THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 899/2024

In the matter between:

GROUNDSWELL DEVELOPMENTS AFRICA (PTY) LTD	**FIRST APPLICANT**
JEAN PIERRE NORTJE	**SECOND APPLICANT**
HORIZON GROUP (PTY) LTD	**THIRD APPLICANT**

and

CATHERINE JUDY BROWN	**RESPONDENT**

Neutral citation: *Groundswell Developments Africa (Pty) Ltd and Others v Brown* (899/2024) [2025] ZASCA 170 (12 November 2025)

Coram: PETSE, MBHA and DLODLO JJA

Heard: 15 August 2025

Delivered: 12 November 2025

Summary: Section 17(2)*(f)* of the Superior Courts Act 10 of 2013 – validity of the agreement of sale – validity of the builder's lien relied upon misrepresentation – unlawful conduct by the second applicant – second applicant failed to show that a grave failure of justice would result or that the administration of justice would fall into disrepute if an order was not granted varying the decision of the high court and the two judges of this Court refusing leave to appeal – application for reconsideration dismissed.

ORDER

On application for reconsideration: referred by Molemela P in terms of s 17 (2)*(f)* of the Superior Courts Act 10 of 2013:

1 The application in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 is dismissed.

2 The second applicant is liable for the respondent's costs on a scale between attorney and client.

3 Paragraph 2 of this order is suspended for ten days to afford the second applicant an opportunity, if so advised, to serve on the respondent's attorneys and file with the Registrar of this Court an affidavit showing cause why paragraph 2 hereof should not take effect after ten days.

4 The respondent is granted leave, if so advised, to deliver an affidavit in answer to that of the second applicant within five days of the filing of such affidavit.

JUDGMENT

Mbha JA (Petse and Dlodlo JJA concurring):

Introduction

[1] This is an application brought by the applicants in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act), for the reconsideration of an order of this Court, per Mabindla-Boqwana JA and Mantame AJA, made on 11 July 2024. In terms of this order, this Court dismissed with costs the applicants' application for leave to appeal on the grounds that there were no reasonable prospects of success in an appeal and that there is no other compelling reason why an appeal should be heard. The President of this Court has exercised her discretion to refer the decision of the two aforementioned judges, of 11 July 2024, to this Court for reconsideration and, if necessary, variation.

Background

[2] The parties in this matter are Groundswell Developments Africa (Pty) Ltd (Groundswell), the first applicant; Mr Jean Pierre Nortje (Mr Nortje) in his personal capacity, the second applicant; Horizon Group (Pty) Ltd (Horizon), the third applicant; and Ms Catherine Judy Brown (Ms Brown), the respondent. It is common cause that Mr Nortje was at all relevant times the alter ego of both the first and third applicants. All the issued share capital in each of the two companies registered in Mr Nortje's name.

[3] The respondent brought an application in the Western Cape Division of the High Court, Cape Town (the high court) seeking, in the main, an order that the agreement of sale (AOS) concluded between the respondent and the first applicant be declared invalid and of no force and effect, alternatively cancelled and an order that the builder's lien relied on by the third applicant also be declared void and of no legal force and effect. The remaining prayers constituted ancillary relief and were dependent on the success of the main relief.

[4] The AOS was between Ms Brown on the one hand as the seller and Groundswell on the other as the purchaser and was in respect of Ms Brown's residential property in Sea Point, Cape Town (the property) which she inherited from her deceased father. Mr Nortje marketed the property on Ms Brown's behalf, as her estate agent, based on her exclusive mandate to obtain a willing and able buyer for the property. There were two offers to purchase received from potential buyers on 3 February 2020 and 24 February 2020 respectively, but which were never presented to Ms Brown. It is common cause that Mr Nortje presented Ms Brown with the AOS on 19 March 2020 and that she signed it on 20 March 2020.

[5] On 18 March 2020, Mr Nortje, while purporting to act on behalf of Groundswell, granted a letter of authority to one Ms Crystalla du Plessis (Ms du Plessis) authorising her to conclude a sale of immovable property transaction on behalf of Groundswell. She was neither a director, a shareholder nor employee of Groundswell. Ms du Plessis signed the AOS on 21 March 2020 as purchaser of the property on behalf of

Groundswell.

[6] The conclusion of this document, ie letter of authority, by Mr Nortje raises a number of inevitable questions:

(a) First, Ms du Plessis, an unknown private individual, appears from nowhere and is merely granted authority to bind Groundswell, a company of which Mr Nortje is the sole shareholder and director, to acquire immovable property with all the responsibilities and obligations (including financial obligations), which normally accompanies contracts of this nature, without a resolution from Groundswell to do so.

(b) Second, Mr Nortje undertakes therein to resign as director, have Ms du Plessis appointed as director instead and cause all issued shares in Groundswell to be registered in her name on transfer of property into the name of Groundswell. The document ostensibly therefore appears to serve a dual purpose. First, it acts as a letter of authority to Ms du Plessis. Second, it acts as a separate contract where Mr Nortje, in his personal capacity and as a director and sole shareholder of Groundswell, binds himself to allow Ms du Plessis to step into his shoes as the sole director and shareholder of Groundswell if and when the transfer of the property occurs.

(c) Third, there are no other terms and conditions, no *quid pro quo* and, as far as the document is concerned, Ms du Plessis becomes the owner of a company which would own real estate on transfer of the property without having paid one cent. Most surprisingly, the property to be acquired is not identified. The conclusion is irresistible that this was deliberate to create the impression that this document was just of a general nature and that Ms du Plessis could use Groundswell to acquire any immovable property she may wish, using Groundswell as her vehicle to do so.

(d) As this document was signed on 18 March 2020, it is clear that it was customised for the acquisition of Ms Brown's property. In fact, in para 69 of Mr Nortje's answering affidavit he affirmed unequivocally that after he had introduced her to Ms Brown's property telling her that it had potential if it could be repaired, he then offered that she could use Groundswell for the transaction.

[7] The origin of the builder's lien relied upon by the third applicant originates from clause 7 of the AOS which deals with occupation. The clause appears, on a proper

interpretation, to grant beneficial vacant occupation of the property to Groundswell for purposes of cleaning, repairs and renovations. It reads, in relevant part, as follows:

'7.1 The seller will prove (*sic*) the Purchaser with Beneficial Vacant Occupation of the Property to do cleaning and repairs/renovations, within 7 days of the Signature Date and agrees that the Purchaser can come to an agreement with the current tenant to assist in this matter.'

The reference to the current tenant at that stage was a reference to Ms Brown's late father's girlfriend, who still occupied the property but vacated it shortly thereafter.

[8] The AOS described explicitly the extent of the repairs and renovations to be effected by the purchaser on the property. It provides that:

'7.2 The Seller acknowledges that the Tenant have (*sic*) made makeshift and unauthorised changes to the property and that the woodwork, plasterwork, ceilings and paintwork is in a very poor condition and therefore agrees that the Purchaser can proceed to remedy same from date of occupation to facilitate bank approval.'

[9] There is no time limit or anything that indicates that this situation can only continue for a determined period. Furthermore, there is no provision that this may include anything else than what is specified in the AOS. As will be seen later, Mr Nortje decided, unbeknown to Ms Brown and without obtaining her prior consent, to build, *inter alia*, two additional bathrooms and two kitchens on the property.

[10] The aforesaid clause 7.2 also contains, in my view, an anomaly in that the 'purchaser' did not have and was not required to obtain the assistance of a bank to finance the sale. Ms Brown in fact states that the use of the words 'facilitate bank approval' in that clause was never explained to her by Mr Nortje. This is not disputed. Even more alarming is the fact that unlike the other two potential offers to purchase the property referred to earlier, the AOS did not require the purchaser to pay any deposit or guarantee within a short time after signature thereof, as this is usually the case whenever similar sale agreements of property were concluded. I will revert to this aspect later when I deal with other apparently onerous terms of the AOS, which were patently weighted against or were disadvantageous to Ms Brown.

[11] On 25 March 2020, Groundswell and Horizon concluded a renovation and repairs agreement (the R and R agreement), in terms of which Horizon as service provider, was to facilitate repairs, renovations and improvements to the property. This agreement was neither discussed with nor disclosed to Ms Brown and it was sent to her just before the legal proceedings in this matter were instituted. This was the very first time that Ms Brown became aware of its existence, some two years after the conclusion of the AOS.

[12] The salient points about the R and R agreement are the following:

(a) The scope of the work recorded in clause 5 goes far beyond what is envisaged in the AOS and includes building two new bathrooms and two new kitchens, rebuilding all aspects of the approximately 200 square metres of residential dwellings, rebuilding of the boundary wall, excavation and removal of 60 cubic meters of soil from the erf and so forth. This is despite the fact that this agreement records that the right to do these works is established in clause 7 of the AOS. The R and R agreement then sets the total contract cost at about R3.5 million, which is even higher than the purchase price of the property of R3 million, agreed to by Ms Brown and as stipulated in the AOS.

(b) Horizon, which does not feature at all in the AOS, is granted possession of the property without Ms Brown's knowledge and this agreement stipulates that she may not interrupt or interfere with the works in progress, albeit she was not even privy to it. Importantly, clause 12.5 of this agreement establishes a builder's lien in favour of Horizon and a right to take (and retain) possession of the property until such time as the contract costs are fully paid.

(c) Pursuant to Horizon's right to full possession of the property in terms of clause 8, Mr Nortje started residing on the property and also used it as his office. Although he never provided a date when he started living on the property, he nonetheless confirmed his occupation thereof and justified it on the basis that the purchaser (Ms du Plessis or Groundswell) had the right to beneficial occupation and was satisfied that he was providing the service and being on the premises on her behalf. On the other hand, Ms Brown did not know when or who took occupation of her property.

[13] Mr Nortje explained (in his answering affidavit) that the purpose of clause 7 in the AOS was to allow Ms du Plessis, the potential buyer, to do repairs and renovations to the property before taking transfer as there was no likelihood of obtaining a bond on the property in its current state. Mr Nortje's statement is telling and, of necessity, raises the following inferences, namely:

(a) The purchaser, ie Groundswell or Mr Nortje himself, required a bond to finance the purchase price, meaning that the purchaser was not able to pay the purchase price.

(b) The purchaser realised that he, she or it would not get a loan to pay the purchase price due to the state of the property.

(c) Neither Ms du Plessis, Groundswell nor Mr Nortje were able purchasers of the property.

(d) On Mr Nortje's version, the purchaser, ie Ms du Plessis, through Groundswell, or Mr Nortje himself, intended to finance renovations and repairs on Ms Brown's property through their own funds or a loan. They would continue with this arrangement until the purchaser was satisfied and could successfully secure a bank loan. Only then would they proceed to request transfer of the property from Ms Brown.

[14] The patently unsatisfactory picture that emerges from this scenario is that Ms Brown's right to a speedy sale and transfer of the property was completely disregarded. This is because there were no time frames stipulated or specifications of what would be permitted and what not, save that remedying work, plaster work, ceilings and paintwork may proceed.

[15] According to Mr Nortje, the scope of the 'project' in respect of repairs and renovations is actually to be found in his recordal thereof on his website which he created for this purpose and that such recordal, referred to as JPN 18, had to be read with the R and R agreement. The JPN 18 contains a long list of some 70 odd itemised attendances to be performed by Horizon or Mr Nortje himself, on the property.

[16] However, what is pertinent is that the R and R agreement read with JPN 18,

does not even resemble anything provided for in clause 7 of the AOS, and even on Mr Nortje's own version, this constituted a recordal of his own observations and opinion of what had to be done, but all or most of which is not authorised by the AOS. Quite significantly, Mr Nortje does not state or claim that there was an agreement with the owner of the property, that this JPN 18 was required in terms of the existing AOS or that an addendum to the AOS was required to make provision for what he intended to do on the property.

[17] Ms Brown asserts unequivocally that she never received any list like the JPN 18. Although she had access to the website that Mr Nortje created, she never saw any list with similar content. She stated, however, that there was a shorter list of things that had to be done on the website. Clearly, and as stated earlier, the scope of work recorded in clause 4 of the R and R agreement goes far beyond what is envisaged in the AOS, albeit that this agreement records that the right to do these repairs and renovations is derived from clause 7 of the AOS.

[18] Mention has been made of the fact that the R and R agreement was neither disclosed to nor discussed with Ms Brown. In addition, nowhere does the AOS authorise Groundswell, the so-called purchaser, to enter into a contract with a third party to do what is envisaged in clause 7 of the AOS, moreover at a cost of R3.5 million, which is more than the agreed purchase price of the property, with the option of additional costs.

[19] Surprisingly, clause 6 of the R and R agreement in particular, does not impose any obligation on Groundswell, the purported 'client' in terms of that agreement and 'purchaser' of the property as per the AOS, to finance the repairs and renovations up front or as the work progresses. Instead, Groundswell undertakes to pay the total cost only before or on taking transfer. The most probable explanation for this situation is that the repairs and renovations were to be financed either by Mr Nortje himself or through the so-called service provider, Horizon.

[20] The service provider Horizon was in terms of clause 10 of the R and R

agreement entitled to use water, electricity and any other municipal service on the property paid for by Ms Brown, and not Groundswell. Ms Brown asserts that she had been paying municipal rates and taxes on the property, which is still the case, and that at the time of the institution of this litigation she had spent in excess of R55 000 in this regard. In addition, whilst she had paid in excess of R320 000 for the cleaning and repairs on Mr Nortje's specific request, which was not denied, she had never seen any proof of contribution by the alleged 'purchaser' in any capacity. Although Mr Nortje admitted these averments, he never deemed it necessary to disclose the conclusion of the R and R agreement to Ms Brown.

[21] Although Groundswell, as the purchaser, purported to grant guarantees involving Ms Brown in clause 12 of the R and R agreement, this was clearly a ruse. Neither Ms du Plessis nor Mr Nortje discussed this with Ms Brown. Consequently, she never agreed to it and was entirely unaware of these arrangements. Groundswell then pledged the benefit of the AOS to Horizon as 'surety' for the payment of the total contract costs in the amount of R3.5 million. This arrangement clearly anticipates Mr Nortje, either personally or through Horizon, revealing himself as the true buyer of the property at the end of the process or just before transfer.

[22] On 13 June 2022, acting on Ms Brown's instructions, her attorney, Mr Gabri Jordaan, addressed a letter to Mr Nortje cancelling the AOS, the power of attorney and the estate mandate on the ground of a misrepresentation he had committed against her. Mr Nortje responded, on 18 July 2022, by forwarding a document titled 'Notice of Cession'. This document records that as allowed for in clause 15.6 of the AOS, Ms du Plessis was ceding with immediate effect all her and Groundswell's rights and responsibilities under the AOS, and specifically in relation to the property, to Mr Nortje. The document also mentioned that Mr Nortje was currently residing on the property as the project 'manager'. Ms Brown responded on the same day, empathetically stating that she did not accept the cession and disputed its validity.

[23] Only on 17 August 2022, did Ms Brown, as seller, receive the notice regarding the R and R agreement, dated 25 March 2022, from Mr Nortje. This is when she came

to know of Horizon's existence. Following a search conducted on the Companies and Intellectual Property Commission website, she then discovered that Horizon was completely 'owned' by Mr Nortje. In her view, Horizon was Mr Nortje's alter ego.

[24] Clause 15.6 of the AOS, on which reliance was sought to be placed by Mr Nortje for the justification of the said 'cession', reads as follows:

'The Seller agrees that the Purchaser shall have the right to cede or assign any part, share or interest of this Agreement of Sale or any rights or obligations hereunder to a third party and that such assignment can allow for the recovery of any cleaning, repair and renovation costs incurred by the Purchaser'.

[25] Three distinct features characterise this 'cession' namely:

(a) It is undated and bears only Mr Nortje's signature. The purported cedent's signature, ie, Ms du Plessis, is glaringly absent therefrom.

(b) Mr Nortje who has signed the AOS as 'agent' and is in fact the purported agent in the transaction, is as far as Mr Nortje is concerned, the prescribed third party to whom the purchaser can lawfully cede rights and obligations arising from the AOS. However, Clause 2.19 of the AOS expressly defines 'agent' to mean Mr Nortje.

(c) Lastly, the AOS does not provide that the purchaser may cede its responsibilities or obligations without the seller's permission. This omission must be contrasted with clause 17.6 of the other two potential offers to purchase referred to earlier, each of which firmly provides that:

'Neither this Agreement of Sale nor any part…nor any rights or obligations hereunder may be ceded…without the prior written consent of the other Party.'

[26] In light of what is stated in the preceding paragraph, this purported 'cession' undoubtedly exposed Mr Nortje for what his true plans and intentions were, *vis-à-vis* Ms Brown. His conduct was certainly inconsistent with his oft-repeated representation to Ms Brown that he always had her interests as seller at heart and that he did not have any conflict of interest when he also represented the 'purchaser' Groundswell, which was later confirmed that Groundswell was his alter ego. This situation also raised the question of how Mr Nortje could justify claiming an agent's commission

when his alter ego, Groundswell, is the purchaser and when he thereafter became the purchaser of the property in his personal capacity after the so-called cession.

The judgment of the high court

[27] The high court (per Fortuin J) found that Mr Nortje had committed various acts of misrepresentation. It found that specifically at the time the AOS was concluded in March 2020, Mr Nortje was not in possession of a valid fidelity fund certificate and that he only obtained a valid certificate on 14 February 2021. Relying, on the decision in *LEK v Estate Agents Board*,[1] Fortuin J held that, in the circumstances any mandate to Mr Nortje during 2020 would have been invalid.

[28] The high court found that Mr Nortje did not disclose his own interest in the transaction to the seller and that purchasing the seller's property, while simultaneously acting as her agent, is unlawful. From the common cause facts, it was clear, the high court continued, that Mr Nortje was the true purchaser of the property and that he used Groundswell with the assistance of Ms du Plessis as a front. On these bases, the high court declared the AOS to be invalid and of no force and effect.

[29] The high court found that at the time that the application was brought, Mr Nortje was residing on the seller's property and also used it as an office without her knowledge and consent. It further found that the initial occupation of the property was authorised in clause 7 of the AOS, in terms of which Groundswell as 'purchaser' was entitled to obtain 'beneficial vacant possession', specifically and only for the purpose of cleaning, repairs and renovations in respect of woodwork, plasterwork, ceilings and paintwork. There was nothing in clause 7, the court held further, that permitted Mr Nortje to occupy the property for residential purposes or for work purposes as an office for an undetermined period, or until transfer has taken place, or until Mr Nortje himself unilaterally decided that the repairs were now complete. In the circumstances, the high court held that Mr Nortje's occupation of the property is unlawful.

[1] *LEK v Estate Agents Board* 1978 (3) SA 160 (C).

[30] The high court further found that over and above improperly purchasing the seller's property while acting as her agent, Mr Nortje had entered into a renovation and repairs agreement with Horizon, while being the sole director of Horizon to the detriment of his principal, the seller. It then held that Mr Nortje had used Horizon as a façade to conceal the true facts when he personally attended to the repairs and renovations on Ms Brown's property, but later involved Horizon.

[31] The high court concluded that Mr Nortje's use of Horizon constituted an abuse of juristic personality of this company as a separate entity. In the circumstances, the court found that Horizon is not a juristic person for purposes of the repairs and renovations work on Ms Brown's property, but that Mr Nortje and Horizon are deemed to be the same person as contemplated in s 20(9)*(a)* and *(b)* of the Companies Act 71 of 2008 (the Companies Act).[2]

[32] As Ms Brown was never privy to the R and R agreement, the high court found the conclusion of this agreement to be an abuse. On the facts, it was clear that Horizon is the alter ego of Mr Nortje. Given that no actual proof of the amount and expenses in relation to the alleged repairs and renovations was provided, the high court declared the builder's lien relied upon by Horizon to be of no force and effect.

[33] With regard to the cession, the high court found that Groundswell had sought to cede all its rights, benefits and responsibilities to Mr Nortje as it was entitled to do in terms of clause 15.6 of the AOS. However, the high court noted that a cession under this clause could only be effected to a 'third party'. It then reasoned that as Mr Nortje

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[2] Section 20 of the Companies Act reads as follows:
'**Validity of company actions**
….
(9) If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may-
(a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and
(b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph *(a)*.'

was in fact an agent, as defined in clause 2.19, and that he also signed the AOS as a witness and agent, he was accordingly not a third party, as was required in clause 15.6 of the AOS. In the circumstances, the high court held that the cession was invalid and void *ab initio*.

[34] On 4 September 2023, the high court granted an order, *inter alia*, declaring the AOS between Ms Brown and Groundswell invalid and of no force and effect, that the builder's lien relied on by Horizon was void and of no legal force and that the respondents grant vacant possession of the property to Ms Brown within 30 calendar days of the order. The costs followed the event. The application for leave to appeal was dismissed on the grounds that there was no reasonable prospect of success on appeal and there was no other compelling reason why an appeal should be heard. On 11 July 2024, a subsequent petition for leave to appeal to this Court suffered the same fate. Hence the current application referred to the Court by the President under s 17(2)(f).

The s 17(2)*(f)* application

[35] Before us two points *in limine* were raised on the respondent's (ie Ms Brown) behalf. First, that the respondent was prejudiced by the applicants' failure to comply with the rules of this Court by failing to deliver a founding affidavit together with the application for reconsideration timeously resulting in the President of this Court not having all the facts before her when she referred the matter for reconsideration and possibly variation. It is further alleged that Ms Brown was prejudiced because she was unable to file a supplementary affidavit to address the belatedly filed founding affidavit. Second, whether the first and third applicants, being juristic persons, could be represented in the appeal by the second applicant, a lay person, without the leave of this Court first having been sought and granted.

[36] The first point *in limine* arose under the following circumstances. The applicants served their application for reconsideration on the respondent via electronic mail on 12 August 2024. However, the founding affidavit was not attached to the index. On 15 August 2024, the applicants served a notice of motion with a founding affidavit in

which condonation was sought for the late filing of the application.

[37] On the same day, 15 August 2024, the respondent filed an opposing affidavit in which it is stated, *inter alia*, that the respondent will abide by the President's decision on the condonation application. The respondent also opposed the application in terms of the s 17(2)*(f)* of the Superior Courts Act on the merits.

[38] As it is common cause that the President made her decision referring the matter for reconsideration and possibly variation on 31 August 2024, it is difficult to understand the respondent's complaint that when the President made her decision she did so without having all the facts before her. Furthermore, the allegation of prejudice does not arise at all because the respondent duly placed all the facts in opposition to the application in her opposing affidavit on 15 August 2024. In the circumstances, the first point *in limine* must fail.

[39] I now turn to consider the second point *in limine* raised by the respondent. It is trite that a company cannot conduct a case in this Court except through the appearance of a natural person who is qualified as an advocate or attorney.[3] However, cases will arise where the interests of justice may require a relaxation of that general rule. Accordingly, superior courts have a residual discretion in any matter where such relaxation is sought, arising from their inherent power to regulate their own proceedings.

[40] Courts have refrained from formulating a test for the exercise of the court's inherent power and such cases have generally been left to the good sense of individual judges. However, this Court has laid down that in each such instance leave must first be sought by way of a formal application.[4] In *Manong & Associates (Pty) Ltd v Minister of Public Works and Another*,[5] this Court said the following:

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[3] *Yates Investments (Pty) Ltd v Commissioner for Inland Revenue* 1956 (1) SA 364 (A); 1 All SA 285 (A).
[4] *Manong & Associates (Pty) Ltd v Minister of Public Works and Another* [2010] (2) SA 167 (SCA); 1 All SA 267 (SCA) (*Manong*) para 14.
[5] Ibid.

'…Lest this be misconstrued as a tacit or general licence to unqualified agents, it needs be emphasised that in each such instance leave must be sought by way of a properly motivated, timeously lodged formal application showing good cause why, in that particular case, the rule prohibiting non-professional representation should be relaxed. Individual cases can thus be met by the exercise of the discretion in the circumstances of that case. It would thus be impermissible for a non-professional representative to take any step in the proceedings, including the signing of pleadings, notices or heads of argument (as occurred here), without the requisite leave of the court concerned first having been sought and obtained.'[6]

[41] It is common cause that Mr Nortje has not filed any application seeking to show good cause why the rule that juristic persons cannot be represented by a natural person who is not an advocate or attorney should be relaxed in this case. In the absence of such application, this Court is not at liberty to simply exercise a discretion in the vacuum to depart from this well-established rule. It therefore follows that Mr Nortje is not permitted to represent the first and third applicants in this application.

[42] With effect from 3 April 2024, the amended s 17(2)*(f)* of the Superior Courts Act reads as follows:

'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'

As Mr Nortje's reconsideration application was lodged on 15 August 2024, after the aforementioned amendment came into effect, it means that the previous threshold for referral, namely 'exceptional circumstances', is no longer required. The current position is that the President of this Court is permitted to refer a matter 'where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute'.

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[6] Ibid.

[43] In *Liesching and Others v S and Another*,[7] the Constitutional Court held that s 17(2)*(f)* applies once special leave has been refused, which implies that the applicant must demonstrate something beyond the requirements for special leave. It held:

'The proviso in s 17(2)*(f)* is very broad. It keeps the door of justice ajar in order to cure errors or mistakes, and for the consideration of a circumstance, which, if it were known at the time of the consideration of the petition, might have yielded a different outcome. It is therefore a means of preventing an injustice. This would include new or further evidence that has come to light or that became known after the petition had been considered and determined.'[8]

[44] In order to establish whether a grave failure of justice would result or the administration of justice would be brought into disrepute, an applicant in the position of Mr Nortje must demonstrate that the matter involved specific criteria, including 'substantive points of law, an issue of great public importance, or a strongly arguable prospect of a denial of grave justice should reconsideration be refused'.[9] In *Avnit v First Rand Bank*,[10] this Court understood the power of referral as one 'likely to be exercised only when the President believes that some matter of importance has possibly been overlooked or grave injustice will otherwise result'.[11] The Court emphasised that s 17(2)*(f)* of the Superior Courts Act 'is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused'[12] and that '[a]n application that merely rehearses the arguments that have already been made, considered and rejected will not succeed'.[13] In this regard the Constitutional Court has stated in no uncertain terms that s 17(2)*(f*) does not provide

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[7] *Liesching and Others v S and Another* [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC).
[8] Ibid para 54.
[9] *Rock Foundation Properties and Another v Chaitowitz* (1038/2023) [2025] ZASCA 82 (9 June 2025) para 17.
[10] *Avnit v First Rand Bank* [2014] ZASCA 132.
[11] Ibid para 7.
[12] Ibid para 6.
[13] Ibid.

for a 'parallel appeal process'[14] or 'additional bites at the proverbial appeal cherry'.[15]

[45] I now turn to consider whether or not Mr Nortje's application satisfies or meets the threshold set out in the amended s 17(2)*(f)* of the Superior Courts Act. Of necessity in determining this issue, regard must be had to the fact that a court must be convinced on proper grounds that there is a reasonable prospect of success on appeal or any other compelling reason for the appeal to be heard.

[46] In sum, Mr Nortje argues that reconsideration is of critical importance because the high court's judgment creates numerous erroneous, 'dangerous and potentially harmful precedents' that are not supported by evidence and which according to him 'could have dire consequences for other litigants'. Mr Nortje submits that the high court's finding that he was not entitled to act as an estate agent at the time of the conclusion of the AOS, as he did not have a valid fidelity fund certificate, is erroneous. Relying on the decision in *Signature Real Estate (Pty) Ltd v Charles Edwards Properties and Others (Signature)*,[16] he submits that the high court's finding undermined estate agents' constitutionally guaranteed right to freely engage in their trade, occupation or profession. In this case, he had fully complied with all the requirements of the Estate Agency Affairs Board (the Board), and any reason for the delay in the issuing of a fidelity fund certificate lays squarely with the Board.

[47] In my view, Mr Nortje's attempt to rely on *Signature* is totally misplaced. The facts briefly, in that case, are that Signature Real Estate (Pty) Ltd (Signature (Pty) Ltd) had fully complied with all the formalities and was entitled in terms of the provisions of the applicable legislation to be issued with a fidelity certificate. However, the Board erroneously issued certificates in the name of Hidicol CC instead of Signature (Pty) Ltd. The Board conceded this. In *casu*, it is common cause that no fidelity fund certificate was ever issued to Mr Nortje for the year 2020 and that he only obtained a

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[14] *Liesching and Others v S* [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) para 139, See also *Mkhonto and Others v Bushbuckridge Local Municipality and Others* (218/2024) [2025] ZASCA 111 (23 July 2025) para 18; *Minister of Police and Another v Ramabanta* [2025] ZASCA 95 para 19; and *Cloete and Another v S; Sekgala v Nedbank Limited* [2019] ZACC 6; 2019 (5) BCLR 544 (CC); 2019 (4) SA 268 (CC); 2019 (2) SACR 130 (CC) paras 47 and 56.
[15] Ibid.
[16] *Signature Real Estate (Pty) Ltd v Charles Edwards Properties and Others* [2020] ZASCA 63; 2020 (6) SA 397 (SCA).

valid fidelity fund certificate on 14 February 2021. Significantly, Mr Nortje has not even filed any supporting evidence from the Board, that this body was somehow at fault in not issuing him with a fidelity fund certificate for 2020. In the circumstances, the high court's finding that any mandate to Mr Nortje as an estate agent, during 2020, would have been invalid, is correct and cannot be faulted.

[48] Mr Nortje argues that the high court's finding that he was the true purchaser and that he used Groundswell with the assistance of Ms du Plessis as a front was incorrect and 'proven totally unfounded'. He submits that this finding is erroneous and creates a 'dangerous and potentially harmful precedent for any property developer or investor as it flies in the face of the independent nature of companies'. He then argues that Groundswell, an independent company, was in fact the buyer.

[49] I have above dealt extensively with the circumstances surrounding the coming into existence of the AOS, which Ms Brown, as seller, signed on 20 March 2020 and the so called letter of authority dated 18 March 2020 by which Mr Nortje authorised Ms du Plessis to conclude the AOS on behalf of Groundswell, the purchaser of the property. It is undisputed that Mr Nortje never disclosed to Ms Brown that he was the sole shareholder in Groundswell, the so-called purchaser which is a registered company. Ms du Plessis, a private individual appeared from nowhere and was merely given authority to bind Groundswell to acquire immovable property, without even a resolution from Groundswell to do so. At the same time, Mr Nortje had purportedly resigned and then had Ms du Plessis appointed as sole director of that company. Significantly, there are no other terms and conditions nor any *quid pro quo* but Ms du Plessis firmly became the owner of Groundswell, which would then own Ms Brown's property without having paid one cent.

[50] To describe what happened as a shenanigan is, in my view, an understatement. It is clear that Mr Nortje devised a devious scheme, whereby he used Groundswell and Ms du Plessis as a front to acquire Ms Brown's property. It is clear that he was in fact the purchaser. As he was purporting to act as Ms Brown's mandated agent to sell the property, the fact that he conjured up his schemes to purchase the property,

without disclosing his interest in the transaction means that he allowed himself to be in a conflict of interest situation. The high court correctly described his conduct as being unlawful.

[51] I have, earlier on in the judgment, made reference to certain terms and conditions in the AOS, which were particularly onerous and disadvantageous to Ms Brown as seller, and which were materially different to the two other prospective offers of sale. Considering that Ms Brown's property was in a poor state of repair and not in a particular marketable condition, one would have expected a similar 'voetstoots' clause to have been inserted in the AOS but this did not happen. The other two agreements also contained an express clause to the effect that no cession could be done without the approval of the other party, something glaringly missing in the AOS. In all, Mr Nortje did not act in the best interests of his 'principal', as so called 'agent'. Instead, he went to great lengths to elaborate fictitious schemes to advance his own interests to the prejudice of his client, thereby betraying the latter's trust.

[52] Mr Nortje criticises the finding by the high court that the builder's lien relied upon by Horizon to be void and of no legal force and effect to be 'totally unfounded'. Furthermore, as a contractor in Horizon's position would seek to rely on a similar lien to ensure that she or it gets paid for work done, the high court's aforementioned finding created 'a dangerous and potentially harmful precedent for any contractor'.

[53] As I have pointed out earlier, the particular lien on which Horizon sought to rely has its root in clause 7 of the AOS dealing with occupation. Groundswell, as the so-called purchaser, was granted beneficial vacant possession of the property for the specified purposes of cleaning, repairs and renovations. The clause further specified that this was to be limited to the woodwork, plaster work, ceilings and paintwork.

[54] It is common cause that completely unbeknown to Ms Brown, Groundswell and Horizon, the latter completely unknown to Ms Brown at that stage, signed a R and R agreement containing onerous and disadvantageous terms and conditions as far as the owner and seller of the property was concerned. All of these have been discussed

earlier in the judgment and will not be repeated here.

[55] It bears reminding again that Mr Nortje was the sole shareholder of Horizon. On the facts, he clearly used Horizon as a façade to conceal the true facts when he personally attended to the repairs and renovations on Ms Brown's property but later involved Horizon. Clearly, Mr Nortje's use of Horizon constituted an abuse of juristic personality of Horizon as a separate entity. In the circumstances, I am unable to fault the high court in finding that Horizon was not a juristic person for purposes of the repairs and renovations on Ms Brown's property, but that Mr Nortje and Horizon were deemed to be the same person as contemplated in s 20(9)*(a)* and *(b)* of the Companies Act.

[56] The high court also found that the lien sought to be relied on by Horizon was also void on the basis that no actual proof of the amount and the nature of the expenses was provided. Furthermore, whoever was responsible for the actual repairs and renovations effected, was entitled to recover whatever he or it believed was due through the normal legal process. I agree totally with the high court's finding and approach in this regard.

[57] Mr Nortje attacks the high court's finding that the cession is invalid and void *ab initio* as 'totally erroneous' and that it 'creates a dangerous and potentially harmful precedent for any entity acting on contracts where the rights of cession are relied on'. He avers that as an estate agent he was not a party to the AOS and that he was in fact a facilitator as well as a third party. Furthermore, only the parties specified as buyer(s) and seller(s) are parties to the AOS. He then alleges that he was only a third party to the AOS and that these are no grounds for finding that the cession is invalid, irregular or illegal. The cession at issue is one purportedly effected by Ms du Plessis (on behalf of Groundswell presumably) to Mr Nortje.

[58] It is so that clause 15.6 of the AOS does provide that the seller agrees that a purchaser of the property has a right to cede or assign any part, share, interest or rights or obligations under the AOS to a third party. The high court found that 'agent'

was defined in the AOS to refer specifically to Mr Nortje. Considering that Mr Nortje also signed and witnessed the AOS as 'agent', I am unable to fault the high court in this regard.

[59] Lastly, Mr Nortje criticises the high court's finding of various acts of misrepresentation on his part as being totally unsubstantiated and therefore erroneous. I have already dealt with the various aspects and relevant facts and documents pertaining to this matter to which Ms Brown, the seller, was not privy. In particular Mr Nortje went to reside and use Ms Brown's property as an office without her knowledge and consent. The R and R agreement and the cession are other documents that were also concluded behind her back.

[60] The question that must now be answered is whether Mr Nortje has successfully satisfied or met the prescribed threshold for a s 17(2)*(f)* application in terms of the Superior Courts Act. I have carefully analysed both the facts in this case and the high court's reasoning for the findings made. I am unable, as I have pointed out in this judgment, to find fault with any of the reasoning by the learned judge who decided the matter.

[61] In my view, Mr Nortje has hopelessly failed to show that a grave failure of justice would result or that the administration of justice would fall into disrepute if an order was not granted varying the decision of the high court and the two judges of this Court who all declined to grant leave to appeal. There is nothing that shows that their decisions to refuse leave to appeal were wrong. All that Mr Nortje has done, in this Court, is simply an attempt to re-argue or rehearse the merits of the case, something which s 17(2)*(f)* is not designed for. There is no basis whatsoever to find otherwise.

[62] The respondent also sought an order striking off irrelevant material from the record with costs. These comprise a transcription of the arguments in the high court which number about seven pages. I do not deem it necessary that any order should be made in this respect because there was not an enormous number of pages involved giving rise to the complaint.

[63] Regarding costs, I am of the view that this application was completely meritless from the onset. Mr Nortje's unconscionable conduct in this entire episode also involved misrepresentation towards his principal, the respondent, which is viewed in serious light. For these reasons, I am of the view that the respondent should not in any way be out of pocket regarding costs. Costs on a punitive scale is justified.

[64] In the result the following order is made:

1 The application in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 is dismissed.

2 The second applicant is liable for the respondent's costs on a scale between attorney and client.

3 Paragraph 2 of this order is suspended for ten days to afford the second applicant an opportunity, if so advised, to serve on the respondent's attorneys and file with the Registrar of this Court an affidavit showing cause why paragraph 2 hereof should not take effect after ten days.

4 The respondent is granted leave, if so advised, to deliver an affidavit in answer to that of the second applicant within five days of the filing of such affidavit.

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JUDGE OF APPEAL

Appearances

For the first and third applicants:	No appearance
For the second applicant:	In person
For the respondent:	J C Tredoux Jordaan and Ferreira Inc, Cape Town Horn and Van Rensburg Attorneys, Bloemfontein