



**SHERIFF APPEAL COURT**

**[2026] SAC (Civ) 52  
DUN-A179-25**

Sheriff Principal Gillian A Wade KC

**OPINION OF THE COURT**

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the appeal in the cause

A

Pursuer and Appellant

against

S

Defender and Respondent

**Pursuer and Appellant: Party  
Defender and Respondent: McNeil; MML Law**

13 July 2026

**Introduction and procedural history**

[1] This appeal relates to a dispute about an allotment. The appellant was formerly a member of the [REDACTED] which is the respondent in this appeal. He occupied plot 7 at an allotment site in Dundee. Following an incident on 5 May 2025 he alleged that he was subjected to sexual harassment and racial abuse at the allotment and that the respondent unlawfully denied him physical access to his plot.

[2] On 30 May 2025 the appellant instituted proceedings against the respondent at Dundee Sheriff Court craving 1) declarator that a) he remained entitled to access his plot

b) that the respondent acted unlawfully, unreasonably and *ultra vires* its powers by terminating his tenancy and failed properly to investigate or act upon his complaints of harassment, sexual harassment and racial abuse 2) interdict preventing the respondent from obstructing his access to his plot 3) damages of £5000 and 4) reinstatement as a tenant and a written apology. He has a plea-in-law to the effect that the respondent failed in its duty to protect him and denied him access to plot 7 without lawful authority.

[3] In answer to the claim the respondent narrated a contrary and somewhat alarming series of events caused by the appellant's behaviour at the allotment which had caused concern to others present and had been brought to the attention of the police due to significant welfare concerns for the appellant. It appeared to those involved that the appellant had suffered some form of mental health crisis. The respondent considered that his resultant behaviour amounted to a breach of terms 3 and 4 of the [REDACTED] allotment agreement and suspended then terminated his tenancy. The appellant was given the opportunity to appeal that decision but chose not to. Instead he raised an ordinary action at Dundee Sheriff Court.

[4] The pleadings disclosed a material dispute in relation to the factual background to the action. A police officer on the scene, PC Cargill, provided an affidavit which supported the account others had given of the incident. As the appellant had not adjusted his pleadings, he was deemed to admit the respondent's case.

[5] Following sundry procedure the respondent lodged a motion for summary decree on 4 September 2025. Following a number of continuations, which I shall address later, the motion called on 15 January 2026 and was further continued to 5 March 2026, when the sheriff made avizandum. He heard further submissions on 23 March 2026, following which he gave an *ex tempore* decision and granted decree in the following terms:

“The Sheriff, having heard parties' further submissions:

- i. on the Defender's motion number 7/1 of process, assoilzies the Defender from the craves of the writ;
- ii. refuses the Pursuer's motion number 7/2 of process;
- iii. finds the Pursuer liable to the Defender in the expenses of the action as taxed, allows an Account to be lodged and remits to the Auditor of Court to tax and report”

It is against this interlocutor that the appellant now appeals. By virtue of interlocutor on 29 May 2026 I ordered that this appeal should proceed by way of written submissions in terms of Rule 8.2(1)(b) of the Sheriff Appeal Court Rules and ordered that these together with any authorities to be relied upon be lodged by 19 June 2026.

### **The sheriff's decision**

[6] In the sheriff's report for this court he explains that in coming to his decision he considered parties' submissions, the pleadings and productions and applied

Lord Bannatyne's summary of the existing law on summary decree in *Grier v Chief Constable* (2020) SCLR 619 at [18]. He provides a summary of the information before him.

The conflict between the factual account of events leading to the termination of the appellant's tenancy at the allotment are stark.

[7] On the one hand the appellant avers that during a conversation on 5 May 2025 at the allotment with four other members of the respondent, someone played an audio recording of a female moaning loudly during sexual intercourse. The member said it sounded like the appellant and a female member of the respondent because “only blackbirds make ladies scream like that”. The appellant, who is black, took offence and commenced video recording events. The member's comments amounted to harassment of him, in breach of the respondent's rules. The respondent failed to investigate what occurred, in breach of a

separate rule. By denying him access to his plot, the respondent acted unlawfully and caused him to suffer distress, anxiety and loss.

[8] The respondent, on the other hand, averred that on 3 and 5 May 2025, the appellant remained in the allotment's eco toilet for several hours. On the latter date, he eventually emerged covered from head to toe in sawdust and when asked if he was well declined assistance. Due to his presentation the police were telephoned and it transpired that the appellant had already been in contact with local mental health services. They also arranged for his general practitioner to contact him the following day. Thereafter the appellant became aggressive and accused a member of making racist remarks to him. The reference to a blackbird was a reference to one member identifying the song of a blackbird nearby using an app on his telephone designed for that purpose. The members at the allotment did not know how to manage the situation. The police were called again and attended. It was then noted that the appellant had removed excrement from the eco toilet, wrapped it in toilet roll then placed it around the inside of the toilet. The respondent claimed it was justified in suspending then terminating the appellant's membership on account of this behaviour which was both alarming and distressing to others. Both steps were permitted by its rules.

[9] The sheriff also had access to productions of which he took account. In particular he had a video recording taken by the appellant (number 5/2 of process); an affidavit sworn by a police constable in attendance and a copy of the tenancy agreement (number 6/1/2 of process) dated 10 May 2021. Clause 3 provides that the appellant agreed not to "do anything on the plot or allotment site which is or may become a nuisance or annoyance to other tenants and members of the public". Clause 10 entitles the respondent to terminate the appellant's tenancy if he breached the agreement, subject to a right of appeal.

[10] Finally the sheriff had regard to the email and WhatsApp exchanges between the parties following the incident and leading up to the termination of the tenancy.

Number 5/1/1 of process is a copy of an email to the appellant from the respondent dated 8 May 2025 requesting that he did not return to the allotment until a number of concerns were addressed. Number 5/1/5 of process is a copy of a further email dated 22 May advising him that the respondent had suspended his membership for a period of 4 months and that he had a right to appeal that decision. Number 5/1/10 of process is a copy of the respondent's appeal procedure. Number 5/1/6 of process is a copy of a WhatsApp message dated 23 May from the appellant to the respondent stating that he would not be appealing the decision. Number 6/2/3 of process is a copy of an email dated 30 October 2025 from the respondent to the appellant advising him that the respondent had decided to terminate the appellant's tenancy and his membership of the association.

[11] The appellant argued that the affidavit of the police constable could not be relied upon because he had, in effect, colluded with members of the allotment association with whom he had a connection.

[12] In coming to his decision the sheriff considered the test in *Grier supra* in which Lord Bannatyne stated:

- “(a) The degree of satisfaction that is the tipping point for the court is less than certainty, but more than probability;
- (b) The court can take into account documents other than the pleadings;
- (c) While the court at the stage of the summary decree motion should not trespass on what is actually a matter for proof, it is in a quest to see if there is a genuine defence and not merely a relevant defence pled. Accordingly, a defender might state a defence, but if the facts appear to the contrary then the court can grant summary decree. Accordingly, the reverse of *Jamieson v Jamieson* [1952] SC (HL) 44, as it were, does not apply.
- (d) Summary decree is not limited to those cases where there is no defence stated at all or the stated defence is plainly irrelevant; the court is not barred from pronouncing decree simply because the defender makes unspecific assertions

which, if established, would provide a defence where the defender does not offer to prove it.”

[13] Relying on the evidence referred to above and in particular on the affidavit of PC Cargill he was satisfied that this was a case which fell into the category referred to in category (c) of *Grier*, where the facts appeared to be contrary to what the appellant was offering to prove. He rejected the appellant’s criticisms of the police evidence, and it did not appear that the events had been captured by a body worn camera. He derived no assistance from the letter from the appellant’s general practitioner and concluded the respondent was entitled to suspend and then terminate the agreement on account of the nature of the behaviour of the appellant; decisions which he had chosen not to appeal.

[14] He explains that in terms of OCR 17.2, he concluded that the appellant’s case had no real prospect of success and that there was no other compelling reason not to grant summary decree of absolvitor and to find the appellant liable to the respondent in taxed expenses.

### **Grounds of appeal**

[15] The appellant advances five grounds of appeal which can be summarised thus:

1. Error of law

There has been a breach of natural justice in that respondent made a quasi-judicial decision to suspend and terminate the appellant’s tenancy without affording him a fair hearing and failing to afford the appellant a fair hearing. The sheriff erred in law by not recognising this.

2. Failure to properly assess procedural unfairness

The sheriff failed to give proper weight to the undisputed absence of any fair process.

3. Reliance on unreliable information with no evidence

The sheriff erred in relying upon information with no evidence advanced by the respondent which was unsupported by objective or medical evidence, and contradicted by medical confirmation from the appellant's General Practitioner.

4. Failure to consider material evidence

The sheriff failed to properly consider the video evidence lodged by the appellant; the absence of body-worn police footage from attending officers, and the respondent's failure to produce such material ought to have resulted in an adverse inference.

5. Error in award of expenses

The sheriff erred in awarding expenses against the appellant.

The appellant acted reasonably in bringing proceedings to challenge an unlawful suspension; and a procedurally unfair termination of tenancy. The respondent's conduct was the cause of the dispute, it was therefore inequitable to award expenses against the appellant.

[16] In the respondent's written submission there is reference to a sixth ground of appeal. However there has been no motion to amend the grounds of appeal and no additional ground has been allowed. This Note of Appeal therefore defines the scope of the appeal.

### **Appellant's submissions**

[17] The appellant submits that the central issue in this appeal is whether an association exercising disciplinary powers affecting a member's rights and interests may lawfully suspend and terminate those rights without first affording the member a fair hearing. In particular he argues that at no stage prior to suspension or termination was he afforded a hearing before the decision-maker. Accordingly the respondent failed to comply with its own stated policy and obligations as written in its association rules. The respondent, he states, was under a contractual and administrative obligation to apply its own rules fairly and consistently. The denial of a right to be heard constituted a breach of natural justice and was procedurally unfair. The decision was therefore unlawful: *West v Secretary of State for Scotland* 1992 SC 385; *St Johnstone Football Club Ltd v Scottish Football Association Ltd* 1965 SLT 171.

[18] He further argues that this constituted a breach of his rights in terms of Article 6 of the European Convention on Human Rights. He complains that the sheriff failed to take account of his video evidence which he claims clearly demonstrates harassment and invites this court to review that evidence. In addition he founds on the absence of any video evidence produced by respondent. He maintains that there was and remains no evidence of him suffering from a mental health condition and that the sheriff was not entitled to draw the inferences which he did from the evidence available.

[19] Finally the appellant takes issue with the award of expenses as the appellant had fairly and reasonably sought judicial determination of the issues.

### **Respondent's submissions**

[20] The respondent invited the court to adhere to the decision of the sheriff and dismiss the appeal. It maintained its position on record that the appellant had suffered a mental health episode on the date in question resulting in disturbing behaviour which breached terms 3 and 4 of the [REDACTED] allotment agreement. The appellant was given the opportunity to appeal that decision but chose not to do so and instead raised an ordinary action at Dundee Sheriff Court which the sheriff determined had no reasonable prospects of success.

[21] Taking the grounds of appeal in turn the sheriff had concluded on the evidence that the decisions of the respondent were justified. The appellant had not invoked the appeal procedure which is provided for in the tenancy agreement. Paragraph 15 provides that a tenancy may be terminated if a tenant, or one of their visitors, breaches the terms of the agreement and also states, "The tenant has a right to an appeal under the appeals procedure", with reference to the [REDACTED] rules, Appendix 2. This process is "used to challenge the decisions of the Committee in relation to specific plots or members". Having failed to engage with the appeal procedure the appellant cannot now complain of procedural unfairness. He ought to have exhausted all internal processes prior to invoking the jurisdiction of the court; *McKenzie v Scottish Ministers* 2004 SLT 1236.

[22] In any event the relationship between the parties was contractual and as such the appellant has agreed to be bound by the terms of that contract which allow the respondent to terminate the appellant's tenancy if any rules are breached. On the evidence available, the

appellant breached those rules which meant the respondent was contractually entitled and, arguably, obliged, to terminate his tenancy. The appellant had the contractual right to appeal but chose not to exercise it.

[23] Turning to the second ground of appeal the respondent argues that there is inadequate specification of what is meant by “Failure to Properly Assess Procedural Unfairness.” Accordingly the respondent is unable to properly address the arguments. This would also appear to be a reference to the failure to allow the appellant a fair hearing the response to which is addressed in relation to ground 1.

[24] It is conceded that grounds 3 and 4 which relate to the sheriff’s treatment of the evidence are the most substantive. These are headed “Reliance on unreliable information” and “Failure to consider material evidence”. However the respondent maintains that the video evidence lodged by the appellant fails to show that he was subject to racial and sexual harassment. Rather, it shows that he is clearly agitated and telling others not to enter the toilet. Given what was subsequently discovered about the state of the toilet this video footage explains why the appellant did not want anyone to enter it. It does not support the appellant’s position. On the contrary it shows the appellant acting in a way that would be likely to cause alarm or distress to another occupier in direct breach of [REDACTED] rules which supports the view that the respondent was entitled to terminate the appellant’s tenancy. The suggestion that the sheriff ought to have drawn an adverse inference from the respondent’s failure to adduce video evidence from a body worn camera is misconceived. The onus is on the appellant to prove his case. If he considered that there was material available which would support his case, he ought to have taken steps to produce it; *Glasgow City Council v First Glasgow (No 1) Ltd* [2022] CSOH 9; 2022 SLT 164 per Lord Ericht [77].

In the present case, the appellant claimed racial and sexual abuse but has failed to provide evidence to support its position.

[25] In relation to the police constable's affidavit there was no prejudice to the appellant. It was free to be used and scrutinised by both parties; the police officer who provided it had no connection to the respondent and stood nothing to gain from providing inaccurate evidence to the court. Accordingly, the submission that the sheriff failed to consider material evidence, or ought to have drawn an adverse inference is misconceived and falls to be rejected. The sheriff having applied the correct test determined that the appellant's case stood no reasonable prospects of success and the appeal amounts to no more than a disagreement with his conclusions.

[26] Finally in relation to expenses it is submitted that it is a fundamental rule of litigation that expenses follow success. The court has absolute discretion as to whether to award expenses and against whom.

[27] The respondent observes that in the original Note of Appeal there were only five grounds, but the appellant has included an additional ground within his submissions which is not competent. In any event, the issues raised within this new appeal ground have already been addressed.

## **Decision**

[28] The respondent lodged a motion for summary decree in this case on 4 September 2026. At the same time a note of basis of preliminary plea was lodged challenging the relevancy and specification of the appellant's pleadings. This was in advance of an options hearing which took place on 11 September 2025. At that option's hearing, the appellant, who is a party litigant, had failed to lodge a record but was indulged to the extent that he

was afforded 24 hours in which to do so. The case was progressed to debate on the basis of the respondent's rule 22.1 note, but a hearing date was not assigned. The motion for summary decree could not be dealt with at the same time as the options hearing because the period for lodging opposition had not expired. For reasons which are not clear it was not until 30 September 2025 that a hearing on the motion was eventually assigned to call on 16 October 2025.

[29] However it was not dealt with by the sheriff presiding that day but was continued to allow the appellant further time for "adjustment" and for clarification of the position in relation to "the pursuer's access to his plot and rights as a tenant and member of the Allotment Association." Standing the terms of the respondent's motion and the fact that a debate had been assigned on the existing pleadings 5 weeks previously without the appellant making any attempt to amend in the interim this decision is difficult to fathom. The matter appears to have called again on 27 November 2025 for a further options hearing (albeit the debate which had previously been assigned was never discharged). Yet again both the options hearing and motion for summary decree were continued until the 15 January 2026 for "the pursuer to amend his application" in light of the termination of the agreement. On the 15 January 2026 the purported second options hearing was discharged for a second time and the motion for summary decree continued to the 5 March 2026 for affidavits in support of the respondent's position to be lodged. The affidavit of PC Cargill was lodged on 2 March 2026 pursuant to that interlocutor and was immediately met with a motion by the appellant to refuse to admit its content to probation. That motion was heard alongside the motion for summary decree on 5 March 2026 after which the sheriff made avizandum. On 11 March 2026 the sheriff assigned 23 March 2026 as a date for further

submissions on both motions and the final interlocutor was issued on that date some 7 months after the motion had originally been lodged.

[30] It is clear from the foregoing procedural history that there has been substantial and inexplicable delay in dealing with this matter, particularly between October 2025 and March 2026 when any form of case management was absent and the matter was allowed to churn from one hearing to another without any real attention being paid to the state of the pleadings, which by that stage ought to have been to debate at the very least. A targeted and thorough focus on the deficiencies of the appellant's pleadings would have been likely to avoid the time and expense which has been incurred since a diet of debate was allowed.

[31] Turning then to the appeal it is clear that it is a challenge to the decision to grant summary decree absolving the respondent from the craves of the writ and awarding expenses. It does not expressly challenge the sheriff's decision on the appellant's motion 7/2 of process.

[32] The starting point is to identify the basis on which the sheriff may grant summary decree. The power to do so is found in Chapter 17 of the 1993 Rules. The test which the sheriff was bound to apply is set out in OCR 17.2(1) and (2) which is in the following terms:

- "17.2 (1) subject to paragraphs (2) to (4), a party to an action may, at any time after defences have been lodged, apply by motion for summary decree...
- (2) An application may only be made on the grounds that-
  - (a) an opposing party's case (or any part of it) has no real prospect of success; and
  - (b) there exists no other compelling reason why summary decree should not be granted at that stage.
- (3) The party enrolling the motion may request the Sheriff-
  - (a) to grant decree in terms of all or any of the craves of the initial writ or counterclaim;
  - (b) to dismiss a cause or to absolve any party from any crave directed against him or her;
  - (c) to pronounce an interlocutor sustaining or repelling any plea-in-law; or
  - (d) to dispose of the whole or part of the subject-matter of the cause.

- (4) The Sheriff may-
  - (a) grant the motion in whole or in part, if satisfied that the conditions in subparagraph (2) are met.
  - (b) ordain any party, or a partner, director, officer or office-bearer of any party —
    - (i) to produce any relevant document or article; or
    - (ii) to lodge an affidavit in support of any assertion of fact made in the pleadings or at the hearing of the motion.”

[33] Before proceeding to grant decree as sought the sheriff in this case ordered and was provided with an affidavit from PC Cargill in order to vouch the factual position which the respondent was advancing. This was in terms of OCR 17.2(4)(b)(ii). He was correct to do so and this is indicative of the careful attention he paid to the test and the rule before acceding to the respondent’s motion.

[34] Unlike the position at debate the sheriff can look beyond the pleadings and consider the substance and authenticity of what is being pled. The rules expressly provide for consideration of evidence by way of documents and affidavits which serve to inform the sheriff of the likely prospects of success. The sheriff’s function is not limited to a consideration of legal principle although if the case is bound to fail as a matter of law that too would be a relevant consideration.

[35] In his note the sheriff expressly approached his task under reference to the guidance given by Lord Bannatyne in *Grier supra*. The court is bound to ascertain whether the averments which the party against whom the motion is directed are genuine and can be substantiated or whether there are other facts which would demonstrate the contrary and are enough to inform the sheriff that even if the matter were to proceed to proof there would be no real prospect of success and no other compelling reason to allow the case to proceed further.

[36] The appellant does not suggest that the sheriff erred in law in the application of the test for granting summary decree. Thereafter the matter is one for the discretion of the sheriff and one with which this court will not lightly interfere. That proposition has been stated often and is almost trite: *Britton v Central Regional Council* 1986 SLT 207; *McTear's Executrix v Imperial Tobacco Ltd* 1996 SC 514. Unless the decision is plainly wrong this court will not disturb it.

[37] The respondent's motion proceeded on the basis that in order to succeed the appellant would require to establish that he was subject to both sexual harassment and racial abuse at the allotment site on 5 May 2025 and, second, that the respondent has unlawfully denied him physical access to his plot.

[38] Separately there was reference to a purported but unspecific averment of a breach of duty of care and an averment that the respondent did not have the lawful authority to restrict the access to the allotment plot. The respondent submitted that the appellant had failed to place on record any additional specification of these matters or the alleged sexual harassment and racial abuse throughout the adjustment period.

[39] The respondent pointed to the contradictory version of events averred in the appellant's pleadings and argued that this was insufficient for proof. Matters are compounded by the appellant's failure to make general denials of the averments placed on record by the respondent resulting in those averments being deemed to be admitted. Taking all of these factors together the appellant's case has no real prospect of success and summary decree should be pronounced.

[40] While the motion largely concentrated on the deficiencies in the pleadings the sheriff correctly identified that the factual dispute about what happened at the allotment on 5 May 2025 and whether the appellant could prove he had been subjected to anything which might

colourably amount to sexual harassment and racial abuse was central to his disposal (paragraph [15] of his note for this court). It was for this reason he sought the affidavit evidence of PC Cargill. He makes clear in his assessment of that evidence that he viewed it in light of the other material to which he refers at paragraphs [9] to [14]. In addition he gave detailed consideration to the appellant's factual averments at paragraph [7].

[41] The sheriff gives a detailed narrative of his assessment of the appellant's video 5/2 of process. He states:

"It initially shows a conversation between a black male, who one must assume is the appellant, and an older white male. The latter then locks a shed and walks off. The black male's conversation then continues with an elderly white female, who eventually picks up an incinerator bin and moves away. Throughout, the black male appears agitated and upset. He alludes to an earlier conversation during which the white male told him that he was a God-fearing man. Nothing said by the white male or female is audible. Both appear to wish to avoid speaking. The camera then turns to show what appears to be the main path through the allotment, at the end of which several white males are seen standing at a large gate. After the black male shouts at them, they all leave through the gate. Two or three of them return soon after and congregate around a building near to the gate. As they do so, the black male repeatedly states 'don't go into the toilet'."

[42] As the respondent correctly identified in the submissions lodged with this court the only grounds of appeal which actually address the sheriff's substantive decision are grounds 3 and 4. Accordingly I shall deal with them first of all. It is argued that the sheriff relied on unreliable information and failed to consider material evidence. This is a complaint that the respondent did not present video evidence or medical evidence to support the factual position it was seeking to advance. This submission is flawed in a number of material respects. It fails to recognise that the onus is on the pursuer to prove its case. It proceeds on the basis that PC Cargill was wearing a body camera and that there is footage available. Neither of these facts are established or even averred. If the appellant is convinced that there was such footage, he must also consider that it would have supported

his version of events. That being so if he wished to rely on such evidence, it would have been open to him to take steps to establish that the footage existed and thereafter seek its recovery. He did neither. Third the sheriff cannot draw an adverse inference from the absence of evidence. On the contrary he is bound to make his decision on the evidence which he has before him. In this regard he had the affidavit of the police officer which refers to the appellant having contacted the police earlier in the day advising that “divine beings were commanding him to do things and by making technology around him make lots of beeping noises.” Such was the concern of officers that they made a referral to Carseview psychiatric ward and the appellant received a triage over the telephone.

[43] At 0800 hours the appellant presented at the police station informing officers his car boot was covered in blood prompting further contact with psychiatric services.

Paragraph [5] of the affidavit details further discussion with named individuals from Carseview and their approach to the escalation of the appellant’s behaviour which had been brought to their attention the day before. PC Cargill explains that he had been instructed not to detain the appellant unless his behaviour was manic or suicidal. As he did not assess it to be such, he did not detain him although in hindsight and with the benefit of further information regarding his behaviour in the eco toilet he potentially would have done so. It is inconceivable that PC Cargill would have invented this detailed account and sworn to it on oath.

[44] The appellant sought to have this evidence excluded. He did so on a basis which did not bear scrutiny and transpired to be without foundation. This served further to undermine the credibility and reliability of his position on record.

[45] This evidence was considered by the sheriff alongside the other evidence to which he makes reference. In his assessment he explains why he did not find that the appellant’s

video supported his averments. It did not show the appellant being sexually harassed or racially abused and instead supported the respondent's contention that he was agitated and telling others not to go into the toilet. The other allotment members appear to be avoiding interaction with the appellant rather than seeking to engage with him. Not only does this video fail to demonstrate that the appellant was subject to sexual or racial abuse, which is an essential fact upon which his case turns, it goes some considerable way to supporting the contrary position advanced by the respondent.

[46] Furthermore his behaviour, particularly in relation to locking himself in the eco toilet, shouting at others not to enter the toilet and his removal of excrement from the toilet is all behaviour which would be likely to cause alarm or distress to the other members and would constitute a breach of paragraph 3 and 4 of the [REDACTED] agreement which the appellant signed and which was available to the court. In turn that breach triggered the provisions of paragraph 15 of the agreement which provides that a tenancy may be terminated if a tenant, or one of their visitors, breaches the terms of the agreement. This is subject to a right of appeal which can be used to challenge the decisions of the committee under reference to the [REDACTED] rule, Appendix 2.

[47] From an assessment of the evidence which the sheriff took into account there is no basis to suggest that he erred in his discretion in upholding the respondent's submission that the appellant's case had no prospect of success. All of the available evidence contradicts the appellant's position and there was no evidence to support the appellant's averments on record. The appellant relies on the absence of evidence rather than its existence and makes unfounded factual statements about the reliability of the affidavit which did not stand up to scrutiny. That being so there is no basis for this court to interfere with the sheriff's decision and grounds 3 and 4 fall to be refused.

[48] Ground 1 is a complaint that there has been a breach of natural justice. That complaint does not relate to the sheriff's decision but rather the sheriff's failure to accept the appellant's argument that the respondent had denied him a fair hearing before suspending and then terminating his tenancy. The sheriff considered the respondent's actions in terminating the tenancy agreement in light of the provisions in the agreement regarding appeals from the decisions of its committee. This is dealt with at paragraphs [12] and [13] of his note for this court. The sheriff concluded that having failed to avail himself of the appeal procedure in relation to the decision to either suspend or terminate the appellant's membership he had no basis to suggest now that the respondent was not entitled to take either step. There was a legitimate route available to the appellant by which to challenge these decisions. He expressly chose not to take it. There is no further specification in the grounds of appeal as to how a breach of natural justice is said to have arisen. His submissions do not mention the right of appeal or his reasons for refusing to follow that course. Accordingly following the dicta of Lord Carloway in *McKenzie v Scottish Ministers* *supra* at p 1243(C) where he observes in general terms: "the principles of common law...require a petitioner to have exhausted any alternative ordinary or statutory remedies before invoking the supervisory jurisdiction" no breach of natural justice arises and, in any event, if what is sought is a judicial review of the process followed by the respondent an ordinary action in the sheriff court is not the correct vehicle or forum. There is no merit in this ground of appeal and it falls to be refused.

[49] Ground 2 is headed "Failure to properly assess procedural unfairness." There is no further specification in the Note of Appeal as to what that unfairness was or how it arose. In the note of argument there is a reference to a breach of the appellant's rights in terms of Article 6(1) of the European Convention on Human Rights. This argument is not

foreshadowed in the grounds and is not referred to in the sheriff's note. There are no pleadings on record anent Article 6 rights. The ground lacks the necessary specification to allow it to be considered further and accordingly it falls to be refused.

[50] The final ground relates to expenses. The respondent having been wholly successful in its motion there is no reason why expenses should not have been awarded in its favour. Expenses are a discretionary matter with which this court should be slow to interfere in the absence of an error. None has been identified and this ground also falls to be refused.

[51] For the foregoing reasons the appeal is entirely without merit. The sheriff applied the correct test when deciding whether or not to grant summary decree and thereafter the matter was one for his discretion in the exercise of which no error has been identified. I shall therefore refuse the appeal and adhere to the sheriff's interlocutor of 23 March 2026. As the respondent has been successful in resisting the appeal I shall make an award of expenses of the appeal process in its favour.