

[14] In the result, the following order is made:

1. The rule *nisi* issued on 28 January 2016 and extended on 12 February 2016 is discharged.
2. Each party is to pay its own costs in respect of the applicants' application for a rule *nisi* and associated relief.
3. The decision of the second respondent's Built Environment and Landscapes Committee of 30 September 2015 ('the HWC decision') to grade the building on Erf 207 situated at 69 Long Street, Piketberg, Western Cape ('the building') as Grade IIC and to approve the total demolition of the building, is reviewed and set aside and referred back to the second respondent for reconsideration.
4. Until the second respondent has finally reconsidered the HWC decision, the first respondent is prohibiting from relying in any way on the HWC decision to demolish or allow the building or any part of the building to be demolished.
5. The second respondent's reconsideration of the HWC decision shall proceed as follows:
  - 5.1. within fifteen (15) court days after the date of this order, the first respondent shall place a notice in the local newspaper published in Piketberg, namely 'Die Piketberger':
    - 5.1.1. notifying members of the public in Afrikaans and English that the record of proceedings relating to the HWC decision and all other documents and information at the second respondent's disposal relevant to the first and fourth Respondents' application for a demolition permit for the building,

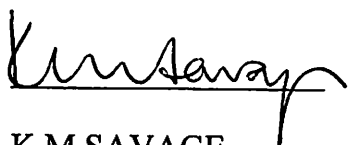
including a heritage statement produced by Aikman Associates on behalf of the first respondent to be provided by the first respondent to the second respondent within five (5) court days of the date of this order, will be available for public scrutiny for a period specified in the notice, which period may not be shorter than thirty (30) calendar days from the date of publication of the notice, at, first, the Piketberg Public Library on Church Street, Piketberg between 09h30 and 17h00 on Mondays, Tuesdays and Thursdays and between 14h00 and 15h30 on Wednesdays and Fridays and, second, the office of the Municipal Manager of the Bergrivier Local Municipality situated at 13 Church Street, Piketberg during office hours;

- 5.1.2. inviting members of the public to submit comments in any official language in connection with the first and fourth respondents' application for a demolition permit for the building, on or before a date specified in the notice, which date may not be earlier than thirty (30) calendar days from the date of publication of the notice;
- 5.1.3. cautioning members of the public that comments received after the closing date may be disregarded; and

- 5.1.4. specifying the name and official title of the person to whom any comments must be sent or delivered and specifying the work, postal and street address, and if available, also an electronic mail address, work telephone number and fax number, of any of such person;
- 5.2. within fifteen (15) court days after date of this order, the second respondent shall dispatch to the applicants the record of proceedings relating to the HWC decision and provide them with all other documents and information at the second respondent's disposal relevant to the first and fourth respondents' application for a demolition permit for the building;
- 5.3. within thirty (30) calendar days after the date the second respondent has complied with the provisions of paragraph 5.2 above, the applicants shall lodge any comments or objections to the first and fourth respondents' application for a demolition permit for the building with the second respondent. Failure by the applicants to lodge their written comments and objection with the second respondent within the time period stipulated, shall serve as confirmation they do not have any comments or objections to make;
- 5.4. within five (5) court days after the date mentioned in paragraph 5.1.2 above or after receipt of any comments or objections made by the applicants in terms of paragraph 5.3 above, whichever is the

later, the second respondent shall submit copies of all such comments to the first and fourth respondents;

- 5.5. within fifteen (15) court days after the second respondent has complied with paragraph 5.4 above, the first and fourth respondents shall lodge with the second respondent their responses, if any, to the such comments or objections or an indication that they have no response thereto: provided that if the first and fourth respondents do not lodge anything with the second respondent within the period specified in this paragraph, they shall be deemed to have no response to such comments or objections;
- 5.6. within sixty (60) calendar days of the expiry of the period of fifteen (15) court days mentioned in paragraph 5.5 above, the second respondent shall reconsider the first and fourth respondents' application for a demolition permit for the building.
6. The second respondent shall pay the costs of the first respondent's counter-application, including the costs of two counsel.



K M SAVAGE

Judge of the High Court

Appearances:

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Applicants: W J Van der Merwe

Instructed by Alastair Morrison Van Huyssteen Attorneys

First respondent: A M Breitenbach SC with

A E Erasmus

Instructed by Du Plessis Hofmeyr Malan Inc.

Second respondent: S van Zyl

Instructed by the State Attorney

view I take of the matter is that each of the parties is to pay their own costs.

[12] Although the applicants' initially elected to oppose Liebco's counter-application they ultimately indicated on 31 March 2016 that they would abide by the substantive relief sought. It is material that the relief sought in the counter-application accorded with that to be sought in the applicants' own application to review HWC's decision. Having regard to all the circumstances of the matter, I am not persuaded that the applicants ought to be saddled with the costs of their opposition to the counter-application prior to the filing of their notice to abide by Liebco's application. This is more so given that the applicants seek to act in the public good and not in furtherance of their own or individual interests.

[13] I see no reason however as to why HWC's decision to oppose the counter-application does not warrant an order of costs made against it, particularly in circumstances in which the applicants and Liebco were in agreement that HWC's decision fell to be reviewed and set aside. In spite of this, HWC elected to proceed with its opposition, apparently on the basis that it sought direction from the Court regarding the issue. It has long been stated by our Courts that it is not the role of the Court to provide advice to litigants. The same applies to HWC in the circumstances of this matter. It was apparent that no party had received notice of the application before it prior to it having been considered, nor had there been any notice and comment procedure put in place. Whilst the provisions of the NHRA may not have required it, PAJA did. As much would have been ascertainable to HWC from a reading of PAJA. There was therefore no cogent reason put up for opposing the relief sought by agreement between the other parties. Having adopted the approach that it did to the issue, HWC exposed itself to an order of costs being made against it and there is no reason to insulate it from such order simply on the basis that it is a statutory agency.

Order

entitled to proceed to demolish the building but with this Court prohibiting Liebco from relying in any way on the HWC decision to demolish or allow the building or any part of the building to be demolished.

[10] Turning to the issue of costs, Liebco seeks that the applicants be ordered to pay costs in respect of the main application on the basis that the application was an abuse of Court process and that it was improper to have approached the Court on an urgent and *ex parte* basis for the relief sought and obtained on 28 January 2016. This, it was contended, was particularly so when no undertaking not to proceed with the demolition of the building had been sought from Liebco, and there was no evidence that the demolition was imminent or any evidence that if Liebco had received notice of the application it would have defeated the object of such application.

[11] It is trite that the Court's discretion with regards to costs is one that must be exercised judicially having regard to all the relevant considerations.<sup>7</sup> The applicants acted in the public interest in approaching the Court to seek to interdict the demolition of the building. While it is so that no undertaking was sought from Liebco prior to approaching the Court in the manner in which they did, the view I take is that the applicants should not be penalised for their decision to act in circumstances in which they considered to be in the public good and given further that had a demolition occurred it would by its nature be final and irremediable. Whilst I am not persuaded that the approach to this Court on an *ex parte* basis was warranted, the respondents were not prejudiced by such approach. In such circumstances, I see no reason as to why the applicants should be penalised by a costs order in respect of the main application. I do however, equally, consider it inappropriate to order that the applicants' costs in respect of the main application be paid by the respondents given the applicants' failure to seek a resolution of the issue prior to an urgent *ex parte* approach to the Court. It follows therefore that, in respect of the main application, the

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<sup>7</sup> *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC) at para 138.