

SOUTH AFRICA / JUDGMENT

Interactive Risk Management (Pty) Limited and Another v City of Johannesburg Metropolitan Municipality and Another (2024/051717) [2025] ZAGPPHC 245 (3 March 2025)

[2025] ZAGPPHC 245

COURT

North Gauteng High Court, Pretoria

BEFORE

N P Mngqibisa-Thusi

CASE / FILE NUMBER

2024/051717

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 2024/051717

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE

03/03/2025

SIGNATURE

In

the matter between: INTERACTIVE RISK
MANAGEMENT (PTY) LIMITED
1st Applicant
SAXONWOLD &
PARKWOOD RESIDENTS' ASSOCIATION
(SAPRA)
2nd Applicant
and
CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY
(Chairman's
of the City of Johannesburg Municipal Planning
Tribunal
and Municipal Appeal
Tribunal)
1st Respondent
SAXON
SQUARE DEVELOPMENT (PTY) LIMITED
2nd Respondent

JUDGMENT

MNGQIBISA-THUSI J

[1] The applicants, Interactive Risk Management (Pty) Limited (first applicant) and Saxonwold & Parkwood Residents' Association (second applicant), seek, on an urgent basis, the following relief:

Part A

1.1 That pending the finalisation of Part B of this application, the first respondent, City of Johannesburg Metropolitan Municipality be interdicted from:

1.1.1 considering and/or approving any consolidation application to consolidate the subject properties;

1.1.2 considering and/or approving any site development plan/s in respect of ERVEN 7[...] and 7[...], Parkwood, Johannesburg (the subject properties), to make provisions for the proposed development;

1.1.3 considering and/or approving any building plans on the subject properties to make provisions for the proposed development;

1.1.4 taking any action to give effect to the approval of the removal application or rezoning application on the subject properties.

1.2 That, pending the finalisation of Part B of this application, the second respondent, Saxon Square Development (Pty) Limited, be interdicted from commencing and/or continuing with any earthworks and/or construction on the subject properties to make provisions for the proposed development based on the approval of the removal application and the rezoning application on the subject properties.

Part B

3. That the first respondent's Municipal Planning Tribunal's (MPT) decisions dated 4 November 2021, approving the removal of restrictive title conditions in respect of the subject properties and approving the rezoning of the subject properties to "residential 4", subject to certain conditions, be reviewed and set aside.
4. That the first respondent's Municipal Appeal Tribunal's (MAT) decision and reasons received on 13 November 2023, to dismiss the appeal submitted by the second applicant against the decision of the MPT, be reviewed and set aside.
5. That the promulgation of amendment scheme 01-18713 and removal of restrictive title conditions 13 4/2023/2018, published on 31 January 2024 in the Gauteng Provincial Gazette, confirming the decision stated in the paragraphs above, be reviewed and set aside, alternatively be declared null and void.
6. That, insofar as it may be necessary, condonation be granted in terms of section 9 of the Promotion of Administrative Justice Act 3 of 2000, condoning the late bringing of the review application.
7. That any party who oppose this application (Part A and/or Part B) be ordered to pay the applicants' costs, jointly and severally, the one paying the other to be absolved.

[2] The first applicant is the owner of erf 735, adjacent to the subject properties.

Brief factual matrix

- [3] In 2018 the second respondent applied to the first respondent for the approval of the rezoning of the subject properties, erven 7[...] and 7[...] Parkwood, Johannesburg in terms of the Spatial Planning and Land Use Management Act 16 of 2013 and the Johannesburg Land Use bylaw and the removal of certain restrictive title conditions applicable to the subject properties. The applicants objected to the rezoning and removal of restrictive title conditions. However, both the city's Municipal Planning Tribunal and the Municipal Appeal Tribunal dismissed the applicants' objections and approved the second respondent's application on 29 September 2021 and 6 October 2023, respectively.
- [4] Aggrieved by the dismissal of their objections and appeal, on 10 May 2024 the applicants filed an application, constituting of Part A and Part B, above. In Part A, the applicants seek an interim interdict prohibiting the first respondent from approving the second respondent's development plans and prohibiting the second respondent from commencing or continuing with construction as approved by the impugned decisions, pending the

determination of Part B of the application. In Part B the applicant seek the review and setting aside of the decisions of the MPT and the MAT. The pleadings closed on 11 November 2024 and only the heads of argument are outstanding.

[5] It is common cause that, despite the applicants' pending review application, towards the end of 2024, construction started in terms of the approved development plans. On 4 December 2024, the applicants sought an undertaking from the second respondent that it would stop construction on the sites until the application was determined. The second respondent refused to give such undertaking. Construction activities stopped during the builders' break in mid- December 2024 and commenced in the middle of January 2025. In light of the second respondent's refusal not to proceed with construction, the applicants launched this urgent application on 28 January 2025 and was heard on 11 February 2025.

[6] The applicants' review application is based, inter alia, on the following grounds:

6.1 that in processing the second respondent's development application there was non-compliance with the mandatory and material procedures prescribed by an empowering provision and the procedure followed was unfair.

6.2 that the first respondent failed to take into account the public

interest and/or how the rights of the public would be affected especially with regards to the negative impact the proposed development would have on the objectors privacy, property values and peaceful living standards.

6.3 that in processing the second respondent's development application there was non-compliance with the mandatory and material procedures prescribed by an empowering provision and the procedure followed was unfair.

6.4 that the first respondent failed to take into account the public

interest and/or how the rights of the public would be affected especially with regards to the negative impact the proposed development would have on the objectors' privacy, property values and peaceful living standards.

6.5 that irrelevant facts or aspects were considered and relevant considerations were not considered.

6.6 that the action was taken arbitrarily or capriciously.

6.7 that irrelevant facts or aspects were considered and relevant considerations were not considered.

6.8 that the action was taken arbitrarily or capriciously.

Urgency

- [7] The second respondent is of the view that urgency is self-created in that the applicants were aware that construction on the subject properties had started as far back as October 2024 and they failed to bring an urgent application. On behalf of the applicants the following submissions were made. It was submitted that even though the review application also included a prayer for an interim interdict prohibiting the second respondent from commencing or continuing with construction, the matter was at that stage not urgent as construction had not started. It is the applicant's averment that the matter became urgent in that despite the pending review application and applicants' request to the second respondent to stop construction pending the finalisation of the review application, the second respondent started with construction which if allowed to continue, would render the review application moot and academic and should be struck from the roll with costs.
- [8] In considering whether to allow this matter to be heard on an urgent basis the main considerations to be taken into account are the prejudice the applicants might suffer if the order is not granted and the prejudice the second respondent might suffer if the order is granted by the abridgement of the prescribed time period.
- [9] Taking into account that the decision precipitating the launching of these urgent proceedings was as a result of the second respondent commencing with construction in the face of a pending the determination of the review application, I am satisfied that there was no undue delay in bringing this application. I am also satisfied that the applicants have shown sufficient cause and grounds for the matter to be heard on an urgent basis.

Interim interdict

- [10] An applicant seeking an interim interdict has to satisfy the following requirements, namely that:

10.1 it has a clear or prima facie right, though open to some doubt;

10.2 there is a reasonable apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;

10.3 the balance of convenience favours the granting of interim relief; and

10.4 there is no other alternative satisfactory remedy available.

- [11] In *Erikson Motors (Welkom) Ltd v Protea Motors Warrenton and Another*[1] the Appellate Division as it then was held that none of the above-mentioned requirements were decisive.

- [12] With regard to a prima facie right, in *Simon NO v Air Operations of Europe AB and Others*[2] the court stated that:

“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.”

- [13] Furthermore, if the applicant’s prospects of success in the review application are weak, the balance of convenience should favour of the granting of the interim interdict. The applicants have raised several grounds for the review of the first respondent. If any of those grounds is reviewed, would justify the granting of the review.
- [14] On behalf of the applicants the following submissions in brief were made. The applicants contend that they have a prima facie right in that they have a right to administrative action in order to avoid the proverbial horse from bolting. It was submitted that by commencing and continuing with the construction based on an impugned decision, the second respondent is infringing on applicants’

right to have the review heard. Further it was submitted that the actions of the second respondent render the applicants’

review application moot in that it would be difficult for a court to ultimately hear the review application which relates mainly to in an attack on the relevant municipal approvals.

- [15] Further, it was submitted that the applicants have reasonable apprehension of irreparable harm if the interim interdict is not granted, in that it will suffer prejudice where the impugned administrative action continues unabated and contrary to the applicants’ rights to just and fair administrative action.
- [16] It is further the applicants’ contention that should the interim interdict not be granted and the applicants are successful in with the review application, the applicants will not have a satisfactory remedy available in view of the fact that courts are reluctant to grant demolition orders. Furthermore, it is the applicants’ contention that balance of convenience is in favour of the interim interdict being granted in view of the fact that very little progress has been made in the development of the subject properties the prejudice to be suffered by the applicants is more significant than that would suffered by the second respondent if the construction is stopped. Further, that the review application has prospects of success in that the building the second respondent is constructing is a six storey building which would be located in an area made up of substantially single-storey buildings and building would be a monstrosity in such location.

- [17] On behalf of the second respondent it was argued that the applicants have not shown that they have a prima facie right for the interim interdict to be granted. Counsel submitted that if the interim entered it is granted and construction is allowed to continue, should the review application be determined in favour of the applicants, the court could grant any order in terms of section 172(1)(b) which it deems to be just and equitable, including an order for the demolition of the building.
- [18] It was further submitted on behalf of the second respondent that the balance of convenience favours the second respondent in that construction has already started and any interruption in the process would cost the second respondent huge amounts in relation to contracts it had included, including the retrenchment of workers.
- [19] I am of the view that the applicants failed to substantiate its claim to a prima facie right. Nothing turns on the fact that the applicants have instituted review proceedings against the impugned decision. In the *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[3], the court stated that:
- “[50] Under the Setlogelo test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision.[4] It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite.”*
- [20] Inasmuch as the applicants’ right to just administrative action, such right will not be negated if the interim interdict is not granted and the second respondent is allowed to proceed with the construction in light of the provisions of section 172(1)(a) of the Constitution.
- [21] The applicant has also not shown that a reasonable apprehension of harm exists if the interim interdict is not granted and final relief sought is eventually granted. Nothing stops the reviewing court, if the applicants are successful, from making an order which is just and equitable in the circumstances. The balance of convenience favours the second respondent in that construction has already started and the costs the second respondent would incur, both financially and otherwise if the interim interdict was granted and construction halted until the review application is determined.
- [22] In the result, I am satisfied that the applicants have not established the requirements of an interim interdict and that the application ought to fail.
- [23] It is trite that costs follow the cause.
- [24] In the result the following order is made:
1. The application is dismissed.

2. The applicant to pay the costs consequent on the employment of senior Counsel.

N P MNGQIBISA-THUSI

Judge of the High Court

Date of hearing : 11 February 2025

Date of Judgment : 03 March 2025

Appearances

For Applicants: Adv J A Venter (instructed by JLR Attorneys & Associates)

For Second Respondent: Adv P Stratherm SC, with Adv S Mushet (instructed by Strauss Scher Attorneys)

[1] 1973

(3) SA 685 (A).

[2] 1999

(1) SA 217 (SCA).

[3] 2012(6) SA 223 (CC).

[4] Setlogelo above n 28 at 227.

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