



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 January 2026

Status: Immediate

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Waterford Estate Homeowners Association NPC v Riverside Lodge Body Corporate & Others 819/2024 [2026]
ZASCA 03 (14 January 2026)

Today the Supreme Court of Appeal (SCA) handed down its judgment, partially upholding the appeal against an order previously granted in the Gauteng Division of the High Court, Johannesburg (the high court), with costs, including the costs of two counsel where so employed.

The high court dismissed Waterford Estate Homeowners Association NPC's (Waterford) application – with costs – to have sections 39(1)(c) and (e) of the Community Schemes Ombud Service Act 9 of 2011 (the Act) declared unconstitutional and to overturn decisions made by the adjudicator, Ms. Khosi Mabaso, concerning contributions owed by Riverside Lodge Body Corporate (Riverside).

The respondents included unit owners at Riverside Lodge Sectional Title Scheme (collectively, Riverside respondents), the Community Schemes Ombud Service, various officials, and the Minister of Human Settlements. The high court only allowed an appeal regarding the review relief, but Waterford later obtained leave to appeal the full order.

Waterford manages Waterford Estate, which includes both full title erven and sectional title units; Riverside oversees administration of part of the estate. Since 2002, unit owners paid the same contributions as those paid by full title owners. After unit owners demanded lower payments in 2007, litigation ensued and ended with a settlement agreement establishing a formula for determining contributions. When Riverside failed to pay as agreed, Waterford cancelled the settlement in February 2018 and sought dispute resolution through the Act for unpaid contributions and interest. Riverside argued that unit owners were not Waterford members, contributions were not correctly calculated, and the new levies were unreasonable. They also sought repayment of alleged overpayments.

The adjudicator found that the unit owners were not Waterford members, contributions were not calculated in terms of the settlement's formula, and the levies were unreasonable. Waterford then applied to the high court seeking to declare sections of the Act unconstitutional and to review the adjudicator's decisions, but the court dismissed the application.

Waterford's appeal notice did not initially include the constitutional challenge, but counsel applied to amend the notice during the hearing. The respondents largely did not oppose the amendment. The SCA considered the application to amend based on the explanation for the omission, prejudice to parties, the need to avoid piecemeal litigation, relevance, prospects of success, and overall interests of justice.

The key issues on appeal were: (a) the constitutional validity of the impugned provisions; (b) whether unit owners are Waterford members; and (c) whether the adjudicator's decisions regarding contributions and interest from 2017 to 2020 should be reviewed and set aside.

Regarding Waterford's constitutional challenge, the SCA found that the impugned provisions grant adjudicators powers that balance contractual autonomy with the necessary regulatory oversight; and provide protection against abuse or unfairness in communal living. These powers are neither absolute nor unconstrained: they are governed by principles of rationality, reasonableness, and procedural fairness, and remain subject to judicial review.

The SCA also found that it was never in dispute that the unit owners were members of Waterford and that, in any event, the Conditions of Township Establishment provide that they automatically became members of Waterford upon purchase of their sectional title units. The SCA consequently found that the Riverside respondents are members of Waterford and are therefore liable for levies in line with their respective participation quotas.

Regarding the adjudicator's findings in respect of the levies (and interest) owed by the Riverside respondents for the 2017 to 2020 financial years, the SCA found that the adjudicator disregarded relevant evidence and had regard to irrelevant considerations. Further, her decision was not rationally connected to the evidence and the reasons given for it.

Regarding costs, the SCA found the Riverside attorneys' refusal to agree to the omission of volumes which contained irrelevant matter, despite repeated requests from Waterford's attorneys, constituted a serious departure from the professional standards expected under rule 8(9)(a)(i) of the SCA Rules. As a result, their actions led to wasted judicial resources and additional expenses for Waterford, and they were ordered to pay the wasted costs *de bonis propriis* (out of their own pockets). With respect to the issue of costs relating to the constitutional challenge, the SCA found that the challenge lacked merit and was frivolous, thereby warranting a departure from the principle articulated in *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 323 (CC).

The SCA consequently dismissed the appellant's application for leave to amend its notice of appeal, with costs; dismissed Waterford's constitutional challenge; declared the unit owners to be members of Waterford; set aside the adjudicator's determinations regarding levies owed to the applicant by the Riverside respondents in respect of

the 2017 to 2020 financial years and remitted the determinations for investigation and determination by a new adjudicator.

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