

SOUTH AFRICA / JUDGMENT

Anthony v Sol Plaatjie Municipality (1359/2019) [2020] ZANCHC 26 (12 June 2020)

[2020] ZANCHC 26

COURT

Northern Cape High Court, Kimberley

BEFORE

N Mayet

CASE / FILE NUMBER

1359/2019

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IN
THE HIGH COURT OF SOUTH AFRICA
NORTHERN
CAPE DIVISION, KIMBERLEY
Case
No: 1359/2019
Heard
on: 15/05/2020
Delivered
on: 12/06/2020
In

the matter between:

STANLEY
VICTOR
ANTHONY
Applicant
and
SOL
PLAATJE
MUNICIPALITY
Respondent

JUDGMENT

MAYET, AJ

Introduction

[1] In Homelite, Kimberley, there is a terrace of houses built and owned by the Respondent.[1] In 1993, the newlywed Applicant and Mrs Alma Anthelene Anthony (“Ms Anthony”) leased number 90 Porpoise Street (“the property”) from the Respondent. In 1998 they divorced. A bitter territorial feud ensued between the Applicant and Ms Anthony over the property which at all material times remained registered and owned by the Respondent. The conflict continued for over a decade until the Respondent decided that the property be registered into the name of Ms Anthony.

[2] The Applicant seeks relief in terms of section 33(2) of the Constitution couched as follows:

“The respondent must provide the applicant with written reasons within 30 days after granting this order as to why Erf No. 24419, Kimberley (Porpoise Street, Homelite, Kimberley) was registered into the name of Alma Anthelene Anthony and not into the applicant’s name.”

[3] Section 33(2) of the Constitution provides that “Everyone whose rights have adversely been affected by administration action has the right to be given written reasons.”

[4] The Respondent resists on the grounds that it has provided reasons as well as copies of the relevant documentation. The Applicant

diverged from his initial claim that the Respondent did not provide any reasons and now claims that the Respondent did not provide acceptable reasons. It was submitted that the reasons provided by the Respondent are laughable and do not constitute reasons.

[5] I convey my gratitude to both Advocate Schreuder and Mr Cronjé who appeared for the Applicant and the Respondent respectively, for the heads of argument and for their appearance and oral submissions during the unusual circumstances occasioned by the Covid-19 national lockdown.

The Issue

[6] To the extent that the claim has evolved to convey that the court can direct the Respondent, who has furnished reasons, to give better or further reasons, an order cannot be made on those terms. A court can make an order for written reasons only if it concludes that the Respondent did not give written reasons at all or that what are purported to be “reasons” do not in law constitute

reasons.

- [7] There is no general rule as to what constitutes proper reasons as this depends on the circumstances of each case.[2] Reasons are considered adequate if such are intelligible and informative.[3] The principal issue in this application is whether the reasons provided by the Respondent are adequate.[4]

Administrative decision

- [8] The Respondent's decision to transfer the property to Ms Anthony is administrative action as the decision was made by the Respondent's Directorate of Services and Infrastructure: Housing Administration Committee and the officials who took the decision are persons in the employ of the Respondent, exercising a public power or performing a public function in terms of an empowering provision.

Applicant's rights

- [9] In argument, emphasis was placed on a 1994 sale agreement in terms of which the Respondent agreed to sell the property to the Applicant.

It was submitted that the Applicant had the sole right or at least, a co-right to the property in terms of the 1994 sale agreement.

The Respondent denied that the 1994 sale agreement was given effect or enforced. It is common cause that the Respondent retained

ownership of the property until transfer to Ms Anthony in 2010.

- [10] It is not necessary to decide in this case, in what circumstances, if any, a relationship giving rise to rights in contract existed between the Applicant and the Respondent beyond that ordinarily contemplated by reasons for a decision in relation to administrative action.[5] The 1994 sale agreement does not grant the Applicant further rights or impose further duties on the Respondent other than those contained in the Constitution. This argument does not assist the Applicant and is irrelevant for purposes of this application.

- [11] Section 26 of the Constitution gives the Applicant the right to access to adequate housing.[6] The Respondent's decision affects the Applicant's interests.[7] The right to be furnished with reasons is a stalwart of just administrative action[8] and applies to every person whose rights or interests are affected.[9] As a result, the Applicant is entitled to written reasons for the Respondent's decision to transfer the property to Ms Anthony.

Factual

Background

- [12] In 2010, the dispute between the Applicant and Ms Anthony regarding the property was referred to the Respondent's Housing Committee responsible for the allocation of immovable property.
- [13] On 18 May 2010, the Respondent informed the Applicant in writing that the Respondent's Dispute Committee had taken a decision to award the property to Ms Anthony.
- [14] On 8 June 2010 the Respondent requested that the Applicant and Ms Anthony to attend at their offices on 10 June 2010 for an interview

concerning the dispute. The Applicant's absence is best explained in his own words: "I had some other commitments and couldn't be present. Mr Bogacwi anyway told the people to go away as it was raining cats and dogs." Ms Anthony was present and made representations to the Respondent during this interview.

- [15] On 14 June 2010, the Applicant was informed in writing that the Respondent's Housing Dispute Committee decided to register the property into the name of Ms Anthony.

Respondent's

reasons

- [16] The Respondent's reasons must be read in conjunction with the uncontested allegations in the answering affidavit. Despite a clear impression being created in the answering affidavit that the Respondent had repeatedly provided reasons as well as the relevant documentation for the decision, the Applicant elected not to deny or deal with these allegations in reply.
- [17] The Applicant does not deny that he visited the housing offices of the Respondent on numerous occasions, and that during these visits he was given copies of the correspondence and informed of the reasons for the decision. The Plascon-Evans Rule, developed in the 1984 decision of the Supreme Court of Appeal serves as a guide to the courts in determining which version should prevail when disputes of fact are found in motion proceedings.[10]
- [18] The Respondent's reasons are contained in an extract of an unsigned and undated document attached to the Respondent's answering affidavit. The document consists of a table with four columns headed "Item, Key Points discussed, Decision, Responsibility" respectively. The contents of the individual columns read as follows:
- [19] The column headed "Items" contains a description of the property.
- [20] Under the column headed "Key Points discussed" the following is stated:

"12.1 Meeting was attended by only Ms Anthony, Mr Anthony allegedly refused to attend.

12.2 The property was allocated to Mrs and Mr Anthony when they were still married on the 7/07/1994 on a Deed of Sale Agreement.

12.3 It was registered on their name. In 1998, they got divorced. The housing dispute resolution committee resolved to re-allocate the property to Ms Anthony.”

[21] The discussion under “Key Points” indicates the nature of the background information that was considered. The information known to the Respondent prior to making the decision, must be distinguished from the reasons for the decision.[11]

[22] The column headed “Decision” reads:

“The Housing Committee resolved the matter by saying that the above mentioned property be given to Mrs Anthony, because the children are living with her.

The letter must be written to Mr Anthony to vacate the mentioned property.”

[23] I now turn to the pith and substance of this application whether the reasons provided by the Respondent are adequate in terms of section 33(2) of the Constitution.[12]

Are the Reasons given for the decision adequate?

[24] The purpose of reasons is to “...enable a person aggrieved to say in effect “Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging.”[13]

[25] In *Koyabe v Minister of Home Affairs and Others*[14] the Constitutional Court set out the factors to be taken into account when determining the adequacy of reasons:

“Depending on the circumstances, the reasons need not always be “full written reasons”; the briefest pro forma reasons may suffice.” Whether brief or lengthy, the reasons must, if they are read in their factual context, be intelligible and informative. They must be informative in the sense that they convey what the decision-maker thinks (or collectively think) that the administrative action is justified.”[15]

[26] When read in the factual context, the Respondent’s reasons are intelligible. The Applicant was able to ascertain that the Respondent considered that the property had been previously allocated to the Applicant and Ms Anthony. It is also clear that the reason underpinning the decision to register the property into the name of Ms Anthony was because the children were living with her.

[27] It is evident from the reasons what factors the Respondent weighed and in this context, the information provides the Applicant with the opportunity to determine whether it was based on an incorrect factual premise or law and to consider whether or not he should challenge the Respondent’s decision by way of review.[16]

[28] The Respondent’s reasons explain “why it settles upon its final choice”[17] and why the Respondent considered its decision to have been justified.[18] Although the Respondent’s reasons are quite brief, when considered against the background of the key points discussed at the hearing, they are succinct and comprehensible. In this regard, I refer to *Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gaming Board* where

Kirk-Cohen ADJP stated that “Brevity is an administrative virtue and elliptical reasons may be perfectly comprehensible when considered against the background of the arguments made at the hearing.”[19]

- [29] The Constitutional Court expressed a similar sentiment in *Koyabe supra* that “Although reasons must be sufficient, they need not be specified in minute detail, nor is it necessary to show how every relevant fact weighed in the ultimate finding.”[20]
- [30] From the reasons provided, the Applicant was able to decide whether the Respondent’s decision involved an unwarranted finding of fact or an error of law, which was worth challenging. I do not agree with the Applicant’s characterization that the reasons are laughable. The Respondent’s reasons “explain why action was taken or not taken.”[21]
- [31] Having regard to the facts of this case, the Applicant’s attack appears to be an attempt to interrogate the reasons and insist on minute details and every relevant fact considered.
- [32] A court cannot prescribe to an administrative decision-maker what its reasons should be. Should the Applicant contend that the reasons do not justify the action, the appropriate remedy is to have the action reviewed, not to attempt to force the Respondent to provide better reasons or to supply particulars for the reasons.[22]
- [33] In summary, the reasons are intelligible and informative for the purposes of enabling the Applicant to determine whether he should

abide or take steps to have the administrative decision corrected or set aside.[23] I am therefore of the view that the reasons provided by the Respondent, are adequate in terms of section 33(2) of the Constitution.

Costs

- [34] Ordinarily costs follow the result. This general rule that costs are awarded to the successful party arises to indemnify the successful party for the expense to which he has been put through having been unjustly compelled to either initiate or defend litigation.[24] The general rule is subject to the overriding principle that the court has a judicial discretion in awarding costs.[25] It is to the appropriate cost order that I now turn.
- [35] The risk of requesting reasons by serving a court application, is an adverse cost order if the reasons are provided within a reasonable

time after service of the application. The reasons for the Respondent’s decision are set out in the answering affidavit.

It was not argued that the reasons provided by the Respondent in its answering affidavit were not furnished within a reasonable time.[26] The Applicant persisted in seeking an order for written reasons thus incurring unnecessary costs.

[36] The Respondent submitted, and I agree, that an order for costs will not serve any real purpose other than to place an additional financial burden on public funded entities.

Order

1. THE APPLICATION IS DISMISSED.
2. NO ORDER AS TO COSTS.

N. MAYET, AJ

NORTHERN CAPE DIVISION

For the Applicant:

Adv. J. Schreuder

For the Respondent:

Mr Cronje

- [1] Previously the Municipality of Kimberley
- [2] *Koyabe v Minister of Home Affairs and Others* 2010 (4) SA 327 (CC) at para 59
- [3] *Commissioner of SAPS v Maimela* 2003 (5) SA 480 (T) at 486A-B
- [4] *Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gaming Board* 1999 (8) BCLR 918 (T) at pg 926 E - F
- [5] *Minister of Home Affairs and Another v American Ninja IV Partnership and Another* 1993 (1) SA 257(A)
- [6] *CCII Systems (Pty) Ltd v Minister of Defence & Others* [2006] JOL 17448 (T) at pg 16; *Transnet Ltd v Goodman Brothers (Pty) Ltd* [2000] ZASCA 151; 2001 (1) SA 853 (SCA); *Bel Porto School Governing Body and Others v Premier, Western Cape and Another* [2002] ZACC 2; 2002 (3) SA 265 (CC) at para 59
- [7] *Commissioner of SAPS v Maimela* 2004 (1) BCLR 47 (T) at pg 52I-J
- [8] *Transnet Limited v Goodman Brothers (Pty) Ltd* 2001 (2) BCLR 176 (SCA) at pg 189H
- [9] *Wessels v Minister for Justice and Constitutional Development* 2010 (1) SA 128 (GNP)
- [10] *Plascon-Evans Paints v Van Riebeeck Paints* [1984] ZASCA 51; 1984 (3) SA 623 In the words of Corbett JA: "It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order."
- [10] *Plascon-Evans Paints v Van Riebeeck Paints* [1984] ZASCA 51; 1984 (3) SA 623 In the words of Corbett JA:

“It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant’s affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.”

- [11] Burns, Administrative Law under the 1996 Constitution Third Ed., pg 253
- [12] Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gaming Board 1999 (8) BCLR 918 (T) at pg 926 E - F
- [13] Minister of Environmental Affairs and Tourism and Others v Phambili Fisheries (Pty) Ltd 2003 (6) SA 407 (SCA) at 428 A–C
- [14] Koyabe v Minister of Home Affairs and Others 2010 (4) SA 327 (CC)
- [15] Koyabe v Minister of Home Affairs, supra at para 64 referring with approval to Commissioner of SAPS v Maimela 2003 (5) SA 480 (T) at 480
- [16] Minister of Environmental Affairs and Tourism and Others v Phambili Fisheries (Pty) Ltd 2003 (6) SA 407 (SCA) at para 40
- [17] Baxter Administrative Law 1984, Cape Town, Juta & Co pg 228 cited in Transnet v Goodman supra and Commissioner of SAPS v Maimela supra
- [18] Commissioner of SAPS v Maimela 2003 (5) SA 480 (T) at 480 at pg 51B – C
- [19] Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gaming Board 1999 (8) BCLR 918 (T) at pg 927 D – E
- [20] Koyabe supra at para 63
- [21] Hoexter The New Constitutional and Administrative Law Vol 2 at 244; Nkondo, supra at 772I – 773A
- [22] Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gaming Board 1999 (8) BCLR 918 (T) at pg 926 I
- [23] Nkondo and Others v Minister of Law and Order; Gumede and Others v Minister of Law and Order; Minister of Law and Order v Gumede 1986 (2) SA 756 (A) at 772I to J
- [24] Texas Co (SA) Ltd v Cape Town Municipality 1926 AD 467 at 488
- [25] Griffiths v Mutual&Federal Insurance Co Ltd 1994 (1) SA 535 (A)
- [26] Commissioner of SAPS v Maimela 2003 (5) SA 480 (T) at 53C-G

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