

SOUTH AFRICA / JUDGMENT

Pretorius and Another v Du Preez and Another (6468/24) [2024] ZAMPMHC 70 (19 December 2024) [2024] ZAMPMHC 70

COURT

Middelburg High Court, Mpumalanga

BEFORE

Malangeni

CASE / FILE NUMBER

6468/24

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

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG

CASE NO: 6468/24

- (1) REPORTABLE: YES
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

DATE 19/12/2024

SIGNATURE

In the matter between:

MARTHINUS WILLEM PRETORIUS

FIRST APPLICANT

HELEEN PRETORIUS

SECOND APPLICANT

and

CHANTELL DU PREEZ

FIRST RESPONDENT

DANIEL JACOBUS LANDMAN

SECOND RESPONDENT

This judgement was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 19 December 2024 at 16:00.

JUDGMENT ON URGENCY

Malangeni AJ

Background

- [1] The applicant and the respondents are neighbours staying at the same street namely H[...] J[...] Street, Dennesig, Middelburg, Mpumalanga. The applicants are residing at no 4[...] and the respondents reside at no 4[...].
- [2] From what is contained in the papers, the respondents found the applicants already staying at 4[...] H[...] J[...] Street. The respondents only started staying at no 4[...] H[...] J[...] Street in September 2024. The applicants went into the respondents' yard to introduce themselves. During the introduction, it was brought to the attention of the respondent that the 2nd applicant (wife to the 1st applicant) was suffering from an illness of which at the times is triggered by loud noise. They were further advised of the encounters they used to have with their previous neighbours due to the noise emanating from loud music. This led in the applicants obtaining court orders against them. Currently the relationship between the applicants and the respondents is acrimonious. This is evidenced by firstly, the fact that parties are before court as the applicants complaining about the noise from the barking dogs of the respondents. Such noise disturbs the health of the second applicant. Secondly, there is an interim protection order dated the 20 of November 2024 and its return date is the 16 of January 2025. In terms of this interim order, the first respondent is the applicant, and the first applicant is the respondent. After having noticed the unhealthy atmosphere between the neighbours, I engaged the legal representatives on humanitarian grounds to establish if they could not find an amicable solution. They came back with the instructions to proceed with the hearing of the application.

THE RELIEF OF SOUGHT BY THE APPLICANTS

- [3] The application before court is on urgent basis, in the following:

3.1 That this application be enrolled and heard as an urgent application in accordance with the provisions of rule 6 (12) and that the requirements pertaining to form and service be dispensed with.

3.2 Declaring that the respondents dogs which bark excessively and continuously constitute a nuisance in law.

3.3 Declaring that the respondents action and omissions in allowing their dogs to bark excessively constitute a nuisance in law.

3.4 Directing the respondents to take all necessary steps within 14 days to prevent their dogs from causing excessive noise and disturbances such steps may include but no limited to:

3.4.1 Enrol the dogs in a certified obedience or behavioural training program.

3.4.2 Adjust the dog's daily routine to include regular exercise and stimulation.

3.4.3 Relocate the dog's housing to a noise minimising area or install soundproofing measures.

3.4.4 Restrict the dog's outdoor presence to designated daytime hours (e.g. 8 a.m to 6 p.m.)

3.4.5 Employ human bark control tools or devices, as advised by a veterinarian.

3.4.6 Supervise the dogs when outdoors to promptly address barking disturbances.

3.4.7 Consult with a certified animal behaviourist to develop a behavioural management plan for the dogs.

3.4.8 Interdicting the respondent, permanently, from allowing their dogs to create excessive noise or disturbances on their property, which interfere with the applicants rights to peaceful enjoyment of their property.

3.5 In the event of non-compliance with this order, authorizing the applicants to approach this honorable court on the same papers, duly supplemented, when necessary, for further relief.

3.6. That the respondent be ordered to pay costs of this application on an attorney and client scale B.

3.7. Where necessary dictate, the court grant a further and/or alternative relief as the court may deem fit.

THE APPLICABLE LAW

[4] Urgent application are catered for under rule 6(12)(b) of the Uniform Rules of the Court. This section provides that:

“(a) ...

(b) In every affidavit filed in support of any application under paragraph (a) of this sub rule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claim that the applicant could not be afforded substantial redress at a hearing in due course.

(c) ...”

- [5] Urgency does not entitle the party to urgent relief. This means that urgency must not be self-created. In *Mogalakwena Local Municipality vs Provincial Executive Council, Limpopo and others*,^[1] the court dealt at length with the test for urgency and the principle of self-created urgency in the following:

“It seems to me that when urgency is an issue, the primary investigation should be to determine whether the applicant will be afforded

substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include [but are not limited to]: Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent’s and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by council acting for respondents, self-created urgency.”

- [6] When it comes to self-created, Notshe AJ had this to say in *East Rock Trading (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*^[2] held as follows:

“In my view the delay in instituting proceedings is not on its own a ground for refusal to grant the matter urgent. The court is obliged to consider the circumstances of the case and explanation given. The delay might be an indication that the matter is not urgent as the applicant would believe. On the other hand, delay might have been caused by the fact that the applicant has attempted to settle the matter or collect some facts with regard thereto.”

- [7] The applicant's case is premised on the view that the dogs of the respondents are making nuisance in the form of noise pollution as they bark nonstop during the day. The first applicant is suffering from medical conditions that do not want any noise at all. In furtherance of this, the applicants refer to a lot of professional reports. Such reports are in the form of annexures (annexure “MW3” found on pages 37 of the indexed bundle, report by Dr. JA du Plessis & Kie Family Doctors found on page 38 of the indexed bundle, annexure “MW4” found on page 39 of the indexed bundle and “MW5” found on page 40 of the indexed bundle).
- [8] The respondents’ legal representative is attacking the annexures referred to by the applicants. In her submissions, she emphasized that annexure “MW3” does not have a date, it can therefore not be known if it was ever used in the initial application between the applicants and their former neighbours. Such application is dated the 22/12/22 and is appearing from pages 32 and 33 of the indexed bundle.
- [9] The respondents aver that there is no urgency in these proceedings, paragraph 11 and 12 of the answering affidavit at page 53 of the indexed bundle state; there is therefore no valid reason to bring this matter on an urgent basis as it has been brought before the urgent court when there are remedies at the applicant’s disposal and which they refused to make use of. It must be noted that bringing a matter to the urgent court should be as a last resort where

no other remedy or recourse exists, and this is so in this matter. Paragraph 12 states that; the applicant is burdening the urgent court with issues that should not be before this Honourable court.

ANALYSIS

- [10] I am alive to the fact that it depends on the circumstances of the case and also a due consideration of whether the applicant will or not get/receive substantial redress in due course for matter to be entertained on urgent basis. In this regard, there is no defined formula to be used for this special determination. It is up to the applicant to convince the court that factors it brought before warrant urgency.
- [11] Let me deal with the undated annexure “MW3”- it says HELEEN PRETORIOUS has been seen for individual therapy sessions in LIFE MIDMEN Hospital. From the sessions, it is evident that she is currently distressed and anxious. This has severely impacted on her overall health and she is currently receiving in-hospital treatment. Mrs Pretorious and her family have experienced significant difficulties with their neighbours. Several traumatic and anxiety provoking incidences have occurred. This has caused and continues to cause significant emotional distress and anxiety. The stressors and difficulties caused by the neighbours are making it increasingly difficult for her to cope. It is impacting on her overall health, wellbeing, quality of life, and causing clinically significant distress. It further caused a depressed mood; constant fear and distress; and the presence of excessive panic. The counter accused by the legal representative of the applicant is that, the date serves no purpose, what is important are the contents of the said document.
- [12] I can't attach any weight to this document as I am unable to determine whether the contents refer to the issue of the first neighbour or the current one. Applicant had an issue with the neighbour about the loud music and in the case under discussion, the issue is about noise made by the dogs. All in all, without date, it cannot be associated with the case under consideration.
- [13] Dealing with the document by Dr JA du Plessis & Kie Family Doctors, it refers in the main to Ms Pretorious being diagnosed with multiple sclerosis after multiple episodes of neurological fallout. It also refers to her being admitted to hospital for meningitis. It is clear that when she got admitted she had not yet met the respondents. This document does not establish any link between the health of Ms Pretorious and the noise of the dogs. Annexure “MW4” appearing on page 39 of the indexed bundle also lacks link between the state of health of the second applicant and the complaint against the respondents. Lastly annexure “MW5” appearing on page 40 of the indexed bundle. Its last paragraph states- I would consider her present situation at her home environment with excessive noise from the neighbourhood as having highly negative effect on her mental and neurological condition and being the cause of new relapses and further deterioration of her mental and physical condition. This is the only document that, in my view, links the issue under consideration with the state of the health of the second applicant.

- [14] My view is that professional documents in any form when presented to court do not bind the court, instead assist the court in making an informed decision.
- [15] No evidence presented to suggest that the state of health of the second applicant is a life-threatening condition that warrant the relief sought to be sought on urgent basis. I further do not understand as to why the applicants would jump the queue and seek their application to be heard on urgent basis instead of following the normal rules of this court in terms of normal procedures dealing with applications. From what has been presented before me by the applicants, I cannot find grounds justifying urgency.

ALTERNATIVE REMEDY (CONTEMPT OF COURT)

- [16] This remedy is not applicable to the respondents in the case under consideration as they were not parties to the aforesaid application. Furthermore, that application dealt with the nuisance in the form of noise emanating from loud music. The nuisance in the current proceedings relates to noise made by barking dogs. The two are distinct from each other. Accordingly, this alternative remedy stands to fail.
- [17] The general rule is that costs follow the successful party. I do not find reasons to deviate from that norm.

ORDER

1. Application is struck off the roll due to lack of urgency.
2. Applicants are ordered to pay costs of this application on scale B, the one paying the other to be absolved from paying.

M MALANGENI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

FOR APPLICANT : ADVOCATE MAPONYA

INSTRUCTED BY : DOLAMO K INC.

FOR RESPONDENT : ADVOCATE GRANT

INSTRUCTED BY : GJ BRITS ATTORNEYS

DATE OF HEARING :18 DECEMBER 2024

DATE OF JUDGEMENT :19 DECEMBER 2024

[1]

(2014) JOL 32/03 (GP) at paragraph 63-64

[2] 2011 JDR 1832 (GSJ) at paragraph 8

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/ZAMPMHC/2024/70.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/pretorius-and-another-v-du-unknown-topic-ampmhc-2024>

Prepared on 10 October 2026 · Esheria