very least, has demonstrated that this application is not ill-founded.

Factual background: -

[20] The core of the dispute between the parties pertains to the approval of building plans, which the applicant alleges contravenes the title deed restrictions. This matter has a protracted history, the litigation between the applicant and the Trust, as neighbours on erven 3[...] and 3[...]2 V[...], already commenced during January

2009. The dispute resulted in various applications to court, including a review application; and applications and appeals to the Tribunal. On 09 September 2020 the applicant instituted an urgent application for an order to interdict and restrain the Municipality and the Tribunal from reconsidering the application. In dismissing the application, I found that the April 2020 submission was no more than the September 2016 application, supplemented in accordance with the appeal tribunal's resolution.

Point in limine - premature application: -

[21] The next issue that requires adjudication is whether the application is premature or not.

[22] On 25 February 2022 the Municipality informed the Trust that: -

22.1 Its application for the removal of the restrictive conditions and departure in terms of SPLUMA and By-laws was rejected; and

22.2 Should it wishes to do so, an appeal must be lodged in terms of section 51(i) of SPLUMA ("the appeal").

[23] In its founding affidavit in this application, the applicant makes no reference to the appeal.

[24] According to the Trust this application is premature and stands to be dismissed as: -

24.1 It had lodged an appeal together with the late filing thereof on 06 April 2022; and

24.2 The applicant is aware of the pending appeal and the condonation application.

[25] The applicant, in reply: -

25.1 Argues that it was never disclosed to him that the Tribunal rejected the applications and that an appeal had been lodged. In response to the allegation, the applicant, however, does not deny that it has been lodged, but merely notes that "...the appeal has been lodged and that there is, at least to Applicant and my knowledge, a pending condonation application for the appeal and pending appeal." ;

25.2 States that a period of 14 months had lapsed since the appeal and the condonation application in respect thereof has been filed; and invited the Trust to provide the court with the outcome of the appeal. In addition, the applicant asserts that he will simultaneously with the filing of the replying affidavit deliver a notice in terms of Rule 35(12) and (14); and

25.3 Claims that, if the court upholds the point in limine, the application should not be dismissed, but stayed, until the outcome of the appeal is made available.

[26] Mr le Roux submitted that the point in limine should be rejected since the allegation that an appeal is pending is far-fetched and untenable as: -

26.1 The Trust failed to provide any proof that the appeal had been lodged with the municipal manager as the notice of appeal does not bear the municipal manager's stamp; and no proof of delivery is provided. Furthermore, Ms. J Bruwer of Macroplan who submitted the appeal on behalf of the Trust did not depose to a confirmatory affidavit;

26.2 The notice of appeal was not served on the applicant;

26.3 The applicant was not provided with the opportunity as envisaged by the audi alteram principle and the SPLUMA regulations to make submissions in opposition to the appeal; and

26.4 The Trust failed to prove that it had taken any further steps to follow up on the outcome of the appeal.

[27] The arguments require consideration in the context of Section 51 of SPLUMA and the SPLUMA regulations.

[28] Section 51 provides: -

‘Internal appeals.—

- (1) A person whose rights are affected by a decision taken by a Municipal Planning Tribunal may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of notification of the decision.
 - (2) The municipal manager must within a prescribed period submit the appeal to the executive authority of the municipality as the appeal authority.
 - (3) The appeal authority must consider the appeal and confirm, vary or revoke the decision.
 - (4) A person whose rights are affected within the provisions of subsection (1) includes—
 - (a) an applicant contemplated in section 45 (1);
 - (b) the municipality where the land affected by the application is located;
 - (c) an interested person who may reasonably be expected to be affected by the outcome of the land development application proceedings.
 - (5) An interested person for the purpose of subsection (4) (c) must be a person having a pecuniary or proprietary interest who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision of the planning tribunal or an appeal in respect of such a decision.
 - (6) A municipality may, in the place of its executive authority, authorise that a body or institution outside of the municipality or in a manner regulated in terms of a provincial legislation, assume the obligations of an appeal authority in terms of this section.
 - (7) No appeal in respect of a decision taken in terms of or pursuant to this Act may be lodged in terms of section 62 of the Municipal Systems Act.'
- [29] Various SPLUMA regulations are also in play. SPLUMA regulation 20 grants municipalities the discretion to determine appeal procedures, which includes the procedures for the lodging and consideration of appeals contemplated in section 51 of SPLUMA. SPLUMA regulation 21(f) provides that the appeal procedures determined by a municipality must include the manner of submission and notice to oppose an appeal. SPLUMA regulation 25 obliges the appeal authority to ensure that every party to a proceeding before the appeal authority is given an opportunity to present his or her case and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

[30] I am not persuaded that the appeal has not been submitted as: -

30.1 On face value, Ms. J Bruwer submitted the appeal together with the condonation application to the municipal manager on 06 April 2022. The applicant's submission in his replying affidavit does not support the contrary argument. In accordance with Plascon-Evans, the scale is tilted in favour of the Trust;

30.2 Neither SPLUMA nor the SPLUMA regulations stipulate that an appeal must be served by an appellant on interested parties. This function is specifically delegated to the municipality and municipal manager in section 51 of SPLUMA, read with SPLUMA regulations 20, 21(f) and 25;

30.3 The argument that, absent the opportunity to make submissions in opposition to the appeal, is indicative of the fact that the appeal was not lodged, also does not withstand scrutiny in view of SPLUMA regulation 25 that requires that the appeal authority, and not the appellant, must ensure that every party to a proceeding before the appeal authority is given an opportunity to present his or her case and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents. Any blame for the failure to inform the applicant of the appeal, and the processing thereof, should be attributed to the fourth and/or fifth respondents; and

30.4 Despite asserting his rights in terms of Rules 35(12) and 35(14), I find no indication that the applicant indeed followed that route.

[31] In addition, Mr le Roux argued that the failure to note the appeal within 21 days as prescribed by section 51(1) of SPLUMA cannot be condoned. In support of this contention, he relies on the fact that the draft SPLUMA regulations[6] provided for condonation on good cause shown, whereas the final SPLUMA regulations do not contain a similar provision. He referred to *Rainbow Junction Development and another v City of Tshwane Metropolitan Municipality and 4 others* (“Rainbow”)[7] where the court held: -

‘In any event, if the legislature, by enacting SPLUMA, had intended to change the existing legal position, it would have explicitly stated its intentions in a clear and unambiguous language, - and one would have expected an unequivocal provision to that effect. In the absence of such, it must be assumed that the legislature did not intend to change the existing legal position. I am of the view that the apparent purpose to which the statutory right to appeal in section 51(1) of SPLUMA and section 20(1)(c) of the By-laws is directed, must be considered and adhered to.

[32] The decision in *Rainbow* does not vindicate his argument as the court there had to pronounce on the right of a person, who simply ignored the public participation procedures prescribed in terms of SPLUMA and the statutory time

periods attached thereto, and thereafter filed a belated appeal demanding a hearing. The court in *Rainbow* did not dismiss the application on the basis that the appeal was filed after the prescribed 21 day period. Mr le Roux’s argument

is additionally misplaced as section 40(2) of the Municipality’s By-laws[8] and section 112(2) of its Land Use Scheme[9] stipulate that the municipal planning tribunal or the designated employee/ official may on its own initiative or on application by the applicant or an interested party, and upon good cause shown, condone an error in a procedure, provided that such condonation does not have a materially adverse effect on, or unreasonably, prejudices any party.

- [33] I agree that the point in limine is dilatory in nature and accordingly that the dismissal of the application on this point is incompetent in the circumstances.
- [34] This is, however, not the end of the matter. SPLUMA regulation 30 specifies that a municipal manager must, as soon as practicable, but no later than 14 days after completion of the pre-hearing process (during which all the necessary documentation must be obtained, the applicant and objectors must be informed and the appeal referred to the appeal authority) submit the appeal to the appeal authority to hear the appeal; and that the pre-hearing process must be completed within 150 days from the date of receipt of the notice of the appeal by the municipal manager. Neither the fourth nor the fifth respondent opposed the application, nor did they provide an explanatory affidavit that could have greatly assisted the court. I find the time lapse since 06 April 2022 rather disquieting and can come to no other conclusion than that the fourth and/or fifth respondents have not adhered to SPLUMA regulation 30; and that the Trust failed to diligently pursue the appeal. This is unacceptable.
- [35] In view of my findings above, it is not necessary to deal with the merits of the matter.

COSTS: -

- [36] The remaining issue is the issue of costs. Both counsel submitted that costs should follow the cause, but that same should be awarded on an attorney and client scale in view of the conduct of the opposing party. I am not swayed that either parties' conduct is deserving of censure. The applicant being successful in his application for condonation and the Trust being successful in raising the preliminary point that the application is premature, justify that each party should be directed to pay their own costs.

Wherefore: -

1. Condonation for the late filing of the first, second and third respondents' answering affidavit is granted;
2. Condonation for the late filing of the applicant's replying affidavit is granted;
3. The application is postponed sine die pending the finalisation of the first, second and third respondents' appeal in terms of section 51 of the Spatial Planning Land Use Management Act 16 of 2013;
4. The fourth and the fifth respondents are directed to process and finalise the first, second and third respondents' appeal in terms of section 51 of the Spatial Planning Land Use Management Act 16 of 2013, the SPLUMA regulations, the Spatial Planning and Land Use Management By-laws, Northern Cape and the Renosterberg Local Municipality Land Use Scheme; and to provide affidavits pertaining to the progress of the appeal to the Office of the Registrar on a quarterly basis, the first affidavits to be filed on or before 13 December 2024 and thereafter until the finalisation of the appeal; and

5. A copy of this judgment and order shall be served on the fourth and the fifth respondents by the sheriff in terms of the Uniform Rules of Court; and
6. No order as to costs is made.

STANTON, A

On behalf of the applicant:

Adv. JHF le Roux

On instruction of Roodt and Co Attorneys Inc.

Care of Engelsman Magabane Inc.

On behalf of the first, second and third respondents:

Adv N Snellenburg SC

On instruction of Muller Gonsior Inc.

Care of Haarhoffs Inc.

[1] GNR.239 of 23 March 2015 (Government Gazette No. 38594).

[2] Smith NO v Brummer NO 1954(3) SA 352 (O) at 358A.

[3] Erasmus: Superior Court Practice Vol 2 at D1-323-5.

[4] 2021

(1) SA 42 (SCA) para 38.

[5] 1956

(4) SA 446 (A) at 449G-H.

[6] General Gazette Notice 526 of 2014, draft regulation 119.

[7] Unreported judgment case number (GDP) 82434/2019 handed down on 12 January 2022 para [22].

[8] Provincial Gazette Notice 150 of 2015 19 October 2015.

[9] General Notice 217 of 2022 30 May 2022.

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