

SOUTH AFRICA / JUDGMENT

Blue Print Housing (PTY) Ltd and Another v Loeto and Others (048243/22) [2022] ZAGPJHC 1000 (5 December 2022) [2022] ZAGPJHC 1000

COURT

South Gauteng High Court, Johannesburg

BEFORE

N Muvangua

CASE / FILE NUMBER

048243/22

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL

DIVISION, JOHANNESBURG

CASE NO: 048243/22

Reportable:No

Of interest to other

judges:No

Revised:No

5 December 2022

Before:

The Honourable Acting Judge Muvangua

Heard

on: 1 December 2022

Delivered

on: 5 December 2022

In the matter between

BLUE

PRINT HOUSING (PTY) LTD

First Applicant

DINO

PROPERTIES (PTY) LTD

Second Applicant

And

FLEANCE

LOETO

First Respondent

SIVIWE

SEPTEMBER
Second Respondent
SISANDA
THOMPSON
Third Respondent
LUNGISIZWE
STAFANS
Fourth Respondent
MZUKISI
JADA
Fifth Respondent
SNETHEMBA
NKABI
Sixth Respondent
ZUKO
SOYAMBA
Seventh Respondent
NANDIPHA
COBA
Eight Respondent
ITUMELENG
ALFRED MOTHLANKANA
Ninth Respondent
THOSE PERSONS
ATTEMPTING TO
INTERFERE WITH THE
APPLICANTS'
BUSINESS ACTIVITIES
AND
DEVELOPMENT AT THE
REMAINING
EXTENT OF PORTIONS 1
AND 5 AND
PORTION 404 OF THE
FARM
ROODEPOORT 237,
REGISTRATION
DIVISION
I.Q. GAUTENG
Tenth Respondent
BUSINESS ACTIVITIES
AND EMPLOYEES
AT
THEIR HEAD OFFICES
Eleventh Respondent
THE STATION COMMANDER
OF THE
ROODEPOORT

POLICE STATION: BRIGADIER
 IRENE SEKWAKWA
 Twelfth Respondent
 THOSE PERSONS
 ATTEMPTING TO INTERFERE WITH THE APPLICANTS' BUSINESS
 ACTIVITIES AND
 DIVISION
 I.Q, GAUTENG
 Tenth Respondent
 INTERFERE
 WITH THE APPLICANTS'
 AT
 THEIR HEAD OFFICES
 Eleventh Respondent
 ROODEPOORT POLICE

STATION: BRIGADIER
 IRENE SEKWAKWA
 Twelfth Respondent

JUDGMENT

INTRODUCTION

1 The application before me was brought on an urgent basis. It is in substance for an order interdicting the first to the eleventh respondents from engaging in certain conduct, pending the final determination of a dispute between the parties under Part B.

2 There are twelve respondents before court, but the twelfth respondent is the Station Commander of the Roodepoort Police Station. "Respondents" in this judgement refers to the first to the eleventh respondents. The Station Commander will be referred to as such, where necessary.

3 There are two issues for determination in sequence. The first is whether the matter is urgent. If I find that it is, then the second question is whether the applicants have made out a proper case for a final, alternatively for an interim interdict.

URGENCY

4 The test for urgency is settled in law. A court may dispense with the forms and service provided for in the Uniform Rules of Court in the event of urgent applications. In order for the court to do so, an applicant must show why it could not be afforded substantial redress at a hearing in the normal course, and also persuade the court under oath that circumstances explicitly stated in the affidavit render the matter urgent.

5 In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*,^[1] Notshe AJ said the following in relation to urgency:

“[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

- [7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.
- [8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.”[2]

6 The applicants allege that the application is urgent effectively for two related reasons: the first is that there is great hostility between them and the respondents that has led to threats of violence being made by the respondents against the applicants. There was physical violence on 10 November 2022, and this demonstrates that the respondents are capable of carrying out their threats of violence. The second reason is that the respondents are continuously threatening to, and disrupting the construction operations of the applicants.

7 The applicants argued that they would not get substantial redress in the normal course. The continuing nature of the threats and the intensity of the hostility, coupled with inaction by the police required the immediate attention of the court.

8 Counsel for the respondents, Mr Ralikhuvana argued that this case was not urgent because the events on which the applicants relied for the urgency happened in September 2022. The applicants’ case is that the events on which they rely for urgency took place from 7 to 11 November. The founding affidavit catalogues that chronology. The applicants’ version of events has not been seriously challenged in the respondents’ answering affidavit. These events are as follows.

9 The applicants explain that they are property development companies and are presently engaged in a large-scale development, which will consist, inter alia, of residential, commercial, and educational facilities.

10 They have already completed phase 1 of the development and are due to complete the second phase. They have, however, been unable to work to complete phase 2 because the respondents forced them to stop the construction on several occasions “through the use of violence, force and intimidation levied towards the Applicants’ employees.” The applicants also allege that on 7 November 2022, a group of people, led by the first and the fourth respondents arrived at the construction site and threatened to close it the next day. The next day, (8 November), a group of approximately 200 people, led by the first to the sixth, and the ninth respondents arrived at the construction site and began to threaten people who were working there on the day. This led to the closure of the site for that day. The applicants alleged that they complained to the South African Police Service (“SAPS”), but despite an undertaking to assist, no police members arrived to the aid of the applicants. A group of about 200 persons arrived at the construction site on 9 November again, leading the construction work to be halted for safety reasons.

11 The applicants also explain in their founding papers that there was physical violence on 10 November 2022. The respondents do not deny that there was violence at the construction site. To the contrary, the deponent to the answering affidavit on behalf of the respondents, Sisanda Thompson, admits that sometimes their engagements with a sub-contractor on the site (Tri-Star), do not end well because of a dispute about money that they believe is owed to them by Tri-Star.[3]

12 The respondents deny the allegations in the founding affidavit, but the denials are either bald and without explanation, or contradicted in other parts of the answering papers. For example, Mr Thompson alleged in one part of the answering affidavit that the respondents never stopped construction work on the site, but that such work was stopped by the applicants themselves “seeing that we were not agreeable to their suggestions”. The applicants alleged that the current phase of the project ought to be concluded by 15 December 2022, but that it is running behind. In the light of that, it is improbable that the applicants would themselves stop a project without violence or threat thereof.

13 Mr Thompson alleged in another part of the affidavit that the events alleged to have taken place on 7 – 10 November simply never took place. This is aside from the fact that he admits to the violence on 10 November.

14 The respondents are alleged to have used their cars to block entrances to the site on 10 November 2022. There is no response to that direct allegation in the answering affidavit.

15 On the respondents’ version, there is a dispute about the payment of money between them and Tri-Star. That dispute remains unresolved and it is the reason for the constant engagement and stand-off between Tri-Star (which is subcontracted to do work on the site at the moment) and the respondents.

16 On 17 November 2022, the applicants launched this application to interdict the respondents from the alleged acts referred to above. The application was set down for hearing on 29 November 2022. I asked counsel for the applicants, Mr Hollander, why the application was set down for hearing on 29 November when it could have been set down on 22 November, which was the soonest Tuesday after the Thursday on which it was launched.

17 His response that the matter was set down for hearing on 29 November because the applicants wanted to give the respondents a reasonable

opportunity to file answering papers. He pointed to a decision by Tuchten J in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo*,^[4] where the court held as follows:

“[64] It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be

afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application

cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing; other prejudice to the respondents and the administration of justice; the strength of the case made by the applicant; and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, selfcreated urgency”. [Underlining added].

18 I am satisfied by the explanation given for the delayed hearing. At any rate, the respondents had not filed answering papers on 29 November 2022, and the matter had to stand down in order to enable them to do so. They only filed their answering affidavit on

1 December 2022 in the morning. The matter was stood down to be heard at 2pm on that day.

19 The applicants have demonstrated that they will not obtain substantial redress in due course. Should the events catalogued by the applicants be allowed to persist, it will not be possible for the applicants to obtain substantial relief at a hearing in the ordinary course. The applicants have also adequately explained why the matter was only set down for 29 November 2022. I am, in these circumstances, persuaded that the application is urgent.

INTERIM INTERDICT

20 During oral argument, Mr Hollander made plain that his clients sought a final interdict in that they had established a clear right. An interim interdict was only sought in the alternative. The difference between a final interdict and an interim interdict is that for the latter, a party must show a *prima facie* right to the relief sought in the main proceedings; a well-grounded apprehension of irreparable harm if the interim relief is not

granted; that the balance of convenience favours the granting of an interim relief, and that the applicant has no other satisfactory

remedy.[5]

21 In assessing whether the applicants have established a prima facie right, I am required to follow the approach in *Simon NO v Air Operations of Europe AB and Others*[6]. That approach is this:

“The accepted test for a prima facie right in the context of an interim interdict is to take the facts averred by the applicant, together with such facts set out by the respondent that are not or cannot be disputed and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered and, if serious doubt is thrown upon the case of the applicant, he cannot succeed.”

22 The court in *Setlogelo v Setlogelo*[7] stated the requirements for a final interdict as follows:

“So far as the merits are concerned the matter is very clear. The requisites for the right to claim an interdict are well known, a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.”

23 I understood the applicants’ prima facie right to arise as a consequence of their having been contracted to develop certain properties. They have an absolute right to the development of the property and are under an obligation to meet certain milestones by certain dates. They explain in their affidavits that the current phase ought to be completed by 15 December 2022.

24 The applicants’ apprehension of harm is rooted in how the respondents have conducted themselves thus far, and the threats that they have made against the applicants – which include damage to the applicants’ head office. I have set out this conduct and threats above. That apprehension is, in my view, reasonable. The respondents’ conduct has led to the cessation of the construction, and it also culminated in physical violence on 10 November 2022.

25 I have noted above that the applicants are under an obligation to develop the property and meet certain milestones by certain times. They alleged that their ability to meet their targets on time has already been frustrated by the respondents’ conduct, and that it will continue to be frustrated if the interdict that they seek is not granted. The balance of convenience favours the granting of the interdict.

26 Turning then to alternative remedies. The respondents argued that the complaints of violence and intimidation in the applicants’ papers are criminal in nature and ought to be reported to the SAPS. It is inappropriate for this court to be requested to grant an interdict in these circumstances, so the argument went. The nub of the argument is that the applicants have an alternative remedy – the criminal justice route by reporting these activities to the SAPS. My main difficulty with this argument is that the applicants say they have gone to the SAPS more than once, and the SAPS never came to their aid. The SAPS did not file an affidavit to explain its position in these proceedings. Absent evidence to the contrary, the applicants cannot be said to

have an alternative remedy available to them.

CONCLUSION

27 I find that the applicants have made out a proper case for the granting of a final interdict on an urgent basis. I have no discretion but to grant it, in the circumstances.

ORDER

28 I make an order as follows:

28.1 The First to Eleventh Respondents be interdicted and restrained from:

28.1.1 interfering, or causing interference, with the Applicants' facilities, installations, buildings, construction sites, agents, contractors, sub-contractors, labourers or any other person at the property described as The Remaining Extent of Portions 1 and 5 and Portion 404 of the Farm Roodepoort 237, Registration Division I.Q, Gauteng ("the property"); damaging any buildings, facilities, vehicles, and the like at the property;

28.1.2 threatening, intimidating, harassing, or assaulting any agents, contractors, sub-contractors, labourers, and any other person at the property;

28.1.3 interfering or causing interference with the Applicants' business, activities and/or employees at the Applicants' head offices situated at 539 Ontdekkers Road, Florida North, Roodepoort.

28.2 The applicants may serve this order the first to the eleventh respondents as follows:

28.2.1 by erecting notice boards at the entrances to the property, and if necessary, at strategic places around the boundary of the property and affixing it to such notice boards; and/or

28.2.2 by way of WhatsApp and/or e-mail at the cell phone numbers and e-mail addresses in respect of each of the first to the eleventh

respondents, in the possession of the applicants.

28.3 The first to the eleventh respondents are ordered to pay for the costs of this application.

N MUVANGUA

Acting Judge of the High Court

Appearances

Counsel for the applicants: L Hollander

Instructed by:

Vermaak Marshall Wellbeloved Inc.

Counsel for the applicants: N Ralikhuvana

Instructed by:

Makhuni Inc. Attorneys

- [1] East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd 2011 JDR 1832 (GSJ).
- [2] East Rock Trading 7 at para 8.
- [3] That dispute forms part of Part B of this matter. It was not before me.
- [4] Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and others 2016 (4) SA 99 (GP).
- [5] Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton 1973 (3) SA 685 (A) at 691C-E.
- [6] Simon NO v Air Operations of Europe AB and Others [1998] ZASCA 79; 1999 (1) SA 217 (SCA) at 229G-I.
- [7] Setlogelo v Setlogelo 1914 AD 221 at 227.
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