

SOUTH AFRICA / JUDGMENT

Bikitsha v Bikitsha and Others (2807/21)

[2022] ZAECHMHC 13 (17 May 2022)

[2022] ZAECHMHC 13

COURT

Eastern Cape High Court, Mthatha

BEFORE

B R Tokota

CASE / FILE NUMBER

2807/21

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IN

THE HIGH COURT OF SOUTH AFRICA

[EASTERN

CAPE LOCAL DIVISION MTHATHA]

CASE

NO.2807/21

In

the matter between:

NOZIBELE

BIKITSHA

Applicant

And

PUMZA

BIKITSHA

First Respondent

BANDA

BODOZA

Second Respondent

AYANDA

BODOZA

Third Respondent

BELEZA

BODOZA

Fourth Respondent

JUDGMENT

TOKOTA J

Introduction:

- [1] The applicant is approaching this court seeking an order to confirm a temporary interdict restraining and interdicting the respondents from entering the applicant's home situated at Hlombe location Lusikisiki, Eastern Cape with the purpose of committing unlawful acts by removing assets except those belonging to the first respondent. A Rule Nisi was granted by this court on 6 July 2021 calling upon the respondents to show cause, on 24 August 2021, why the interim order cannot be made final. On 24 August 2021 the Rule was extended to 7 September 2021. On 7 September 2021 the matter was simply postponed to 5 May 2022 and the Rule Nisi was not extended. The respondents are opposing the matter.

Factual

background:

- [2] The first respondent was married to the late Sanele Bikitsha who was the brother of the applicant. That marriage was dissolved by the death of Sanele who died on 1 June 2021.
- [3] After the death of her husband the first respondent was chased away from her marital home by the applicant instructing her to take all her personal belongings and go away. The applicant is staying at her house in Mthatha where she is employed. The first respondent is staying in Gauteng where she is also working.
- [4] On 11 June 2021 the first respondent went and removed some of her personal belongings from the marital home. The applicant claims that some of the items removed by the first respondent belonged to her late brother. She claims that the first respondent is not the heir to her late brother's estate and as such taking items belonging to him is tantamount to self help.
- [5] It is not necessary to set out the details of what had already been removed or what damage was caused thereby as the interdict is corned with future conduct and not the past.[1]
- [6] On 12 June 2021 the respondents visited the marital home of the first respondent again but could not remove anything as they were prevented from doing so. On 15 June 2021 the respondents went back again, this time accompanied by the police and being in possession of a letter from Justice Centre authorising them to remove other items such as garage doors. They were again prevented from removing any item and were advised that they would not be allowed to do so without a court order. They then left.

- [7] The applicant contends that the first respondent has no right to remove anything belonging to her husband since she is not the heir to his estate. She contends that the first respondent is committing an offence of trespassing by visiting her marital home.

Discussion:

- [8] The requirements for a final interdict are trite.[2] Accordingly, in order to succeed, the applicant must establish such requirements. These are (a) a clear right, (b) injury actually committed or reasonably apprehended, and (c) the absence of similar protection by any other ordinary remedy.
- [9] The clear right to be proved is a right to which, if not protected by an interdict, irreparable harm would ensue. Quite apart from the right to an interdict, the applicant should demonstrate a right that is threatened by an impending or imminent irreparable harm. It is a right to which, if not protected by an interdict, irreparable harm would ensue.[3] An interdict is meant to prevent future conduct and not the past. When the applicant approached this court for an interim interdict she should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. On her own version she did not demonstrate any right which was threatened.
- [10] This application falls flat on the first requirement for final interdict. The applicant is not the owner of the property from which the first respondent has been interdicted. She stays in Mthatha. The place in question is the marital home of the first respondent. It is common cause that the first respondent was married to the applicant's brother (the deceased).. She was the one who bought the house hold necessities as her husband was not working. The applicant has no right to prevent her from staying, visiting or even taking her own property from the marital home. The applicant has not alleged any right which she may have had to any property in the homestead. There she has not demonstrated any right to be protected by means of an interdict.
- [11] The second requirement depends on the first one. Consequently the application cannot succeed. This is merely a family feud which should not have come to this court.
- [12] There was an argument that the Rule Nisi has lapsed by reason of the fact that when the matter was last postponed to 5 May 2022 the Rule was not extended. In the light of the view I take of the matter it is not necessary to debate that issue here. I will assume, without deciding, in favour of the applicant that the Rule has not lapsed.
- [13] What remains is a question of costs. The general rule is that costs should follow the event. I see no reason why I should deviate from that rule.
- [14] In the result the following order will issue:
1. The Rule Nisi granted on 6 July 2021 is hereby discharged.
 2. The applicant is ordered to pay costs of this application.

B R TOKOTA

JUDGE OF THE HIGH COURT

Appearances:

For the applicant:

Mr S L Mgxaji

Of Mgxaji & Co Inc.

For the respondent:

Mr Madubela

Instructed by Mkata Attorneys

Date of hearing:

5 May 2022.

Date of delivery:

17 May 2022.

[1]National Treasury v Opposition to Urban Tolling Alliance 2012 (6) SA 223 (CC) para.50

[2] Setlogelo v Setlogelo 1914 AD 221: at 227

[3] OUTA para.50 footnote 1

[4] Setlogelo v Setlogelo 1914 AD 221. at 227.

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