

SOUTH AFRICA / JUDGMENT

National Home Builders Registration Council v Van Rooyen and Others (11273/2006) [2006] ZAGPHC 170 (20 April 2006)

[2006] ZAGPHC 170

COURT

High Courts - Gauteng

BEFORE

B.R. Southwood

CASE / FILE NUMBER

11273/2006

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

Source record

IN THE HIGH COURT OF SOUTH
AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

Date: 2006-04-20

NOT REPORTABLE

Case No: 11273/2006

In the matter between:

NATIONAL HOME BUILDERS REGISTRATION
COUNCIL

Applicant

vs

PHILLIPUS VAN

ROOYEN First

Respondent

PHILLIPUS VAN ROOYEN NO

(In his capacity as trustee of the

FLIP VAN ROOYEN

FAMILY TRUST) Second

Respondent

MARIA JOHANNA VAN ROOYEN NO

(In her capacity as trustee of the

FLIP VAN ROOYEN

FAMILY TRUST)

Third Respondent

GREATER TZANEEN

LOCAL MUNICIPALITY Fourth

Respondent

JUDGMENT

SOUTHWOOD J

- [1] In this urgent application the applicant, the National Home Builders Registration Council (NHBRC), seeks a final order interdicting and restraining the second and third respondents (the trustees of the Flip van Rooyen Family Trust – ‘the Trust’) from allowing any home builder, not registered with the NHBRC, to complete the construction of the home or from completing the home on Erf 100, Letsitele (‘the erf’) whilst the erf is not enrolled with the NHBRC in terms of the provisions of the Housing Consumers Protection Measures Act 95 of 1998 (‘the Act’).
- [2] Initially, the applicant also sought final orders against the first respondent, Phillipus van Rooyen, in his personal capacity –
- (1) interdicting and restraining the first respondent, whilst not registered as a ‘Home Builder’ with the NHBRC from conducting the business of a home builder as defined in the Act;
 - (2) interdicting and restraining the first respondent from continuing with the construction of the house being built on the erf until such time as he is registered with the NHBRC in terms of the Act;
 - (3) interdicting and restraining the first respondent from continuing with the construction of the home being built on the erf until such time as the erf is enrolled with NHBRC in terms of the Act.
- [3] Since the applicant seeks final relief on notice of motion the principles set out in *Plascon Evans Paints Limited v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984
- (3) SA 623 (A) at 634E635C are applicable. The applicant did not ask for the first respondent to be crossexamined and did not contend that his evidence should be rejected on the papers. For purposes of this application the applicant accepted the correctness of the allegations in the first respondent’s affidavit and conceded that the relief sought against the first respondent (referred to in the previous paragraph) could not be granted. However, the applicant contends that the relief sought against the Trust can be granted. The applicant argues that on the respondents’ version the applicant is entitled to the relief sought.
- [4] The relevant facts are uncomplicated and may be summarised as follows: On 7 March 2006 one of the applicant’s inspectors discovered that a house was being built on the erf, and, after questioning the workmen on site in the absence of the first respondent, concluded that the first respondent was building the house. The inspector handed to a workman a Notice of NonCompliance. This notice states that the home builder is not registered with the NHBRC in terms of section 10 of the Act; that the house under construction is not enrolled with the NHBRC in terms of section 14 of the Act; that the home builder is to discontinue

construction and register himself and enrol the house with the NHBRC and that there should be compliance by 15 March 2006. The respondents did not comply with the notice and on 4 April 2006 the applicant launched this urgent application. The applicant alleges that the first respondent conducts business as a home builder and contractor inter alia at the erf. The first respondent is not registered as a home builder with the NHBRC and the home being constructed on the erf is not enrolled with the NHBRC.

- [5] The first respondent states that he is a businessman. He is a director of Ekageng Konstruksie (Edms) Bpk which conducts business upgrading and maintaining roads in Limpopo. The first respondent says that he does not conduct the business of a building contractor and does not have the infrastructure to conduct such a business. The first respondent is one of the trustees of the Trust (he is cited as such as second respondent). As trustee the first respondent is managing the administration and execution of the building works on the erf which is owned by the Trust. The Trust is building a house on the erf with employees contracted for this purpose. These employees are each responsible for a portion of the building work. The Trust pays the employees and purchases the building materials with its own funds. The Trust intends to use the house to accommodate the beneficiaries of the Trust i.e. the first respondent and his wife and their children, or their employees. The Trust does not intend to sell the erf.
- [6] The only issue to be decided is whether the Act applies. This depends on whether the first respondent or the Trust is carrying on business as a home builder as defined in section 1 of the Act.
- [7] The applicant seeks relief in terms of section 20 of the Act which provides –

'20. INTERDICTS

If the Council is of the opinion that a home builder does not comply with this Act, the Council may, despite the imposition of any penalty in respect of that noncompliance and in addition to any other right that the Council may have, at any time on notice to the home builder apply to a court for an order, irrespective of whether any other remedy is available to the Council or not –

- (a) to direct that home builder to comply with the relevant provision;
- (b) to stop construction of a home; or
- (c) to grant any other assistance which may be appropriate in the circumstances.'

[8] In terms of section 6 of the Act the objects of the NHBRC are inter alia –

- (1) to regulate the home building industry;
- (2) to provide protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of this Act;
- (3) to establish and to promote ethical and technical standards in the home building industry;

- (4) to improve structural quality in the interests of housing consumers and the home building industry.

To achieve these objects the Act contains four crucial provisions, section 10, section 13, section 14 and section 18.

- [9] Section 10 provides that no person shall carry on the business of a home builder or receive any consideration in terms of any agreement with a housing consumer in respect of the sale or construction of a home unless that person is a registered home builder (ss (1)) and that no home builder shall construct a home unless that home builder is a registered home builder (ss (2)). It further provides that the NHBRC shall register a home builder if it is satisfied 'that the home builder has appropriate financial, technical, construction and management capacity for the specific business carried on by the home builder in order to prevent housing consumers and the NHBRC from being exposed to unacceptable risks' (ss (3)).
- [10] Section 13 provides for the requirements for validity and the content of agreements concluded between home builders and housing consumers.
- [11] Section 14 provides for enrolment. It states that a home builder shall not commence the construction of a home falling within any category of home that may be prescribed by the Minister for the purposes of this section unless
- (a) the home builder has submitted the prescribed documents, information and fee to the NHBRC in the prescribed manner;
 - (b) the NHBRC has accepted the submission contemplated in paragraph (a) and has entered it in its records;
 - (c) the NHBRC has issued a certificate of proof of enrolment in the prescribed form and manner to the home builder (ss (1)).

Section 14(2) contains similar provisions in respect of a home the acquisition of which, except in respect of any deposit payable, will be financed solely from the proceeds of a state housing subsidy.

Section 14 also provides for the cancellation of enrolment in certain circumstances.

- [12] Section 18 provides that –

'(1) No financial institution shall lend money to a housing consumer against the security of a mortgage bond registered in respect of a home, with a view to enabling the housing consumer to purchase the home from a home builder, unless that institution is satisfied that the home builder is registered in terms of this Act and that the home is or shall be enrolled with the Council and that the prescribed fees have been or shall be paid.

- (2) Any conveyancer attending to the registration of a mortgage bond in favour of an institution contemplated in subsection (1) shall ensure that the home builder is registered in terms of this Act, has enrolled the home with the Council and has paid the prescribed fees in respect of that enrolment.’

[13] A ‘home builder’ is defined in section 1 of the Act as –

‘A person who carries on the business of a home builder’

and

‘business of a home builder’ means –

‘(a) to construct or undertake to construct a home or to cause a home to be constructed for any person;

(b) to construct a home for purposes of sale or otherwise disposing of such home;

(c) to sell or otherwise dispose of a home contemplated in paragraph (a) or (b) as a principal; or

(d) to conduct any other activity that may be prescribed by the Minister for the purposes of this definition,

but does not include

(i) the bona fide building of a home by any person for occupation by that person;

(ii) the bona fide assistance to a person contemplated in paragraph (i) by a person who is not a registered home builder, in the building of a home; or

(iii) the sale or disposal by a housing consumer of his or her bona fide home’

And ‘home’ means –

‘Any dwelling unit constructed or to be constructed by a home builder, after the commencement of this Act, for residential purposes or partially for residential purposes, including any structure prescribed by the Minister for the purposes of this definition or for the purposes of any specific provision of this Act, but does not include any category of dwelling unit prescribed by the Minister’.

- [14] Accepting that the house is being built by the Trust the applicant’s counsel contends that the respondents are hit by the provisions of the Act unless the house being built on the erf falls within the exclusion provided for in the definition of ‘business of a home builder’. He submits that the word ‘person’ is not defined in the Act and that the extended definition of ‘person’ in the Interpretation Act 33 of 1957 (which includes ‘any company incorporated or registered as such under any law’ and ‘any body of persons corporate or unincorporate’) does not include a

trust – Commissioner of Inland Revenue v Friedman and Others NNO [1992] ZASCA 190; 1993

(1) SA 353 (A) at 369J370I; *Friedman and Others NNO v Commissioner for Inland Revenue: In Re Phillip Frame Will Trust v Commissioner for Inland Revenue* 1991

(2) SA 340 (W) at 342J343H. Accordingly he argues that the trust cannot fall within the exclusion.

[15] This argument, while correct as far as it goes, does not take into account the wording of the definitions and the exclusion. In the first place a ‘home builder’ means ‘a person who carries on the business of a home builder’. A trust, which is not a person – *Commissioner of Inland Revenue v Friedman and Others NNO supra* at 370EI – cannot qualify as a home builder and is therefore not covered by the provisions of the Act. If the first respondent must be regarded as the home builder because he is managing the administration and execution of the building work, the question

arises whether he is excluded from the operation of the Act. The definition uses the words ‘any person’ and the word ‘any’ is ‘a word of wide and unqualified generality. It may be restricted by the subject matter or the context, but prima facie it is unlimited’ (*R v Hugo* 1926 AD 268 at 271). ‘In its natural and ordinary sense, “any” – unless restricted by the context – is an indefinite term which includes all of the things to which it relates’ (*Hayne & Co v Kaffrarian Steam Mill Co Ltd* 1914 AD 363 at

371) – *Commissioner for Inland Revenue v Ocean Manufacturing Ltd* [1990] ZASCA 66; 1990

(3) SA 610 (A) at 618H. The first respondent is managing the administration and execution of the building work on the erf. The house is being built for the occupation of the first respondent and his wife and family. There is nothing to suggest that this is not bona fide building of a home. The fact that the erf is owned by the Trust is not relevant as the exclusion does not refer to ownership of the property. The first respondent is accordingly not a home builder as defined and need not be registered as such in terms of section 10 and the house need not be enrolled in terms of section 14.

[16] The Act is therefore not applicable to the respondents’ activities and the application must be refused.

[17] The following order is made:

(1) The application is dismissed;

(2) The applicant is ordered to pay the costs of the application.

B.R. SOUTHWOOD

JUDGE OF THE HIGH COURT

HEARD ON: 13/4/2006

FOR THE APPLICANT: ADV M SNYMAN

INSTRUCTED BY: JAN TROMP & ASSOCIATES

FOR THE RESPONDENT: ADV J M C SMIT

INSTRUCTED BY: THOMAS & SWANEPOEL INCORPORATED

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/ZAGPHC/2006/170.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/national-home-builders-registration-council-v-van-rooyen-and-others-unknown-topic-agphc-2006>

Prepared on 13 October 2026 · Esheria