
SOUTH AFRICA / JUDGMENT

Imkwanca Municipality v Bathembu and Others (154/2014) [2014] ZAECGHC 20 (3 April 2014) [2014] ZAECGHC 20

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Plasket

CASE / FILE NUMBER

154/2014

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION,

GRAHAMSTOWN)

CASE

NO. 154/2014

DATE

HEARD: 27/3/14

DATE

DELIVERED: 3/4/14

NOT

REPORTABLE

In

the matter between:

INKWANCA
MUNICIPALITY Applicant
and
SICWABULANA
BATHEMBU First
Respondent
MAKI
FLIGO Second
Respondent
UNATHI
GALADA Third
Respondent
LUYANDA
GAMZANA Fourth
Respondent
PHILA
GODLWANA Fifth
Respondent
MBULELO
JACOBS Sixth
Respondent
VUYISEKA
KUPA Seventh
Respondent
XOLA
MAKALIMA Eighth
Respondent
NOMSITHO
MANI Ninth
Respondent
AYANDA
MAXAMBELE Tenth
Respondent
SIPHOKAZI
MJONTO Eleventh
Respondent
XOLANI
MPONGOSHE Twelfth
Respondent
BULELANI
MTHAKATHI Thirteenth
Respondent
TYHALA
MZAMO Fourteenth
Respondent
INNETTE
BABA
NDEVANA Fifteenth
Respondent
NONELWA
NDEVANA Sixteenth

Respondent
DANISILE
NDIBI Seventeenth
Respondent
ZAMILE
NDIBI Eighteenth
Respondent
SIPHO
NDLANGA Nineteenth
Respondent
NTLONIPHO
NDLELENI Twentieth
Respondent
NANDIPHA
NJOKWENI Twenty-First
Respondent
MXHOSANA
NKENKE Twenty-Second
Respondent
TYALA
NOKUZOLA Twenty-Third
Respondent
TSHITA
PHATO Twenty-Fourth
Respondent
ZIYADUMA
(THAMSANQA)
SPHOKO Twenty-Fifth
Respondent
GEDION
TOKOTA Twenty-Sixth
Respondent
ASANDA
TSHAKA Twenty-Seventh
Respondent
NANDIPHA
KOPI Twenty-Eighth
Respondent
SIYABULELA
YEKANI Twenty-Ninth
Respondent
SIPHO
MANELI Thirtieth
Respondent
LUZUKO
YALEZO Thirty-First
Respondent
ELFY
LUSIBA Thirty-Second
Respondent
MBUYISELO

MATIWANE Thirty-Third
Respondent
Application
for interdict – disputes of fact and referral to oral evidence
– applicant’s allegations so vague
and deficient that no
purpose served in referring matter to oral evidence – would be
an impermissible resort to rule 6(5)(g)
of uniform rules.

JUDGMENT

PLASKET J

[1] The town of Molteno has, it is clear from the papers before me, been in a state of turmoil for some time. This has largely taken the form of civil disorder. It would appear that the civil disorder has involved violent protests, attacks on the property of the

municipality – the applicant – and attacks on the property of individuals. The respondents claim that they too have

been the victims of violence.

[2] The applicant seeks an order in the following terms against the respondents:

‘1. That the Respondents be interdicted and restrained from in any way interfering with or obstructing the normal operation of the

Applicant’s offices, or conspiring with, encouraging or calling for or inciting any person to act as aforesaid; and

2. that the Respondents, or any person making common cause with them, be interdicted and restrained from in any way being abusive of, or inciting others, or calling upon any other party to be abusive and/or aggressive to the office bearers of the Applicant at the premises of the Applicant; and

3. that the Respondents, or any person making common cause with them, be interdicted and restrained from in any way intimidating or threatening the employees of the Applicant, who wish to present themselves for their execution of their duties at the premises of the Applicant; and

4. that the Respondents or any other persons making common cause with them be interdicted and restrained from in any way hindering or obstructing access to or egress from the premises of the Applicant of employees of the Applicant or other members of the public wishing to make use of the offices of the Applicant;

5. that the Respondents or any persons who make common cause with them be interdicted and restrained from gathering for any purpose within a distance of 200 metres from the main gate of the Applicant's buildings; and
6. that the Respondents or any other persons who make common cause with them be interdicted and restrained from burning or vandalising any of the Applicant's property, or threatening to do so; and
7. that the Respondents, jointly and severally the one paying the other to be absolved, be ordered to pay the costs of this application.'

[3] The matter is opposed by the respondents and they have filed papers. When the matter was called, Mr Cole, who appeared for the applicant, applied in terms of rule 6(5)(g) of the uniform rules for the matter to be referred to oral evidence. Ms Redpath, who appeared for the respondents, opposed this application on the basis that a referral to oral evidence would serve no purpose because, in the applicant's papers as they stand, no case is made out for the relief claimed.

[4] In order to evaluate whether the application should be referred to oral evidence, it is necessary to consider the founding papers,

particularly in order to see whether individual respondents have been identified as perpetrators of unlawful conduct, what conduct is ascribed to each and on what basis.

- [5] The deponent to the founding affidavit is Mr Galliot Sgojo, the applicant's municipal manager. The respondents, he claims, are all residents of Molteno and certain of them work for the applicant. His affidavit deals with incidents that occurred in Molteno in July 2013, October 2013 and January 2014. It is far from clear from his affidavit whether he witnessed any of the incidents personally. He certainly does not make this claim.
- [6] In describing the first of these incidents, on an unspecified day in July 2013, he said that after various demands had been made by residents of Molteno concerning service delivery problems yet more demands were made and 'ultimately an emotional throng, including the majority of the Respondents in this matter, advanced upon the Municipal offices of Applicant in Molteno and, amid vulgar language, stoning of property and vandalising of Municipal property, senior officials of the Applicant were evicted from their offices in the Municipal buildings in Molteno'.
- [7] He made mention of three other incidents: the 'displacement' of a councillor from his office and the stoning of his car; the slashing of the car tyres of the chief financial officer and her eviction from her office; and the stoning of his own car. No confirming affidavit is deposed to by the councillor, the chief financial officer states that her car tyres were slashed and she was forced out of her office in December 2013 and even if it is assumed that Sgojo was present when his car was stoned, he gives no details as to who was responsible.

[8] As far as the events of October 2013 are concerned, he alleges that on the 26th of that month a group of people entered the office of Ms Bulelwa Majombozi in the human resources department and instructed her to vacate the premises. Another group entered the office of Ms Yandiswa Matross,[1] a library assistant, on the same day and ordered her to leave her office. Sgojo's affidavit lists eight people by name who allegedly entered Majombozi's office and 18 who allegedly entered the office of Matross. Their confirmatory affidavits say nothing about these incidents but purport to confirm instead what they saw during 'illegal marches that took place in Molteno in January 2014' (in the case of Matross) and 'during the marches which took place involving the Respondents during January 2014 in Molteno' (in the case of Majombozi). Of all the names listed by Sgojo (who clearly was not present) only two are of respondents – the ninth and nineteenth respondents. They deny that they were present and say that they were attending different funerals on that day. In any event, their purported identification as participants in the conduct in question is inadmissible hearsay.

[9] The next incident is alleged to have occurred on 9 January 2014. Sgojo says that he 'cannot state what provoked this resurgence

of illegal activity but the Respondents determined, once again, to commence a rowdy protest march to the premises of the Municipal

offices, where remaining workers employed by the Applicant fled from the Municipal offices in fear of what might happen to them on account of the earlier incidents in July 2013'.

[10] He proceeds to say that the group behaved in an identical manner on 16 January 2014 but was 'stopped at the bridge which links the town of Molteno to the location on the outskirts of Molteno'. He refers to the affidavit of Matross and Majombozi who, he says, specifically noted the identities of those present at that time'. When regard is had to their affidavits, they do no such thing.

[11] Sgojo states that he can confirm that 'care has been taken to identify those present in the unlawful activities of the 9th and 16th of January 2014 and that the Respondents in this matter all joined the violent protests and all participated in a common cause to render the office of the Applicant inoperative in Molteno'. He refers again to the affidavits of Matross, Majombozi and Mr K Jonga who were apparently present on both days. I have dealt with the affidavits of Matross and Majombozi. Jonga does not identify any individual respondent as having done anything specific on 9 January 2014. He makes no mention of 16 January 2014.

[12] Finally, Sgojo refers to an incident on 28 January 2014 when a letter from the South African Municipal Workers Union was delivered to the applicant's office and which said that the union's members intended to go-slow for that and the following day, and that they would also be demonstrating and handing over a petition to the Department of Local Government and Traditional Affairs on 30 and 31 January 2014. (While he claims that a copy of this letter is attached to his affidavit, this is not so.) He says that three people, T Ndevana, L Yalezo and N Ndevana, signed the letters. T Ndevana does not appear to be a respondent. Neither L Yalezo or N Ndevana are identified as respondents but they may or may not be the thirty-

first and sixteenth respondents.

[13] Sgojo does not say whether the go-slow eventuated or whether the handing over of the petition and demonstration occurred. He does, however, refer to an incident in which he says that, on 28 January 2014, 'the following individuals visited the Supervisor of the EPWP (Works Program)' and instructed her to release 'all workers for the purposes of joining in the illegal march scheduled for the 30th and 31st of January 2014.' Despite creating the impression that he would, he did not name anyone. The supervisor, Ms Nofungile Matros named three people, none of whom are respondents.

[14] I turn now to some of the guidelines from the cases as to how the exercise of the discretion to refer a matter to oral evidence ought to be approached. First, a referral to oral evidence is meant to resolve disputes of fact within a comparatively 'narrow

compass'. [2] Secondly, it is not appropriate when it would amount to engaging in a 'roving enquiry' [3] or a 'fishing expedition'. [4] Thirdly, a referral to oral evidence is intended to resolve a dispute of fact on the papers and so should not 'enlarge the scope of the enquiry'. [5] Finally, '[v]ague and insubstantial allegations' in the papers 'are insufficient to create the kind of dispute of fact which should be referred for oral evidence'. [6]

[15] The founding papers are replete with vague allegations that simply are not good enough to implicate any of the respondents in any of the unlawful conduct alleged. To say, as Sgoji does, that 'the majority of Respondents' were involved in unlawful conduct on an unspecified day in July 2013 does not provide any information as to which respondents were present and what each is alleged to have done. Even when, in relation to the events of 9 and 16 January 2014, it is said (with reference to '[t]he group of respondents' on the latter occasion) that care was taken to identify those present, that they 'all joined in violent protests' and that 'all participated in a common cause', no allegation is made as to which respondents were present, what each did and how each made common cause with the whoever may have been perpetrating unlawful acts. There simply is no admissible evidence of any of the respondents being present in the offices of Matross and Majombozi on 26 October 2013. And, as to the allegations that two people who may or may not be respondents are alleged to have signed a letter threatening a go-slow and protest action, when the letter is not even put up, does not even get the case against these two people off the ground.

[16] In these circumstances, where the founding papers are so utterly deficient, there would be no purpose in referring the matter to oral evidence. The only way in which the applicant would be able to establish a case against the respondents would be if it introduced new evidence that was not in its papers and so supplemented its case in order to remedy the defects that I have highlighted. That would amount to an impermissible resort to rule 6(5)(g).

[17] The application for a referral to oral evidence cannot be granted and, as the merits of the main application have not been argued before me, that must be postponed. The costs of this application for the referral should follow the result.

[18] I make the following order.

- (a) The application in terms of rule 6(5)(g) for the matter to be referred to oral evidence is dismissed with costs.
- (b) The matter is postponed sine die.

C Plasket

Judge of the High Court

APPEARANCES

For the applicant: S Cole instructed by Yokwana Attorneys

For the respondents: N Redpath instructed by Neville Borman & Botha

[1] There is little consistency in the spelling of this person's surname. It is variously spelt as 'Matrose' and

'Matose'. I have opted for the way in which she spelt her surname when she signed her affidavit.

[2] Standard Bank of SA Ltd v Neugarten & others 1987

(3) SA 695 (W) at 699B-E.

[3] Atlas Organic Fertilisers (Pty) Ltd v Pikkewyn Gwhano (Pty) Ltd 1978

(4) SA 696 (T) at 699A-B.

[4] Hopf v Pretoria City Council 1947

(2) SA 752 (T) at 768.

[5] Wepener v Norton 1949

(1) SA 657 (W) at 658-659

[6] King William's Town Transitional Local Council v Border Alliance Taxi Association 2002

(4) SA 152 (E) at 156I-J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2014/20.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/imkwanca-municipality-v-bathembu-and-others-unknown-topic-aecghc-2014>

Prepared on 10 October 2026 · Esheria