

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
BLOEMFONTEIN**

**SCA case number: 1490/2024**

**Court *a quo* case number: 4755/2022**

In the matter between:

**HENDRIK PETRUS CELLIERS**

First Applicant  
(First Applicant *a quo*)

**PAUL ERNEST MCMENAMIN**

Second Applicant  
(Second Applicant *a quo*)

**IZAK JACOBUS BOOYSEN**

Third Applicant  
(Third Applicant *a quo*)

**JOHANNES VENTER**

Fourth Applicant  
(Fourth Applicant *a quo*)

And

**KLEINFONTEIN AANDELEBLOK (PTY) LTD**  
(Registration number: 2018/209461/07)

First Respondent  
(First Respondent *a quo*)

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY** Second Respondent  
(Second Respondent *a quo*)

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**FILING NOTICE**

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**DOCUMENT FILED:      APPLICANTS' REPLYING AFFIDAVIT TO FIRST  
RESPONDENT'S ANSWERING AFFIDAVIT**

**FILED BY:                DR. T C BOTHA INC ATTORNEYS  
ATTORNEYS FOR APPLICANT**

SIGNED at Pretoria on this the 17th day of FEBRUARY 2025.

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REF.: MR. C GERDENER/\_\_\_\_\_

TO: **THE REGISTRAR OF THE PRETORIA HIGH COURT**

AND TO.: **THE REGISTRAR OF THE SUPREME COURT OF APPEAL  
BLOEMFONTEIN**

AND TO: **HURTER SPIES INC  
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AND TO: **MARIVATE ATTORNEYS INC.**  
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REF.: \_\_\_\_\_

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
BLOEMFONTEIN**

SCA case number: 1490/2024

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**HENDRIK PETRUS CELLIERS**

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(First Applicant *a quo*)

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Third Applicant

(Third Applicant *a quo*)

**JOHANNES VENTER**

Fourth Applicant

(Fourth Applicant *a quo*)

And

**KLEINFONTEIN AANDELEBLOK (PTY) LTD**

First Respondent

(Registration number: 2018/209461/07)

(First Respondent *a quo*)

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY** Second Respondent

(Second Respondent *a quo*)

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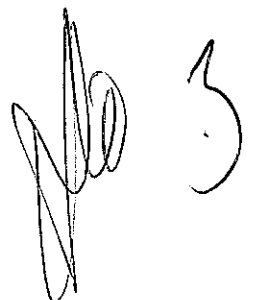
**REPLYING AFFIDAVIT TO THE FIRST RESPONDENT'S ANSWERING  
AFFIDAVIT**

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I, the undersigned

**HENDRIK PETRUS CELLIERS**

do hereby declare under oath as follows:



1.

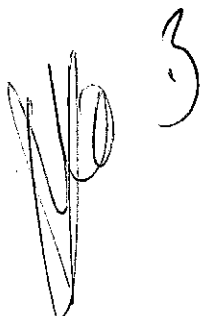
- 1.1. I am a major male with identity number: 500116 5023 08 9, currently residing at BA6, Lewerik Street, Plot 235, Kleinfontein.
- 1.2. I am a shareholder in the First Respondent herein.
- 1.3. The facts contained herein fall within my personal knowledge, unless the context indicates otherwise and are, to the best of my knowledge, both true and correct.

2.

- 2.1. I am advised that in this Replying Affidavit I am restricted to deal only with new matter raised by the First Respondent.
- 2.2. I deny the contents of the First Respondent's Answering Affidavit insofar as same are not in consonance with what I have stated in my Founding Affidavit in this application for leave to appeal.
- 2.3. I shall herein below under different headings refer to the paragraphs of the First Respondent's Answering Affidavit that necessitates a reply.

3.

**AD PARAGRAPH 6 THEREOF:**

A handwritten signature, possibly reading 'M. B.', followed by the number '3'.

It is accepted that Dr Venter is not participating in this application for leave to appeal as he is no longer a shareholder of the First Respondent and has moved out of Kleinfontein in December 2024.

4.

**AD PARAGRAPH 7 THEREOF:**

4.1. It is reiterated that the Applicants do not take issue with the Court *a quo* granting an interdict against the First Respondent. The Court *a quo* correctly did so.

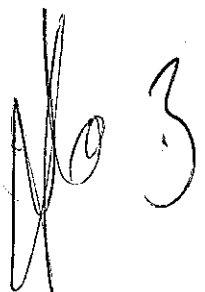
4.2. The Court, however, should have granted an interdict against the Second Respondent as the Applicant has satisfied the requirements for such interdictory relief.

5.

**AD PARAGRAPH 8 THEREOF:**

5.1. It is not necessary to have joined the shareholders of the First Respondent.

5.2. I am advised that a private company such as the First Respondent is represented by its directors and there existed no need to join some 52 individuals and trusts that have purchased shares in the First Respondent.

A handwritten signature, possibly reading 'No 3', is written in the bottom right corner of the page.

- 5.3. If the aforesaid reasoning is applied in litigation, it would mean that any application brought against a private company would necessitate the joinder of all the shareholders.
- 5.4. Accordingly, there are no merits in the First Respondent's objection of non-joinder.

6.


**AD PARAGRAPH 9 THEREOF:**

- 6.1. It is submitted that on the facts that were common cause in the Court *a quo*, the Applicants were entitled to a final interdict against the First Respondent.
- 6.2. It is common cause that the activities of the First Respondent contravene the legislative provisions referred to in my Founding Affidavit, which contraventions constitute offences.
- 6.3. In the circumstances the Court did not have a discretion but to grant the interdictory relief, alternatively in not granting the interdictory relief the Court did not exercise its discretion judicially.

**See: Lester v Ndlambe Municipality, 2015 (6) SA 283 (SCA) at paragraphs 23 to 28.**

A handwritten signature in black ink, appearing to be 'N3' with a stylized flourish.

- 6.4. The First Respondent contends that the Applicants did not make any averment of substantive non-compliance with the National Building Regulations and Building Standards Act, 103 of 1977 ("the Building Standards Act").
- 6.5. It was common cause that not a single structure erected in Kleinfontein was erected in accordance with building plan approval procured in terms of Section 4(1) of the Building Standards Act. Any building plan approval procured would have in any event contravened the provisions of Section 7(1) of the Building Standards Act in that the Second Respondent's (Municipality's) town planning scheme, its bylaw and the provisions of the Spatial Planning and Land Use Management Act, 13 of 2016 ("SPLUMA") are contravened.
- 6.6. Lastly, not a single structure occupied in Kleinfontein is occupied in terms of an occupancy certificate issued in terms of Section 14 of the Building Standards Act.
- 6.7. In the circumstances, there is no merit in the First Respondent's aforesaid contention.
- 6.8. In respect of the First Respondent's application brought under case number: 6713/2022, the First Respondent did not apply for leave to appeal and accordingly was satisfied that its application had correctly been dismissed by the Court *a quo*. Accordingly, I am advised that it is not necessary for me to deal further therewith.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the bottom, followed by a small '3'.



6.9. Insofar as the First Respondent contends that it has been “hamstrung” in procuring the necessary land use approvals with reference to the demise of the Development Facilitation Act (“the DFA”), I am advised that the First Respondent should have procured the necessary approvals prior to establishing the unlawful township of Kleinfontein. If the First Respondent had done so, an application for township establishment could have been brought in terms of the Town Planning and Townships Ordinance, 15 of 1986 (“the Ordinance”), which town planning legislation governed the establishment of townships before the DFA came into operation.

6.10. The fact that the First Respondent at some stage applied for the necessary land use rights does not legitimise the unlawful use of the relevant properties.

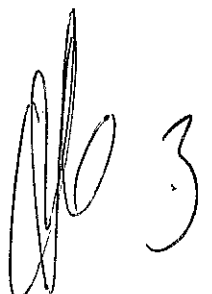
**See: City of Tshwane Metropolitan Municipality v Grobler, 2005 (6) SA 61 at paragraphs 6 to 9; and**

**United Technical Equipment Co (Pty) Ltd v Johannesburg City Council, 1987 (4) SA 343 (T) at 348H-I.**

7.

**AD PARAGRAPH 18 THEREOF:**

7.1. A zoning of “Undetermined” allows for agricultural purposes in terms of the relevant Scheme. Such zoning would allow for a single dwelling house on each farm portion.



7.2. There can be no doubt whatsoever that the First Respondent is contravening the zoning of the subject properties, and this issue has correctly been found by the Court *a quo*.

8.

**AD PARAGRAPH 23.6 THEREOF:**

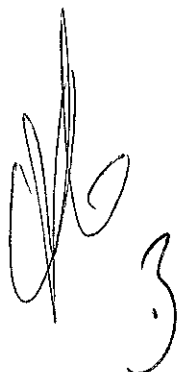
8.1. The First Respondent states that it is not the First Respondent that continues with construction activities but only it is only the existing share block holders that do so.

8.2. The aforesaid is of no assistance to the First Respondent as insofar as it allows further construction activities to continue on the subject properties of which it is the registered owner, it is acting unlawfully and committing an offence.

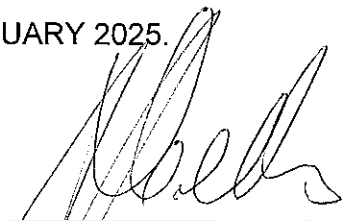
9.

**CONCLUSION:**

9.1. In the aforesaid circumstances, it is submitted that for the reasons set out in my Founding Affidavit, there is a reasonable prospect of success on appeal and there also exists compelling reasons why leave to appeal should be granted.

A handwritten signature in black ink, followed by the number '3'.

Dated at Pretoria on this 17<sup>TH</sup> day of FEBRUARY 2025.

  
Deponent

I, the undersigned commissioner of oaths, hereby certify that before taking the oath:

1. the deponent identified himself to me; and
2. that I asked the deponent the following questions and noted his answers in his presence:

Do you know and understand the contents of this declaration?	<u>YES</u> /NO
Do you have any objection to taking the prescribed oath?	YES/ <u>NO</u>
Do you consider the oath to be binding on your conscience	<u>YES</u> /NO

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration which was sworn to before and the deponent's signature was placed thereon in my presence. The deponent uttered the words "I swear that the contents of this declaration are true, so help me God."

Dated at Pretoria on this 17<sup>TH</sup> day of FEBRUARY 2025.



**COMMISSIONER OF OATHS**

**FULL NAMES:**

**DESIGNATION:**

**Ex Officio Republic of South Africa**

**AREA FOR WHICH APPOINTED:**

**PHYSICAL/BUSINESS ADDRESS:**

**JAN LUKAS BOTHA**

Kommissaris van Ede

Commissioner of Oaths - Ex Officio

Praktiserende Prokureur - Practising Attorney

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