

SOUTH AFRICA / JUDGMENT

Agri Eastern Cape and Others v MEC for the Department of Transport and Safety Liaison and Others (3928/2015) [2020] ZAECHGHC 26 (10 March 2020)

[2020] ZAECHGHC 26

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe

CASE / FILE NUMBER

3928/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

Case

No: 3928/2015

In

the matter

between:

AGRI
EASTERN
CAPE First
Applicant
RINDA
KLOPPER
Second Applicant
RICHLAND
TRADING 016 (PTY) LTD
Third
Applicant
ALEXANDER
WELSH PRINGLE
Fourth
Applicant
ALEXANDER
WELSH PRINGLE N.O.
Fifth Applicant

WILLIAM
DODDS PRINGLE N.O.
Sixth Applicant
REGINALD
DAVID GOWAR N.O.
Seventh Applicant
CHARLES
PETER FEATHERSTONE
Eight
Applicant
FLORIS
JOHANNES DU TOIT
Ninth
Applicant
GLENN
DAVID ZEHRMKE
Tenth
Applicant
And
THE MEC FOR THE
DEPARTMENT OF TRANSPORT
&
SAFETY
LIAISON
First Respondent
THE DIRECTOR-GENERAL,
DEPARTMENT OF
TRANSPORT
& SAFETY LIAISON
Second Respondent
MAKANA MUNICIPALITY,
REPRESENTED BY
ITS
MUNICIPAL MANAGER N.O.
Third Respondent

JUDGMENT

BESHE J:

- [1] The applicants seek in the main, an order to the effect that the settlement agreement entered into between the parties on the 16 May 2018 be made an order of this court. Ancillary orders are also sought which are aimed at enforcing compliance with the terms of the settlement agreement concerned. This agreement was reached on the 16 May 2018 as stated in the preceding paragraph. This date was scheduled for the hearing of an appeal against Roberson J's judgment (with her leave) by the Supreme Court of Appeal. What had served before Roberson J was an application for a structural interdict that was meant to address "the poor condition and lack of maintenance and repair

of the road network of the farming communities in the Eastern Cape”.^[1] The parties in that matter were the same as they appear in the appellation of this matter. Roberson J issued an order that to a large extent accorded with the draft order that was proposed by the applicants.

[2] It was however at the door of the Supreme Court of Appeal and at the proposal of the present respondents who were appellants that the matter was to be settled in the terms suggested in a draft order proposed by the respondents which were the following:

“1. The appeal is upheld.

2. The judgment and order of the court a quo are set aside.
3. The appellants are ordered to pay the respondents’ costs in the appeal and the application, such costs to include those of two counsel where utilized.”

This order was taken by consent between the parties.

[3] It is common cause that the order was taken pursuant to the parties entering into the agreement that is the subject of this application in settlement of the litigation that was pending before the Supreme Court of Appeal in relation to this matter. For a proper understanding of the issues, it will be apposite to reproduce the said agreement. The following is recorded therein:

“AGREEMENT

WHEREAS it was agreed that the Draft Order proposed by the Respondents on 16 May 2018 under SCA Case No. 1107/2017 would be an agreement between the parties.

1. It is agreed that the first and second respondents (“the respondents”) have made R15 million available in the current financial year for urgent maintenance and repairs to the roads forming the subject matter of this appeal.
2. The first applicant’s Grahamstown attorneys agree to advise the respondents’ Grahamstown attorneys, within one month of the date of this agreement, of those roads which in its view require priority maintenance and repairs.
3. The respondents agree as far as is reasonably possible, to give effect to the requirements of the first applicant as communicated to their Grahamstown attorneys within a period of six months thereafter.
4. 4.1 It is agreed that the respondents have undertaken, with immediate effect, to enter into negotiations with both the National and provincial Departments of Treasury, and all other stakeholders they consider necessary, to discuss possible solutions at a political and executive level to the ongoing problems experienced in respect of the repair and maintenance of provincial roads utilised by commercial farmers.

4.2 The respondents agree to report on affidavit, within six months of this agreement, to the High Court of South Africa (Eastern Cape Division, Grahamstown) on progress made in respect of such negotiations and on possible solutions to the maintenance and repair of the relevant provincial roads, as may have been agreed upon, and the High Court shall make such further order it may consider necessary, after having heard the parties, pursuant to such report.

5. The applicants agree each year to make such representations as they may consider necessary to the respondents, in terms of the participatory processes in the budget allocation of the Department of Transport and Safety Liaison ("the Department") as contemplated by section 118(1) of the Constitution of the Republic of South Africa Act, 1996.
6. The Department agrees, in determining the Department's annual budgetary allocation, to give appropriate and careful consideration and any such representations received from the applicants.
7. In the event of the applicants being aggrieved by the Department's budget allocation in any given year, they shall be entitled:

7.1 to request the respondents to provide reasons for the Department's budget allocation; and

7.2 In the event of them dissatisfied with such reasons, or if no reasons are furnished within one month of a request to for reasons, to apply to the High Court on notice to the respondents, under Case No 3928/15 on the same papers duly amplified as may be necessary, for any relief which they may consider appropriate in the circumstances.

DATED at Grahamstown on this 2nd day of May 2018.

Signed by the authorised representative of the Respondents and the authorised representative of the Applicants."

- [4] The applicants complain that the respondents have not complied with the terms of the settlement agreement.
- [5] In opposing the application, respondents make an assertion that work in excess of R10 000 000.00 has already been undertaken by the department concerned in order to address the applicants' concerns. That therefore, it will not be appropriate to make the agreement in the manner it is formulated an order of court as it made provision for co-operation. I however do not see how making the agreement as it stands an order of the court will affect that spirit of co-operation between the parties. In any event, the respondents had agreed to those terms. All what the applicants seek in my view is compliance by respondents with their side of the bargain.

- [6] Respondents make reference to a table / document that is annexed to the answering affidavit as proof that work in excess of R10 000 000.00 has already been undertaken. The applicants complain that they have not been privy to the table annexed to respondents' answer prior to it being so provided and are therefore unable to reply thereto as they are unable to make sense of it. They also complain that no meetings have been held between the parties since October 2018.
- [7] Rule 41 (4) provides for the enforcement of a settlement that was entered into between the parties to a litigation. The rule provides that:
- "(4) Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms of thereof on at least five days' notice to all interested parties."*
- [8] The settlement agreement was not made part of the court order after it was entered into. In *Brandtner v Brandtner*[2], it was stated that a party seeking to enforce a deed of settlement is not without a remedy. He may apply for judgment in terms of Rule 41 (4).
- [9] In *Mansell v Mansel*[3] it was pointed out that the only merit in making an agreement an order of court is to cut out the necessity for instituting action and to enable the claimant or aggrieved party to proceed directly to execution.
- [10] In *Eke v Parsons*[4] the Constitutional Court re-enforced this principle – namely that "The effect of a settlement order is to change the status of the rights and obligations between the parties The order brings finality to the lis between the parties, the lis becomes res judicata. It changes the terms of a settlement agreement to an enforceable court order".
- [11] Respondents' objection to the settlement agreement being made an order of the court is that if it were to do so, that would infringe on the principle of separation of powers. Reliance for this proposition is placed on *Mazibuko N.O. v Sisulu N.N.O.*[5] where it was stated that "Political issues must be resolved at a political level. Our courts should not be drawn into political disputes, the resolution of which falls appropriately within the domain of other fora established in terms of the Constitution".
- [12] The court is however not asked to order the respondents to do anything other than what they had agreed to. The court will not be imposing any obligation on the respondents other than what they had agreed to do. What they had bound themselves to do.
- [13] The respondents cannot bemoan judicial oversight in the matter. The agreement that they entered into with the applicants, provides for such judicial oversight. I do not see how this will amount to the court encroaching upon policy matters as suggested by respondents' counsel Mr Dala. Or how it will offend the doctrine of separation of powers.

- [14] Both Mr Moorehouse for the applicants and counsel for the respondents placed reliance on a number of decided cases to support their respective submissions in this regard – namely judicial oversight as opposed to overreach and the efficacy or otherwise of structural or supervisory interdicts. I have taken note of these authorities.
- [15] Whether or not it will be appropriate to issue a supervisory interdict will hinge on whether or not respondents can be said to have failed to comply with terms of the agreement. On whether applicants have shown cause for the issuing of such an order. It is necessary to look back at the history of this matter. On the 12 May 2016, Smith J issued an order which I believe was by agreement between the parties, in which the respondents were required to file reports as to the envisaged steps to be taken to repair roads within the area of the respondents' jurisdiction. The order also provided for the making of such reports an order of court. The matter later served before Roberson J who was to consider the said reports. Having determined the reports, Roberson J issued a detailed order directing the respondents to do certain things. The order also had a supervisory element which required the filing of reports by the respondents to the court.
- [16] As indicated earlier in this judgment, respondents sought to appeal against Roberson J's judgment and order but the appeal did not get to be heard by the Supreme Court of Appeal. The parties having settled the matter by means of the agreement entered into between them. This was on the 16 May 2018. What followed are attempts by those representing the applicants to get respondents to sign the agreement, which came to naught. This culminated in applicants approaching the court for an order directing the respondents to sign the agreement, failing which an order authorising the Sheriff to sign the agreement on respondents' behalf. The order was issued but the respondents still failed to sign the agreement. It was ultimately signed by the Sheriff.
- [17] Applicants complain that respondents have not complied with the terms of the agreement. Respondents also do not claim to have complied with the terms of the agreement.
- [18] Respondents concede that the general purport of the agreement was the manner in which the parties would move forward on urgent maintenance and repairs. They acknowledge the requirement to report on affidavit within six (6) months to the Eastern Cape Division of the High Court on the progress of negotiations on solutions regarding the maintenance of roads in the province. In the same vein, respondents state that the need to report to the High Court would be superfluous as the applicants would be involved in quarterly meetings and being advised of the progress made.
- [19] I do not think that is for the respondents to say. They had agreed to report on affidavit to this court. In my view, applicants have every reason to seek the intervention of the court. Respondents have displayed a clear unpreparedness to give effect to the terms of the agreement they concluded with the applicants.

- [20] In *Pheko & Others v Ekurhuleni Metropolitan Municipality and Others* number 3[6] it was pointed out that “in appropriate cases supervisory orders guarantee commitment to the constitutional values of accountability, responsiveness and openness by all concerned in a system of democratic governance”. That in this way the court secures response in the form of reports thereby preventing failure to comply with obligations by a party concerned.
- [21] The applicants have made out a case for the need for a supervisory order. This however is not the case as regards to 2.4 of the Notice of Motion. Applicants seem to be jumping the gun. In terms of Clause 7 of the agreement, the reasons are to be provided in the event of the applicants being aggrieved by the department’s budget allocation. We have not been told that they are aggrieved by the department’s budget allocation, and for which year. I however do not think that a period of fifteen (15) days for the filing of the requisite reports by the respondents is a reasonable period. In my view, thirty (30) days is a reasonable period.
- [22] Applicants also seek a cost order against the respondents jointly and severally the one paying the other to be absolved, on an attorney and client scale. In the alternative, and in the case of the court determines that the first respondent has persistently failed to take the necessary and effective steps to address the issues that have been brought to her attention and has breached her duties and responsibilities as the MEC for the Department of Transport and Safety Liaison, that first respondent be ordered to pay the costs of this application on an attorney and client scale and in her personal capacity.
- [23] Apart from suggesting that making the agreement an order of court will go against the grain of the said agreement which was meant or aimed at fostering co-operation between the parties, the first respondent does not make any submissions why the MEC should not be mulcted with costs in her personal capacity. It will be recalled that applicants’ prayer in this regard is conditional upon the court’s finding that first respondent has consistently failed to take steps to address the issues and that she has breached her duties and responsibilities as MEC for the department concerned.
- [24] Save to show that the respondents have not complied with the terms of the agreement in question, no case has been made that the first respondent failed to take the necessary steps to resolve / address the issues between the parties. In my understanding, the applicants still require a report on the progress done, if any, regarding the maintenance of roads. Secondly, the first respondent has not been joined in her personal capacity. It is trite that under common law cost orders granted against persons acting in their respective capacity were granted if they were guilty of conduct that was motivated by malice or amounted to improper conduct.[7] In *Black Sash Trust V Minister of Social Development & Others*[8] it was stated that the abovementioned rules have now been buttressed by the Constitution. Further that “accountability and responsiveness are founding values of our democracy”. No case has been made for concluding that the first respondent was guilty of conduct that was motivated by malice, improper conduct,

gross negligence or dereliction of her duties and responsibilities. I am also not persuaded that a case has been made for an attorney and client cost order against the respondents.

[25] For all the reasons stated above, the following order will issue:

1. That the settlement agreement marked “NOM 1” is made an Order of this Court;
2. That the Respondents file a report, on affidavit and within 30 days of the granting of this Court Order, with the Registrar of the above Honourable Court and the Applicant’s attorneys of record, wherein the Respondents shall:
 - 2.1 record and report on all maintenance that has been carried out on the roads identified in annexure “NOM 2” hereto (hereinafter referred to as the “identified roads”) from 15 June 2018 to the date of the granting of this Order;
 - 2.2 record and report on all planned future maintenance to occur in respect of the identified roads and the anticipated dates on which such maintenance shall occur;
 - 2.3 record and report on the progress made in respect of the negotiations described in paragraph 4.1 of “NOM 1” and on possible solutions to the maintenance and repair of the identified roads;
3. Respondents to pay the costs of the application, jointly and severally the one paying the other to be absolved.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicants : Adv: Moorehouse

Instructed by : RJM ATTORNEYS

C/o NETTELTONS ATTORNEYS

118A High Street

GRAHAMSTOWN

Ref: Mr Nettelton

Tel.: 046 – 622 7149

For the Respondents : Adv: I Dala

Instructed by : MABECE TILANA INC.

100 High Street

Ref: AF Basson/jg/M142

Tel.: 046 – 622 2047

Date Heard : 27 February 2020

Date Reserved : 27 February 2020

Date Delivered : 10 March 2020

[1] Paragraph 4 of Roberson J's judgment.

[2] 1999

(1) SA 866 (W) at 868 B.

[3] 1953

(3) SA 716 (N) at C – D.

[4] 2016 (3) SA 37 CC at [31].

[5] 2013

(6) SA 249 CC at 273 [83].

[6] [2016] ZACC 20 / 2016 (10) BCLR 1308 CC.

[7] Swaartbooi v Brink 2006 (1) SA 203 CC at 207 H – I.

[8] CCT48/87.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2020/26.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/agri-eastern-cape-and-others-v-mec-unknown-topic-aecghc-2020--6a3ea5133b1caa912980accc>

Prepared on 10 October 2026 · Esheria