

CONVERTING GARAGES INTO LIVING SPACES IN A BODY CORPORATE...

SUMMARY OF JUDGEMENT: MARETHA MINEUR V THE BAYDUNES BODY CORPORATE

Court Information

- **Court:** High Court of South Africa (Western Cape Division, Cape Town)
- **Case No:** 11020/2018
- **Date of Judgment:** 24th May 2019
- **Coram:** Justice J I Cloete

Introduction

This case involves Maretha Mineur's appeal against an adjudication order made by the third respondent, dated 23 May 2018, which dismissed her relief requests. The appeal is based on the interpretation of section 13(1)(g) of the Sectional Titles Schemes Management Act and its management rule 30(f).

Key Legal Provisions

- **Community Schemes Ombud Service Act (CSOS Act)** - Section 57 allows appeals to the High Court only on questions of law.
- **Sectional Titles Schemes Management Act**

Background of the Case

- The **Baydunes Scheme**, located in Hartenbos, consists of 73 sections (units) and has been operational since its conversion to a sectional title scheme in 1993.
- The applicant, Maretha Mineur, sought declaratory relief regarding the conversion of garages to living quarters and the legality of certain special resolutions and conduct rules adopted by the body corporate.

Special Resolutions and Conduct Rules in Question:

- **Special Resolution 1** - Approved the conversion of garages into living quarters.
- **Special Resolution 3** - Created new exclusive-use areas from common property.
- **Conduct Rule 10** - Conferred rights of exclusive use of additional parts of the common property for parking purposes.



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Dispute Context

- The applicant highlighted that many owners had unlawfully converted their garages into living spaces without proper consent.
- The local municipality demanded that these alterations be regularised, leading to the body corporate's attempt to ratify the existing alterations.

Legal Issues Addressed

- **Interpretation of 'Section' in section 13(1)(g)** - The primary legal question is whether the word "section" refers to the entire unit or can be interpreted to include parts of the unit, such as garages.
- **Procedure Followed** - Whether the body corporate followed the proper procedures in adopting the special resolutions and conduct rules.

Findings of the Court

- **Section 13(1)(g)** - The court concluded that this section applies to changes in the use of sections (including parts of sections) that materially affect other owners in the scheme.
- The definitions in the Act classify sections as either "primary" (living quarters) or "utility" (garages), establishing that garages are intended for parking and not living spaces.

Key Conclusions

- The conversion of garages to living quarters requires a unanimous resolution from all owners, as it fundamentally alters the use of the property and affects the communal living environment.
- Special resolution 1 was declared **unlawful and invalid** as it did not obtain the necessary consent.
- Special resolution 3 and conduct rule 10 were also declared **unlawful and invalid** due to improper procedures and failure to adhere to statutory requirements.

Final Orders

- The appeal is successful, with costs to be borne by the first respondent.
- The third respondent's order is set aside, with the following declarations made:
 - Section 13(1)(g) applies to the conversion of garages to living quarters within the Baydunes Scheme.
 - Conduct rule 10 is declared unlawful and invalid.
 - Special resolutions 1 and 3 are declared unlawful and invalid.

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