

SOUTH AFRICA / JUDGMENT

Dlamini and Another v Mogale City Local Municipality and Another (32602/2021)

[2021] ZAGPJHC 435 (15 July 2021)

[2021] ZAGPJHC 435**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Windell

CASE / FILE NUMBER

32602/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****CASE****NO: 32602/2021****REPORTABLE:**

YES

OF

INTEREST TO OTHER JUDGES: YES

REVISED.

3/8/2021

In

the matter between: LYDIA
DLAMINI
First Applicant
OTHER
OCCUPIERS OF PTN 23 OF THE FARM
RIETVALLEI
[...] L.Q. LISTED IN ANNEXURE "A"
Second Applicants
and
MOGALE
CITY LOCAL MUNICIPALITY
First Respondent
THE
SOUTH AFRICAN POLICE SERVICE
(JOHANNESBURG)
Second Respondent

JUDGMENT

WINDELL, J:

INTRODUCTION

- [1] On 9 July 2021, the applicants instituted urgent proceedings in this court for an order in the following terms:

"1. Dispensing with the forms, time periods and service provided for in the Uniform Rules of Court and directing that this matter be dealt with as one of urgency in terms of Rule 6(12)(a);

2. That the First Respondent is hereby ordered to rebuild all demolished structures or homes of the Applicants or reasonably compensate them for the damages caused by the eviction and demolishing of their structures on Tuesday dated 7 July 2021, in light of the Application for Leave to Appeal under case 23484/2021 which was served on the First Respondents attorneys on the 1st of June 2021, within 48 hours of the grant of this order.
3. That the First and Second Respondents are hereby interdicted and restrained from further evicting and demolishing any of the

Applicants structures or homes during the National State of Disaster in line with Regulation 37(2) of the Disaster Management Act.

4. That the eviction and demolishing of the Applicants structures or homes is hereby declared unlawful and unconstitutional.
5. That the First Respondent has violated the right to dignity and security of a person of the Applicants by evicting and demolishing

their structures or homes under Level 4 of Lockdown and Covid-19 pandemic.

6. That the First Respondent by directing the Second Respondent to evict and demolish the structures and homes of the Applicants be declared as a violation of Section 26(3) of the Constitution of the Republic of South Africa and Covid- 19 Regulations which are in place relating to evictions.”
- [2] On 15 July 2021, after hearing both parties, this court struck the matter from the roll for lack of urgency. The reasons are as follows.

BACKGROUND

- [3] During May 2021, Mogale City Local Municipality (“Mogale City”) instituted urgent proceedings against the applicant and other occupiers of “PTN 23 of the Farm Rietvallei [....] L.Q. (“the property”), in which it sought an order, inter alia, ordering the applicants to dismantle structures erected on the property. On 21 May 2021, the urgent court (Keightley J), after hearing both parties, granted an order in favour of Mogale City (“the Keightley order”). The relevant parts of the order are paragraphs 3 and 7, and read as follows:

“3. Any of the respondents who erected structures from 1st of May 2021 is directed to dismantle and/or remove the structures placed and/or that may have been constructed on Portion 40 of the Property and to leave the said Property on or before Wednesday the 26th of May 2021 before 14h00;

7. The security officers contracted by the applicant are authorised to give effect to this order by preventing any of the respondents from breaching the terms thereof;”
- [3] It is common cause, firstly, that the respondents did not comply with paragraph 3 of the order and, as at 26 May 2021 at 14h00, they were in breach of the order; and secondly, that the erected structures of the applicants were dismantled and removed by the security officers instructed by Mogale City on 7 July 2021, in accordance with paragraph 7 of the order.

URGENCY

- [4] This application is opposed on various grounds, including the lack of urgency. In accordance with Rule 6 of the Uniform Rules of this court, the applicant is required to set out the reasons why the matter deserves the urgent intervention of this court and indicate why they cannot obtain substantive relief in due course.
- [5] It is trite that urgent relief will be denied in circumstances where any urgency claimed is self-created and/or where it is apparent that the applicant failed to act with the necessary haste in approaching the court.
- [6] The applicants contend that the application only became urgent after the demolishing of the structures on 7 July 2021. The respondents contend that the urgency is self-created as the applicants have been aware of the Keightley order since 21 May 2021, but decided to wait until it was executed before it approached the court for urgent relief.

- [7] The respondents further contend that it is clear from a letter written by Mr Madikane from Lawyers for Black People, to Mogale City's attorneys, on 1 June 2021, that the applicants acknowledged the need to appeal the Keightley order. The letter reads as follows:

"Dear Sirs

We have consulted at great length with our clients in relation to this matter but their instructions to us still remain that we should appeal the order of the Learned as we hereby do.

It is a fact that we know that the Municipality intends to build houses in the area however it is our clients view that the order was not just and equitable to the extent where it comes to issues pertaining to homelessness and destitution in the event of an eviction if carried out.

Our clients' grounds for appeal are set out in their application and they contend that the Learned Judge did not pay attention to their case as set out in their Answering Affidavit and do hold the sentiment that a different court will come to a different conclusion."

- [8] It is common cause that at the time of the hearing of the matter (15 July 2021) no appeal had been noted against the judgment and order of Keightley J.
- [9] The respondents contend that the "horse has therefore bolted", in that the Keightley order had been executed. In response the applicants submit that Mogale City acted unlawfully and contrary to the court order as the court order does not allow the removal of the structures. It is submitted that the matter therefore remains urgent.

CONCLUSION

- [10] The relief the applicants' seek in the notice of motion is based on the premise that there is an application for leave to appeal pending against the Keightley order, and the execution thereof was suspended pending the application for leave to appeal as envisaged in section 18(1) of the Superior Courts Act[1].
- [11] When the order was executed on 7 July 2021, there was no application for leave to appeal filed or noted against the order of Keightley J, suspending such order, and Mogale City was entitled to execute the order.
- [12] The order is, at least in my view, clear. It permitted the respondent to utilize the security company to give effect to the order if the applicants are in breach of the court order.
- [13] The gravity of the relief sought and the serious consequences which may flow therefrom is evident from the prayers in the notice of motion. However, the circumstances relied upon by the applicants as the basis for the application, have been present since 21 May 2021 and the application could have been moved earlier. The matter became urgent because the applicants waited until after the execution of the court order to approach the court for urgent relief. The urgency is, therefore, clearly self-created and due to the failure on the part

of the applicants to approach the court at an earlier stage or to file an application for leave to appeal.

[14] In the result the following order is made:

1. The application is struck from the roll.
2. Each party is ordered to pay its own costs.

L. WINDELL

JUDGE OF THE HIGH COURT

(Electronically submitted therefore unsigned)

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for the hand-down is deemed to be 15 July 2021.

APPEARANCES

Counsel for applicants: Advocate L. Moela

Instructed by:

Bila Mashamba Attorneys

Counsel for first respondent: Advocate S.K Lekitima

Instructed by:

Motlatsi Seleke Incorporated

Date matter heard:

15 July 2021

Judgment

date:

15 July 2021

Date of written reasons: 3 August 2021

[1] Act 10 of 2013

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