

SOUTH AFRICA / JUDGMENT

Sibeko and Others v A Re Shomeng Project Proprietary Limited and Others (LCC02/2024) [2024] ZALCC 31 (13 September 2024)

[2024] ZALCC 31

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC02/2024

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IN

THE LAND COURT OF SOUTH AFRICA

RANDBURG

CASE

NO: LCC 02/2024

Before:

Honourable Ncube J

Head

on: 04 June 2024

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED. NO

In

the matter between:

LETTA
SIBEKO
CHRISTINA
SOKO
MEISI
EMILINAH NKOSI
AARON
TATSHI SOKO
ELIZABETH
MINAH NKOSI
1st
Applicant
2nd
Applicant
3rd
Applicant
4th
Applicant
5th
Applicant
SIPHO
MAHLANGU
PHAKAMANI
JOHANNES MAHLANGU
and
A
RE SHOMENG HOLDINGS PROPRIETARY LIMITED
A
RE SHOMENG PROJECT PROPRIETARY LIMITED
JOSEPH
MASIKWAMENG
6th
Applicant
7th
Applicant
1st
Respondent
2nd
Respondent
3rd
Respondent

Heard: 04 June 2024

Delivered: This judgement was handed down electronically by circulation to the parties' legal representatives via e-mail. The date and time for hand-down is 13 September 2024

JUDGMENT

Ncube J

Introduction

[1] This is the application in which the applicants seek the relief declaring the respondents to be in contempt of a court order of my sister Cowen J dated 29 February 2024. The application was brought on urgent basis and it is opposed by the respondents. The respondents have filed a counter application seeking relief ordering a relocation of the applicants to the houses constructed for them by the respondents at a different site. The applicants resist the relocation to the houses built for them as they perceive such houses as not being suitable alternative accommodation compared to the houses they are being relocated from. The affected land is Portion 35 of the farm Kromkrans 208 IS, Mpumalanga Province.

[2] The applicants contend that there was no compliance with Cowen J's order for various Reasons. To name but a few, the applicants contend that there was no meaningful engagement before the relocation process was undertaken. The second applicant ("SOKO")

was unlawfully relocated as Cowen J's order did not permit her removal on the date she was removed from her house to the temporary structure. They contend further that the living conditions at the new sites are not commensurate with the living conditions at their previous sites in that the applicants were previously living in a village set up but they are being relocated to a township set up where no provision is made for their livestock. The size of the yard is smaller than the size of their previous yards, consequently, they are unable to practise their cultural activities like iqhude and ingoma. Those who were moved to new structures have returned to their previous homesteads leaving the new houses unoccupied.

Parties

[3] The applicants are representatives of seven (7) families which are resident on Portion 35- of the farm Kromkrans 208 IS in ("the

farm") in the Mpumalanga Province. All applicants can be described as occupiers on the farm. The first respondent own a coal mine known as Motshaotshile Colliery which operates on the farm in question. The first respondent conducts open cast coal mining activities on the farm pursuant to a mining right granted by the Minister of Mineral Resources and energy. The third respondent is the CEO of the first respondent.

Factual

Background

[4] This matter commenced in January 2024 when the respondents applied on urgent basis to the Land Court, initially for the removal of the occupiers to the temporary accommodation in the mobile homes provided for them on the farm. Thereafter, the occupiers were to be moved to permanent new accommodation which was being built by the respondent 600 metres away from the occupiers' current homesteads. Following negotiations and consultations, the occupiers agreed to relocate to new permanent homes. Although the occupiers agreed to relocate to new permanent homes, they resisted a temporary relocation to temporary structures. They perceived the temporary relocation to be destructive to their lives and not having been raised in their negotiations and they claimed the temporary accommodation was not suitable for their needs. On the other hand, blasting activities had come to a halt as it could not continue in the presence of the occupiers. Ultimately Cowen J granted a relocation order, relocating some of the respondents to temporary mobile homes subject to applicants in that case complying with certain conditions.

Court Order

[5] Cowen J's order serves as the basis upon which the contempt application is premised.

It is therefore important to quote that order in its entirety. The order provides:

" 29.1 Mr Phakamani Johannes Mahlangu is substituted as the seventh respondent in the application.

" 29.1 The First and Fourth respondents and persons claiming rights of residence through them is ordered by 16h00 on the 23 February 2024, to vacate their existing homes on Portion 35 of the farm Kromkrans 208 IS ("Portion 35") and relocate to the temporary housing made available for them by the applicants on Portion 35.

29.3 The applicants must ensure that the temporary housing provided to the first

and the fourth respondents includes sleeping, kitchen, lounge /dining room and sanitation facilities commensurate with each family's

requirement. Water and electricity must be supplied as follows:

29.3.1. Generator power will be supplied at the applicants' costs until the applicants have installed Solar electricity or have provided an Eskom connection. Once the Eskom connection is supplied the relevant occupiers will be responsible for their own electricity costs.

29.3.2. Water will be supplied in a jojo tank, and the applicants will ensure the tank remains adequately filled to address the mobile homes' occupiers' reasonable needs.

29.3.3 The first and seventh respondents' livestock will continue to graze Portion 35 at all relevant times.

29.4 The applicants must forthwith facilitate an ongoing process of engagement with the first and the fourth respondents either directly or through their legal representatives, to communicate the temporary relocation plan and decision to facilitate the relocation process to ensure that the temporary accommodation is commensurate with respondents' reasonable needs having regards to their existing living arrangements.

29.5 The applicants must provide such assistance with transport and labour as is required to move the furniture's and belongings of the families in a safe, orderly and dignified manner.

29.6 The applicants must construct at the first and fourth respondent's permanent house on Portion 35 in accordance with the plans signed off by the first and fourth respondent's, FA4 to the applicants' founding affidavit and take such steps as are reasonably necessary to follow the programme F5 to the founding affidavit (attached). The first and fourth respondents must relocate to the permanent houses once constructed, on no less than 14 days' notice and the provisions of the paragraph 29.5 apply.

29.7 The applicant will endeavour to expedite the construction of the second, third, fifth, sixth and seventh respondents' permanent houses to avoid them having first to relocate to the temporary mobile homes. Save where otherwise agreed these permanent houses must be constructed following the plans signed off by the first to sixth respondents' FA4 to the applicants' founding affidavit and in accordance with the seventh respondent's existing plans.

29.8 The applicants shall, within ten court days of the date of this order deliver a report to court and the respondents detailing the proper sequence in which the applicants will construct the second, fifth, sixth and seventh respondents' permanent houses, the anticipated time frames within which construction will take place and advising. of the order in which and likely time frames in which any of these respondents' families may need to relocate to temporary housing on Portion 35 to ensure mining activities are not unduely interrupted. The report must include details of the intended ongoing process of engagement and assistance in accordance with paragraph 29.4 and 29.5.

29.9 The applicant shall, upon delivery of the report, conduct a meaningful engagement with these respondents about the proposed plan and their accommodation needs should it be necessary of them to relocate to the temporary accommodation at any stage.

29.10 The applicants may thereafter approach the Court, on no less than ten days' notice, on the same papers duly supplemented, for an interim order regulating the relocation of the second, third, fifth, sixth and seventh respondents, including the notice period for vacating their existing homes to either the temporary or, when built, permanent new housing.

29.11 The first to seventh respondents are ordered to comply with any direction given to them by the first applicant's mine manager or other authorised official to move to safe place during blasting operations.

29.12 The sheriff for the district of Carolina is authorised to remove the first and fourth respondents from their existing homes on Portion 35 if they have not complied with paragraph 29.2 or 29.6 of the order by moving to the temporary or permanent housing made available for them by the applicants on Portion 35

29.13 The South African Police Service and the sheriff of the high Court and / or any other entity or person(s) delegate/instructed by the South African Police Service and / or the Sheriff of the Court are authorised to take all such steps as may be necessary to enforce this Court Order.

29.14 Service of this order and any process under it may be effected electronically upon the relevant party's legal representatives,

who shall thereafter promptly ensure it is delivered to the relevant respondent, save that this order must be served by the sheriff or otherwise physically delivered to the first and fourth respondents by a representative of the applicants or applicants' legal representatives by no later than 10am on 20 February 2024.

29.15 The above order operates on an interim basis pending the determination of Part B of the applicant, in respect of which, the

applicants are directed to deliver any amended notice of motion and supplementary founding affidavit within one month of the date of this order whereafter the ordinary Rules of Court will apply.

29.16 No final relocation order may be granted unless and until the permanent new homes are constructed and the applicants are authorised

to update their affidavits accordingly and the grant of this order does not prejudice any rights of any respondent to claim compensation

for which the applicants may be liable arising from the relocation process.

29.17 Should any dispute arise in respect of the implementation of this order, the relevant parties must first attempt to resolve the dispute by engagement failing which they may approach the Court on such notice as is reasonable in the circumstances.

29.18 In the event that the relief sought in Part B is not granted, the second applicant is ordered to remediate any damage caused to any occupier's existing home situated on Portion 35 due to the second applicant's blasting activities."

Events after the order of Cowen J

[6] After Cowen J's order, the applicants in this case, respondents in Cowen J's order, brought the present contempt of court application on urgent basis. The contempt application was to be heard on 25 April 2024. On 25 April 2024, I directed the parties to have a meaningful engagement on the completion and sizes of the relocation houses and the matter was adjourned to a further date. Relocation to temporary and permanent houses was not an issue. That much had been agreed upon between the parties through the consultation

process. What was placed in issue was the size of the houses and the yards.

- [7] When the first and fourth applicants were to be relocated to temporary houses, pending their relocation to permanent houses, chaos erupted as there was resistance to such relocation. Other members of the community joined the picketing on the gates of the mine. People came up with new demands for employment by the mine, they complained about the size of new houses, size of yards, demanding bigger yards where they could practise their Iqhude and Ingoma dance. Police had to be called in. Sheriff was called in to execute the court order. Twelve people were arrested.

Contempt of Court

- [8] Contempt of court is the commission of any act or making any statement that displays disrespect for authority of the court, of its officials acting in an official capacity, including wilful disobedience or resistance to lawful court order. In *Pheko and Others v Ekurhuleni City*[1] Nkabinde J, expressed herself in the following terms:

“The rule of law a fundamental value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial as the capacity of the courts to carry out their functions depends upon it. As the Constitution demands, orders and decisions issued by a court bind all persons to whom and organ of state to which they apply and no person or organ of state may interfere in any manner with the functioning of the courts, it follows from this that disobedience towards court orders or decisions risks rendering our courts important and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.

Elements of Contempt of Court

- [9] The following are the elements of contempt of Court:

- (i) There must be a court order.
- (ii) The order must have been duly served on or brought to the notice of the alleged contemnor.
- (iii) There must have been non compliance with the court order
- (iv) The non compliance must have been wilful or mala fide

- [10] In *Casu*, there is no doubt about the existence of the court order. It is also not in dispute that the respondents are aware of the court order. It is only the last two elements which are in dispute. The onus is on the applicant to prove the elements of the offence beyond a reasonable doubt[2] Applicants aver that the respondents did not provide a report to court within ten days of the court order as directed by Cowen J and that the second occupier was moved without a court order. The respondent argued that the report was out of time by only three days and they allege the delay was caused by the fact that the applicants were not co-operative and did not want to engage with the respondents. The respondents have applied for condonation for late submission, of the report required by the court.

- [11] The applicants are required to prove that the third respondent is guilty of wilful and mala fide refusal to comply with the court order. This, the applicants have failed to prove. It is also telling that the founding affidavit does not define the third respondent and it fails to show how the third respondent was complicit in non compliance with the court order, if any. The applicant have failed to make out a case of contempt of court against the three respondents.

Counter Application

- [12] The respondents have filed an application, effectively seeking the court order forcing the occupiers to relocate to their temporary and newly constructed permanent houses. The seventh occupier, Phakamani Johannes Mahlangu is now late. Consequently, the respondents abandon the relief they seek in paragraphs one to four of their Notice of Motion, in so far as those paragraphs relate to the seventh occupier. This part of judgement should not detain me for long. It is just clear that the respondents have gone, out of their way and tried to accommodate the occupiers. The occupiers, on the other hand, keep on making unreasonable demands.
- [13] Before I completed writing this judgement, I enquired from the parties' legal representatives about the progress made in the construction of the occupiers' permanent houses. I was informed all other houses are now complete and ready for occupation, except for two houses for occupier 3, and 7 which will be completed by the 25th of November 2024. Photographs of the houses were forwarded to me. The houses are beautiful with ablution facilities, a bath and a shower. Respondents have applied for electricity connection with Eskom and they have paid for it. The receipt showing payment was shown to me. Despite this, there is a generator at the present moment which provides light to the houses. A borehole is provided to pump water for use by the occupiers. Arrangement has been made for the cattle to graze at Portion 35 of the farm, for those occupiers who have cattle.
- [14] There is also no reason why I should not condone the respondents' delayed submission of the report to court. The report was late by only three days and the prospect of success on the counter application is good.

Costs

- [15] It is the practice in this court not to make cost orders unless there are good reasons to do so. The Supreme Court of Appeal has confirmed the said practice[3] In my view, there is no good reason why I should deviate from the general practice of this court of not making costs orders.

Order

- [16] In the result, I make the following order:-
1. The application for contempt of court brought by the occupiers of Portion 35 of the farm Kromkrans 208 IS ("Portion 35") is dismissed.

2. The failure by the respondents to submit a report to court within ten (10) days' of Cowen J's order is condoned.
3. The counter application brought by the Respondents is granted.
4. The 1st, 2nd 4th, 5th and 6th occupiers and all those occupying through them are ordered to vacate their present homesteads and relocate to their respective newly constructed permanent houses on or before 16 September 2024.
5. Should the occupiers mentioned in paragraph 4 above and or those who occupy through them fail to vacate their present homesteads on 16 September 2024, the Sheriff is hereby authorised to evict them from their present homestead on 17 September 2024.
6. The Sheriff is hereby authorised to seek assistance from the local South African Police to assist with the eviction of the occupiers in case of resistance.
7. The 3rd occupier and all those who occupy through her are ordered to vacate their present homestead and relocate to the temporary accommodation

provided to her by the respondents on 16 September 2024 and thereafter relocate to her newly constructed permanent house on 27 November 2024 once that house is completed.

8. All those who occupy through the late 7th occupier are ordered to vacate their present homestead and to relocate to the temporary accommodation provided by the respondents on 16 September 2024 and thereafter relocate to the newly constructed permanent house provided to the late 7th occupier on 27 November 2024 once that house is completed.

9. The provisions of paragraphs 5 and 6 above shall apply to occupiers and other persons mentioned in paragraphs 7 and 8 above.
10. The first and second respondents in the contempt application, shall ensure that the temporary and permanent houses are provided with water and electricity as follows:

10.1: Generator power will be supplied at the respondents' cost until the respondents have provided Eskom Connection. Once the Eskom connection is supplied, the relevant occupiers shall be responsible for their electricity costs.

10.2: Water will be supplied in Jojo tanks and the first and second respondents shall ensure that tanks remain adequately filled to address the occupiers of both temporary and permanent houses reasonable needs until the pump in the borehole is in full operation.

11. All occupiers who keep livestock are granted leave with the consent of the first and second respondents to continue grazing their livestock on Portion 35.
12. The first and second respondents are placed on terms to assist the occupiers with transportation of their goods to their respective relocation sites at the first and second respondents' expense, should the occupiers ask for such assistance.

13. No order as to costs.

M.T Ncube

JUDGE OF THE LAND COURT

Date of hearing: 04 June 2024

Date of judgment: 13 September 2024

Appearances:

For the Applicant: Adv B. Lukhele Instructed by: Ledwaba Mazwai Attorneys PRETORIA For the Respondent: Adv R. Booysen & S Sibisi Instructed by: Webber Wentzel Rivonia SANDTON

[1] 2015(5) SA 600 (CC) Para 1

[2] Fakie NO v CCII systems (Pty) Ltd 2006(4) SA 326 (SCA)

[3] See Haak Douthmbly Boerdary CC v Mpela 2007

(5) SA 596 (SCA) para 76.

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