

SOUTH AFRICA / JUDGMENT

Masuka v Tshwane Metropolitan Municipality (1751/2021) [2021] ZAGPPHC 49 (28 January 2021)

[2021] ZAGPPHC 49

COURT

North Gauteng High Court, Pretoria

BEFORE

E.M Kubushi

CASE / FILE NUMBER

1751/2021

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER
JUDGES: NO

DATE:

28-01- 2021

Case

Number: 1751/2021

In

the matter between:

ALEX

MASUKA

APPLICANT

and

TSHWANE

METRO POLICE DEPARTMENT

RESPONDENT

JUDGMENT

KUBUSHI J,

This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.

- [1] The applicant, Alex Masuka, approached court on urgency for an interdictory order to restrain the respondent, Tshwane Metro Police Department ("Metro Police") in particular its Director Nkwashu's actions in obstructing or defeating the ends of justice against the applicant's family having a sleeping protest at the United Nations High Commissioner for Refugees' ("the UNHCR's") office, in Brooklyn Pretoria. The order sought is in essence to restrain the Metro Police from removing the applicant and his family from camping and/or sleeping outside the UNHCR office pending the application launched by the applicant with the UNHCR for his removal from South Africa to another country due to insecurity reasons he experiences in South Africa.
- [2] The applicant appeared before court without legal representation and had prepared and filed his papers without legal assistance. It was determined before the commencement of the hearing that he will be able to represent himself and that he does not require the services of a legal representative nor that of an interpreter.
- [3] The application was initially set down for hearing on 25 January 2021 on strictly truncated times lines. It is not in dispute that the matter is urgent. However, leave was granted the Metro Police to file its answering affidavit and for the applicant to reply thereto. As such the matter stood down to be heard on 27 January 2021. Due to the fact that the applicant was unrepresented the virtual hearing of the matter was allowed.
- [4] The applicant, when filing his replying affidavit also filed a supplementary affidavit. It was explained to the applicant that for the supplementary affidavit to be admitted into evidence he has to be allowed by the court to file same, on application. The applicant had either to proceed with the main application without the supplementary affidavit or to have the matter stand down further to allow for the application for leave to file a further affidavit and for the respondent to answer thereto. The applicant opted to abandon the supplementary affidavit and to proceed with the main application.
- [5] Although it is not specifically stated in the founding papers but from the perusal of the other documents filed of record and the arguments during the hearing of the application, it appears that the applicant is a Zambian citizen who has been granted refugee status in South Africa.

- [6] From the email dated 18 January 2021 by the applicant to the UNHCR attached to his founding affidavit, the applicant's home in South Africa is in Dennilton in Limpopo. He and his family fled Limpopo due to threats made against him allegedly by the Zambian Government and members of the SDA church.
- [7] The email, also shows that he has asked for protection against the people threatening him from the UNHCR and further requested to be removed from South Africa to another country (not Zambia). It also appears from the said email that he has been camping in front of the UNHCR office for over five months in a form of a protest whilst awaiting the requested assistance from the UNHCR.
- [8] Initially on arrival from Limpopo, the UNHCR provided the applicant and his family with temporary shelter but since May 2020 the UNHCR failed to pay the rental for the accommodation and the family was in July 2020 evicted.
- [9] The applicant approached court for assistance in this regard – the details of that application are not provided for in the papers before me. Be as it may, on 10 November 2020 Msimang AJ granted an order in the following terms:
- "1. That the Applicant [Mr Alex Masuka] be subjected to a psychosocial evaluation by a registered psychiatrist as soon as possible.
2. That the First Respondent [Minister of Home Affairs] be ordered to ensure that the United Nations High Commissioner for Refugees and other associated organisations comply with the following undertakings tabled in the First Respondent's report and to cover the costs for:
- (i) temporary shelter for Mr Masuka's wife and children until finalisation of this matter;
- (ii) any form of assistance for the children; and
- (iii) the psychosocial evaluation with a registered psychiatrist.
4. No order as to costs."
- [10] Pursuant to the failure by either Home Affairs and/or UNHCR and/or the associated organisations to comply with the above mentioned court order, the applicant and his family, consisting of thirteen (13) members in all, have been camping outside the UNHCR office whilst waiting to be accommodated by UNHCR as per the said court order.
- [11] According to the applicant he has approached this court for assistance because the Metro Police, in particular its Director Nkwashu, has unjustifiably threatened to remove the applicant and his family from the place next to the offices of the UNHCR where they have been camping and/or sleeping in protest of the failure by the UNHCR to comply with the court order of 10 November 2020.

- [12] The applicant, without giving enough information, alleges that Director Nkwashu attempted to kidnap his children and take them to an unknown place and has also threatened to remove their blankets and the tents which are their place of abode. It is common course that at the hearing of this application the applicant and his family had already been removed from their camping site and the tents taken by the Metro Police.
- [13] Such action of trying to kidnap the family and take them to an unknown place is, according to the applicant, tantamount to defeating the ends of justice and an unlawful and intentional deprivation of their freedom of movement and/or the control over his children.
- [14] The applicant submits further that he cannot be so removed whilst awaiting the implementation of prayer 2
- (i) of the court order of 10 November 2020 which directed Home Affairs to ensure that the UNHCR and other associated organisations provide temporary shelter for Mr Masuka's wife and children until finalisation of that matter.
- [15] The applicant's argument is that the Metro Police cannot do so whilst the applicant is still awaiting the response from UNHCR and without an order of court directing the Metro Police to remove them which is in contravention of the court order of 10 November 2020.
- [16] The relief sought by the applicant herein is a prohibitory interdict. The relief seeks to restrict the respondent from committing a threatened wrong or from continuing an existing one. An interdict is a remedy of a summary and extraordinary nature, allowed in cases where a person requires protection against an unlawful interference, or threatened interference, with his rights.[1]
- [17] In this instance the relief sought is an interlocutory interdict. The relief, if granted, will be granted pending the finalisation of the application of the applicant to the UNHCR to remove him from South Africa to another country.
- [18] The requisite for an interim interdict are well known and need not be repeated herein. Of the said requirements, it is my view that the applicant has not satisfied the requirement of the absence of any other satisfactory remedy and has not established either a clear or prima facie right to camp and/or sleep outside the office of the UNHCR.
- [19] The applicant in his own version alleges that there is a court order granted in his favour on 10 November 2020 directing Home Affairs to ensure that the UNHCR and other associated organisations provide his family with temporary accommodation pending the outcome of the applicant's application to the UNHCR. The applicant does not indicate in the papers filed of record what initiatives he has taken to compel Home Affairs and/or the UNHCR and/or any other associated organisation, to comply with the said court order. Instead, the applicant has decided to take the law into his own hands and to protest by camping and/or sleeping outside the office of the UNHCR, as he says, in protest. The applicant must follow the process of the law and see to it that the court order of 10 November 2020 is complied with. He is the one who in the first place approached court for a remedy which was granted

in the form of that order and must see it to finality. He can therefore say that he does not have any other satisfactory remedy.

- [20] This also is an indication that he has not been able to establish the right, whether clear of prima facie, that allows him to camp and/or sleep outside the office of the UNHCR, this in contravention of the City of Tshwane's By-Laws. It does not appear from the papers where exactly the applicant had erected the tents that were removed by the Metro Police. It is, however, evident that the tents were erected outside the UNHCR premises and thus on the road reserve.
- [21] The applicant contends that By-laws permit anyone to legally protest and the police should protect those protesting with or without a permit as long as there is no traffic disturbed or road blocked and as a refugee he has a right to protest and do so peacefully and not infringe on the rights of others. He further contends that at the time the tents were removed by the Metro Police they were not obstructing vehicles.
- [22] It cannot be correct that by camping and/or sleeping on the reserve road and/or outside the UNHCR office, the applicant and his family are not infringing on the rights of others. The reserve road or pavement or the corner in which he alleges to have erected the tents, is not an area zoned for human habitation and by just being there, the tents and the fact that there are people dwelling there, are causing a nuisance to residents in that neighbourhood and the other passers-by.
- [23] Consequently, the application ought to be dismissed.
- [24] The Metro Police counsel has in argument not insisted on costs in the event of the Metro Police being successful.

[25] I make the following order

1. The application is dismissed.
2. There is no order for costs.

E.M KUBUSHI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearance:

Applicant in Person

: Mr Alex Masuka

Respondent's Counsel

: Adv. A. Vorster.

First Respondent's Attorneys

: Gildenhuis Malatji Inc.

Date of hearing

: 27 January 2021

Date of judgment

: 28 January 2021

[1] See Erasmus: Superior Court Practice 2ed Volume 2 pD6-1.

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Prepared on 14 October 2026 · Esheria