

SOUTH AFRICA / JUDGMENT

Elmir Mining (Pty) Limited and Others v Zulu and Others (30385/2016) [2017] ZAGPPHC 968 (1 September 2017) [2017] ZAGPPHC 968

COURT

North Gauteng High Court, Pretoria

BEFORE

L Adams

CASE / FILE NUMBER

30385/2016

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IN THE HIGH

COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE NO:

2016/30385
NOT REPORTABLE
NOT OF INTEREST
TO OTHER JUDGES
REVISED
1/9/2017
In the matter

between:

ELMIR MINING
(PTY) LIMITED
First
Applicant
JOSAMA
INVESTMENTS (PTY) LIMITED
Second
Applicant
AFRISAKE
NPC
Third
Applicant
and
ZULU,TERRENCE
First
Respondent
KABINI,

WILLIAM
Second
Respondent
ALL
TRESPASSERS TRESPASSING ON THE PROPERTIES
KNOWN
AS THE FARM
SCHIETPOORT Third
Respondent
CITY OF
TSHWANE METROPLITAN
MINICIPALTY Fourth
Respondent
THE
MINISTER OF
POLICE Fifth
Respondent

JUDGMENT

ADAMS J:

[1]. In this application, which started out as an urgent application, the applicants in essence sought relief curtailing the unlawful invasion of their land. In addition, the applicants requested an order that the South African Police Services (the fifth respondent) and the City of Tshwane Metro Police (the fourth respondent) be ordered to take all reasonable steps within its available resources to ensure that effect be given to the court order and that the unlawful occupation of the land comes to an end.

[2]. At this stage of the proceedings the only issue which I am required to adjudicate is whether or not the applicants are entitled to the final relief sought against the City of Tshwane Metro Police. The applicants require confirmation of a rule nisi previously issued against inter alia the Tshwane Metro Police. This means that I am required to enquire into the legal duties and responsibilities of the Metro Police in relation to unlawful invasion of land and the enforcement of court orders relative to land invasion and eviction orders.

[3]. On behalf of the applicant, Mr Hamman submitted that in terms of s 7(2) of the Constitution the state (which includes the police) has a duty to respect, protect, promote and fulfil the property rights of the applicants which are protected in terms of s 25 of the Constitution.

[4]. Mr Hamman further argued that, if regard is had to the provisions of the Trespass Act, 6 of 1959, s 64E of the South African Police Service Act, 68 of 1995, which provides that the functions of the Metro Police are inter alia the policing of bylaws and the prevention of crime, and the provisions of s 64F(3) of the said Act, which provides that metro police officers are peace officers with the powers to make arrests, the Metro Police can and should be ordered to assist against the invasion of land by the other respondents. The municipal by - laws, which the Metro Police are by

law required to police, also have provisions aimed at curtailing land invasions.

[5]. Mr Vorster, who appeared on behalf of the fourth respondent, on the other hand, submitted that, if regard is had to the legislative framework within which metropolitan police operates and functions and the fact that their powers and responsibilities are circumscribed, the metro police do not have the same duties and functions as the South African Police to assist the sheriff in executing a court order.

[6]. Mr Vorster placed great emphasis on the order in which the mandate of the metropolitan police, like that of the fourth respondent, is set out in s 64E of the South African Police Services Act, 68 of 1995 ('the Police Act'). The section provides as follows:-

'64E: Functions of municipal police service

The functions of a municipal police service are-

- (a) traffic policing, subject to any legislation relating to road traffic;
- (b) the policing of municipal by-laws and regulations which are the responsibility of the municipality in question; and
- (c) the prevention of crime.'

[7]. Mr Vorster submitted that the fact that the provisions relating to the functions of the metropolitan police reside in the Police Act, means that the main crime - prevention responsibility resides with the SAPS, and that the metro police department should play a supportive role. Furthermore, it was submitted by Mr Vorster that by listing the

traffic law - enforcement function first, the legislature placed special emphasis on this function. This means that it is so that the main purpose of a metro police department is that of traffic law - enforcement. In that regard, I was referred to a Judgment of this court (Kubushi J), (Case no: 35022/2017), in which the Court apparently agreed with the submissions of the fourth respondent. It must however be pointed out that Kubushi J was at pains to indicate that she assumed, without concluding that the Metro Police do not have an obligation to assist the applicants in that matter nor the Sheriff.

[8]. I am of the view that the Metro police do have such a duty. The simple fact of the matter is that one of the statutory functions of Metro Police is the 'prevention of crime'. It is a crime to unlawfully invade land, even more so to occupy land in contravention of a court order. There is no need to go into an in - depth analysis and interpretation of the term 'crime - prevention'. One needs to have regard only to its ordinary meaning, which, as I have indicated, includes the prevention of persons from acting in total disregard of a court order. Furthermore, as correctly pointed out by Mr Hamman, these individuals by invading the land belonging to the applicants, are committing the crime of trespassing.

[9]. I therefore can see no reason why the fourth respondent should not be ordered to do what it is mandated to do by statute.

[10]. It was also submitted on behalf of the fourth respondent that the applicants, who seek a mandamus order (a mandatory interdict) against it, do not make out a case entitling them to the mandamus. In addition, so it is submitted, the statutory instruments relied upon by the applicants do not place on the fourth respondent any obligation to assist to curtail an unlawful invasion of land. I have dealt with this issue supra. One of the functions of the fourth respondent's metro police force is to prevent crime, and that is all they are called upon to do.

[11]. It is also submitted that the order sought is impractical because the applicants seek an order against faceless respondents. I disagree. The first and the second respondents have been clearly identified as the masterminds behind the unlawful occupation. The third respondents are those people who have been found on the land.

[12]. In the circumstances, I am satisfied that the applicants are entitled to the relief asked for against the fourth respondent.

ORDER:

Accordingly, I make the following order:-

1. The rule nisi issued against the fourth respondent on the 15th April 2016 be and is hereby confirmed.
2. The fourth respondent is ordered to take all reasonable steps within its available resources, through its Metro Police Force, to ensure that effect is given to this order and that the unlawful occupation of the land comes to an end.
3. The fourth respondent shall pay the first, second and third applicants' cost of this application.

L ADAMS

Judge of the High Court

Gauteng Division, Pretoria

HEARD ON: 8th June 2017

JUDGMENT

DATE: 1st September 2017

FOR THE APPLICANTS: Adv

J G C Hamman

INSTRUCTED BY: Hurter

Spies Incorporated

FOR THE FOURTH RESPONDENT: Adv Adrian Vorster

INSTRUCTED BY:

Malebye Motaung Mtembu Incorporated

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Prepared on 24 October 2026 · Esheria