

SOUTH AFRICA / JUDGMENT

Magerman v Ekurhuleni Metropolitan Municipality (42681/21) [2023] ZAGPPHC 653 (4 August 2023)

[2023] ZAGPPHC 653

COURT

North Gauteng High Court, Pretoria

BEFORE

MNGQIBISA-THUSI

CASE / FILE NUMBER

42681/21

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NO: 42681/21****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES:NO****(3)****REVISED.**

DATE:

04/08/23

SIGNATURE

In

the matter between: THOBILE
 NOKULUNGA MAGERMAN
 Applicant
 and
 EKURHULENI
 METROPOLITAN MUNICIPALITY
 Respondent

JUDGMENT

MNGQIBISA-THUSI, J

- [1] During 2011 the applicant and the respondent concluded an oral agreement in terms of which the respondent leased portions of a building situated on Erf 1[...] M[...] Township (“the property”) to the applicant. The property, which is zoned for social development, is approximately 3 611m² in extent and consists of six Blocks of buildings (Blocks A to E).
- [2] The applicant, who runs a non-governmental organisation (“NGO”) known as Stone of Hope, was given occupation and use of Block C and portions of Blocks D and E. The applicant used her portion of

the building for purposes of providing services to the destitute and poor members of the local community and some training.

- [3] The other Blocks of the building are occupied and used by other NGOs including, inter alia, Tukaro Group (Block A), Jikekasi (Block B), Ithuba Primary Co-operative (Block D) and Ubambana Peoples Development (part of Block E). These NGOs provide learning and training services to learners from the local community.
- [4] Pursuant to an application by the applicant, on 12 December 2019 the respondent’s Council passed a resolution in which they, in principle, approved a lease in favour of the applicant for a period of 9 years and 11 months, which resolution was approved by the respondent’s HoD: Real Estate. The approval provided, inter alia, that:

“6. That the lease of portion of building situated on Erf 1[...] M[...] Township approximately 3 611 m² in extent for community development projects purposes to Thobile Nokulunga Magerman in terms of regulation 34(1)(b) and 40 of the Asset Transfer Regulations,

2008. BE APPROVED IN PRINCIPLE at the minimum rental of R6 416. 66 (Excl VAT) per month subject to compliance with the following conditions:

...

7. That should the above mentioned prospective lessee of the property referred to above FAIL to enter into the necessary lease agreement

within a period of 2 months from date on which the draft lease agreement are forwarded by the municipality to the prospective lessee, The resolution I was the Municipality relating to the proposed lease of the said property BE DEEMED as having been rescinded and any offer made in terms of such resolution on behalf of the Municipality shall lapse without further notice: Provided that the lessee shall BE ADVISED of the resolution when the draft Lease Agreement are submitted to the prospective lessee”

- [5] The lease agreement was, however, not concluded between the applicant and the respondent. After making a demand for the lease agreement to be concluded, a dispute arose due to the different interpretation given by the parties to clause 6 of the resolution in relation to the extent the contemplated lease should cover. As a result the applicant launched these proceedings.
- [6] In the notice of motion, the applicant seeks an order interdicting the respondent from considering any other lease applications pertaining to the property pending the institution of an action by the applicant within a month of the order as to the interpretation of clause 6 of the resolution. Further, the applicant seeks a mandamus directing the respondent to prepare a written lease agreement for her signature, which lease agreement should cover the entire building situated on the property. The applicant basis her application for an interim interdict on the ground that the respondent’s resolution approved her application to lease the entire building on the property.
- [7] Bearing in mind the quoted portions of the respondent’s resolution (above), there is a dispute between the parties as to the proposed size of the space covered by the resolution.
- [8] It is the applicant’s contention that the resolution relates to the whole building situated at the property. On the other hand, it is the respondent’s contention that the resolution relates to the leasing of only a portion of the property to the applicant as the other portions of the building are already occupied and used by other community based organisations.
- [9] The requirements for an interim interdict are the following:
- (i) a prima facie right on the part of the applicant;
 - (ii) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is granted;
 - (iii) a balance of convenience in favour of granting the interim relief; and
 - (iv) the absence of any other satisfactory remedy available to the applicant.
- [10] The purpose of an interim order is to preserve rights pending a final determination and the onus is on the applicant to show that she has established the requirements for an interim interdict.
- [11] On behalf of the applicant the following submissions were made. That by virtue of the respondent’s resolution of 12 December 2019 the applicant had a prima facie right.

- [12] On behalf of the respondent it was contended that the applicant had misinterpreted the resolution which provides that only portion of the building would be leased to the applicant. It was contended on behalf of the respondent that the resolution could not have related to the entire building on the property as other parts of the building were already occupied and used by other social development organisations. It was further argued on behalf of the respondent that from the submissions made on behalf of the applicant she has not shown that she has a prima facie right worthy of being granted an interim interdict over the whole building situated on the property. Further that the balance of convenience does not favour the granting of the relief sought in light of the occupation and use of other portions of the building by other users. Furthermore, it was argued that the relief sought by the applicant was inappropriate in that it has final effect. It is also the respondent's contention that in view of the provisions of clause 7 of the resolution, the suspensive conditions therein have not been complied with, in particular, the requirement that a lease agreement between the parties must be signed within two months of its approval. It was submitted that a draft lease agreement had been forwarded to the applicant for her signature but that she had refused to sign as she wanted the lease to cover the entire building.
- [13] The issue to be determined is whether the resolution covers the entire building or portion of the building.
- [14] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*[1] the court, in relation to the interpretation of, inter alia, contracts, said the following:

"[18] Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School. The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document".

- [15] Taking into account what was said in the Endumeni matter (supra), I am of the view that, as correctly pointed out by counsel for the respondent, that the correct interpretation of clause 6 of the resolution is to take into account the language of the clause in context and have regard to the purpose of the provision and the background to the passing and approval of the resolution.
- [16] It is common cause that at the time the applicant applied for a lease and when the resolution was taken by Council, the applicant was occupying and using only part of the building on the property. Further, it is common cause that at that time, the remaining portions of the building not used by the applicant, were occupied and used by other community based organisations. From the papers filed in this application, it is not clear whether the applicant did apply for a lease covering the entire building. Bearing in mind the submissions on behalf of the respondent, that there were applications from other community based organisation, it is not reasonable to believe that at the time that a resolution was taken, the respondent's Council would not have taken into consideration the fact that there were other applications or that there were other community based organisations occupying and using the facility.
- [17] I am in agreement with the interpretation of clause 6 of the resolution as contended for by the respondent. It is clear from reading of clause 6 of the resolution that approval was given for granting a lease to the applicant over a portion of the building which building is situated on the property which is 3 611 m² in extent.
- [18] In the circumstances I am not convinced that the applicant has established a prima facie right to a lease covering the entire building.

Furthermore, the applicant has not shown any prejudice she would suffer if the interim order is not granted in that she has not shown a right to be granted a lease of the entire building. The other applicants referred to by the respondent would be prejudiced if this application are not considered as a result of an interim order. Furthermore, the balance of convenience favours not granting the interim order, taking into account that the building is meant for services to community-based organisations, including those already in occupation and using the building.

- [19] I am therefore of the view that the applicant has not made out a case for the granting of an interim interdict and that the application ought to be dismissed.

Order:

‘The application is dismissed with costs.’

NP MNGQIBISA-THUSI

Judge of the High Court

Date of hearing :14 April 2022

Date of Judgment :04 August 2023

Appearances:

For Applicant: Adv C J Welgemoed (Instructed by Marius Blom Inc) For Respondent: Adv I E Tshoma (instructed by Buthelezi Vilakazi)

[1] 2012 (4) SA 593 (SCA).

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