



**Republic of South Africa**

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

Case no. 14664/2022

Before: The Hon. Mr Justice Binns-Ward  
and  
The Hon. Mrs Justice Mangcu-Lockwood

Hearing: 19 May 2023  
Judgment: 24 May 2023

In the matter between:

**COMMUNICARE NPC**

Applicant

and

**ACTING MAGISTRATE, Ms VENICE BURGINS**

First Respondent

**NCUMISA MATU**

Second Respondent

**MANDISA TSHONA**

Third Respondent

**CITY OF CAPE TOWN**

Fourth

Respondent

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**JUDGMENT**

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**BINNS-WARD J (MANGCU-LOCKWOOD J concurring):**

[1] In 2001, a multi-national group of senior judges who called themselves the Judicial Group on Strengthening Judicial Integrity met at Bangalore in India to formulate a set of principles directed at strengthening the judicial system worldwide. The product of their work, ‘The Bangalore Draft Code of Judicial Conduct’, was reviewed and revised at a round table meeting of chief justices held in The Hague, Netherlands, in 2002.

[2] The finished work, known as the ‘Bangalore Principles of Judicial Conduct’,<sup>1</sup> was affirmed in a resolution of the United Nations Economic and Social Council adopted in July 2006. The resolution invited member states to encourage their judiciaries to have regard to the Bangalore Principles when reviewing or developing domestic rules of judicial conduct.

[3] The Bangalore Principles identify six core values that, on an integrated basis, should inform judicial conduct at all levels of the judiciary. They are independence, impartiality, integrity, propriety, equality and competence and diligence.

[4] The Bangalore Principles materially informed the content of the Code of Judicial Conduct promulgated in October 2012 to regulate the conduct of judges in the superior courts of South Africa and also the Code of Judicial Conduct for Magistrates (the current version of which was inserted as Schedule E to the Regulations for Judicial Regulations in Lower Courts, 1994,<sup>2</sup> by way of the substitution effected by GN R933 of 7 September 2018).

[5] The Code of Judicial Conduct for Magistrates was promulgated by the Minister of Justice in terms of s 16(1)(e) of the Magistrates Act 90 of 1993 upon the recommendation of the Magistrates Commission. Paragraph 7 of the preamble to the Code records ‘It is necessary for public acceptance of its authority and integrity in order to fulfil its

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<sup>1</sup> The text of the Bangalore Principles is readily available on the internet, including at [https://www.judicialintegritygroup.org/images/resources/documents/ECOSOC\\_2006\\_23\\_Engl.pdf](https://www.judicialintegritygroup.org/images/resources/documents/ECOSOC_2006_23_Engl.pdf) (accessed on 21 May 2022).

<sup>2</sup> The Regulations were promulgated in GN R361 in GG 15524 of 11 March 1994 and have since been amended on several occasions since then. The original version of the Code of Conduct was inserted as Schedule E to the Regulations in terms of GN R50 published in GG 34969 of 26 January 2012.

constitutional obligations that the judiciary should conform to ethical standards that are internationally generally accepted, more particularly as set out in the Bangalore Principles of Judicial Conduct (2001) as revised at the Hague (2002).’ In terms of Article 2, the Code applies to every magistrate ‘including an acting magistrate’. Any wilful or grossly negligent breach of the Code is a ground upon which a complaint against a magistrate may be lodged.

[6] Article 3(1) states that the object of the Code ‘is to assist every magistrate in dealing with ethical and professional issues, and to inform the public about the judicial ethos of the Republic’. Article 3(3) provides that ‘international standards and those applied in comparable foreign jurisdictions’, while they may not be directly applicable, ‘provide a useful source of reference for interpreting, understanding and applying [the] Code’.

[7] The current matter is an application for the review and setting aside of the proceedings conducted by the applicant before the first respondent, Ms Venice Burgins, who was an acting magistrate at the time. The proceedings concerned an application by the applicant for the eviction, in terms of s 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, of the unlawful occupiers of an apartment in the suburb of Brooklyn, Cape Town. The second respondent in the proceedings in the magistrates’ court had been the lessee of the apartment. The lease was cancelled because of the second respondent’s default on her rental payments. The second respondent had vacated the apartment and left the third respondent in unauthorised occupation of it. The fourth respondent was the City of Cape Town in its capacity as the relevant local government authority responsible for the provision of emergency housing. The first respondent dismissed the applicant’s eviction application with costs.

[8] The applicant contends that the proceedings in the lower court are susceptible to judicial review in terms of s 22(1)(b) and (c) of the Superior Courts Act 10 of 2013; namely,

‘interest in the cause, bias, malice or corruption on the part of the presiding judicial officer’ and ‘gross irregularity in the proceedings’.<sup>3</sup>

[9] The applicant is Communicare NPC, a non-profit company, as defined in s 1 of the Companies Act 71 of 2008. Its aforementioned eviction application was dismissed by the first respondent in terms of a judgment delivered by the first respondent in the Cape Town magistrates’ court on 3 August 2022. The hearing of the application had commenced before the first respondent on 21 June 2021, with judgment having been reserved after a second day of hearing nearly a year later on 20 May 2022.

[10] Some days after the dismissal of the application, a parcel, marked ‘Attention: Anthea Houston, RE Ncumisa Matu v Communicare’, was delivered ‘anonymously’ at the applicant’s offices. It contained various documents, the contents whereof led the applicant to apprehend that the first respondent had not been impartial when she presided over the eviction application. The applicant contends that it had grounds to form a reasonable apprehension of bias on the part of the applicant, and that she had in any event been duty-bound to recuse herself from hearing the eviction application. The review application proceeded on the premise that the validity of the proceedings before the first respondent was vitiated by reason of her failure to have done so.

[11] The documentation delivered to the applicant’s offices showed that the first respondent, on various occasions before she became seized of the eviction application, had published or associated herself with strongly worded and unambiguously hostile opinions about the applicant on social media. The substantiating documentation (which has the appearance of a series of printouts of screen grabs of pages from a social media website) annexed to the applicant’s founding affidavit in the current proceedings included the following:

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<sup>3</sup> The application also refers to s 22(1)(d) (‘the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence’), but no case was made out in that regard.

1. A post, dated 3 November 2018, apparently emanating from an account called '**Jerry Manuel** is with **Venice Burgins** and **21 others**' of a statement by one João Jardim, under the heading '#CommunicareMustFall#', in the following terms:

'Today at a public meeting with HON MPL Gopie, ADV Burgins, ADV Erasmus and broader community members of Ruyterwacht.

After observing first hand and listening to the testimonials how our most vulnerable people are being exploited by COMMUNICARE I was in total disbelief.

The DIVIDE AND RULE tactics which Communicare apply is an exposure of capitalist gutterism.

Communicare mislead the public through the tabloids wanting us to believe the 8 suspended employees are to blame, what the tabloids do not reveal is on what basis these employees were suspended what charges were brought against them.

Communicare perceive themselves above the Constitution of Country in that they violate Human rights and dignity.

The intimidation tactics and fear they instilled must be dealt with immediately.

I make a clarion call to all cadres; activist to advance and defend the Plight of our people in Ruyterwacht, who are victims and traumatised through Communicare

#CommunicareMustFall#

João Jardim'

2. A conversation, or exchange of posts on the same date, apparently with reference to the aforementioned statement of João Jardim, as follows:

'**Jerry Manuel** is with **Vladimir Castro Manuel** and **21 others**

**Jerry Manuel**

Lorraine Stemmet this is fact. Let's work collectively to put an end to this catastrophe of extreme capitalism

**Venice Burgins**

Emotions aside, the Plight of the most vulnerable for access to justice and victim support is still a dire outcry.

Forward we shall march to a better Ruyterwacht for All.

**Jerry Manuel**

Thanks Comrade João Jardim for your retrospective perspective presented today at the National Assembly to Comrade ADV Burgins.

Thanks Hon MPL Gopie for rekindling the hope in our people of Ruyterwacht whom are in despair.’

3. A conversation or exchange of posts on 12 August 2020, as follows:

‘**Colin Arendse** is with **Carlos Filipe Mesquita** and **7 others**

attitude .. h will be alone in front of that bakkie .. rest of workers at the back

**Venice Burgins**

Com Colin Arendse this is Absurd.

We must expose Communicare and its Cabal and safeguard our people against this pandemic called ... GREED

Why are these colonized activities still continuing during our lifetime?

Is this the City that’s supposed to work for us?’

4. A conversation or exchange of posts on 9 September 2020 as follows:

‘**Colin Arendse** is with **Jerry Manuel** and **2 others**

**Venice Burgins**

Ismail Carr I know

The question is whether they understand their portfolio [thinking emoji]

**Venice Burgins**

In RSA we still have courts which are competent and hopefully some of our judiciary who are not captured.

The shocking revelations and investigation with evidence gathered is sufficient

Take Communicare to court and make an application to deregister Communicare

This must seriously STOP

In exploiting the most vulnerable

**Jerry Manuel**

Declare all the directors delinquent and it will’

5. A conversation or exchange of posts on 10 September 2020, apparently after an unnamed person’s death, as follows:

‘**Colin Arendse** is with **Anele Zwelonke** and **7 others**

‘... mapped out a way forward in terms of our Struggle.

Within a matter of a few months Both of this Remark Men of the People has passed on. We will however continue with the Legacy they left behind.

**Jerry Manuel**

Indeed sadly missed but not forgotten, a people's champion who addressed COMMUNICARE HEAD ON

**Jimmy van Wyk**

Colin Arendse i work a long time with him still missed him a fighter for social justice

**Venice Burgins**

The struggle continues and we shall EXPOSE the Communicare rot exploiting our people'

6. A conversation or exchange of posts on 15 November 2020 as follows:

**'Colin Arendse is with Tamzin Hoogbaard and 27 others**

Cape Town – A spotlight has been shone on the financial dealings of social rental housing company Communicare by a group of its tenants.

**Deon Carelse**

We needed an urgent audit on All Community Care matters ASAP .. We can't let greet and profits be above human kindness .. as its government assits. And government resources were use for self gain and not the plight of the poor to have a right to housing,Fuck Community Care.

**Venice Burgins**

Deon Carelse unfortunate REALITY

Have there ever been any asset or land audit [thinking emoji]'

- [12] The deponent to the applicant's founding affidavit made the following averments concerning the first respondent, which have not been gainsaid:

'The first respondent is a member of a social media group under the group name of **"UNITED ACTION GROUP"** (*"the group"*). The group functions as a platform where members can share information and discuss matters important to the underlying cause of the group, and that such cause includes sharing and discussing matters relating to the applicant. The first respondent has been the admin[istrator] of the

group since 15 February 2021 [?and], to the best of my knowledge, is still the admin of the group.’

[13] The applicant alleged in the review application that the Colin Arendse who participated in some of the social media exchanges described above was in court when the first respondent read out her judgment. Mr Arendse made an affidavit, delivered as part of the third respondent’s opposing papers, denying the allegation. He did not dispute that he was the author of a post on social media, a copy of which was attached to the applicant’s founding affidavit and appears to have been part of the content of the parcel delivered to the applicant’s offices on 12 August 2022, which treated of the judgment in fulsome language. Mr Arendse also did not disclose the circumstances in which he had come into possession of a copy of the judgment or otherwise learned of its content.

[14] The copy of Mr Arendse’s post attached to the papers is incomplete. The part that was reproduced in the papers read as follows:

**‘STOP COMMUNICARE**

**Colin Arendse is with Wilfred Alcock**

**\*BREAKING NEWS\***

**\*MASSIVE COURT RULING AGAINST COMMUNICARE NPC\***

No embargo

1. In a dramatic three hour, 63-page judgment of seismic proportions on 3 August 2022, the Cape Town Magistrates Court ruled against Communicare NPC in an epic case that is going to shake the foundations of state capture and reverberate throughout the corridors of justice for centuries to come.
2. For the first time since 1929, a Court has finally dissected the Communicare myth and, this ruling proves that although the wheels of justice may turn slowly, they have eventually turned full circle against this once apartheid relic.
3. Acting Magistrate Burgins took issue with Communicare (represented by Toefy attorneys), who appear to have failed to take the Court into its confidence on the vexing issue of the unresolved land claim against it in the Land Claims Court in Randburg (Case No. LCC 100/2019). This despite some pessimists doubting and even questioning the authenticity of the land claim which now, after



this groundbreaking judgment, can no longer be in dispute, in a bizarre twist, it appears that Communicare denied before Court that it is a Respondent in the Land Claims Court matter.

4. The issue of *locus standi* (the right to bring an action before Court) took centre stage in the judgment and it appears from the ruling that Communicare failed to place evidence before Court by way of a Title Deed that it was the legal owner of the property in dispute – a simple and basic requirement in law.

5. This ruling is massive for all our oppressed victims of Communicare and a huge victory for those who have not carelessly strayed from the path to hold them to account. This is our Damascus moment as we confront the confused elephant in the room that has been staring us all in the eye since that “sunset” period between 1989 and 1994.

6. Acting Magistrate Burgins, in a technically sound judgment, also questioned the origin of Communicare specifically in terms of the Interim Constitution of 1993 which stipulated at the time that any assets acquired under the old regime were meant by law to have been handed over to the new government post 1994.

6.1 There appears to be no proof that the assets of the Citizens Housing League *vir Arme Blankes et al*, who fortuitously changed their name (several times) and then to Communicare in 1990 (the same year in which President Mandela was released from prison), ever handed the land and buildings acquired under the previous regime over to the newly elected government after 27 April 1994. Also, nobody has seen the asset registers of Communicare or its surrogate, Goodfind Properties and our victims do not understand how Communicare can style themselves as a social ....’

[15] The application posits a material non-observance by the first respondent of one of the core values of judicial conduct identified in the Bangalore Principles, viz. impartiality. The principle is stated in the following terms s.v. ‘Value 2’ in the Bangalore Principles: *‘Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.’*

[16] The Bangalore Principles provide the following guidelines in respect of the application of the principle of impartiality:

*Application*

*2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.*

2.2. *A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.*

2.3. *A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.*

2.4. *A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.*

2.5. *A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:*

*(a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;*

*(b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or*

*(c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;*

*provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.'*

The term 'judge' is defined in the Principles to mean 'any person exercising judicial power, however designated', and therefore applicable to an acting magistrate like the first respondent.

[17] Article 13 of the Code of Judicial Conduct for Magistrates was plainly framed to articulate the core judicial value of impartiality. It provides:

***'Article 13: Recusal***

*A magistrate must recuse himself or herself from a case if there is a –*

*(a) real or reasonably perceived conflict of interest; or*

*(b) reasonable suspicion of bias based upon objective facts,*

*and must not recuse himself or herself on insubstantial grounds.’*

The notes to article 13 include the statement that ‘*Recusal is a matter regulated by the constitutional fair trial requirement, the common law and case law.*’.

[18] In respect of civil matters, such as the eviction application brought before the first respondent, ‘the constitutional fair trial requirement’ referred to in article 13 is entrenched in s 34 of the Constitution, which gives everyone the right to have any dispute that can be resolved by the application of law decided ‘in a fair public hearing before a court, or where appropriate, another independent and impartial tribunal or forum’. The provision expressly acknowledges independence and impartiality as essential attributes of a fair hearing. To underscore the point, s 165(2) of the Constitution provides: ‘The courts [in which the judicial authority of the Republic is vested<sup>4</sup>] are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice’. In *Bernert v Absa Bank Ltd* [2010] ZACC 28 (9 December 2010) ; 2011 (4) BCLR 329 (CC) ; 2011 (3) SA 92 (CC), at para 32, Ngcobo CJ observed ‘[a]s is apparent from the Constitution, the very nature of the judicial function requires judicial officers to be impartial. Therefore, the authority of the judicial process depends upon the presumption of impartiality’.

[19] The Constitutional Court held in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 9 (4 June 1999); 1999 (4) SA 147 (CC); 1999 (7) BCLR 725 (CC) (‘SARFU’), at para 30, that ‘ [a] judge who sits in a case in which she or he is disqualified from sitting because, seen objectively, there exists a reasonable apprehension that such judge might be biased, acts in a manner that is inconsistent

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<sup>4</sup> Section 165(1) of the Constitution.

with section 34 of the Constitution, and in breach of the requirements of section 165(2) and the prescribed oath of office.’ Later in the judgment (at para 48), the Court stated ‘The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.’ (Underlining supplied for emphasis.)

[20] The reported cases treat mainly of cases in which a party in the litigation applies for the recusal of the presiding judicial officer(s). They treat at length with the onerous burden on such applicants to displace the presumption of judicial impartiality. But, as the passage from *SARFU* at para 30 quoted above illustrates, there is a strict duty on judicial officers to decline of their own accord to hear cases in which they have a personal interest in the outcome or the contested issues. It is insufficient in such cases for the judicial officer to be satisfied that he or she is capable of divorcing his or her personal interest from their adjudication of the matters. The duty not to hear the matters applies if, regardless of the judicial officer’s subjective view of his or her ability to judge the case impartially, the

pertinent facts and circumstances would support a reasonable apprehension that he or she could not hear and determine it impartially.

[21] ‘The recusal right is derived from one of a number of rules of natural justice designed to ensure that a person accused before a court of law should have a fair trial. Generally speaking such rules, which are part of our common law, must be observed unless the Legislature has by competent legislation, either expressly or by clear implication, otherwise decreed’; see *Council of Review, South African Defence Force, and Others v Mönning and Others* 1992 (3) SA 482 (A), at 491F and *SARFU* supra, at para 28.

[22] The first respondent has abided the judgment of the court. She did not make an answering affidavit. In the ‘reasons’ that she delivered for the purposes of the current application, she indicated that she would oppose the prayer for costs against her in the applicant’s notice of motion, but there was no appearance by her at the hearing of the review application. The content of the first respondent’s aforementioned ‘reasons’ was otherwise directed at defending the merits of her decision of the eviction application, but that is not something with this court has to concern itself in the review.

[23] What is of significance in the adjudication of the review is that the first respondent has chosen not to explain or qualify the import of her social media posts described above. Individually, and all the more so, collectively, they suggest a passionate interest by the first respondent in the activities of the applicant and its relationship with its tenants. They indicate that the first respondent holds the view that the applicant’s conduct in that respect is oppressive. Her reference to ‘the rot at Communicare’ implies an allegation of corruption, and the references to a land audit and the transfer of assets in relation to the constitutional transition suggest at least scepticism by the first respondent that Communicare’s property is validly held by it. It appears from the social media content that it was because the first

respondent held such opinions that she publicly expressed the view that court proceedings should be instituted to deregister the applicant.

[24] It is evident that the first respondent's social justice interests and related campaigning were closely related to the issue in the case she was called upon to adjudicate. It was clear that she nurtured a hostile view of the applicant's management of its housing stock. She had published these opinions on the internet. It should have been obvious to her that it would reasonably be apprehended in the circumstances that she could not be impartial in her adjudication of the eviction application. She was under an ethical and legal duty in the circumstances to have declined to sit in the case. The effect of the first respondent's failure to recuse herself from the eviction application was that the proceedings before her were a nullity; see e.g. *Council of Review, SADF* supra, at 495A-D, and *Moch v Nedtravel (Pty) t/a American Express Travel Service* 1996 (3) SA 1 (A) at 9D-G.

[25] That conclusion should be the end of the matter. It would ordinarily be unnecessary and irrelevant to have regard to the first respondent's judgment in the eviction application because, as mentioned, her determination on the merits of it is irrelevant for the purposes of the review. It would be remiss of this court, however, not to mention that the 63-page judgment unfortunately contains passages that bear out that the first respondent did in fact introduce her personal issues into the adjudication of the case. *Moch v Nedtravel* supra, (see p. 16B-F) exemplifies a case in which the court (in that matter on appeal rather than review) found confirmation in the judgment in the impugned proceedings of the judicial officer's perceived bias. In the judgment, the first respondent discussed material concerning the applicant's history and activities that were not relevant to the case, or properly before her on the evidence.

[26] So, for example, she discusses the applicant's involvement in a government social housing scheme in 'the entire suburb of Ruyterwacht' - the suburb mentioned in the many of

the social media posts described above. The property concerned in the eviction application was in Brooklyn. The reference in the judgment to the applicant's activities in Ruyterwacht is inexplicable, except in the context of the first respondent's documented extrajudicial personal interest in them.

[27] The first respondent's judgment also digresses into the issue of the applicant's compliance (if such was required) with what the first respondent described as the "Transitional arrangements of Assets and Liabilities" as described in the Act' (being the Interim Constitution, Act 200 of 1993). The first respondent stated in her judgment (at para 161.3.5) that 'the Applicant is silent whether it has complied with these prescripts ... and there is no evidence before this Court whether they implemented any asset registers and if these were ever audited by the new incoming government after 27 April 1994'. The matter was not an issue on the papers in the eviction application, but it is evident from her social media posts that it was a matter of personal concern to her extrajudicially. Her mentioning of it in the judgment illustrates that the first respondent brought her personal causes concerning the applicant into her adjudication of the case.

[28] The first respondent also referred in her judgment (at para 161.3.6) to an online report dated 23 July 2019 that she found on the iol.co.za website 'that the Social Housing Regulatory Authority was going to probe Communicare after receiving complaints from residents about financial disbursements and the transfer of properties'. She noted '[t]he status of this important investigation is unclear and unknown despite Government's announcement of it, through SHRA, more than three years ago'. There was no evidential basis for this reference in the case before her. It is, however, evident from the social media excerpts quoted earlier, that the first respondent had a personal interest in these matters and had apparently even been involved in lobbying politically about them.

[29] The merits or demerits of the first respondent's issues with *Communicare* are irrelevant, and this court is in any event not qualified by the material before it to pronounce on them. But irrespective of their validity or invalidity, the examples (which are not exhaustive) of the first respondent's unjustified involvement of them in her adjudication of the case serve as ample substantiation of the reasonableness of the applicant's apprehension that it did not receive an impartial hearing.

[30] In the circumstances the review application will be granted and directions given for the eviction application to be tried afresh before a different magistrate.

[31] As mentioned, the applicant prayed in its notice of motion for costs against the first respondent. Advisedly, in my opinion, the applicant's counsel indicated at the hearing that the applicant did not persist in seeking costs in the light of the first respondent having elected to abide the judgment of this court. The applicant, may, of course, if so advised, pursue the impropriety of the first respondent's conduct with the Magistrates Commission if it considers that her breach of the Code of Judicial Conduct for Magistrates was grossly negligent or wilful.

[32] The applicant also did not seek costs against the third respondent, who was the only party to oppose the review application. The third respondent's opposition was founded almost entirely on her defences in the eviction application. Although, in its notice of motion, the applicant invited this court to substitute its own determination of the eviction proceedings when setting aside the first respondent's judgment, the applicant's counsel, advisedly, did not press for such relief at the hearing.

[33] An order will issue as follows:



1. The proceedings in case no. 2571/2020 in the magistrates' court for the district of Cape Town conducted before the first respondent, including the judgment delivered on 3 August 2022 are reviewed and set aside.
2. The application in said case no. 2571/2020 is remitted to the district court for hearing afresh before a different magistrate.

**A.G. BINNS-WARD**  
**Judge of the High Court**

**N. MANGCU-LOCKWOOD**  
**Judge of the High Court**