

SOUTH AFRICA / JUDGMENT

Horn v Ceronio N.O and Others (3395/2020) [2021] ZAFSHC 101 (6 May 2021) [2021] ZAFSHC 101

COURT

Free State High Court, Bloemfontein

BEFORE

N.S. Daniso

CASE / FILE NUMBER

3395/2020

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IN THE HIGH COURT
OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN
Case
number: 3395/2020
In

the matter between:

HECKIE
HORN
Applicant
And
JOHANNES
HENDRIK CERONIO N.O.
First
Respondent
EVERT
PHILLIPUS CERONIO N.O.
Second
Respondent
(in their respective
capacities as Trustees of
the JH CERONIO
BESIGHEIDSTRUST,
IT1188/2013)
BASE
HIRE AND SALES (PTY) LTD
Third

Respondent
(REG:2015/258492/07)
LOHAN
CIVIL (PTY) LTD
Fourth Respondent
(REG:2005/000756/07)
MANGAUNG
METROPOLITAN MUNICIPALITY
Fifth Respondent
HEARD

ON: 18 FEBRUARY 2020

JUDGMENT

BY: DANISO, J

DELIVERED ON: 06 MAY 2021

- [1] The applicant owns and also resides at number 187 Kenilworth road in Groenvlei. Adjacent to the applicant's residence is a farm described as Portion 1 of the Farm Retreat "A" number 2002 situated at the corner of Maluti Avenue and Kenilworth road, Groenvlei ("the property").
- [2] The first and second respondents are the registered owners of the property in their official capacities as the trustees of JH Ceronio Besigheidstrust and co-directors of the private companies, the third and fourth respondents trading as Base Hire and Sales (Pty) Ltd and Lohan Civil (Pty) Ltd respectively.
- [3] The fifth respondent is a Municipality duly established in terms of the provisions of Section 12 of the Local Government, Municipal Structures Act, 117 of 1989 to regulate and enforce compliance with the provisions relating to development and land use as provided for in its Town Planning Scheme.[1]
- [4] The applicant seeks an interdict restraining the respondents from allowing or using the property for business, consultancy and office administration in contravention of the Bainsvlei Town Planning Scheme (the zoning scheme) which prohibits the use of the property other than for agriculture, dwelling house, shop for selling general dealer's products, processed agricultural and milk products. That they be ordered to forthwith remove any and all signage referring to any business which is not permitted by the zoning scheme in particular, office administration, construction and consultancy businesses.
- [5] The application is opposed by the first to fourth respondents. No relief is sought against the 5th respondent except for costs only in the event that the 5th respondent opposes the application.

- [6] The applicant is aggrieved that the third and fourth respondents with the permission of the first and second respondents, are using the property for business activities which are prohibited by the zoning scheme namely: construction of roads and infrastructure; logistics and plant activities; supply of construction equipment; domestic cleaning and chemicals. Annexure “RA2” is the Provincial Gazette number 63 of 09 October 2020 in which recent insertions to the Bainsvlei Town Planning Scheme were published. It confirms that the zoning scheme is still existent. Furthermore, Annexure “FA6”

is a letter from the 5th respondent addressed to the first to fourth respondents’ attorneys confirming the applicability of the zoning scheme to the property and Annexure “FA15” is a “transgression notice” issued by the 5th respondent against the respondents to cease conducting the prohibited activities at the property.

- [7] The applicant contends that the respondents’ illegal conversion of the residential and agricultural property to business premises has caused substantial adverse effects on the residential and agricultural character of the area, the enhancement of the area’s aesthetic, tranquil, safety and also the economic value of the applicant’s property and the surrounding properties.
- [8] At the hearing of the matter, the applicant sought the leave of the court to supplement its replying affidavit by substituting the letter marked as Annexure “RA1” dated 16 March 2020 with a letter dated 12 May 2021. Both letters were addressed to the applicant’s attorneys Noordman Attorneys by the respondents’ attorneys Messrs Du Plessis Attorneys. The letter of 12 May 2021 enclosed the 5th respondent’s letter, Annexure “FA6” which confirms the zoning of the property. Reference to this letter is made in the applicant’s founding and replying affidavits. The applicant had intended to attach the letter dated 12 May 2020 to its replying affidavit however due to a printing error the document dated 16 March 2020 was attached. The applicant submits that the respondents will not be prejudiced as it is not in dispute that at all material times hereto Messrs du Plessis acted for the respondents and that the letters were addressed to the applicant’s attorneys on the instructions of the respondents. The prejudice that will befall the applicant if the order is not granted far outweighs any prejudice that the respondents may ostensibly suffer.
- [9] On the other side, the respondents maintain that the document sought to be annexed to the applicant’s replying affidavit merely proves that at some stage the respondents’ attorneys addressed a letter to the applicant’s attorneys enclosing a certificate. There is no evidence that the purported certificate is a zoning certificate it does not even relate to the respondents’ property.

[10] I'm of the view that the applicant has shown sufficient cause entitling it to the court's indulgence to supplement its replying affidavit and that the respondents will not be prejudiced thereby. It will be in the interests of the parties to deal with the real issues between them to enable the court to dispense with justice equitably. Leave to supplement the applicant's replying affidavit is accordingly granted as prayed for in the notice of motion dated 11 February 2021.

[11] The respondents' opposition of the application is premised on the grounds that in the applicant's founding affidavit the property which is a subject of this application is described as 1 Maluti Avenue whereas the respondent's farm is situated at 7 Maluti Avenue. The respondents' property does not fall under the provisions of a zoning scheme and this was confirmed by the 5th respondent when the respondents applied for the rezoning of the property from agricultural premises for Special Use shopping and

office complex.

[12] The respondents contend that Annexure "FA6" does not constitute proof that the property is part of the zoning scheme. The document is in fact inadmissible hearsay as there is no affidavit confirming its veracity. With regard to the business conducted at the property, it is denied that the third and fourth respondents trade in business, construction and consultancy businesses. The third respondent trades in the sale of cool drinks, chips, chocolates, hand sanitizers, boots and overalls and all these items are permitted under the sale of general dealer's products.

[13] The administration offices are occupied by the administration staff responsible for capturing information on the computers. There are indeed construction tools and other implements lying outside the property. The first and second respondents are presently building a shop on the premises, once it is completed the tools will be moved inside the shop. The second respondent does not trade at this property the business signage boards were merely installed for advertising purposes.

[14] It is the respondents' case is that having regard to these disputed facts there is no basis upon which it can be found that the applicant's allegations have been proven to justify the order it seeks. The application must be dismissed with costs.

[15] The principles governing the requirements for a final interdict have been settled. In *Hotz and Others v University of Cape Town* 2017

(2) SA 485 (SCA) para 29 the following is stated:

"An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy. Once the applicant has established the three requisite elements for the grant of an interdict the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief." See also Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd 2017

(1) SA 613 (CC) para 8.

[16] I now turn to consider whether the above three requirements elucidated above have been established in this matter.

[17] The respondents fail to consider that it is not in dispute that the property is situated at the corners of Maluti Avenue and Kenilworth road in Groenvlei. As correctly countered by the applicant the property has been appropriately cited at paragraph 7.3 of the applicant's affidavit, on the Annexures "FA6" and "FA15" and verified by the Title Deed which its veracity is uncontroverted. The reference to street number 1 instead of 7 is clearly a misnomer.

[18] On the respondents' version the property is regarded as an agricultural land. On the basis of the Provincial Gazette Annexure "RA2" there is sufficient proof that the property is still zoned as "Special Use II" in terms of the Bainsvlei Town Planning Scheme 1 of 1984.

[19] The advertising boards outside the property and the advertisements on the third and fourth respondents' business website[2] negates the respondents' version that no construction, consultancy or civil engineering businesses are conducted in these

premises. Having regard to these factors, I'm not persuaded that the respondents' version raises a real dispute of fact, it is merely a bare denial wholly untenable to be elevated to a status of a real dispute of facts.

[20] The purpose of zoning and its concomitant restriction of the use rights attaching to land is to provide for the orderly, harmonious and effective development of the affected area. It is the duty of the local authority to comply and enforce compliance with, inter alia, the provisions of the Ordinance and the zoning scheme. A zoning scheme is promulgated in the interests of the inhabitants of an area. It is legislative in character and is binding not only on owners and occupiers of land subject to the scheme, but also on the administering local authority."[3]

[21] The applicant's right to seek the interdict is derived from his ownership of the property which is situated in the vicinity of the property on which the illegal activities are conducted. The right is equally statutorily derived from the zoning scheme. It is a right worthy of protection against an infringement which is expressly prohibited by law.[4] The first two requirements for the grant of the interdict have been duly established.

[22] This brings me to the third and final enquiry. The applicant submits that an interdict is the only appropriate remedy under these circumstances. Except to issue a transgression notice against the respondents, the 5th respondent has not actively pursued this matter. Criminal proceedings can take months or even years to be finalized in the meantime the respondents will be continuing with their illegal conduct. On 28 January 2020 the second respondent was invited to the community

WhatsApp group where the issue of the illegal use of the property was discussed. He conceded that the property's altered structure and the activities performed by the respondents therein caused a nuisance[5]. On 13 February 2020 the applicant through its attorney addressed a letter of demand to the respondents calling upon them to cease the illegal activities. On 14 June 2020 the respondents were served with a transgression notice[6]. The respondents have still not ceased their illegal activities. The applicant submits that the respondents' unrelenting illegal conduct justifies a punitive cost order.

[23] I'm in agreement with the applicant's contentions. All other efforts to deter the respondents from using the property for illegal activities have proved futile. The effective remedy to put an end to the conduct which interferes with the applicant's rights is an interdict particularly when that infringement amounts to a criminal offence.

[24] I'm satisfied that the applicant has satisfied all the requirements of a final interdict.

[25] On the aspect of costs, I have found no reason for the departure from the general rule that costs follow the result. The respondents' recalcitrant conduct and the persistent disregard of the applicant's and other property owner's rights deserves disapproval by the Court. A punitive cost order is warranted.

[26] For the above reasons, the following order is made:

(1) The first to fourth respondents are interdicted and restrained from using or permitting the use of the immovable property known as Portion 1 of the Farm Retreat "A" number 2002 of corner of 7 Maluti Avenue and Kenilworth road, Groenvlei for any purpose other than for agriculture, a dwelling house or a shop for selling general dealer's products and processed agricultural and milk products as prescribed by its zoning "Special Use II" in terms of the Bainsvlei Town Planning Scheme 1, 1984.

(2) The first to fourth respondents are ordered to forthwith remove any and all signage referring to any business, consultancy,

office or use contrary to the zoning of the property; and

(3) The first to fourth respondents are to pay the costs on the scale as between attorney and client jointly and severally one paying the other to be absolved.

N.S. DANISO, J

APPEARANCES:

Counsel on behalf of Applicant: Adv. N Snellenburg (SC)

Instructed by:

Blair Attorneys

BLOEMFONTEIN

Counsel on behalf of Respondents: Adv. SJ Reinders

(First to fourth)

Instructed by:

Symington De Kok Attorneys

- [1] Section 156(2) of the Constitution Act, 1996 (Act No. 108 of 1996), Spatial Planning and Land Use Management Act, 2013 (Act No 16 Of 2013).
- [2] Annexures “FA8.1” to “FA8.3”, “FA11” and “FA14” of the applicant’s founding affidavit are photos and screenshots of the advertisements of the third and fourth respondents’ businesses.
- [3] Chapman’s Peak Hotel (Pty) Ltd & Another v Jab & Annalene Restaurants CC t/a O’Hagans [2001] 4 ALL SA 415 (C) para 12.
- [4] Patz v Greene 1907 TS 427 at 433.
- [5] Annexure “FA16” of the applicant’s founding affidavit.
- [6] Annexure “FA15”: Notice to cease the unlawful use of the property in terms of section 89 of the Spatial Planning Land Use Management Act 16, 2013.

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Prepared on 10 October 2026 · Esheria