IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

CASE NO: 16347/2016

In the Recusal Application:

Hermanus Pieterse (Respondent) (On behalf of 145 Paradise Park Homeowners)	Applicant

In Re: The matter between:

RH SCHONEGEVEL	First Applicant
MAGNA BUSINESS SERVICES (PTY) LTD	Second Applicant

And

THE OCCUPIERS OF PARADISE PARK HOLIDAY RESORT, VERMONT, WHOSE NAMES APPEAR ON THE LIST ANNEXED HERETO AS ANNEXURE"A"	1st to 284th Respondent
THE OCCUPIERS OF PARADISE PARK HOLIDAY RESORT, VERMONT, WHOSE PARTICULARS ARE UNKNOWN	285th Respondent
OVERSTRAND MUNICIPALITY	286th Respondent

And
In Re: the matter between:

ANGELINA RAS	1ST Applicant
146 RESIDENTS	2ND - 146TH Applicants

And

R H SCONEGEVEL	1ST Respondent
MAGNA BUSINESS SERVICES (PTY) LTD	2ND Respondent
OVERSTRAND MUNICIPALITY	3RD Respondent

Order: (Application for leave to appeal): 20 October 2022

Le Grange J

[1] These are two applications for leave to appeal to the Supreme Court of Appeal, alternatively to the Full Court of this Division against judgment and orders I delivered where the same parties are involved. The first is against the judgment and order delivered on 21 February 2022 and the second is against the judgment and order I delivered on 20 April 2022. A third application for leave to appeal against the 20 April 2022 judgment and order was also launched on 24 August 2022 by Mr Danie Zeelie. That matter however became settled and in an email to the attorneys of Magna Business Services, Mr Zeelie recorded that he was going to vacate the premises of Paradise Park and will not proceed with his application. That matter was on 10 October 2022 removed from the roll with no order as to costs. In current proceedings, for the sake of convenience, I have prepared one judgment.

[2] Mr Hermanus Pieterse is the applicant in the first and Mrs Angelina Ras in the second application. Mrs Ras initially filed an application for leave to appeal in the form of

a notice of motion on 30 June 2022, during the recess period, at my chambers. The same was also served on Sharuh Attorneys on 30 June 2022.

[3] At the start of the third term on 18 July 2022, my secretary informed the occupiers of Paradise Park via the email address of Mr Pieterse that the application for leave to appeal did not comply with Practise Directive 45 of this Court and that such application will not be entertained unless there are full compliance with the said Practise Directive. A copy of the Practise Directive was attached to her email. On the same day, Mrs Tracy Henn wrote an email to my secretary expressing the occupiers' discontent about the practice directive that they need to comply with.

[4] On 8 August 2022 the same application for leave to appeal in the form of a notice of motion was filed at the office of the Registrar. On 12 August 2022, my secretary via email informed all the relevant parties including Sharuh attorneys, Mr Pieterse and Mrs Henn that the matter will be heard on 10 October 2022 at 10 am.

[5] Mr Pieterse, on 14 September 2022, enquired from my secretary as to a date when his application for leave to appeal (the recusal application) can be heard, since his application for direct access to the Constitutional Court (CC) in respect of this case was dismissed on 5 August 2022 by the CC. My secretary via email on 16 September informed Mr Pieterse, including Sharuh Attorneys that the application will also be heard on 10 October 2022.

[6] On 10 October 2022, Mr Pieterse was in person. Mrs Ras was apparently sick and could not attend court. I was informed by Mrs Tracy Henn (who seems to be the driving force and the main correspondent on behalf of the current occupiers in this case), that Mrs Ras including the occupiers, wants Mr Sharuh to represent them. Apparently, Mr Sharuh was not at available as he was busy in another court. It needs to be mentioned that Mr Sharuh was fully aware of the hearing date since 15 August 2022.

[7] Despite the affidavit filed by the attorney of Magna Business Services, setting out solid grounds why a postponement should not be granted, I postponed the matter until 18 October 2022 for Mr Pieterse and Mrs Ras to obtain legal representation. I informed Mr Pieterse and Mrs Henn, in no uncertain terms that I have a dim view about the way Mr Sharuh absented himself in this case since 2 August 2021, and his failure to comply with Rule 16 of the Uniform Rules of this Court. Furthermore, they were informed that his unavailability on the 18 October 2022 will not be regarded as a good cause to delay the continuation of the two pending applications.

[8] On 18 October 2022, Mr Sharuh failed to appear and needless to say a further postponement was sought by Mr Pieterse and Mrs Henn. It now seems that Mr Sharuh insists on a mandate of all the occupiers and to consult with each of them individually before he will come on record. Mrs Ras was still ill and could not attend court.

[9] It has become obvious from the sworn affidavit of Mrs Ras dated 29 June 2022 that since Sunday, 23 April 2022, she and the remaining occupiers of Paradise Park had decided to approach Mr Sharuh for legal assistance. In paragraph 7.3 of her affidavit she recorded that they were attempting to get a consultation date with him. According to the affidavit filed by the attorney of Magna Business Services, an urgent application was launched by one of the occupiers, Mr V Martins and allegedly on behalf of 159 others on 23 August 2022. The urgent application sought to stay off the execution of the eviction order. According to the affidavit, Mr Sharuh appeared on behalf of all 160 occupiers. Due to a serious lack of non-compliance of the Rules of this Court, the matter was struck from the roll with costs. If the latter is correct then common sense dictates that the allegation of a sudden lack of a mandate and the need to consult with the individual occupiers, to continue with this application is simply untenable. Mrs Henn and Mr Pieterse were also lost for words as to why another attorney and or counsel were not briefed to argue the applications on their behalf, if Mr Sharuh was unable to do so.

[10] Having regard to the history of this matter, a further postponement would clearly undermine the proper administration of justice. It has now become manifestly clear that the occupiers' main objective is to unduly delay these proceedings. Another disturbing feature is the persistence of the occupiers to use the services of Mr Sharuh at great costs to them, whilst the services of one of the bigger legal firms in Cape Town, Webber Wentzel Attorneys, who was willing to assist them *pro bono* was outright declined in the past. Moreover, no legitimate reason was advanced as to why counsel and or another

attorney was not approached to deal with the current applications if Mr Sharuh was unable to do so.

[11] Mr Pieterse has further recorded in his affidavit that he was supported by about 145 co-residents and if required would file signed power of attorneys, permitting him to speak on their behalf. In the second application, Mrs Ras has also recorded in her affidavit that she was duly authorised by her co-applicants, their executors and heirs to institute the second application. A list with names was annexed to both applications in support of this allegation and to purportedly confirm their authority to institute proceedings on behalf of others. Despite the reference to a number of co-applicants only the founding affidavit was filed in support of each of the applications. Both applicants simply failed to file any supporting or confirmatory affidavits by parties they allege to represent.

[12] Mrs Ras in her application has cited 146 other residents (as the 2nd – 146th applicants as per annexure "V but there is not a single signature or any implied authorisation, and or any reference that authorised her to institute this application or depose to the founding affidavit on their behalf.

[13] Mrs Ras recorded that 7 parties included in the list have passed away, yet she failed to cite the executor(s) of the deceased estates.

[14] Mr Pieterse has been repeatedly informed that as a lay person he is not permitted to represent other individual occupiers. It is obvious, despite being a learned man, that Mr Pieterse has no interest in heeding the warnings of this Court. The position that lay persons cannot represent a natural person in a court of law was recently reiterated in the case of Commissioner for the South African Revenue Service v Candice-Jean van der Merwe (211/2021) [2022] ZASCA 106 (30 June 2022), where the Supreme Court of Appeal refused that a father represent his daughter in a court of law and held the following in para 45-46:

> *'[45] In terms of the common law, it is not permissible for a lay person to represent a natural person in a court of law. This common-law position now finds support in s 25 of the Legal Practice Act 28 of 2014, which provides in relevant part that: '(1) Any person who has been admitted and enrolled to practise as a legal practitioner in terms of this Act, is entitled to practise throughout the Republic, unless his or her name has been ordered to be struck off the Roll or he or she is subject to an order suspending him or her from practising. (2) A legal practitioner, whether practising as an advocate or an attorney, has the right to appear on behalf of any person in any court in the Republic or before any board, tribunal or similar institution, subject to subsections (3) and (4) or any other law.'*
>
> *[46] It follows that there is no discretion to allow a lay person to represent a natural person in a court of law. In Shapiro & De Meyer Inc v Schellauf (Shapiro) [2001] ZASCA 131 (SCA) para 10, this Court accordingly held that the respondent's wife was not entitled to appear and argue the appeal on behalf of the respondent.*

There is no justification for this Court to depart from its established practice, which is in accordance with the common law. The pitfalls of a natural person being represented by a person who is not a legal practitioner are obvious. The clearest example that comes to mind is that the rules of this Court would not oblige such a lay representative to file a power of attorney. This could cause a party to subsequently deny the authority of the representative, to the detriment of the administration of justice.'

[15] Turning to the application for leave to appeal by Mr Pieterse, the criterion, in regard to the question of leave to appeal, has now obtained statutory force as contemplated by Section 17(1)(a) of the Superior Courts Act No. 10 of 2013 and provides as follows:

> *"(1) Leave to appeal may only be given where the Judge or Judges concerned are of the opinion that:*
>
> *(a)(i) the appeal would have a reasonable prospect of success ..."*

[16] In the matter of Ramakatsa and others v African National Congress and another [2021] JOL 49993 (SCA), the Supreme Court of appeal held at para 10 as follows:

> *"The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a Court of appeal could reasonably arrive at a conclusion different to that of the Trial Court. In other words, the Appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there*

must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

[17] I have carefully considered the notice of application for leave to appeal and the grounds of appeal listed therein where Mr Pieterse contends that another Court will come to a different conclusion.

[18] Having regard to the papers filed, and having heard Mr Pieterse and counsel for the other parties, I would have preferred that another court looked at my judgment on the recusal application but that is not the test. In applying the test whether Mr Pieterse has shown that on proper grounds which is not remote, there exists a reasonable chance of succeeding, it is obvious besides the procedural flaws in the application, he has failed to show in substance a sound rational basis for the conclusion that there are prospects of success and that another court would come to a different conclusion.

[19] It follows that Mr Pieterse's application for leave to appeal falls to be dismissed with costs.

[20] In respect of the application for leave to appeal by Mrs Ras, her application as it stands and despite the late filing thereof suffer the same procedural flaws as that of Mr Pieterse. Despite bringing to this Courts attention that in paragraph 67 of the judgment an incorrect reference was made to s 2 of the Formalities in Respect of Leases of Land

Act, 18 of 1969, as it was repealed, she has also failed to show a sound rational basis for the conclusion that there are prospects of success and that another court would come to a different conclusion. It would therefore not be in the interest of justice to merely strike her application from the roll but to dismiss it.

[21] My reference to s 2 of the Formalities in Respect of Leases of Land Act, 18 of 1969. In the context of paragraph 67 of the judgment is patently incorrect. The relevant section is s 1(2) of the Act, which contents had been fully referred to in footnote 5. It follows that since the error had been brought to my attention it needs to be corrected in terms of Rule 42 of the Uniform Rules. It follows where reference is made to s 2 of the Formalities in Respect of Leases of Land Act, 18 of 1969, in paragraph 67 of the judgment it should be amended to read 1(2), the contents thereof had been fully referred to in footnote 5.

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

1. The Application for leave to appeal by Mr Pieterse is dismissed with costs.
2. The Application for leave to appeal by Mrs Ras is dismissed with no order as to costs.
3. Reference to section 2 of the Formalities in Respect of Leases of Land Act, 18 of 1969, in paragraph 67 of the judgment is herewith amended to read s 1(2).

Le Grange, J