

SOUTH AFRICA / JUDGMENT

Van As and Others v Sibidi and Others (B2/2024) [2025] ZAGPPHC 183 (24 February 2025) [2025] ZAGPPHC 183

COURT

North Gauteng High Court, Pretoria

BEFORE

Strijdom

CASE / FILE NUMBER

B2/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

(Gauteng Division,
Pretoria)

Case no: B2/2024

(1) REPORTABLE: YES

/ NO

(2) OF INTEREST TO

OTHER JUDGES: YES / NO

(3) REVISED.

DATE: 24 February 2025

SIGNATURE

Judgment Reserved:6

February 2025

Judgment handed down: 24

February 2025

In

the matter between:

FREDERIK
JOHANNES VAN AS
First Applicant
FREDERIK
JOHANNES VAN AS N.O
Second Applicant
(in
his capacity as duly authorised trustee of the
FRIKKIE
VAN AS FAMILY TRUST – IT: 2979/09)
FERDINAND
SMARTENRYK DEVENIER N.O
Third Applicant
FRIKKIE
VAN AS FAMILY TRUST – IT: 2979/09)
Third Applicant
OGOERION
CONSTRUCTION CC
Fourth Applicant
And
NICKY
SIBIDI
First Respondent
ANNAH
MOSELLA MOTAUNG
Second Respondent
FRANK
MANYISI
Third Respondent
PHUMZA
MAWATHI ALONI
Fourth Respondent
PHILA
SIPELE
Fifth Respondent
SIYABONGA
NTIYA
Sixth Respondent
THE
STATION COMMANDER; SOUTH AFRICAN
Seventh Respondent
POLICE
SERVICE (SAPS), CARLETONVILLE
MEMBERS
OF THE SAPS,
CARLETONVILLE
Eighth Respondent

JUDGMENT**STRIJDOM, J**

1. The applicants seek an order in the following terms:

1.1 That the first to sixth respondents be declared to have contravened the Court order granted on 2 January 2024 by Davis J and confirmed on 14th of May 2024 by Snyman AJ under case number B2/2024 subsequent to 19th March 2024;

1.2 That the suspended sentence imposed by Lenyai J on the 19th of March 2024 on the first to six respondents be brought into effect immediately and that the first to sixth respondents be committed to direct imprisonment for six (6) months and that a warrant of arrest be issued by the Registrar of the Gauteng Division of the High Court, Pretoria to this effect.

2. The application is opposed by the first to sixth respondents. There is no opposition by the seventh to eight respondents.

3. The first to sixth respondents opposed the application on the following grounds:

3.1 lack of urgency;

3.2 lack of authority and standing;

3.3 the application is premature

3.4 dispute of facts

3.5 the applicants have failed to prove further breach of the Court order.

URGENCY

4. At the commencement of this matter I ruled that the application is urgent.

5. It was submitted by the respondents that the application is not urgent and could have been brought in the normal course. It was also submitted that the urgency was self-created.

6. When urgency is in issue the primary investigation should be to determine whether the applicants will be afforded redress at a hearing in due course.

7. In *Gauteng Boxing Promoters Association v Wysoke*[1] the following was stated:

“In my view urgency in the present matter arises from the nature of the relief which was sought and granted in favour of the applicants.

It is trite that contempt of a court order is inherently urgent. In the context of this matter, this means non-compliance with the Court order would result in the applicants suffering ongoing prejudice against their dignity. This, considering the nature of the relief sought and the circumstances of his matter, I find that the matter deserves to be treated as urgent.”

8. It was also stated in *Thabazimbi Local Municipality and Another v Absa Bank Ltd and Others*[2] that: “Moreover, matters pertaining to the blatant disregard of a court’s order deserve urgent attention and intervention.

This is because an attack on the rule of law requires expeditious resolution’.”

9. In this matter the applicants have laid numerous criminal charges which the SAPS failed or refuse to investigate. Even protection orders obtained in terms of the Protection from Harassment Act, 17 of 2011, did not yield the deserved result.
10. Not only property, but life and limb are at stake. The mini substations are connected to extremely high voltage (6 kva) and tenants and residents can access the wiring in the mini sub-stations and be electrocuted.
11. I conclude that the applicants will not be afforded substantial redress at a hearing in due course.

LACK OF AUTHORITY AND STANDING

12. The respondents contend that the first applicant should have been authorized to institute this application by resolution of the current trustees of the Deelkraal Behuising Trust (“the DBT”) as the DBT is the owners of the farms comprising the Deelkraal Estate. It was further submitted that the resolution authorizing him to act on behalf of the fourth applicant is flawed as the resolution relied upon (annexure “FA2” to founding affidavit) was signed on 22 December 2022 already and

merely authorized him to initiate legal action in criminal action relating to the property of the fourth applicant.

13. The resolution adopted on 22 December 2022 is a resolution authorizing the first applicant to initiate legal proceedings against all parties involved in criminal actions relating to the property of the fourth applicant and is in my view not confined to the present application. The present application is covered by the resolution as it concerns unlawful and criminal actions by the first to sixth respondents.
14. The applicants deprive their locus standi from the court order that was granted in their favour and they are entitled to act upon breach, or further breach thereof.
15. The fourth applicant is a legal persona, and the Notice of Motion was signed by an attorney.
16. It is trite that Rule 7(1) of the Uniform Rules of Court provides for the procedure to be followed by a party who wishes to challenge the authority of an attorney acting on behalf of another party.[3]
17. The first to sixth respondents should have made use of the procedure provided by Rules 7(1) of the Uniform Rules of Court, which they did not.
18. In my view the respondents point in limine on authority is dismissed.

PREMATURE APPLICATION

19. It was submitted by the respondents that the proceedings before Lenyai AJ were not in accordance with justice as she made the contempt order under circumstances where not all the respondents were before her.
20. It is trite that all orders of court have to be obeyed until they are properly set aside.[4] The order of Lenyai J has not been appealed against or set aside. A rescission application does not automatically suspend the operation of a court order. I conclude that this point in limine must be dismissed.

FACTUAL DISPUTES

21. The respondents argued that there is a demonstrable dispute of fact in so far as the first Defendant's authority to act is concerned.
22. It is desirable to consider whether in the case under consideration, it is appropriate to decide the dispute without hearing oral evidence.
23. "The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard." [5]
24. "If by a mere denial in general terms a respondent can defeat on delay an application, then motion proceedings are worthless, for a respondent can always defeat or delay a petitioner by such a device, It is necessary to make a robust common-cause approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The court must not hesitate to decide an issue of fact on affidavit merely because it would be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits." [6]
25. The applicant's detailed version of events on 4 and 13 January 2025, backed up by photos and witness reports, was met by a bare denial, which is insufficient to create a true factual dispute. The applicant's version of events on 8 and 13 January 2025 was also met by a bare denial.
26. I have carefully perused the affidavits and after considering the nature and extent of the factual disputes arising from the affidavits, I have come to the conclusion that there are sufficient reasons to accept that the balance of probabilities which favoured the applicants would not be disturbed by the hearing of oral evidence.
27. In my view there are no material issues in which there is a bona fide dispute of fact.

CONTRAVENTION OF THE COURT ORDER

28. It was stated in *Meadow Glen Home Owners Association and Others v Tshwane City Metropolitan Municipality and Another*[7] that, as a contempt order for committal could only be made on proof of the contempt on the criminal standard of proof beyond reasonable doubt, it inevitably follows that the bringing of a suspended order of committal into operation requires proof of a willful breach of the conditions of suspension on a similar standard.
29. Once the applicant has proved the existence of the order, service or notice thereof and non-compliance with the terms thereof by the respondent, the applicant is prima facie entitled to a committal order. [8] On evidentiary burden then rests upon the respondent in relation to willfulness and mala fides, ie. to advance evidence that establishes a reasonable doubt as to whether non-compliance with the order was willful and mala fide[9]. Should the respondent fail to advance such evidence, contempt will have been established beyond reasonable doubt.
30. The applicants set out the instances where the court order was breached by the respondent's subsequent to the granting of the Lenyai J order.
31. The breach of sub-paragraph 3.3 of the court order occurred when:
- 31.1 the opposing respondents forcefully broke open the mini substation in Kingfisher Drive, Deelkraal on Saturday, 4 January 2025 and tampered with the electrical installation by connecting/disconnecting the electricity supply of tenants and residents of Deelkraal;[10]
- 31.2 The second, third, fourth and fifth respondents broke houses open in Deelkraal on 13 January 2025.
32. The opposing respondents admit that they connected electricity, but state that such action was not willful and merely bona fide action to avoid human catastrophe. No detail was provided about the residents who are ill and need electricity to survive.
33. The applicants' version of events on 4 and 13 January 2023 was met by a bare denial.
34. The breach of sub-paragraph 3.4 of the court order occurred when:[11]
- 34.1 The first, second and fourth respondents intimidated and threatened Hannes van den Berg, who is an employee of the Frikkie Van As Family Trust, on 8 January 2025.
- 34.2 The second, third, fourth and fifth respondents threatened and intimidated Hannes van den Berg and his family on 13 January 2025.
35. The applicants' detailed version of events on 8 and 13 January 2025 was also met with a bare denial by the respondents.
36. Hannes van den Berg dealt with the opposing respondents' version and stated that further threat and intimidation by the opposing respondents took place on 14 January 2025.[12]

37. In my view the respondents failed to advance evidence that establishes a reasonable doubt as to whether non-compliance of the court order was willful and mala fide.
38. It is not the respondents' case that the terms of the court order are unclear or that due to some or other bona fide misunderstanding they breached the order.
39. I conclude that the applicants succeed in proving further willful breach of the court order by the respondents beyond reasonable doubt.

SANCTION

40. The court has a discretion as to the implementation of the suspended sentence. The court is guided by section 297 (7) of the Criminal Procedure Act 51 of 1977 which provides as follows: "if satisfied that the person concerned has through circumstances beyond his control been unable to comply with any relevant condition, or for any other good and sufficient reason, further postpone the passing of sentence or further suspend the operation of a sentence or the payment of a fine, as the case may be subject to any existing condition or such further conditions as could have been imposed at the time of such postponement or suspension."
41. In my view the respondents failed to discharge the onus on a balance of probabilities that through circumstances beyond their control they were unable to comply with the conditions of the court order or that they are entitled to a further suspension of the court order.
42. I conclude that the suspended sentence should be put into operation.

COSTS:

43. It was stated in *Readam SA (Pty) Ltd v BSB International Link CC and Others*[13] that where a litigant is held to be in contempt of an order, it is appropriate that costs be borne on the attorney and client scale. The same principle should apply where there is further breach of a court order following a finding of contempt.
44. In the result the draft order marked x is made an order of Court.

JJ STRIJDOM

JUDGE OF THE HIGH COURT OF

SOUTH-AFRICA, GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the applicants: Adv R Grundlingh Instructed by: Scheepers & Aucamp Attorneys
For the first to sixth respondents: Adv BR Matlhabe Instructed by: TA Dipudi Attorneys

[1] (22/6726)

[2022] ZAGP JHC 18 (28 April 2022) at para [14]

[2] 2025 JDR 0101 (LP) at para [8].

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- [3] Games and Another v Telecom Namibia Ltd 2004
- (3) SA 615 (SCA) at para [19]. ANC Umvoti Council Caucus and Others v Umvoti Municipality 2010 (3) (KZP) at para {28}.
4. Culverwelt v Beira 1992 (4) SA 490 (N) at 494A-C.
- [5] Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) Plascon Evans Paints v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).
- [6] Prinsloo v Shaw, 1938 AD 570.
- [7] 2015
- (2) SA 413 (SCA)
- [8] Dezius v Dezius 2006 (6) SA 395 (T) at para [17]
9. Putco Ltd v TVE Radio Guarantee Co (Pty) Ltd 1985 (4) SA 809 (A) at 863D-E.
- [10] Caselines: 021-43-56
- [11] Caselines: 021-54 to 56 FA
- [12] Caselines: 21-320 para 8
- [13] 2017
- (5) 184 (GJ) at para [45]
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