

SOUTH AFRICA / JUDGMENT

Nkuna v Collins Chabane Local Municipality and Another (350/2017)

[2024] ZALMPTHC 12 (12 January 2024)

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COURT

Limpopo High Court, Thohoyandou

BEFORE

Monene

CASE / FILE NUMBER

350/2017

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

LOCAL DIVISION, THOHOYANDOU)

CASE

NO: 350/2017

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

Date:

2024/01/12

In

the matter between:

JAN

WISANI NKUNA

APPLICANT

and

COLLINS

CHABANE LOCAL MUNICIPALITY

1st

RESPONDENT

RESENGA

RICHARD SHILENGE N.O

2ND

RESPONDENT

JUDGMENT

MONENE AJ

- [1] This matter is about whether the first respondent is guilty of contempt of court for failure to comply with an urgently granted order of Acting-Magistrate G Risimati of the Malamulele District Court dated 17 June 2020 in terms of which the first respondent and or its agents were, "pending the finalization of a review application it had launched in this local division, interdicted and prohibited from undertaking or proceed(sic) with the proposed land development proposal, sale of business sites, identified as Business Park with ERFS 1-56 including the rest of portion 48 in the current filing system of the First Respondent as per the Sowetan newspaper advertisement dated 4 June 2020 and scheduled for the 19th of JUNE 2020".
- [2] The applicant initially sought an order from this court declaring the respondents to be in contempt as well as an order to the effect of imprisoning the second respondent, the acting municipal manager of the first respondent for a period of 18 months. The latter prayer was, however, abandoned by the applicant in arguments before this court.
- [3] It being so that the existence of the order and its coming to the knowledge of the respondent are not disputed by the respondents, the bone of contention before me is whether the respondents have acted in contempt of court or not, with the respondents in the main arguing that their allegedly contemptuous conduct did not constitute contempt as is conduct falling outside the scope of what they were interdicted against.
- [4] Accordingly this

judgement

implicates the tools of interpretation of statutes and judgements where one party alleges one meaning and the other another meaning for one and the same order.

THE BACKGROUND FACTS

- [5] Preceding everything else was a dispute between the applicant and the first respondent over the immovable property Erf 1-56 at Malamulele also known as Portion 48.
- [6] Litigation over the property under case number 277/2011 at this local division saw the first respondent being declared the owner thereof.
- [7] Unhappy with that outcome the applicant launched a rescission application.

Nothing appears to have become of the rescission application since 2011 to date as the applicant's counsel was at the time of hearing this application uncertain of its standing on the roll but was confident it had not yet been finalized. He suggested however that the rescission application was probably awaiting judgement per Madavha AJ. It was unclear when it had been heard and how long judgement had been reserved if it was at all.

- [8] In 4 June 2020, some nine years since the ownership determining order of case number 277/2011 had been granted, the first respondent advertised the sale of business sites on the property in the Sowetan newspaper scheduling the sale for 19 June 2020.
- [9] With that sale looming the applicant successfully approached the Malamulele Magistrate Court on an urgent basis and thereat on 17 June 2020 sought and got an order interdicting the proposed land development proposal and sale.
- [10] It would appear that the proposed land development and/or sale planned for 19 June 2020 did not proceed.
- [11] During November 2020, the first respondent published an intention to dispose off an/or encumber the property, again in the Sowetan newspaper.
- [12] On 8 February 2021 the applicant wrote a letter to the respondents seeking therein an undertaking that the respondents would not continue with the alienation and/or encumbrance of the property as suggested in the Sowetan publication.
- [13] Deriving no joy from the respondents the applicant launched this contempt proceedings on 24 March 2021. It is as undesirable and unconscionable as it is unclear why this application was only heard on 12 October 2023 more than two years after it was issued.
- [14] The contempt application was and is opposed by the respondents, in the main, on the ground that the scope of the court order purportedly contempered did not go beyond interdicting the land development proposal or sale scheduled for 19 June 2020.

THE ISSUE

- [14] As already foreshadowed supra the crisp issue for determination is whether in its admitted conduct of seeking to alienate the property post the 17 July court order, the first respondent acted in contempt of court.
- [15] Given that it is the meaning of the court order, which is the subject of the /is, it becomes important, pursuant answering that key question, to apply the tools of interpretation to the text of the order.

THE LAW ON INTERPRETATION IN BRIEF

- [16] In *Firestone South Africa (Pty) Ltd V Gentiruco AG* 1977(4) SA 298(A) at 304 the Appellate Division (as it then was known) guided as follows:

"The court's intention is to be ascertained from the language of the judgement or order as construed according to the usual, well-known rules...Thus as in the case of a document, a

judgement

or order and the court's

reasons

for giving it must be read as a whole to ascertain its intention."

[17] The SCA in *Finishing Touch 163(Pty)Ltd v BHP Billiton Energy Coal South Africa Limited and Others* [2012] ZASCA 49("Finishing touch") held at paragraph 13 that the primary task of interpreting a court order is to first determine the manifest purpose of the order. That view was approvingly restated in by the Constitutional Court in *Eke v Parsons* 2015

(11) BCLR 1319 (CC) at paragraph 29 which referred to paragraph 13 of *Finishing Touch 163* in the following phrasing:

"Once a settlement agreement has been made an order of court, it is an order like any other. It will be interpreted like all court orders.

Here is the well- established test on the interpretation of court

orders:

"The starting point is to determine the manifest purpose of the order. In interpreting a

judgement

or order, the court's intention is to be ascertained primarily from the language of the judgement or order in accordance with the usual well-known rules relating to interpretation of documents. As in the case of a document, the

judgement

or order and the court's

reasons

for giving it must be read as a whole in order to ascertain its intention".

[18] In *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012

(4) SA 593(SCA) at para 18 the SCA had the following to say regarding interpretation:

"...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."

ANALYSIS

OF THE DOCUMENT

[19] The key order as already alluded to supra reads as follows:

"2. Directing that pending the finalization of the Application for Rescission of

Judgement

filed by the Applicant in the High Court Case No. 277/2011. "

2.1 The First Respondent or any of their employees and or agents are interdicted and prohibited from undertaking or proceed(sic) with the proposed land development proposal, sale of business sites, identified as Business Park with ERFS 1-56 including the rest of portion 48 in the current filing system of the First Respondent as per the Sowetan newspaper advertisement dated 04th June 2020 and scheduled for the 19th of June 2020."

[20] As I understand the submissions before me, I am urged by the applicant to understand or interpret the order to mean that the respondents are interdicted from performing land development or sale of sites until a pending rescission application under case number 277/2011 is finalized. The respondents on the other hand are praying that I have due regard to the reference to 19 June 2020 in the order and interpret the order to be interdicting only that which was to occur on 19 June 2020.

[21] It seems to me that the question is really what I make of the following phrases:

21.1 "In the current filing system of the First Respondent"

21.2 "as per the Sowetan newspaper advertisement dated 04th June 2020 and scheduled for the 19th of June 2020."

- [22] In the respondents' view these two phrases must occupy prominence in my interpretation. In the applicant's view I must simply ignore them. I cannot and will not ignore them as to me interpretation means contextualizing words and does not and should include redrafting a document nor condensing or amplifying if further with words additional to those used in a document.
- [23] I am unable to give any meaning to the current filing "system" other than perhaps an imperfect reference to a tax return filing season with current meaning the season encompassing the date on which the order was granted, to wit, 17 June 2020. If that be the case, then date of November 2020 when the respondent again advertised possible interference with the period would by parity of reasoning and per judicial notice have fallen within the relevant tax season.
- [24] In the context of the order however, the words "as per the Sowetan newspaper advertisement dated 04th June 2020 and scheduled for the 19th of June 2020" are crystal clear. They can have no other meaning other than that the land development proposal and or sale of the property interdicted as per a newspaper advert dated 4 June 2020 scheduled to take place on 19 June 2020. That can be the only logical reason why the application was brought and heard on an urgent basis; the incident sought to be interdicted was on the date of the order, 17 June 2020, only two days away.
- [25] What appears to throw the above interpretation of the tracks of any reader's mind is the introductory part of the order which, although inelegantly drafted. for an order, suggests that the interdict will hold for as long as the rescission application brought by the applicant against the ownership of the respondent was pending.
- [26] As at the time of the hearing of this application there was some uncertainty as to the status of the said rescission application. Initially it was thought that it had not yet been set down but later it was indicated with some uncertainty still, that the rescission application had been heard and was awaiting a reserved judgement. Information availed to this court, subsequent to the heaing and pending this judgement, was however to the effect that the rescission application had since been delivered with a negative outcome to the applicant. This latest information is not helpful in interpreting the said order at all but is information the court cannot just ignore if the interests of justice are to be pursued without recourse to unhelpful burying of the court's head in the sand and pretense to ignorance of surrounding realities as the contempt issue is determined.
- [27] I find that the manifest purpose of this order looking at the context under which it was granted and preferring sensibility over insensibility as counseled by *Finishing Touches 163*, *Endumeni Municipality, Firestone and Eke v Parsons supra*, was to stop a sale or land development proposal scheduled for 19 June 2020 regard being had to the following considerations:

27.1 It is an order which was sought and granted urgently triggered by the sale of land scheduled for 19 June 2020. But for the advertisement in the Sowetan dated 4 June 2020 and scheduling the sale for 19 June the applicant would not have approached the Malamulele Magistrate Court urgently on 17 June 2020 and even if that urgent route was chosen without the scheduled date, it is in my view, unlikely that the matter would have been heard urgently.

27.2 It is inconceivable that the interdict would have been purposed at holding the respondent's rights in the property in abeyance until the prosecution of the rescission by the applicant in circumstances where inaction due to laxity or obstructionism by the applicant the rescission could have taken years, as it eventually was the case, to be finalized. That is so because regard being had to the well-known *Setlogelo v Setlogelo* interdictory relief requirements, the applicants' prayer would not have met the threshold regard being heard to alternative remedies and the balance of convenience between the competing interests of an individual and a municipality acting the interests of an entire community.

27.3 I understand the order to have been made as per a draft order drafted by the applicant before the Learned Magistrate. As I understand this court's role in interpreting the order, I opine that the rules of grammar and syntax militate for a meaning as drafted by the applicant himself and endorsed by the court. As alluded to already somewhere supra in this judgement. I certainly do not understand interpretation to amount to settling inelegantly drafted documents for inept counsel, bringing life into dead drafts counsel for litigants or in any manner doing remedial work where legal drafting classes were either bunked or never registered for.

[28] Accordingly I am unable to find that post 19 June 2020 there was any conduct that the respondent could, related to the order, have engaged in to constitute contempt of court.

[29] Even if I am wrong in that regard, there are three further reasons why I cannot find the respondent in contempt in this matter to wit;

29.1 During arguments before me the applicant abandoned the prayer for the imprisonment of the second respondent retaining only the prayer for the respondents to declared to be in contempt. Such an order even if it was granted would not help the applicant in any way. It would be a hollow victory which would not advance the applicant's cause regarding his claim to the property.

29.2 There has been a considerable lapse of time from the time the order was allegedly contravened, 20 November 2020, to the time this application was launched, 24 March 2021 and up to the time this application was enrolled for hearing before me being 12 October

2023. While passage of time does not affect the validity, enforceability, and binding force of a court order, it is for me doubtful whether the proverbial horse has not long bolted regarding the sale of the property since the alleged violation of the order, such that a mere declaration, three years down the line, that the respondents are in contempt absent any consequential sanction, would not help the applicant to any extent.

29.3 My sense of what is just would still not and still does not permit me to reason, that is if I had preferred the applicant's interpretation of the order, that as at the time this application was heard the respondents were in contempt of a court order because I cannot close my eyes to the objective fact that the rescission application has since failed.

[30] In all the above circumstances, I find that although there was an order granted against the respondents, which order was served on the respondents, the respondents did not fail to comply therewith.

COSTS

[31] While it is so that the successful party is generally entitled to costs, I am, in my discretion, disinclined to mulct the applicant with costs regard being had to the following considerations:

31.1 The order is inelegantly drafted, and the applicant genuinely approached this court praying for contempt. He was well within his rights to approach this court as the order really cried out to be interpreted.

31.2 This court generally lacks an appetite to grant court orders in favour of powerful state organs such as the respondents against ordinary members of society given the skewed power relations involved in such litigation.

ORDER

[32] Resultantly, the following order is made:

32.1 The application fails and is dismissed.

32.2 There is no order as to costs.

MS MONENE

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO LOCAL DIVISION, THOHOYANDOU

APPEARANCES Heard on October 2023

Judgment

delivered onJanuary 2024 For the Applicant: Adv. M Tshisikule, and : Adv. M Netshimbupfe
Instructed by : Mahowa Attorneys Inc : Email: pa5minc.me For the Respondent Adv. M J
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