When an HOA fine goes too far

Why a penalty must first be triggered by the wording of the rule — and must then survive scrutiny under the Conventional Penalties Act.

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In Part 1 of this series, we considered an important feature of the *Baronetcy Estate* judgment: municipal approval does not necessarily excuse an owner from complying with the private rules of a homeowners association (HOA).

But establishing a breach is only part of the enforcement equation.

Many estates rely on penalty clauses to compel compliance. Daily fines, escalating penalties and interest charges are common features of HOA rules. Properly drafted and fairly enforced, they can be an effective means of securing compliance with obligations that are difficult to quantify in monetary terms.

But a penalty does not become recoverable merely because it appears on an owner's levy statement.

The Western Cape High Court's decision in *Baronetcy Estate Homeowners Association v Mohamed Abdulahi* (WCC cases 17258/2019 and 8985/2022, 18 August 2026) illustrates two separate questions that must be answered before an HOA can recover a penalty:

1. **Did the wording of the rule actually trigger the penalty?**
2. **If it did, is the amount proportionate to the prejudice suffered by the HOA?**

Those questions must be dealt with in that order.

Interpretation determines whether a debt arose at all. Only once that hurdle has been crossed does the Conventional Penalties Act 15 of 1962 become relevant to the amount recoverable.

The penalty claim

The owner occupied his completed dwelling in December 2017.

At that stage, the City of Cape Town had issued a temporary occupation certificate. A final occupation certificate followed in September 2018.

The HOA, however, had not issued its own occupancy clearance certificate because of the unresolved dispute concerning the height of the roof.

The applicable rules provided that nobody could move into a dwelling without an occupation certificate issued by the City. They further stated that the City would not issue its occupation certificate unless the HOA committee had first issued an occupancy clearance certificate.

A separate clause imposed a fine of R700 per day where the dwelling was occupied before the HOA issued its certificate.

The HOA's case was straightforward: because its own certificate had never been issued, the daily fine continued to run.

By the time proceedings were instituted, its certificate of balance reflected a claim of almost R3.7 million, together with interest at 26% per annum compounded monthly.

The Court rejected the claim — but not initially because the amount was excessive.

The more fundamental problem was that the penalty had never been triggered.

Interpretation comes first

The Court applied the established approach to contractual interpretation set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).

The language of the rule had to be considered together with its context and purpose.

The starting point was the wording of the rule itself.

It prohibited occupation without a **City occupation certificate**.

The natural consequence of that wording was that once the City had issued the certificate, occupation was permitted.

The HOA's own occupancy clearance certificate was described as part of the process that was supposed to precede the City's certificate. It was not clearly drafted as a separate and continuing requirement after the municipality had authorised occupation.

That distinction was fatal to the penalty claim.

The HOA's proposed interpretation would also have produced an unusual result: an owner who had been lawfully authorised by the municipality to occupy the property would nevertheless remain exposed to an unlimited daily fine until the HOA decided to issue a separate certificate.

The Court preferred the interpretation that best matched the apparent purpose of the rule — namely, preventing occupation without municipal approval.

Because the owner had held a temporary and thereafter a final City occupation certificate throughout the relevant period, the daily fine was never triggered.

The penalty claim therefore failed at the first hurdle.

Why this matters for HOA penalty rules

There is a simple but important lesson here.

Before asking whether a fine is fair, reasonable or excessive, an HOA must first be able to point to a rule which clearly makes the owner's conduct punishable.

A court cannot reduce a penalty that was never contractually payable in the first place.

That means the drafting of the triggering event matters enormously.

If an estate intends both municipal approval **and** HOA approval to be prerequisites to occupation, the rule should say so expressly.

If a penalty continues until a particular event occurs, the rule should also make clear what that event is, who controls it and when the penalty stops accumulating.

Ambiguity at that stage can defeat the entire claim.

The Conventional Penalties Act

Although the Court found that the fine was not payable, it went further and considered what the position would have been had the HOA's interpretation been correct.

Section 1(1) of the Conventional Penalties Act recognises the enforceability of a contractual provision requiring payment of a penalty following a breach.

But section 3 gives a court an important corrective power.

Where the penalty is **out of proportion to the prejudice suffered by the creditor**, the court may reduce it to the extent it considers equitable.

The question is therefore not simply whether the amount is large.

Nor is the enquiry whether the court itself would have chosen a lower penalty.

The issue is whether there is a material mismatch between the penalty imposed and the prejudice actually suffered by the HOA.

The debtor ordinarily bears the onus of establishing that disproportion.

But the Court in *Baronetcy* emphasised that the enquiry may nevertheless be informed by undisputed facts and obvious inferences arising from the HOA's own case.

Prejudice does not only mean financial loss

One point from the judgment is particularly important for HOAs.

The prejudice contemplated by the Conventional Penalties Act is broader than direct financial loss.

An HOA has a legitimate interest in preserving the integrity of its rules, maintaining orderly administration and discouraging owners from simply ignoring the estate's requirements.

The Court referred to *Van Staden v Central South African Lands and Mines* 1969 (4) SA 349 (W), where prejudice was understood broadly enough to include harm to a creditor's property, reputation, activities, convenience and other legitimate interests.

That means an HOA does not necessarily have to prove that the breach cost it a specific amount of money.

But there is an important limit.

A general assertion that enforcement is necessary to preserve the authority of the rules does not justify a penalty of any amount.

There must still be some rational relationship between the prejudice suffered and the penalty claimed.

In *Baronetcy*, the Court found no evidence that the breach had encouraged similar violations, undermined the HOA's authority or caused material harm to the estate.

The height deviation was relatively minor and had not interfered with the neighbour's view or use and enjoyment of the property.

The prejudice established by the HOA was therefore limited.

Whose prejudice matters?

The HOA also attempted to rely on the hardship allegedly suffered by the neighbouring owner.

That argument failed.

For purposes of section 3 of the Conventional Penalties Act, the relevant prejudice is the prejudice suffered by the **creditor claiming the penalty**.

In this case, that creditor was the HOA.

The HOA could not simply appropriate the neighbour's alleged prejudice and rely on it to justify its own penalty claim, particularly where the neighbour was not a party to the proceedings.

That distinction is important in practice.

A neighbouring owner's complaint may well explain why an HOA decides to investigate or enforce a rule, but it does not automatically become prejudice suffered by the HOA itself.

The danger of an open-ended fine

Perhaps the most important practical lesson from the judgment concerns penalties that continue indefinitely.

A conventional late-building penalty normally ends when the owner completes the work. The owner controls the cure.

The penalty in *Baronetcy* worked differently.

It continued until the HOA issued its own clearance certificate — a certificate which the HOA had decided to withhold.

The owner therefore had no practical means of stopping the penalty from accumulating other than vacating the home.

That created an obvious difficulty.

The ultimate size of the penalty became dependent not only on the owner's conduct, but also on how long the HOA allowed the dispute to continue.

The longer the HOA withheld the certificate, the larger its claim became.

A penalty structured in that way creates a significant risk that an enforcement mechanism will become punitive rather than corrective.

And that is precisely what section 3 of the Conventional Penalties Act is intended to guard against.

The numbers tell the story

The comparison in *Baronetcy* was stark.

The owner's ordinary levy was approximately R2,000 per month.

The daily penalty of R700 equated to roughly R21,000 per month — more than ten times the ordinary levy.

Over time, the claim grew to almost R3.7 million, with compound interest at 26% per annum.

Yet the HOA alleged no equivalent financial loss.

The Court referred to the comparative approach adopted in *Plumbago Financial Services (Pty) Ltd t/a Toshiba Rentals v Janap Joseph t/a Project Finance* [2007] ZAWCHC 35; 2008 (3) SA 47 (C).

The question was effectively whether payment of the full penalty would place the HOA in a dramatically better position than it would have occupied had the breach never occurred.

On the facts before the Court, the answer was plainly no.

What the Court would have allowed

Because the Court found that the penalty had never been triggered, it was unnecessary to determine a reduced amount.

Nevertheless, it considered the position in the alternative.

Had the fine been payable, the Court indicated that it would have reduced the daily amount from R700 to R150 and would have stopped the accrual on 14 February 2022.

That was the date on which the HOA upheld the owner's internal appeal and approved the height relaxation subject only to the neighbour's consent.

On the Court's calculation, that would have resulted in a total penalty of approximately R230,400.

That figure should not be treated as a benchmark or tariff for HOA penalties.

Its significance lies in the reasoning behind it.

The Court looked at:

- the actual prejudice established;
- the owner's conduct;
- the daily rate;

- the period of accumulation; and
- the point at which continued enforcement ceased to serve a meaningful purpose.

That is the type of enquiry an HOA should anticipate whenever a substantial penalty is challenged.

What HOAs should do differently

Draft the trigger precisely.
The rule should identify exactly what conduct attracts the penalty. If municipal approval and HOA approval are both required, say so expressly. Do not rely on an assumed sequence of approvals to create an obligation that the wording does not actually contain.

Give the owner a realistic way to stop the penalty.
A penalty should ordinarily terminate when the owner performs an objectively identifiable act within his or her control. Where the HOA controls the terminating event, the rule should include clear decision periods, review mechanisms or another sensible stopping point.

Set a defensible rate.
The amount should bear some rational relationship to the nature of the breach, the likely prejudice, comparable penalties and the estate's ordinary levy structure. Large daily penalties, indefinite accumulation and compound interest require particular caution.

Keep evidence of actual prejudice.
Complaints, professional costs, security incidents, disruption to amenities, repeated violations and other consequences of the breach may all become relevant. General statements about maintaining the integrity of the rules will not necessarily justify a substantial claim.

Keep the accounting accurate.
The applicable rule, calculation period, daily rate, interest and payments must all reconcile. A penalty claim should be capable of being explained line by line.

Conclusion

Penalty clauses remain a legitimate and useful enforcement tool for HOAs.

But they are not self-enforcing.

Before a fine can be recovered, the HOA must first establish that the wording of the rule actually applies to the owner's conduct. Only then does the question arise whether the amount survives scrutiny under the Conventional Penalties Act.

The lesson from *Baronetcy* is therefore twofold:

First, draft the penalty so that the trigger is clear. Second, ensure that the amount remains connected to the prejudice the HOA is actually seeking to address.

A penalty should encourage compliance.

It should not become an instrument of punishment or a source of windfall recovery.

This is Part 2 of our three-part series on the *Baronetcy Estate* judgment. Part 1 considered whether HOA rules remain enforceable despite municipal approval. In Part 3, we consider a different and potentially far-reaching issue: when architectural and design rules imposed by an HOA may themselves conflict with municipal planning legislation.

If you have any questions about HOA penalty provisions, the enforcement of conduct or architectural rules, or the application of the Conventional Penalties Act, feel free to contact us at **info@theadvisory.co.za** for a no-obligation quotation.