

SOUTH AFRICA / JUDGMENT

Berte Van Zyl (Pty) Ltd v Mohale and Another (7766/2023) [2025] ZALMPPHC 42 (12 March 2025) [2025] ZALMPPHC 42

COURT

Limpopo High Court, Polokwane

BEFORE

Diamond AJ

CASE / FILE NUMBER

7766/2023

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

(LIMPOPO DIVISION,

POLOKWANE)

CASE

No:7766/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE

JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: DIAMOND AJ

DATE: 12/03/2025

In the matter between: BERTE VAN ZYL (PTY)
 LTD
 APPLICANT
 and
 PIET MASIE
 MOHALE
 1ST RESPONDENT
 THE SOUTH AFRICAN
 NATIONAL
 ROAD AGENCY LIMITED
 (SANRAL)
 2ND RESPONDENT

JUDGMENT

DIAMOND A J:

- [1] The Applicant is a farming business and its main entrance to its Head Office is situated at a gate, colloquially known as the “Avo gate” which intersects with a certain the road, the R36, near Mooketsi in the Limpopo Province.
- [2] This intersection is used by heavy traffic, amongst others large trucks, buses, minibus taxis, private vehicles, tractors et cetera.
- [3] The First Respondent, previously an employee of the Applicant, is a street vendor.
- [4] The First Respondent parks his vendor vehicle and sets up a vendor stall in the road intersection, referred to above and sells products from the road reserve, which is the property of the Second Respondent.
- [5] The Second Respondent is a statutory body entrusted with the obligation to manage intersections such as the above within the framework of the South African National Roads Agency Ltd and the National roads act, 7 of 1998 (Act 7 of 1998) (the “Act”).
- [6] The Applicant applies for certain relief against both the respondents.
- [7] The First Respondent does not oppose the application. The Second Respondent opposes the application.
- [8] This application revolves around Sections 48 and 52 of the Act.
- [9] Section 48 stipulates as follows:-

 “48. Structures and other works on, over or below national roads or certain other land.—

(1) Except as provided in subsection (2), no person may do any of the following things without the Agency’s written permission or contrary to that permission, namely—

- (a) on or over, or below the surface of, a national road or land in a building restriction area, erect, construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of that land);
 - (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of, a national road or land in a building restriction area;
 - (c) give permission for erecting, constructing, laying or establishing any structure or that other thing on or over, or below the surface of, a national road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.
- (2) Subject to any condition imposed under section 49 (3) (a) (iii) or (iv), the provisions of subsection (1), except in so far as they prohibit the erection, construction, laying or establishment of a structure or other thing on or over, or below the surface of, a national road, do not apply to—
- (a) a structure erected or constructed by the South African Rail Commuter Corporation Limited on land under its control;
 - (b) any dwelling on a farm and any other structure on a farm used only for farming operations in the true sense.
- (3) (a) The Agency, in its discretion, may give or refuse its permission in terms of subsection (1).
- (b) When giving permission, the Agency may prescribe—
- (i) the specifications to which the structure, other thing, alteration or addition for which permission is asked, must comply;
 - (ii) the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and
 - (iii) the obligations to be fulfilled by the owner of the land in question if the structure, other thing, alteration or addition is erected, constructed, laid, established or made.
- (4)
- (a) If an obligation to remove a structure or other thing is prescribed by a condition imposed under subsection
- (3) (b), the Registrar of Deeds having jurisdiction in respect of the area concerned must, at the written request of the Agency, note the obligation on the title deed of the land affected thereby and in the appropriate register kept by that Registrar.
- (b) The costs in connection with that noting must be paid by the person to whom the permission has been given.
 - (c) The Agency may enforce compliance with an obligation that has been so noted.

- (d) The provisions of section 49 (6) (a) and (b), reading in the changes necessary in the context, will apply to an obligation so noted.
- (5) Where a person without the permission required by subsection (1) or contrary to any permission given thereunder, has erected, constructed, laid or established a structure or other thing or has made a structural alteration or addition to a structure or other thing or given permission therefor, the Agency by notice in writing may direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which must be stated in the notice but which may not be shorter than 30 days calculated from the date of the notice.
- (6) If the person to whom a notice has been issued in terms of subsection (5), fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, it may be removed by the Agency itself which may recover the costs of the removal from that person.
- (7) (a) Despite the provisions of any other law, the Agency may remove or shift, to a place determined by it, any structure or other thing (except a structure or thing mentioned in subsection (2)) which, before the date on which the road or route concerned is declared a national road in terms of section 40 or was declared a national road under the previous Act, was erected, constructed, laid or established on or over, or below the surface of— (i) that national road; (ii) land in a building restriction area; or (iii) other land situated within a distance from that national road as specified in a condition imposed under section 49 (3) (a) (iv). (b) In the case of a power line or telephone line, any sewage disposal works or water reticulation, supply or disposal works or other works so erected, constructed, laid or established subject to a condition, imposed under any law, in terms of which any other person is responsible for the removal or shifting thereof, the Agency may recover the costs of the removal or shifting from that other person.
- (8) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine. “

[10] Section 52 stipulates as follows:-

“52. Trading on national road or in building restriction area.—

- (1) Except as provided in subsection (2), no person may without the Agency’s written permission or contrary to the terms of the written permission, carry on any trade or expose, offer or manufacture for sale any goods on a national road or in a building restriction area.

- (2) Subsection (1) does not apply to any person who, after the date on which a road or route is declared a national road under section 40, continues, on land forming part of the national road or building restriction area, any business or undertaking which was carried on or conducted on that land immediately before that date, unless that person, by notice in writing, has been directed by the Agency to discontinue the business or undertaking before a date stated in the notice, and that date has arrived.
- (3) Any employee of the Agency or person authorised thereto in writing by the Agency, any employee of the Agency mentioned in section 54 (1), any employee of a municipality or province designated or appointed to perform law enforcement functions on a national road by virtue of an agreement entered into under section 54 (3), and any person who in terms of a road traffic law is a traffic officer for the purpose of the road traffic law, may—
- (a) if such an employee, officer or person (in this section called the competent official) suspects on reasonable grounds that a person has performed an act for which the Agency's written permission is required in terms of subsection (1), demand that the person then and there produces to the competent official the Agency's written permission to perform that act;
- (b) if the person to whom the demand is made, fails to produce such a written permission to the competent official, or if the competent

official suspects on reasonable grounds that a person has performed on a national road or in a building restriction area any act that is unlawful in terms of subsection (1)—

- (i) demand that the person's full name and residential address be furnished by the latter then and there;
- (ii) order that person to remove from the building restriction area or the national road—
- (aa) every article with or in respect of which that act has been performed or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person; or
- (bb) any structure, tent, vehicle, implement or other object in, on or with which that act has been performed, or in or on which there is such an article, or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person;
- (c) remove from the national road or the building restriction area any article, structure, tent, vehicle, implement or other object mentioned in paragraph (b) (ii), or which the competent official finds on the national road or in the building restriction area and suspects on reasonable grounds to have been used, or to be destined for use, by any person in connection with a contravention of subsection (1).

(4)

- (a) A person is guilty of an offence—

- (i) upon contravening any provision of subsection (1); or
 - (ii) when failing to furnish the latter's full name and residential address to a competent official demanding it in terms of subsection (3) (b) (i); or (iii) upon having failed to obey an order given to that person under subsection (3) (b) (ii).
 - (b) A person convicted of an offence mentioned in paragraph (a) will be punishable with a term of imprisonment not longer than three months, or a fine.
- [11] The relief sought against the First Respondent, is to interdict the First Respondent from acting in a manner contradicting the stipulations of sections 48 and 42.
- [12] The Second Respondent concedes that the First Respondent does indeed contradict these stipulations and submits that the relief sought against the First Respondent is justified.
- [13] The Second Respondent however submits that the relief against the Second Respondent is not justified. It points out in its answering affidavit that it did involve itself with attempts to have the First Respondent stopped from transgressing sections 48 and 52.
- [14] What it did do, was to have meetings with the First Respondent, with the community and eventually lay charges against the First Respondent at the police. Nothing came of the charges.
- [15] As is clear from the above sections, powers of the Second Respondent extend beyond the mere laying of criminal charges. In terms of section 48 it has the power is to remove any structure (including the structure attached to the ground) or any "thing", which has been erected in contravention of section 48.
- [16] The defence of the Second Respondent is that section 48 is confined to an immovable structure that was erected by the transgressor. It is clear that the First Respondent has not erected any immovable structures. For that reason, so the argument goes, the Second Respondent does not have the powers to do anything beyond what it has already done, viz to hold meetings and to lay charges with the police.
- [17] The Second Respondent further argues that the orders against the First Respondent provides sufficient remedies against the illegal actions of the First Respondent, and that a further order against the Second Respondent is consequently not necessary.
- [18] The Second Respondent stated clearly in its papers that to take any steps beyond what has already been taken by the Second Respondent will lead to unrest in the community and that for that reason it would be irresponsible to proceed with any further actions.
- [19] In my view, the submissions of the Second Respondents are untenable. It is clear from a simple reading of sections 48 and 52 that the sections do not only apply to immovable structures, but it applies to any structures and even to a "thing" present on the road reserve. That would include a vehicle and a temporary a trading stall.

- [20] It is also untenable that the second respondent so easily content itself with the inaction of the South African Police Services to proceed with prosecution of the First Respondent. There are several mechanisms available to the Second Respondent to prompt the South African Police Services into prosecution of the First Respondent.
- [21] It is, in my view, further mind-boggling that an organ of state can state in open court that it will not discharge of its statutory obligations since it fears the threats of unrest of a particular community. To succumb so easily to such threats would mean that the orderly governance of the country would succumb to mob rule.
- [22] Lastly, the granting of a prohibitory interdict against the First Respondent does not stand in the way of a mandatory interdict against the Second Respondent. The Second Respondent cannot be relieved of its duties in terms of the act simply because an alternative remedy is available. The prohibitory interdict against the First Respondent is clearly not in the alternative to the mandatory relief against the Second Respondent.
- [23] I am also of the view that the conduct of the First Respondent, as it appears from the papers, is so defiant, that it justifies a cost order on a scale as between attorney and client against the First Respondent. Furthermore, in my view the conduct of the Second Respondent is a clear and patent derelict of duty in clear contravention of what can be expected of the organ of state in the position of the Second Respondent. For that reason, I am of the view that a cost order on an attorney-client scale against the

Second Respondent is justified.

- [24] For all of the above reasons I am of the view that the application should succeed.

- [25] The court consequently makes the following order: -

- a) The First Respondent is interdicted and restrained from conducting any vendor business at the main turn — off to the entrance to the head offices of the Applicant on the R36 - road (opposite Freshling Mooketsi), or at any other place on a national road or in a building restriction area, in contravention of sections 48(1) and 52(1) of the South African National Road Agency Limited and National Roads Act, 7 of 1998 (as amended) or to permit any person to do so on his behalf;
- b) The First Respondent is interdicted and restrained from conducting any vendor business. at, or near the Donkerval gate situated on the Houtbosdorp provincial road (D617) and/or anywhere on the Houtbosdorp provincial road (D617);
- c) The First Respondent is ordered to immediately cease any trading as a vendor at the main turn - off to the entrance to the head offices of the Applicant on the R36 - road (opposite Freshling Mooketsi), or at any other place on a national road or in a building restriction area, in contravention of sections 48(1) and 52(1) of ' the South African National Road Agency Limited and National Roads Act,7 of 1993 (as amended);

- d) The First Respondent is ordered to immediately cease any trading as a vendor at or near the Donkervall gate situated on the Houtbosdorp provincial road (D617) and/or anywhere on the Houtbosdorp provincial road (D617);
- e) The Second Respondent is ordered to comply with the provisions of Sections 43 and 52 of the South African National Road Agency Limited and - National Roads Act, 7 of 1998 (as amended), and any other provision of such Act where applicable, in order to prevent the First Respondent from unlawfully trading as a vendor-at the main turn - off to the entrance to the head offices of the Applicant on the R36 - road (opposite Freshling Mooketsi), or at any other place on a national road or in 'a building restriction area within its jurisdiction, and to take all steps necessary in that regard, which shall include, but not be limited to, the laying of charges against the First Respondent for the contravention of sections 48(1) and 52(1) of the South African National Road Agency Limited and National Roads Act, 7 of 1998 (as amended), and to provide such assistance as may be required for the 'proper prosecution of such charges: against the First Respondent;
- f) The First and Second Respondents are ordered to pay the costs of the Applicant, of this application jointly and severally, the one paying the other to be absolved, on an attorney and client - scale;

G DIAMOND AJ

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPELLANT : ADV. R. GRUNDLINGH INSTRUCTED BY : JOUBERT & MAY ATTORNEYS
INCOPOTARED FOR THE RESPONDENT : ADV. T. MORETLWE INSTRUCTED BY : MICHAEL
RAPHELA ATTORNEYS DATE OF HEARING : 24 FEBRUARY 2025 DATE OF JUDGMENT : 12
MARCH 2025

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