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## SUMMARY OF JUDGEMENT: INCASA BODY CORPORATE VS. RISE PROPERTY SOLUTION & OTHERS

### Court Information

- **Court:** High Court of South Africa, Gauteng Division, Pretoria
- **Case Number:** B5673/2023
- **Date of Hearing:** 17th October 2023
- **Date Delivered:** 23rd October 2023
- **Judge:** SWANEPOEL J

### Parties Involved

- **Applicant:** Incasa Body Corporate
- **First Respondent:** Rise Property Solution
- **Second Respondent:** Rudolph Krog
- **Third Respondent:** Oyeniyi Akadi
- **Fourth Respondent:** Beauty Bankole

### Background

The application was presented in the urgent court, initiated by the president of what the applicant claims to be the Incasa Body Corporate. This individual claims authorization to act on behalf of the body corporate as per a constitution adopted during a meeting on the 22nd of July 2023. The constitution emphasizes "Reclaiming ownership of Incasa Body Corporate common property."

### The Context

- The **first respondent** is the **managing agent** appointed by the actual trustees of the body corporate.
- The **second to fourth respondents** are **trustees** of the body corporate.

### Relief Sought by the Applicant

- An interdict restraining the respondents from acting on behalf of the body corporate.
- An interdict preventing the respondents from bringing the body corporate into disrepute.
- An interdict prohibiting the respondents from managing the common property of the body corporate.

### Court's Findings

- The founding affidavit lacked substantive context, primarily indicating a concern over a meeting scheduled for the 11th of October 2023 without providing a factual basis for its significance.
- The applicant's reliance on a prior adjudicator's decision from the Community Schemes Ombud Service was found unsubstantiated, as the adjudicator had denied the relief sought by the applicant, including the dissolution of the current trustees.
- The applicant's interpretation of the adjudicator's findings was deemed incorrect, leading to the election of a rival board of trustees, which is not permissible.
- The applicant was found to lack **locus standi** (the right to bring the matter before the court), as the deponent to the founding affidavit was not authorized to act on behalf of the non-existent applicant.

### Procedural and Substantive Issues:

- The application failed to meet urgency requirements and was set for a hearing after the concerned meeting had already taken place.
- The absence of three other trustees in the application was highlighted as a critical flaw, as they had a direct interest in the proceedings.
- The applicant did not establish a clear or prima facie right to the relief sought, nor did they provide evidence of irreparable harm or the absence of alternative remedies.

### Conclusion and Order

The court concluded that the application must be dismissed due to the numerous procedural and substantive failures outlined. The respondents' argument for costs against the deponent was accepted, as the applicant lacked legal personality, meaning any costs order against it would be unenforceable.

### Final Order

- The application is dismissed.
- Mr. Emmanuel Sibadela is ordered to pay the costs of the application **de bonis propriis** (from his own funds).



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