

**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR THE BUILT  
ENVIRONMENT ("APPEAL COMMITTEE")**

In the appeal between:

**MONIQUE BOTHA**

APPELLANT

**SOUTH AFRICAN COUNCIL FOR THE  
ARCHITECTURAL PROFESSION (SACAP)**

FIRST RESPONDENT

**CIZANIE VAN ZYL**

SECOND RESPONDENT

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**RULING OF APPEAL**

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**INTRODUCTION**

1. The Appeal, forming the subject matter, relates to a Compliant by Monique Botha, "Appellant", against the decision of the Council of South African Council for the Architectural Profession ("SACAP"), "First Respondent", to dismiss the

complaint of improper conduct against Cizanie Hilriette Scholtz (nee Van Zyl),  
"Second Respondent"

## **THE PARTIES**

2. The Appellant is **MONIQUE JO-ANNE BOTHA**, who is the legal owner<sup>1</sup> of the property situated at Erf 16958, 9 Rylaan 3, Seemeeupark, Mossel Bay.
  
3. The First Respondent is **SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION**, the regulatory authority in terms of the Architectural Profession Act 44 of 2000 and its delegated authority, the Council of the First Respondent, who took the decision<sup>2</sup> that is the subject of the current appeal.
  
4. The Second Respondent is **CIZANIE HILRIETTE SCHOLTZ (NEE VAN ZYL)** a professional draughtsperson registered with SACAP in terms of Section 18(2) of the Architectural Profession Act 44 of 2000 to provide architectural services to members of the public.

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<sup>1</sup> Affidavit in terms of Section 27 of the Architectural Profession Act – dated 11 October 2023 indicates that the Appellant and Rodney Botha are the joint owners of the property

<sup>2</sup> Record – Appeal Records 1- page 3 The decision was communicated in a letter dated 3 October 2024 signed by Ms. Bessie Hlope – Acting Senior Legal and Compliance Manager

## **BACKGROUND**

5. The Appellant lodged a complaint of improper conduct with the First Respondent in terms of Section 27 of the Architectural Profession Act 44 of 2000 against the Second Respondent.
6. On 3 October 2024, the Appellant was informed that the Council of the First Respondent had resolved that the complaint should be dismissed. As detailed in the letter of the 3 October 2024, the Appellant is entitled in terms of Section 35(1)(a) of the Architectural Profession Act 44 of 2000 to request written reasons for the decision of the Council of the First Respondent prior to lodging the appeal.
7. In terms of paragraph 1 on page 2 of Annexure A<sup>3</sup> – to the Heads of Argument, the Appellant stated that she requested written reasons for the dismissal of her complaint.
8. The record of appeal unfortunately does not include the request for the reasons, nor does it indicate if written reasons were indeed provided to the Appellant.

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<sup>3</sup> Record of Appeal - Appeal Records 3 - Annexure A page 2

9. The decision was subsequently appealed<sup>4</sup> by Appellant in terms of Section 21 of the Council for the Built Environment Act 43 of 2000, to the Appeal's Committee of the Council for the Built Environment (CBE).
10. The Council of the First Respondent decision of 3 October 2024 is the subject matter of this appeal to the CBE.

### **HEARING APPEAL – APPEALS COMMITTEE**

11. The Appeal committee heard the appeal on Monday 13 January 2025 in Pretoria. The Appellant attended the hearing in person. Similarly, the First Respondent was represented by Ms Kgagogelo Mashile. The Second Respondent, elected not to participate in these proceedings. The respective parties addressed the Appeal committee and made necessary oral representations.
12. The parties were requested during the hearing to clarify certain of the Appeal committees' concerns.

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<sup>4</sup> Record Appeal Records 1 page 1-2 Notice of Appeal dated 15 November 2024 and same was indicated in the appeal hearing to have been formally lodged with the CBE on 18 November 2024

13. As detailed above, the appeal record is not clear if the Appellant had indeed requested written reasons and or if same was provided prior to her lodging the appeal.
  
14. The Appeals Committee has been provided with bundle of the record of the proceedings, described as Appeal Records 1,2 and 3. The Appeal record included submissions by the Appellant and the First Respondent, which has assisted the Appeals Committee in preparing its ruling. In light of the aforesaid the Appeals Committee will not overburden this ruling with a detailed background to the appeal, which is largely common cause and reference were applicable will be made to the relevant portions of the record.

#### **DIRECTIVE – APPEALS COMMITTEE**

15. The Appeals Committee is constituted to give effect to Section 34 of the Constitution of the Republic of South Africa<sup>5</sup> (“the Constitution”), which ensures that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
  
16. In keeping with the right in Section 34 of the Constitution, the Appeals Committee and as prescribed in the CBE appeals policy<sup>6</sup>, the Appeals

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<sup>5</sup> Act 108 of 1996

<sup>6</sup> Policy on Conducting Appeals approved by council on 17 June 2022

Committee needs to ensure a fair hearing. As such the Appeals Committee is not bound by the Appeal record and it is entitled to request additional information in the exercise of its powers on appeal to ensure a fair hearing and decision.

17. In this context the Appeals Committee requested the parties to address specific issues which arose in the hearing especially in clarifying factual background to the initial compliant which tendered before the Council of the First Respondent.
18. On 13 January 2025, the Appeals Committee issued a directive to the parties. In terms of the directive the Appellant and the First Respondent were required to provide additional documents by the close of business on the 14 January 2025.
19. The Appellant was to provide *inter alia* copies of all documents and approvals authorising the building works at the property which she obtained from the Municipality. This was to demonstrate the timeline of the submission of *inter alia* the plans to the Municipality.
20. The Appeals Committee needed to gain an understanding as to when and by who the plans were submitted. The Appellant was further required to provide copies of all complaints she had filed in different forums relating to the property i.e. The Public Protector, Engineering Council of South Africa and National Home Builders Registration Council.

21. The First Respondent was similarly required to provide the Appeals Committee with a copy of the initial complaint filed by the Appellant against the Second Respondent. In addition, the Appeals Committee required, the reply to the complaint by the Second Respondent.
  
22. Importantly, the Appeals Committee is required to determine in this appeal as detailed in the notice of appeal if the First Respondent Council "*3.3. Failure to prefer charges / Investigate a complain(sic)*". In the absence of these documents, the Appeals Committee is unable to understand the historical context of the appeal and determine if the First Respondents decision should be set aside on appeal.
  
23. The Appeals Committee without having had sight of the original complaint, found it difficult to completely understand the crux of the matter. On a *prima facie* reading of the appeal record this appeal appeared to be a purely administrative issue of alleged incorrect completion of forms. The detailed information that formed part of the original complaint provided more clarity as to the nature of the complaint. If all this information was not presented to the First Respondent, it is reasonable to assume that they failed to request the information for clarity issues as clearly the Appellant had all the information at hand. The Appeals Committee is concerned that the appeal record did not contain this information. It is unclear if the Appeal record is defective or if the information was even considered by the First Respondent? If the information does not form part of the record because it was never part of the investigation into the complaint, then a negative inference is to be drawn. The Appeals

Committee is simply unable to determine what exactly tendered before the First Respondent.

24. On 14 January 2025, the Appeals Committee was provided with WeTransfer link to obtain access to the additional requested documents provided by the Appellant and the First Respondent.
25. The Appellant and First Respondent were further entitled to reply to the additional submissions. The Appellant proceeded to submit a further email on the evening of 15 January 2025, indicating her view as to the documents submitted. The First Respondent did not elect to make any further submissions.
26. On 16 and 17 January 2025, the Appeals Committee discussed the additional submissions and resolved that it had sufficient information to decide the appeal.

## **APPEAL TO THE CBE**

27. The arguments presented to the appeal Appeals Committee will be summarised below.



## **APPELLANTS SUBMISSION**

28. The Appellants submissions are summarised in her heads of argument.<sup>7</sup>

## **RESPONSE BY FIRST RESPONDENT**

29. The First Respondents submissions are summarised in its heads of argument.<sup>8</sup>  
To avoid overburdening this ruling the arguments will not be repeated, however the arguments which warrant reply will be dealt with below.

## **ISSUES**

30. This appeal raises several issues, whilst these issues may not be depository of the appeal, the following two topics warrant comment in this ruling as it forms the basis / rationale for the conclusion reached by the Appeals Committee.

30.1. The test for the failure to prefer chargers / investigate a complaint.

30.2. Application of the test to the facts of this matter.

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<sup>7</sup> Record Appeal Records 3 – Annexure A page 1-12

<sup>8</sup> Record Appeal Records 3 – Annexure B page 1-5

## **FAILURE TO PREFER CHARGERS / INVESTIGATE A COMPLAINT**

31. The nature of the appeal and the question before this committee warrants clarification.
32. The appeal deals with the question whether the Council of the First Respondent decision not to prefer chargers against the Second Respondent is correct.
33. Importantly it is not for this Appeals Committee to pronounce on the chargers but whether the decision not to proceed to *inter alia* constitute a disciplinary tribunal was correct.
34. As detailed above, the appeal record did not provide the committee with sufficient information to determine if the First Respondents council was correct in dismissing the complaint.
35. The First Respondents council refusal to proceed to formal disciplinary steps is akin to a prosecutor refusing to prosecute a criminal complaint. In this regard, it is instructive to consider the regulatory framework governing criminal prosecutions.
36. In the case of ***Nzuza and Others v National Director of Public Prosecutions and Others (70192/17) [2024] ZAGPPHC 335; 2024 (2) SACR 251 (GP) (15 April 2024)***, the Judge President Mlambo dealt with the

Review application and Section 22 of the National Prosecuting Authority Act 32 of 1998. The case dealt with the question of the National Director of Public Prosecutions – refusal to review decision by Director of Public Prosecutions to institute a prosecution.

37. At paragraph 47 – 48 the learned judge opined: -

*[47] Pursuant to section 21 of the NPA Act, a National Prosecution Policy document is in place, and it has the purpose of "set[ting] out, with due regard to the law, the way in which the Prosecuting Authority and individual prosecutors should exercise their discretion."*

*[48] Chapter 4 of the Policy covers the criteria governing a decision to prosecute. It emphasises the "profound consequences" a decision whether or not to prosecute can have on society at large, from victims to accused persons. The overarching decision should be based on whether there is **"sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution"**. [ own emphasis]*

## **EVIDENCE BEFORE FIRST RESPONDENTS' COUNCIL**

38. The first step in this process is to identify the material placed before the Council.

39. The scope of the appeal and what this committee is to determine is in fact on a very narrow compass.
40. The Appeal Committee has belatedly received the Appellants initial complaint, and the Second Respondents reply to the complaint.
41. The Appeals Committee is not privy to exactly the reason for the decision taken by the First Respondents Council.
42. In the affidavit of 17 November 2023, the Second Respondent states under oath that: -
- 42.1. *"I was only recently informed that Mr Wesson, who Mr Van Straten has appointed as engineer, was not a Civil Engineer"* (para 54).
- 42.2. *"Mr Wesson, was, in any event, not used by me as an Engineer on the building project"* (para 55).
43. As detailed above it is not for this Appeals Committee to pronounce on the veracity of the Second Respondents version. The question is limited to whether there is **sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution.**

44. It is also common cause that the Second Respondent was initially engaged by Mr Van Straten to provide architectural services. No such agreement was concluded between the Second Respondent and the Appellant. The only agreement between the Second Respondent and the Appellant was the agreement of sale of the property.
45. We highlight this in reply to the assertion by the Appellant that the conclusion of the sale agreement created obligations on the Second Respondent. Whilst the conclusion of the sale agreement creates contractual obligations on the Second Respondent to the Appellant in her capacity as the Seller / Owner, it does not necessarily follow that the sale agreement creates a professional obligation and duty on the Second Respondent to the Appellant. In addition, as a rule the Act allows for any person to lodge a complaint against the conduct of a Professional person - Clause 28(1)(b) of the Architectural Professions Act. The existence of an agreement is with respect irrelevant.

## **ANALYSIS OF THE COMPLAINT**

46. For purposes of completeness, we address, our view the aspects of complaint filed against the Second Respondent which warrant a reply. We have taken the liberty of transcribing the Appellants complaint verbatim from the initial complaint and thereafter provide a reply to same.

46.1. ***"Ms. Van Zyl completed a Form 1 as owner to erf 16958 and appointed herself as competent person as Professional Architectural Draughtsperson."***

No, transgression. Although after the initial Form 1 submission, Mrs Scholtz (nee van Zyl) became the owner and remained the Competent Person for the Architectural Draughting services.

46.2. ***"She should be held accountable also for her actions as owner and non-compliance of duties accepted i.e. The appointment of an engineer which she failed to do but for who she submitted a Form 4."***

Ms van Zyl indeed became the owner of the property and thus had to assume the responsibilities of an Owner in terms of the relevant legislation and regulations.

The Section 1 of Form 1 to be completed by the Owner clearly specifies that the onus is on the Owner to:

*"ii) notify the local authority in writing should be appointment be terminated before the work for which this person was appointed is*

*completed, and to make another appointment in terms of Regulation **A19(2)**.*

*iii) extend the above appointment to meet the requirements of Regulations **A19(7)** and **A19(8)** where applicable”*

In the absence of a Form 2 completed by Mr C Belter, it is suspected that Mrs van Zyl failed to inform the Municipality of the change and failed to make another appointment.

As an experienced competent person, it is reasonable to assume that Mrs van Zyl should have been aware of her responsibilities in this regard.

46.3. ***“As built plans were only submitted after the property had already transferred to us.”***

Submission of as-built plans to record any changes to the original designs as approved by the municipality is common cause.

- 46.4. ***"Ms van Zyl certified her Form 4 on the incorrect building plans to obtain an occupation certificate from the municipality."***

No evidence of this could be found.

- 46.5. ***"Ms van Zyl acted as a builder and sold to us the house which she also designed."***

This statement is not factual. Mr van Zyl as a homeowner used a registered builder to build her home, but before completion of the home, sold it to the Appellant. There is nothing in the Code of Conduct that restricts this.

- 46.6. ***"Ms van Zyl submitted 3 plans to the municipality and issued a Form 4 on the incorrect plans. As built plans were only submitted after the property had already transferred to us."***

There is no limitation to the number of submissions and the submission of as-built plans.



46.7. ***"Ms Van Zyl did not adhere to the "Deemed to Satisfy requirements" as stated on the Form 2 i.e. 1. Appoint competent persons for Structural design 2. Appoint competent persons for foundations."***

It is undisputed that Mr van Zyl did not appoint a Structural Engineer when she purchased the property and decided to continue with the building of the home (Replying Affidavit par 16). In her own submission, she confirmed that the services of the Engineer who signed the Form 2 were not retained. She also confirmed in her affidavit that she allowed the builder to appoint the Engineer.

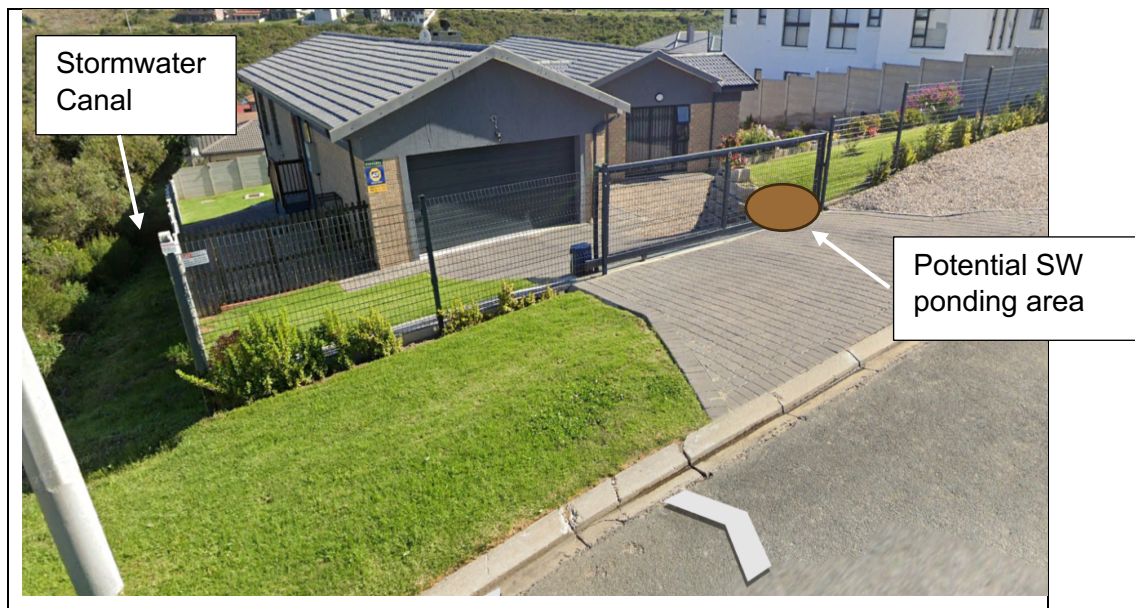
It is critical to note that by completing Form 2, the Engineer declare that he/she accepts the full responsibility for the designs, assessment in respect of the project and requirements of the National Building Regulations.

In this case, there is no Form 2 and no declaration by Mr Belter and no record of his responsibilities and liabilities. As there is no record of designs or drawings, the scope of work of the appointed Engineer is not clear.

On scrutinising the drawings as submitted to the Municipality, the scope of work for which the Structural and Civil Engineer should take responsibility is also not indicated and insufficient detail is indicated on the drawings to identify the scope of work for the Competent Persons.

46.8. ***"No or incorrect stormwater disposal, water is ponding in front of property which may have a severe impact on the foundations."***

A note appears on the Sewer Layout that the Stormwater should comply with the SANS 10400-R. No design and details are provided. Stormwater design is the competence of a Civil Engineer. The Form 4 signed by Mr Belter was for the structural system only. On scrutinising the site plan, it was evident that stormwater management off the property was a critical consideration. The images hereunder indicate an area where likely stormwater drainage could be problematic if no proper drainage design was completed. The absence of a Civil Engineer may have indeed resulted in stormwater related issues judging from the plans as submitted to the municipality for approval. A stormwater canal is located directly next to the property. It is normal for a Civil Engineer to assess the flood levels to ensure that the floor levels are above prescribed flood levels. In the absence of a Civil Engineer, it cannot be confirmed if the design level for the property is above the flood levels as prescribed by the National building regulations or Municipal By-laws.



47. As detailed above, in our view there is no substance to the allegation that Second Respondent acted improperly while acting as the “draughtsperson”. The dismissal of the other causes of complaint are dealt with above.
48. The conduct of the Second Respondent in her capacity as the “owner” of the property is of grave concern. As highlighted above, she appears to have failed to inter alai inform and notify the Municipality of the change in the engineer. The Second Respondent has simple delegated all authority to the builder. The delegation to the builder in our view does not indemnify the owner from defects to the property.
49. Notwithstanding same, in our considered view, there is insufficient admissible evidence to provide a reasonable prospect of a successful prosecution against the Second Respondent for improper conduct in her **professional capacity**.

50. Whilst the Appellant may be aggrieved by the alleged conduct of the Second Respondent this is not the forum to determine her liability (if any). This aspect should be dealt with in a civil suit.
51. The Appeal committee notes that various role players conduct has contributed to the Appellants current dilemma. In this regard, the finding of Engineering Council of South Africa of 5 April 2024 regarding – the complaint against Mr Colin James Belter shows that the Appellant cause of complaints has merit when proceeded with in the correct forum.
52. The Appeal committee considering the allegations made during the hearing of this appeal encourages the CBE and the various councils of the profession<sup>9</sup> to consider the issues raised by the Appellant to determine if other professionals in the built environment are deliberately and intentionally breaching the codes of conduct.

## **CONCLUSION**

53. The Appeals committee finds that the decision of the First Respondents Council based on evidence before it was correct.

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<sup>9</sup> Section 1 of Council for the Built Environment Act 43 of 2000 defines “councils of the professions”

## **RULING**

As a result, the following ruling is made: -

- (i) The Appeal is dismissed;
- (ii) The First Respondents decision set out in the record of decision dated 3 October 2024 remains in force; and
- (iii) This ruling together with necessary supporting documents to the complaint / appeal record is to be referred to the various "Councils of the professions" as detailed in Section 1 of Act 43 of 2000 to consider if any charges of improper conduct is to be brought against members of the profession who were part of the project, i.e. design and or construction of Erf 16958 Mossel bay, for instance, Mr. Wesson may have a case to answer if similar charges against his conduct was lodged with the ECSA.

**DATED AT JOHANNESBURG ON 17 JANUARY 2025**



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**APPEALS COMMITTEE**

**MR. S HANGONE (CHAIRPERSON)**

**MR. C KOOPMAN**

**MR. C MERRINGTON**