IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5057/2022

In the matter between:

THE FRANSCHHOEK CLAIMANTS TRUST	Applicant
and	
EXECUTIVE MAYOR STELLENBOSCH LOCAL MUNICIPALITY	First Respondent
STELLENBOSCH MUNICIPAL PLANNING TRIBUNAL	Second Respondent
THE STELLENBOSCH MUNICIPALITY	Third Respondent

JUDGMENT DELIVERED ELECTRONICALLY ON 12 APRIL 2023

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] This is an opposed application for review in terms of sections 6 and 8 of the Promotion of Administrative Justice Act 3 of 2000 (*"PAJA"*). The applicant seeks the review and setting aside of a decision taken by the first respondent, in her capacity as the appeal authority, in which she revoked an approval granted by the second respondent

(*"the Municipal Tribunal"*) to the applicant in respect of erf 1692, Franschhoek, Western Cape (*"the property"*).

[2] The applicant is a trust which was established to hold in trust communal land - the property - on behalf of its members. The property was acquired pursuant to a land claim. The beneficiaries of the applicant are made up of groups representing 40 claims, with a total of 254 individual beneficiaries belonging to any one of the claimant groups.

B. <u>THE FACTS</u>

[3] The decision that is the subject of the review concerns an application made on behalf of the applicant, in terms section 60 of the Stellenbosch Municipality Land Use Planning By-Law (promulgated in terms of Provincial Notice 354/2015) (*"the By-Law"*), in terms of which the applicant applied for the removal of a restrictive title deed condition, rezoning, subdivision and departures in terms of section 15(2) of the By-Law.

[4] The land use application was in fact submitted to the Municipality by Headland Planners (Pty) Ltd, who in turn had been appointed by Surrey Holmes (Pty) Ltd, a development company appointed by the applicant to develop the property. The appointment of Surrey Holmes by the applicant was effected by means of a consent document signed by eight of the applicant's trustees, which authorized Surrey Holmes to undertake a proposed construction of the property (*"the consent document"*). Headland Planners was appointed in terms of a special power of attorney, supported by resolution, of Surrey Holmes authorizing Headland Planners to submit the application on behalf of the applicant.

[5] The land use application was approved by the Municipal Tribunal on 18 August 2020. The approval letter gave notification of a right to appeal the decision to the Appeal Authority in terms of section 79(2) of the By-Law.

[6] Two groups lodged appeals in terms of section 79(2), namely the Franschhoek Gegriefde Grondeiers Groep (*"the FGGG"*) and a group referred to collectively as Ward 1 and Ward 2 Committees (*"Ward 1 and 2"*). A report assessing the appeals was submitted by an authorised employee of the Municipality to the first respondent in terms of section 80(12) of the By-Law, and found that the appeals did not have merit.

[7] In order to consider the application, the first respondent decided to hold an oral hearing in terms of section 81 of the By-Law, where all the parties involved were afforded opportunity to present their cases by way of written and oral submissions. The oral hearing took place on 26 August 2021. The first respondent upheld the appeals, thereby revoking the decision of the Municipal Tribunal.

C. <u>THE APPEAL</u>

[8] The basis for the appeal of the FGGG was that the land use application did not contain proof of any mandate given by the claimants of the applicant to the applicant's trustees to enter into an agreement with Surrey Holmes; and also did not contain proof of approved minutes of an Annual General Meeting (*"AGM"*) which was held by the applicant on 19 August 2017.

[9] The basis for the appeal of Ward 1 and 2 was that there was no consultation with the claimants, and that the trustees failed to follow proper procedure in authorizing Surrey Holmes to develop the property. Furthermore, it was stated that at the AGM of 19 August 2017 the claimants did not support the recommendation by the trustees to develop the property in terms of a proposal presented by Surrey Holmes.

[10] In reaching her decision, the first respondent relied on sections 38(c), 38(b), 65(1)(a) and section 38(d) of the By-Law. She found that section 38(d) was complied with in that proof of ownership of the property was submitted. As regards the rest of her decision, she stated as follows at paragraph 1.2(f) to (i) of the decision:

"f. Consent was submitted as a power of attorney. The highlight of this is "signatures" of some landowners/beneficiaries in control of land or authorised representatives. Some signatures appear on the consent document and a date of 23/08/2017 in the middle of the signatures. Nowhere is a reference to these names as being Trustees and no proof as envisaged in section 38(c) was submitted. There is also no reference to where this document was signed.

g. The document LETTERS OF AUTHORITY dated 27 July 2016 also does not assist as it was issued some time before the application was submitted. This is particularly unacceptable as the subject property is the result of a land claim and belongs to a group of beneficiaries as spelt out in the Deed of Trust.

h. It was argued that the Trustees [have] an open discretion to act on behalf of the Trust. However, a close look at, and interpretation of sections 4, 13 and 32 of the Trust Deed may not grant that authority to the Trustees.

i. Having regard for all the above, cognisance should be taken that the Appeal Authority has a mandate and scope of authority to only act in terms of the provisions of the By-Law which is very prescriptive and mandatory in the information and documentation required in an application. These were not fulfilled as prescribed by section 79, 65 and 38 of the [By-Law]."

[11] As I have already indicated, the review application is brought in terms of the provisions of the PAJA. The applicant's case may be summarized as follows:

a. The first respondent's decision was not authorized by the empowering provision, namely section 81 of the By-Law, in that she was not authorized to delve into issues of the mandate of the trustees. She was merely required to verify that the procedure in terms of section 38 had been complied with.

b. The first respondent's decision was not rationally connected to the purpose of the empowering provision because there was no basis for determining internal administrative issues of the applicant.

c. The first respondent's decision was materially influenced by an error of law because she was not empowered to engage in a general review of the decision of the Municipal Tribunal.

d. The first respondent's decision was taken because of irrelevant considerations, or relevant considerations were not considered.

e. The first respondent's decision was not rationally connected to the information before her.

D. THE LAW

[12] The impugned decision constitutes administrative action as contemplated in the PAJA. In making the decision, the first respondent was exercising a public function in terms of legislation, namely the By-Law. Moreover, the decision had an adverse effect on the applicant's rights which had the direct external legal effect of preventing it from developing the property.

[13] Section 217 of the Constitution of the Republic of South Africa 108 of 1996 provides that *"when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective"*.

[14] Fairness in a procurement process is a value in it itself.[1] Section 6 of PAJA provides for judicial review of administrative action which is described in subsection (2) thereof.

[1] *Tera Mobile Radio (Pty) Ltd v MEC, Department of Public Works* 2008 (1) SA 438 (SCA) at para 9.

[15] It remains to be emphasised that in applications for judicial review the court is not concerned with the merits of the impugned decision, but only with its legality. As a result, even if a decision might be set aside on review, that does not mean that a different result will follow when the matter concerned is reconsidered by the relevant functionary upon remittal.[2]

E. DISCUSSION

[16] It is convenient to begin with the over-arching approach of the applicant in this application, concerning the powers of the first respondent when considering an appeal of the kind that is at issue in these proceedings. It is argued that her powers are limited to either confirming, varying or revoking the decisions of the Municipal Tribunal and/or authorised employee. The effect is that the first respondent, it is argued, was precluded from enquiring into the validity of the consent document and the issues of mandate raised by the complainants in the appeal.

[17] I do not agree with the applicant. It is clear from the provisions of the By-Law that the powers granted to an appeal authority are wide, in the sense contemplated in *Tikly & Others v Johannes NO & Others* [3], permitting a complete re-hearing of, and fresh determination on the merits of the matter with or without additional evidence or information.

[18] For a start, section 79(5)(a) requires an appeal authority to have regard to the provisions of section 65(1). Section 65(1) contains the criteria that a Municipal Tribunal must have regard to when considering an application of the nature concerned in this matter. In other words, the appeal authority is again required to have regard to the

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[2] *Choisy-Le-Roi Owners (Pty) Ltd v The Municipality of Stellenbosch and Another* (10240/2020) [2022] ZAWCHC 71; 2022 (5) SA 461 (WCC) at para [9].

[3] *Tikly & Others v Johannes NO & Others* 1963 (2) SA 588 (T) at 590F–591A.

requirements that the second respondent was required to have regard to in its decision of the application.

[19] Then, in terms of section 80(2)(g) an appeal must set out *"<u>any issue</u> that the appellant wishes the Appeal Authority to consider in making its decision"*. This is in addition to sub-paragraphs (c) and (d) in terms of which an appellant is required to set out which parts of the decision or approval they seek to appeal against. In other words, an appellant may raise any new issue that was not before the Municipal Tribunal. In passing, I observe that in the appeal proceedings before the appeal authority, the applicant mounted an argument that the appeal authority was limited to only consider grounds of appeal which are described in section 80(2)(a)(i) and (ii). This is clearly contrary to the express wording of the provisions, which states that a ground of appeal *"may include"* those grounds. An appeal is therefore not limited to the grounds stated in section 80(2)(a)(i) and (ii).

[20] Another indication of the wide powers of the appeal authority is contained in section 81 of the By-Law in terms of which she may consider an appeal by means of the consideration of written documents or an oral hearing. In terms of section 81(3) an oral hearing may be held *"if it appears to the appeal authority that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it"*. The implication here is that there might be matter which is which not clear from the written documents or material lodged with or provided to the appeal authority, and in respect of which she might need additional oral representations, which were not before the Municipal Tribunal.

[21] Furthermore, in terms of section 81(6) the appeal authority must ensure that every party to a proceeding before her is given an opportunity to present his or her case, whether in writing or orally 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 to relation to those documents". This anticipates that there may be documents in respect of which a party might not have already made submissions by the time the matter is before the appeal authority.

[22] All of this indicates that the powers of the appeal authority are wide enough to include enquiry into issues not previously raised before the Municipal Tribunal, or issues not apparent from documents submitted to the appeal authority. The facts of this case illustrate this point, because the nature of the issues raised by the complainants in the appeal required further elaboration and documents which were not placed before the Municipal Tribunal. There is no basis apparent from the By-Law for the appeal authority refusing to engage with those issues on the basis that they were not before the Municipal Tribunal.

[23] Besides, most of the issues raised by the complainants in the appeals are intertwined with the requirements in sections 38(1)(b) and (c) and 65(1), which the appeal authority must have regard to. Those issues included allegations that the applicant failed to consult with its beneficiaries in respect of the proposed development of the property; that the applicant's beneficiaries did not approve the agreement with Surrey Holmes for the land use application; that the applicant failed to consult some newly elected trustees; and there were no minutes attached in respect of the AGM of 19 August 2017. Even if the first of these may be excluded as not being strictly relevant to the land use application, the rest are directly relevant to the question of proof of authorisation which is required in terms of section 38(1)(b) and (c), as discussed later.

[24] Then, in their written submissions, the complainants in the appeal included the following complaints: the decision of the trustees is *ultra vires* the Trust Deed; that Headland Planners did not have *locus standi* to lodge the application on behalf of the Surrey Holmes and/or the applicant; the trustees acted in bad faith and lodged an application without legal mandate from the applicant's members. The alleged lack of

mandate and the issue raised in respect of the Trust Deed are also relevant to the issue of compliance with section 38(1)(b) and (c).

[25] In terms of section 38(1)(b), if an applicant is an agent the power of attorney required must "authorise" the applicant to make the application on behalf of the owner. It would make no sense to have this requirement if it was not to ensure that the agent is authorised to act on behalf of the landowner. If there was no proper mandate given to the trustees in terms of the Trust Deed to appoint Surrey Holmes and, by extension Headland Planners, then the issue of authorization is called into question. Similarly, subsection (c) requires proof that the person is authorised to act on behalf of the applicant. This is the very issue raised by the appellants in their appeals. In this context, it does not assist to claim that the appeal authority is precluded from looking into the inward workings of the applicant. The aim of the provision is to ensure that the applicant has duly authorised the agent. That issue will not always be resolved by looking at a piece of paper, especially when the circumstances of that document are called into question.

[26] I now turn to the appeal authority's decision. In terms of section 38(1)(b), if the applicant is an agent, as Headland Planners were, a power of attorney was required, authorising it to make the application on behalf of the Trust. Then, in terms of section 38(1)(c), because the owner of the land in this case is a trust, proof was required that Headlands Planners was authorised to act on behalf of the applicant when it submitted the land use application.

[27] It is common cause that, as proof of the appointment of Surrey Holmes by the applicant, the consent document was attached to the land use application to the Municipality, as was the special power of attorney in terms of which Headland Planners was appointed by Surrey Holmes. The consent document was dated 23 August 2017, and contained some eight signatures plus names, which were described in the document as the "*name of authorised person if the landowner is a legal entity*". It is recorded in the

consent document that these signatories gave consent for Surrey Holmes to undertake the proposed construction of a residential development on the property.

[28] As recorded in her decision, the first respondent took issue with the consent document, stating that it failed to indicate that the signatories were trustees of the applicant, or where it was signed. She concluded that that there was no proof as envisaged in section 38(1)(c). I take this to mean that, in her view, the consent document did not constitute proof that Headland Planners was authorised to act on behalf of the applicant.

[29] It is correct that the consent document makes no mention that its signatories were trustees at the time of signature or at any other time. However, it must be borne in mind that the By-Law does not prescribe what form the authorisation required in terms of section 38(1)(c) should take. There is no requirement that the consent document in this case should specify that the signatories are trustees. There is similarly no prescribed requirement that the consent document should indicate where it was signed, contrary to her decision. In fact, the consent document is not specifically called for in terms of the By-Law. What is required is proof of authorisation. This may take a combination of documents in some instances. That being so, I would have expected the appeal authority to request further information in that regard if she was not satisfied with the consent document. Thus, to the extent that the first respondent held that the consent document did not indicate whether or not the signatories were trustees and where it was signed, she took into account irrelevant considerations.

[30] In construing the consent document, one option available to the first respondent which is what she followed, was to have had regard to the names contained in the Letters of Authority. The Letters of Authority were issued on 27 July 2016 by the Office of the Master of the High Court in terms of section 6(1) of the Trust Property Control Act 57 of 1988, in respect of the applicant. It is apparent from the two documents, and is common

cause that the eight names contained in the consent document are the same names as those contained in the Letters of Authority.

[31] The first respondent complained that the Letters of Authority do not assist because they were issued some time before the land use application was submitted. It is not clear from this observation whether she meant that the Letters of Authority had expired, or had no legal force by virtue of the fact that they were issued on 27 July 2016. If this was the intention, it is clearly flawed. The Letters of Authority constitute authorization issued by the Master in terms of section 6 of the Trust Property Control Act, upon appointment as a trustee. In terms of the Letters of Authority those names were authorised to act as trustees of the applicant. There was no indication that the Letters were withdrawn or lacked legal force. Thus, the extent that the first respondent found that the Letters of Authority were not proper authorisation for the trustees to act on behalf of the applicant, she failed to take into account relevant considerations, and that decision was materially influenced by an error.

[32] There was no evidence, or even allegation, before the first respondent that the Letters of Authority had been withdrawn by the Master. Instead, there was an allegation that three of the trustees had been substituted by new ones. The complainants in the appeal alleged that at an AGM of the applicant held on 19 August 2017, the term of three trustees came to an end, and that they were replaced by new names. This allegation was supported by means of affidavits submitted by some of the complainants who stated that they had attended the AGM. The significance of this allegation lies in the fact that the land use application did not contain names or signatures of the newly appointed trustees, but contained signatures of the outgoing trustees. Further, the consent document was signed on 23 August 2017, some four days after the AGM; and the special power of attorney signed by Surrey Holmes for the appointment of Headland Planners is dated 9 July 2018. Both of these documents post-dated the substitution of the outgoing trustees.

[33] In these proceedings the applicant alleges that the removal and replacement of three trustees was never formalised because the three new trustees failed or refused to sign the necessary documents in order to be formally appointed by the Master of the High Court. The applicant also complains that it was not afforded an opportunity to deal with this aspect before the first respondent, and has dealt with it in a replying affidavit in these proceedings. On the other hand, the written submissions submitted on behalf of the claimants in the appeal alleged that the new trustees did indeed submit these documents in question for forwarding to the Master, and point to an agenda item of a meeting held on 5 October 2017 in support of this allegation. As I have said, this issue arises in these proceedings in the replying affidavit and is otherwise not dealt with by the respondents. This is a factual aspect which remains unclear, and which, in any event, I do not consider appropriate to resolve on the papers, on application of the *Plascon-Evans* principle.

[34] For now, it suffices to set out the legal implications regarding the status of the trustees. In *Meijer NO and another v First Rand Bank Ltd*[4] it was held that in order for the resignation of a trustee to be effective in terms of the Trust Property Control Act the trustee must show that written notice was sent to the Master and the affected beneficiaries, and that the Master acknowledged receipt of such notice.[5] Otherwise, a Trust Deed instrument may provide for resignation of a trustee in a certain manner, in which case compliance with that provision will suffice, especially in instances where the Master has not acknowledged receipt of the notification which has been shown to have been sent to the Master's office. In particular, it is possible for a Trust Deed to contain a clause that a trustee's resignation will be effective from the date upon which the Master receives notice of such resignation.[6] In the present case, the Trust Deed makes no such provision. It does not provide for the transitional period after the resignation of a trustee, but before the Master has confirmed receipt of notice of such resignation.

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[4] *Meijer NO and another v First Rand Bank Ltd* [2015] JOL 30560 (WCC)
[5] At para [11]
[6] See *Meijer NO and another v First Rand Bank Ltd* at para [8]. See also *Olivier Strydom and Van den Berg Trust Law and Practice* 3-18.

[35] The implication of *Meijer* to the present case is that the default position provided for in terms of section 21 of the Trust Property Control Act applies. The trustees whose names are reflected in the Letters of Authority were authorised to sign the consent document for the appointment of Surrey Holmes. They were not precluded from signing the consent document on 23 August 2017. The corollary is that it is questionable whether the three 'new' trustees were entitled to sign the documents before receiving Letters of Authority from the Master. As it turns out from the new evidence in the replying affidavit, they may not have had authority to sign the documents as trustees.

[36] To conclude this aspect, to the extent that the first respondent failed to have regard to the Letters of Authority when construing the consent document, she failed to take into account relevant considerations. Moreover, her decision in that regard was not rationally connected to the information that was before her, namely the Letters of Authority. Furthermore, her decision to reject the Letters of Authority was materially influenced by an error of law.

[37] I now turn to the first respondent's decision based on the provisions of the Trust Deed. She concluded that clauses 4, 13 and 32 of the Trust Deed do not grant an open discretion to the trustees to act on behalf of the applicant. The context for this observation appears from the complaint that claimants in the appeal did not support the recommendation by the trustees to approve the development proposal by Surrey Holmes and that, as a result: the trustees acted *ultra vires* the terms of the Trust Deed and did not have a legal mandate to appoint Surrey Holmes; Headland Planners did not have *locus standi* to lodge the application on behalf of Surrey Holmes and/or the applicant.

[38] Clause 4 of the Trust Deed sets out the main objectives of the Trust as follows:

> "The Trust was created for the following purposes:
>
> 4.1 To hold the designated land in common of the benefit of the members.

4.2 The acquisition, development, improvement and administration of any rights, properties and interests of the trust for the benefit of the members.

4.3 The carrying out of further activities to address the needs of the members".

[39] Clause 13 sets out the powers of the trustees as follows:

"13.1 In furtherance of the main objective of the Trust and subject to the provisions of the Trust Deed, the Trustees shall have the following powers:

13.1.1 a complete and unfettered discretion in the manner in which they use the total Trust Fund from time to time for the benefit of the members.

13.1.2 all powers required by the Trustees shall include but not be limited to General Administrative and in Investment Powers attached as Appendix "A".

13.2 Notwithstanding any contrary provisions appearing in this Trust Deed, the powers of the Trustees:

13.2.1 may be limited in a manner as set out in clause 13.3; and

13.2.2 be limited in a manner as set out in clause 13.4.

13.3 Powers of the Trustees may be limited at any time by means of resolutions passed by the members at a General Meeting duly called and constituted in the manner set out in clause 20.

13.4 The powers of the Trustees will be limited in terms of clause 32 in so far as matters deemed to be Special Business which can only be enacted in terms of resolutions by Members at a duly called Special Meeting."

[40] Clause 32 provides for 'Special Business' as follows:

"32.1 Notwithstanding any contrary provision in this Trust Deed, no decision of the Board regarding a matter that represents a Special Business will be valid unless it is approved at a Special General Meeting, duly convened in a manner as aforesaid, and the notice convening this meeting must set forth the nature of this Special Business to be considered.

32.2 Any matter involving the following matters will be deemed to be a Special Business:

> 32.2.1 The sale, transfer or pledging by way of mortgage of any immovable property.
>
> 32.2.2 Any changes to the terms of the Trust Deed, including the proposed change of the name of the Trust.
>
> 32.2.3 Any decision to dissolve the Trust …."

[41] It is clear from clause 4.2 of the Trust Deed that the objectives of holding the designated land in common for the benefit of the members, and the development and improvement of the property for the benefit of the members, form some of the main objectives of the Trust. Then, in terms of clause 13 trustees have all powers required by them which include, in terms of clause 6 of Appendix A, *"maintaining, managing, developing, renting, selling or dealing with"* immovable property in any way.

[42] Although it is not clear from the decision of the first respondent, it appears that she was persuaded by the claimants' argument that a Special General Meeting should have been held regarding whether the application for land use should be made. That is the implication of her decision that the trustees did not have an *"open discretion to act on behalf of the [applicant]"*.

[43] Clause 32 of the Trust Deed deals with Special Business, and the calling of Special General Meetings. In terms of clause 32.2 any matter involving *"the sale, transfer or pledging by way of mortgage of any immovable property"* will be deemed to be Special Business. There is no indication anywhere in the record that the application lodged with the Municipality involved sale, transfer or pledging by way of a mortgage of the applicant's property.

[44] Firstly, the consent document in which the activity to be undertaken by Surrey Holmes was described referred to it as *"proposed construction of a residential development on erf 1692, Franschhoek"*. Secondly, the document headed "special power of attorney" in terms of which Headland Planners was authorised to submit the land use application, described the applications to be submitted as a *"rezoning application, a sub-*

division application, and removal of restrictions application". The same language appears in the Municipality's approval granted in terms of section 60 of the By-Law. Section 15 of the By-Law refers to all these applications - which are provided for in sections 17, 18, 20 and 33 - as *"land development"*, which no person may commence without the approval of the Municipality in terms of section 2.

[45] All indications are therefore that the land use applications in question in this matter concerned the development of land. As such, such a decision did not require a Special General Meeting of the applicant in terms of clause 32 of the Trust Deed. Furthermore, the trustees were entitled to deal with the matter as provided for in Appendix A, read with clause 13 of the Trust Deed. In this regard therefore, the decision of the first respondent at paragraph 1.2.h of her decision took into account irrelevant considerations insofar as she concluded that clause 32 of the Trust Deed was applicable in the circumstances of this matter.

[46] Lastly, there is also the issue of first respondent's belief that the claimants in the appeal comprised 90% of the beneficiaries of the applicant, an issue which is disputed by the applicant. This is an allegation relied upon by the first respondent in these proceedings, although it does not appear in her decision. The issue was, however raised by the aggrieved claimants in the appeal before her, where it was stated as a fact. However, the names attached in support of that averment at the appeals stage were 33 individuals out of a total of approximately 254 individual beneficiaries per group amongst some 40 claimant groups. To the extent that the decision of the first respondent relied on the allegation that the aggrieved claimants comprised the majority numbering of 90% of the beneficiaries, this indicates a failure to take into account relevant considerations as well as taking into account irrelevant considerations.

[47] For all the above reasons, the decision of the first respondent is reviewable and should be set aside. The question is what relief should be granted. I am of the view that it is appropriate that the matter be remitted back to the appeal authority. I have already

indicated that the applicant complains that there are documents which the first respondent ought to have requested from it and/or given it sufficient time to make representations thereto. This is with regard to the issue of the substitution and transition of old trustees. It still remains unclear from the papers whether the documents of the 'new' trustees had indeed been submitted and sent to the Master in notification of the change of trustees as at the time of the decision to appoint Surrey Holmes. It has also come to light in these proceedings that the 'old' trustees have now been reinstated, although it is not clear what the sequence of events was. These are issues which are not appropriate for resolution on the papers, and in respect of which there should be further investigation.

[48] I also note that the minutes of the AGM of 19 August 2017, which formed an important part of the complaints in the appeal, are attached to the replying affidavit in these proceedings. It remains unclear from the documents before me whether, and to what extent they were sufficiently dealt with before the first respondent.

[49] At the same time, the first respondent has displayed strong views in her opposition of this application. In some ways this is understandable given the applicant's stance that she was not entitled to consider the matters that she did – that she did not have powers of a wide appeal. I have already found that she was correct and that she did have such powers. However, when considering the relief to be granted, it is appropriate for another appeal authority to preside over the re-consideration of the appeal in the matter. In terms of the By-Law the appeal authority may consist of the Executive Committee or a Committee of Councillors. There is no reason why such a committee cannot be established for the specific purpose of considering the appeal in this matter and be seized with the rights and powers set out in the sections 79, 80 and 81 of the By-Law.

[50] In the circumstances, the following relief is granted:

a. The decision of the first respondent is reviewed and set aside.

b. The appeals lodged by the Franschhoek Gegriefde Grondeiers Groep and Wards 1 and 2 Committees are remitted to the third respondent for reconsideration before an appeal authority other than the first respondent.

c. The respondents are to pay the costs of this application.

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N. MANGCU-LOCKWOOD

Judge of the High Court