

SOUTH AFRICA / JUDGMENT

Viviers NO and Another v City of Johannesburg Metropolitan Municipality and Others (31753/2016) [2016] ZAGPJHC 277 (30 September 2016) [2016] ZAGPJHC 277

COURT

South Gauteng High Court, Johannesburg

BEFORE

FHD Van Oosten

CASE / FILE NUMBER

31753/2016

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
LOCAL DIVISION, JOHANNESBURG)
CASE
NO: 31753/2016

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED
30
SEPTEMBER 2016
In
the matter between
ANTHONIE
MICHAEL VIVIERS
NO FIRST
APPLICANT
VALUATION
APPEAL BOARD OF
THE
CITY OF JOHANNESBURG GV
2008 SECOND
APPLICANT

and
THE
CITY OF JOHANNESBURG
METROPOLITAN
MUNICIPALITY FIRST
RESPONDENT
AND
SIX OTHER RESPONDENTS

JUDGMENT

VAN OOSTEN J:

[1] This application comes before me by way of urgency. The applicant seeks an order for the restoration of possession and use of a boardroom facility situated at the offices of the City of Johannesburg and an interdict against the first and sixth respondents

from interfering with the activities, obligations and duties of the applicants which they are required to perform in terms of the

Municipal Property Rates Act 6 of 2004 (the Rates Act). The sixth respondent is the group head of the property Unit, City of Johannesburg and she has deposed to the answering affidavit on behalf of the respondents.

[2] The City of Johannesburg (the City) opposes the relief sought. It is common cause between the parties that the sixth respondent, on 15 August 2016, caused the applicants to be locked out and prevented from using the offices, referred to as the boardroom, which they had occupied and used since the date of the establishment of the second applicant (the Board) in 2008. The Board was established to deal with appeals and reviews in regard to the general 2008 valuation roll for the City of Johannesburg, which subsequently was supplemented eleven times and its extended term of office expires at the end of October

2017. The City, in terms of s 66 of the Act, is obliged to provide the Board with the necessary office accommodation. In the respondents' answering affidavit a letter by the City's attorneys is attached, dated 15 September 2016, in which the applicants' access to the boardroom is tendered together to which a caveat was added that should the applicants perform any functions 'including the said verification process', the City 'will not be in a position to remunerate them for any work or services undertaken'. It appears that the sixth respondent's interference with the applicants' use of the boardroom and the applicants' other activities, was premised on the allegation that the expenses of the second applicant were not budgeted for by the City, resulting in its refusal to pay for the applicants' services 'any further'. I shall revert to this aspect of the matter but it suffices to mention that the relief sought in regard to the use of the boardroom has therefore become moot. All that remains is to consider the interdictory relief sought by the applicants concerning the alleged interference of the City and the sixth respondent in the applicants' performance of

their functions and duties.

- [3] As the paper trail progressed the true nature of the dispute between the parties emerged: the applicants rely on s 69 of the Act for an entitlement to conduct a verification process, which they allege results from 'numerous short-comings' in the City's capturing of the decisions of the Board and further point out that they are dependent on the income derived from their Board activities, which they are now barred from doing. The City contends that the applicants are not entitled to undertake the verification process but only to finalise the pending appeals that are serving before the Board and that, in any event, budgetary constraints precludes the City from paying for the applicants' services or remunerating the Board's members. In the view I take of this matter, the verification issue, although pivotal between the parties, for the purpose of this application, is ancillary to the issues which I am required to determine. Counsel for the applicants proposed an amendment to the prayers in the notice of motion to cater for payment of remuneration to the members of the Board on the same basis as before. This being an urgent application, I am not satisfied that the verification issue was properly raised and dealt with in the papers before me or that it ought to be dealt with urgently. I therefore decided against allowing the amendment. Insofar as the verification issue may arise in future, the parties would then obviously be entitled to avail themselves of whatever remedies they consider would be appropriate.
- [4] That brings me to the remaining issue. The conduct of the sixth respondent complained of, consists of the following: querying and challenging the Board members' travel allowances resulting in late payments to them, attempts to get rid of the Board in insisting on the appointment of a second Board in respect of the 2013 valuation roll and eventually unilaterally locking the applicants out on 15 August 2016 and instructing a secretary to inform the applicants that they would not be allowed to continue with the performance of their duties.
- [5] A disturbing feature emerging from the answering affidavit is the unjustified accusation that the application is motivated by 'nothing more than greed'. Although the deponent states that this will become apparent from the papers, I have not been able to find support for the wide-ranging comment. The sixth respondent unilaterally and unlawfully prevented the Board and its members from continuing with their duties. The addition of the threat that the members of the Board would be allowed to continue with their functions 'at their own peril' was not only uncalled for but also, not unsurprisingly, triggered the continuation of the matter, which eventually has developed into a hefty bundle consisting of 181 pages.
- [6] I am satisfied that the sixth respondent interfered with the proper performance of the Board's duties, that she embarked upon unilateral unlawful conduct and that the interdict sought is justified. The Board is an independent autonomous creature of statute and in the performance of its functions in the interests of not only the City but also the rates paying public in general, ought to do so independently within the statutory framework in terms of which it was established. The inroad into their functioning caused by the sixth respondent cannot be justified.

- [7] A punitive costs order against the City and de bonis propriis against the sixth respondent is sought. In my view such an order against the City is amply justified. The sixth respondent occupies a senior and responsible position within the City administration which requires her to respect the autonomy of the Board. Her failure to do so, justifies an order against her for partial payment of costs.
- [8] For all the above reasons the following order was issued at the conclusion of the hearing before me, on 27 September 2016:
1. The first and sixth respondents are interdicted and restrained from interfering with, in any manner whatsoever, the activities, obligations and duties of the applicants, as described in terms of the Municipal Property Rates Act 6 of 2004.
 2. The first respondent shall pay the costs of this application on an attorney and client scale.
 3. The sixth respondent shall pay 1/3'd of the costs of this application, on the scale as between party and party, jointly and severally with the first respondent, the one paying the other to be absolved.

FHD VAN OOSTEN

JUDGE OF THE HIGH COURT

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RESPONDENTS' ATTORNEYS MOHAMED

RANDERA & ASS

DATE OF HEARING 27

SEPTEMBER 2016

DATE OF ORDER 27

SEPTEMBER 2016

DATE OF JUDGMENT 30 SEPTEMBER 2016

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Prepared on 12 October 2026 · Esheria