

SOUTH AFRICA / JUDGMENT

Western Crown Properties 113 (Pty) Ltd and Others v The Trustees From Time to Time of the Mkonza Family Trust and Another (13699/2013) [2015] ZAGPPHC 596 (30 July 2015)

[2015] ZAGPPHC 596

COURT

North Gauteng High Court, Pretoria

BEFORE

M D Mohlamonyane

CASE / FILE NUMBER

13699/2013

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

30/7/2015

Case No: 13699/2013

DELETE

WHICHEVER IS NOT APPLICABLE

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED✓

.....

DATE SIGNATURE

HEARD

ON: 19 FEBRUARY 2015

DELIVERED

ON: 30 JULY 2015

In

the matter between: WESTERN
CROWN PROPERTIES 113 (PTY)
LIMITED
First Applicant
BRUCE
FINNEMORE
Second Applicant
MARGARET
FINNEMORE
Third Applicant
and
THE TRUSTEES FROM TIME TO TIME OF THE
MKONZA
FAMILY TRUST
First Respondent
XUMA
TECHNOLOGIES (PTY) LTD
Second Respondent

JUDGMENT

MOHLAMONYANE AJ:

INTRODUCTION:

[1] On 28 January 2014 this Court, per Murphy J, granted an Order against the First, Second and Third Respondents, in the following terms:

“1.1 Remove all vehicles, material, machines and equipment related to the unlawful use of Portion [...] Nooitgedacht within 7 (seven) days of this Order;

1 .2 Immediately cease with the use of Portion [...] Nooitgedacht for any purpose other than that permitted by:

1.2.1 The National Environmental Management Act, 1998 (Act 107 of 1998) and the Regulations published in terms of that Act;

1.2.2 The title conditions of the property; and

1 .2.3 The zoning of the property.

1.3 Not to commence or recommence with any use of Portion [...] Nooitgedacht for purposes presently impermissible until and unless:

1.3.1 The title conditions of the property have been amended to permit the intended use;

- 1.3.2 The zoning of the property has been changed to permit such intended use; and
- 1.3.3 The intended change of land use of Portion [...] Nooitgedacht has been authorised/ in terms of the National Environmental Management Act, 1998 (Act 107 of 1998) and the Regulations published in terms of that Act by the Gauteng Department of Agriculture and Rural Development.
2. The First, Second and Third Respondents are Ordered to pay the costs of this application on a scale as between attorney and client jointly and severally, the one paying the other to be absolved”.
- [2] For purposes of this judgment, it is necessary to quote the Order and its terms in full.
- [3] The First and Second Applicants (hereinafter “the Applicants”) approach this Court seeking to have the First and Second Respondents (hereinafter “the Respondents”) held in contempt of the Court Order granted on 28 January 2014. The Third Respondent, who had leased the property [Portion [...], a Portion of Portion ...] of the farm Nooitgedacht [...], Registration Division J. Q., Province of Gauteng, measuring 8, 7366ha (“ the property”) from its owner, the First Respondent, is no longer a party to these contempt proceedings because the lease has since expired and the Third Respondent has subsequently vacated the property. It is not suggested by the Applicants, or it does not so appear from the papers that the Third Respondent is currently conducting any activities on the property.
- [4] It is trite that a Court Order, even a wrong Order, remains valid and binding until it is nullified or set aside by a higher Court of competent authority. (*Jeebhai v Minister of Home Affairs* [2007] ZAGPHC 47; [2007] 4 All SA 773 (T) par. 51). The Court Order of 28 January 2014 was never challenged by the Respondents on appeal. At the outset, I must state categorically that the Order remains valid, binding and enforceable. Whether the Order has been contravened or has not been complied with by the Respondents is an issue that I must determine.
- [5] The First and Second Respondents are resisting the granting of the Order for contempt of court against them.

VERSION OF THE APPLICANTS:

- [6] Dr Bruce Finnemore (“Finnemore”) testified on behalf of the Applicants. His testimony is briefly that the Respondents are in contempt of the Order in three respects. These are that the Respondents have:
- 6.1 failed to remove the vehicles, material, machinery and equipment related to the unlawful use of the property.
- 6.2 continued to use the property for business purposes in contravention of the National Environmental Management Act, no 107 of 1998 (“NEMA”) , the title conditions of the property by continuing to store business related vehicles, material, machines and equipment thereon and by using the property to dump waste.

6.3 commenced or allowed commencement of the unlawful use of the property to dump rubble.

[7] The title deed of the property (pages 93-95-Annexure “FUR03”

- contained in bundle: Respondents’ Application for Leave and Condonation) sets out the title conditions. For purposes of this application, the salient conditions are the following:

7.1 “Not more than one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith shall be erected on the land except with the written approval of the Controlling Authority as defined in Act 21 of 1940.

7.2 The land shall be used for residential and agricultural purposes only and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act 21 of 1940.

7.3 No building or any structure whatsoever shall be erected within a distance of 37, 38 metres from the centre line of the public road, without the written approval of the Controlling Authority as defined in Act 21 of 1940” .

[8] A series of photographs (Annexures “CON02” and “CON03” pages 23- 25, Contempt Application) were annexed to the Applicants’ founding papers. According to Finnemore these sets of photographs were taken by him. The first set, Annexure “CON02”, was taken on 24 February 2014. The second set, Annexure “CON03”, has the date “12 02 2014” imprinted on the set of photographs, with the corresponding day times at which they were taken. I will later revert to these aspects.

THE RESPONDENTS’ VERSION:

[9] Mr Nkosinathi Owen Mkonza (“Mkonza”) testified on behalf of the Respondents. Although the Applicants challenged Mkonza’s locus standi to depose to the answering affidavit because he attached no proof that he was authorised to depose to the affidavit on behalf of the Respondents, in the interests of justice it is deemed that Mkonza was so authorised by condoning the defect. The Applicants will not be prejudiced by the admission of the answering affidavit of Mkonza into these proceedings.

[10] The gist of Mkonza’s testimony is that on the date the Applicants’ photographs were taken, the Respondents were in the process of removing the “material” and “cables” from the property. (Paragraph 6 of the Answering Affidavit, page 38) . It is the version of Mkonza that as at the date of deposing to the affidavit, being 09 July 2014, the Respondents had removed all the materials and the cables as well as vehicles from the property. It appears from Mkonza’s evidence that the only vehicle that remained on the property as at 09 July 2014 was the truck that had broken down and which required some repairs.

[11] In reply Finnemore, on behalf of the Applicants, annexed a further set of photographs (Annexure “REP04”, pages 174-209, - Replying Affidavit, Contempt Application). Finnemore also annexed Google Earth images (pages 211-214, Replying Affidavit, Contempt

Application).

THE LAW REGARDING CONTEMPT OF COURT:

- [12] Counsel (in Applicants' simplified heads of argument) referred me to *Fakie NO v CCII Systems (Pty) Ltd*, [2006] ZASCA 52; 2006 (4) SA 326 (SCA), which, as counsel correctly pointed out, settled the law on contempt of court.
- [13] The Applicants must proof three requisites in contempt proceedings. These are the Order, service or notice on the Respondents and non-compliance (*Fakie NO* at pars. 23 and 41).
- [14] Furthermore "...once the applicant has proved the Order, service or notice and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt". (*Fakie NO supra*, par. 42(d)).
- [15] From the Respondents' own version, I am satisfied that they are aware of the Order, which was granted pursuant to an opposed application in which they were represented by their legal representatives.
- [16] The next crucial question is whether the Respondents have complied with the Order or not. Before I venture to decide whether the Respondents have complied or not, I have to deal with the Respondents' additional evidence. I do so hereunder.

FIRST AND SECOND RESPONDENTS' SUPPLEMENTARY AFFIDAVIT:

- [17] On 29 January 2015, some two weeks before the hearing of this application, the First and Second Respondents delivered a supplementary affidavit. The said affidavit is deposed to by Ms Boitumelo Charmain Mkonza ("*Boitumelo*") who is a director of the Second Respondent. Boitumelo indicated in her affidavit that the purpose of the affidavit was "...to place relevant information before the Honourable Court which makes the current proceedings against the respondents nugatory". In the supplementary affidavit, the Respondents seek to rely on three letters. One is from an official of the Gauteng Department of Agriculture and Rural Development ("*GOARD*"), the second one from another official of *GOARD* and the third from the Director of Public Prosecutions in Johannesburg, which are contained on pages 36, 38 and 33 respectively, contained in bundle of Application for leave and Condonation. In the Respondents'

concise submissions, the Respondents contend that the Applicants' notion that the Respondents are in utter and continuous contempt of the court order are at odds with the independent inspections conducted by the *GOARD* and the office of the *OPP* in Johannesburg. The Respondents' argument is flawed because whatever officials of *GOARD* and the *OPP* might have echoed does not supersede a court order. It seems that the letters from *GOARD* only considered issues that had to do with environmental deterioration of the site. The Respondents were still required to comply with title conditions of the property.

- [18] These letters sought to exonerate the Respondents from liability. The two letters from GOARD indicated that, in essence, no unlawful activity could be found on the property. The Applicant's counsel, in his simplified heads of argument, contends that these proceedings relate to whether the Respondents have complied with the Court Order or not. It is contended further that the Court Order does not make compliance therewith dependent on whether the Respondents would be guilty or not of any preferred criminal offences. It is further argued that the statutory notice referred to in one of the letters will also have no bearing to these contempt proceedings. I agree.
- [19] It follows therefore, that the supplementary affidavit of the Respondents does not take the Respondents' case any further.

PARTS OF THE ORDER:

- [20] As indicated by the Applicant's counsel in his heads of argument, the Order is in three parts. I will deal with each part in turn.

PART 1.1:

20.1 Part 1.1 of the Order orders and directs the Respondents to remove all vehicles, material, machines and equipment related to the unlawful use of the property within seven (7) days of the granting of the Order. The seven (7) days would expire on 06 February

2014. As stated above, in paragraph 6 of the Respondents' answering affidavit (in the Contempt Application) the Respondents "...were ... in the process of removing the material and cables from the property in question". In my view, the date of removing the "material" and "cables" is significant to determine whether the Respondents have complied with the Order or not. The photographs were taken on 24 February 2014, which date is clearly imprinted on the photos annexed as Annexure "CON02", on pages 23-24 of the Contempt Application.

20.2 The images in Annexure "CON02" required extremely closer scrutiny to which I subjected them. The purpose was to discern what appeared to have been on the property on 24 February 2014, when these photographs were taken. I saw an unused canopy,

cables, heavy duty truck, concrete manholes and cable drums. The authenticity of the photographs was not disputed, apart from a very late attempt by the Respondents alleging that the dates on the photographs presented by the Applicants were "...manipulated in that the dates on the photos have been changed". This serious allegation which went short of alleging deceit, misrepresentation and fraud on the part of the Applicants appears, in a letter written to the Applicants' attorney of record by the Respondents' attorney of record and dated 23 February

2015. The allegation of manipulation was not pursued in this Court on 31 March 2015, either on affidavits by the Respondents or in argument by the Respondents 'counsel. In my view, it was wise of the Respondents 'counsel not to do so. I am made to appreciate that the dates on these photographs are automatically imprinted on the photographs by the electronic camera which was used to take the photographs. In the absence of convincing proof of any manipulation, I will accept the dates to be true and correct.

20.3 The Applicants, in reply, annexed a further bundle of photographs as Annexure "REP04" (pages 172-209, Contempt Application). The photographs were taken by Finnemore. I again scrutinised the photographs. The following objects or items are visible thereon:

20.3.1 On 12 and 20 February 2014-dumping of concrete and building rubble; a crane enabled truck.

20.3.2 On 26 June 2014-dumped concrete and building rubble, bricks and cables.

20.3.3 On 07 July 2014-dumped concrete and building rubble, storage structure, a commercial vehicle, cable drums and cables and bricks and building materials, concrete manholes and manhole covers, burglar bars and a housing structure.

20.3.4 On 12 July 2014-commercial vehicles and transporter for heavy industrial vehicles.

20.3.5 On 01 August 2014-labourers working on industrial site, cables and trunking, bricks and building materials, a shed-like structure, burglar bars, cables and cable drums, concrete manholes and manhole covers.

20.3.6 On 22 September 2014-concrete manholes and manhole covers, commercial vehicles, cables and cable drums, bricks and building materials, concrete and building rubble, burglar bars, transporter for heavy industrial vehicles.

20.3.7 On 25 September 2014-concrete and building rubble and a commercial bakkie.

20.3.8 On 09 October 2014-concrete and building rubble, cables, bricks, commercial vehicles, cables and cable drums, concrete and manholes and manhole covers.

20.3.9 On 29 October 2014-transporter for heavy industrial vehicles, bricks, commercial vehicles, a housing structure, concrete and building rubble, concrete manholes and manhole covers.

20.4 The Google Earth images on pages 211 to 214 show rubble and waste on 10 April 2014, 06 June 2014 and 28 July 2014.

[21] What appear on the photographs on the dates indicated, at least since 24 February 2014 to 29 October 2014 demonstrate a consistent pattern. The different dates show that almost same objects, viz., rubble, cables, commercial vehicles, manhole covers and concrete manholes remained on the property on those dates mentioned. Have the Respondents proffered a contrary indication that the manhole, rubble or bricks were not on the property?

PART 1.2:

21.1 Part 1.2 of the Order requires the Respondents to immediately cease with the use of the property for any purpose other than that permitted by law, specifically NEMA and its Regulations, as well as the title conditions of the property.

21.2 Title condition contained in clause 3 of the title deed reads:

“The land shall be used for residential and agricultural purposes only and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act 21 of 1940”.

I agree with the proposition by the Applicant’s counsel that the failure of the Respondents to comply with part 1.1 of the Order, means, by definition, that the property is still being used for business purposes and as a store for business related material. I have not been informed as to whether the Respondents acquired the necessary approval required in terms of clause 3 of the title conditions to use the property for business or industrial purposes. I am, through what appear on the photographs, persuaded that there was and still is industrial and business activity going on inside the property.

- [22] For instance, heavy equipment were still working on the property, as shown on photographs on pages 88 and 89 (of the Application for Leave and Condonation Bundle) on 03 December 2014.
- [23] On 01 August 2014, on pages 188 and 190 (Contempt Application Bundle) the photographs show workers still working on the unlawful business site.
- [24] One week before the hearing of this application, specifically on 09 and 12 January 2015, on pages 77 and 88 respectively (of the Application for Leave and Condonation Bundle) the photographs show that the commercial vehicles were still being used for work that was going on inside the property.
- [25] On pages 174, 175, 177, 180 and 194 (of the Contempt Application Bundle) and pages 76, 78, 79, 81, 82, 86, 89 and 90 (Application for Leave and Condonation Bundle) these photographs show the cement columns and building rubble dumped in February 2014, after the Order was granted. All these building materials, rubble and machinery are still stored on the property.
- [26] The Respondents have not shown that they have authority to use the property for business or industrial purposes as required by condition of title contained in clause 3. This, in my view, is a clear contravention of the title condition.

PART 1.3:

26.1 Part 1.3 of the Order prohibits the Respondents from commencing or recommencing with any use of the property which is presently impermissible, unless permission has been granted by the relevant authority to rezone the property. It appears that the Respondents have not acquired such permission.

26.2 Clearly, this title condition and this part of the Order have been contravened.

EVIDENTIAL BURDEN RESTS WITH THE RESPONDENTS:

[27] In *Fakie NO*, supra, paragraph 41, Cameron JA stated:

“... once the applicant proves the three requisites (order, service and non-compliance) unless the respondent provides evidence raising a reasonable doubt as to whether non-compliance was wilful and mala fide, the requisites of contempt will have been established. The sole change is that the respondent no longer bears a legal burden to disprove wilfulness and mala fides on balance of probabilities, but need only lead evidence that establishes a reasonable doubt”.

[28] The Respondents were required, in terms of the Order, to remove the offending materials, vehicles, machines and equipment on or before 06 February 2014, which they failed to do. This conduct is in clear wilful disregard of the Order of this Court. Wilfulness, in my respectful view, presupposes mala fides. In *Chetcutti v Chetcutti* [2001] 1 All SA 75 (Tk) the Court held that the party who has failed to comply with a court order has the onus to rebut the presumption of wilfulness presumed to exist upon such non-compliance. On the authorities, the Respondents had a duty to advance evidence establishing a reasonable doubt and they have not done so. The contempt is consequently proven beyond reasonable doubt.

IMPORTANCE OF THE CIVIL CONTEMPT PROCEDURE:

[29] The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders [*Fakie NO*, supra, par. 42 (a)].

[30] Courts of law must be able to dispense justice without improper or extraneous influences, and justice can be properly upheld through the courts only if they enjoy the respect and confidence of the public. If the respect and authority of a court is undermined, the public interest itself is undermined, for the courts exist in the interest of the wellbeing of the whole community [*S v Tromp*, 1996(1) SA 646 (N) 652 G-H] .

[31] It is, accordingly, vital to the administration of justice that those affected by court orders obey them and disregard cannot be tolerated.

[32] The Order of 28 January 2014 is clear and unambiguous and capable of enforcement. [*Thutha v Thutha*, 2008(3) SA 494 (TkH)].

ULTERIOR MOTIVE ALLEGED:

[33] The Respondents have accused the Applicants of having an ulterior motive and abusing the court process by bringing this application.

The Respondents allege, both in their papers and written submissions, that these proceedings were brought against the Respondents with a view to force them to sell the property to the Applicants in order to include the property in the impending so-called Crane-Valley project, a development project undertaken by the First Applicant. It seems that there was a proposal to sell

the property, which proposal was not pursued. It remained just that a proposal made without prejudice. I consequently remain unpersuaded that the Applicants have an ulterior purpose. The issue should therefore not detain me any further.

[34] I now turn to the Respondents' application to file a second further affidavit. I do so hereunder.

APPLICATION TO FILE A SECOND FURTHER AFFIDAVIT:

[35] On 27 February 2015 the Respondents delivered an application to file a second further affidavit. The Applicants delivered an affidavit in answer to the Respondents' application for leave to file a second further affidavit.

[36] I dismissed the Respondents' application to file a second further affidavit and undertook to give my reasons in this

judgment.

The reasons follow.

[37] Firstly, the Respondents' purpose of applying to file a second further affidavit is "...to present important facts in the form of photographs to dispute the allegation that the respondents are in contempt of court".

[38] Secondly, the Respondents deemed it in the interests of justice that this Court should have regard to the "pictures" which were taken by Boitumelo, the deponent to the second further affidavit, before I hand down judgment which was reserved.

[39] In motion proceedings generally three sets of affidavits are permitted. These are the founding, opposing/answering and replying

affidavits. In terms of Rule 6(5)(e) of the Uniform Rules the court may permit the filing of further affidavits. Whether to allow a further set of affidavits is in the Court's discretion.

[Erasmus, Superior Court Practice, Commentary on Rule 6(5)(e) at page B 1-47], *Standard Bank of SA Ltd v Sewpersadh and Another*, 2005

(4) SA 148 (CPD) at paras. [9], [10] and [13] 153H-154J. *Sealed Africa (Pty) Ltd v Kelly and Another*, 2006(3) SA 65 (WLD), para. 4 at 67B-E, *James Brown & Hamer (Pty) Ltd v Simmons*, N.O., 1963 (4) SA 656 (AD) at 660D-H.

[40] The law on the filing of further affidavits is well settled. In this regard the following factors will be taken into account by the Court:

40.1 it is basically a question of fairness to both sides [*Milne NO v Fabric House (Pty) Ltd*, 1957(3) SA 63(N) at 65A];

40.2 the materiality of the evidence contained in the proffered affidavit;

40.3 it is only in exceptional circumstances that a fourth set of affidavits will be received. [Transvaal Racing Club v Jockey Club of South Africa, 1958(3) SA 599 at 604 B-D; Erasmus Superior Court Practice, supra, f t 6].

40.4 In Avnit v First Rand Bank Ltd (20233/14) [2014] ZASCA 132 (23 September 2014) at par. 5, the concept of ‘exceptional circumstances’ was recently explained by the Supreme Court of Appeal thus:

“What is ordinarily contemplated by the words ‘exceptional circumstances’ is something out of the ordinary and of an unusual nature: something which is expected in the sense that the general rule does not apply to it; something uncommon, rare or different”.

40.5 “There should in each case be a proper and satisfactory explanation which negatives ‘mala fides’ or culpable remissness as to the cause of the facts or information not having been put before the Court at an earlier stage”. [Erasmus supra, Nick’s Fishmonger Holdings (Pty) Ltd v Fish Diner in Bryanston CC, 2009 (5) 629 (W) at 641G-6420].

40.6 “Where an affidavit is tendered both late and out of its ordinary sequence, the party tendering it is seeking, not a right, but an indulgence from the Court. He or she must explain why it is out of time and convince the court that in all circumstances of the case it should be received”. (Transvaal Racing Club v Jockey Club of South Africa supra).

40.7 “The Honourable Court must be satisfied that no prejudice is caused by the filing of the late affidavit that cannot be remedied by an appropriate order as to costs”. (Erasmus, supra)

[41] As far back as July 2014 the Respondents filed an answering affidavit in which no issue regarding the photographs was taken. The Respondents, I must point out, were aware of the photographs the Applicants had annexed to their founding papers. I find no plausible reason for not dealing with the question of photographs by the Respondents at the stage of answering in July 2014.

[42] The photographs were not material to the Respondents’ case. In fact, the photographs confirm the Respondents’ proven

non-compliance with the Order. The Respondents should have produced and presented photographs before judgment was reserved, at the latest when the Respondents delivered a further supplementary affidavit in January 2015. I found that there were no exceptional circumstances warranting admission of the second further affidavit. I therefore remained unconvinced that the second further affidavit should be received in evidence.

[43] With a view I have taken of the matter I do not wish to pronounce on the alleged existence of a dispute of fact raised by the Respondents save to state that substantively, there is none. If there was one, it had, procedurally, to be raised at the beginning of argument. That was not done.

[44] I now revert to the contempt proceedings.

[45] I find that contempt has been established by the Applicants beyond reasonable doubt. The First and Second Respondents are accordingly

found to have been in contempt of the Order of this Court dated 28 January 2014, under case number 13699/2013.

[46] In the result I make the following Order:

46.1 The First and Second Respondents be and are hereby found to be in contempt of the Order issued out of this Court on 28 January 2014 by Murphy J under case number 13699/2013.

46.2 Boitumelo Charmain Mkonza (ID) in her capacities as a trustee of the First Respondent and director of the Second Respondent is committed to immediate imprisonment for that contempt of this Court for a period of fifteen (15) days.

46.3 Respondent and directors of the Second Respondent are committed to imprisonment for contempt of this Court for a period of thirty (30) days:

46.3.1 Kethukhuthula Mkonza (ID); and

46.3.2 Nkosinathi Owen Mkonza (ID).

46.4 The imprisonment ordered above, which shall also be served in full, is suspended for 2 (two) years on conditions that:

46.4.1 The First and Second Respondents fully and strictly comply with the Order issued out of this Court on 28 January 2014 by Murphy J under case number 13699/2013 within 30 (thirty) days of the date of this Order; and

46.4.2 The First and Second Respondents comply fully with the conditions on which they are to allow the Applicants to inspect the property to verify compliance with this Order imposed below.

46.5 The compliance with the order of Murphy J ordered above relates to the entirety of that Order and with regard to parts 1.1, 1.2 and 1.3 thereof shall include:

46.5.1 Regarding part 1.1 of the Order:

The removal from Portion [...] Nooitgedacht of:

46.5.1.1 all commercial and construction vehicles;

46.5.1.2 all material, machines and equipment related to the unlawful use of the property, including pipes, cables, cable drums, trunking, manholes, manhole covers, bricks, building materials and related rubble.

46.5.2. Regarding part 1.2 of the Order:

46.5.2.1 Cessation of the use of Portion [...] Nooitgedacht for any purpose impermissible in terms of the National Environmental Management Act, 1998 (Act 107 of 1998), the title conditions applicable to the property and/or the zoning of the property including:

46.5.2.1.1 Use for business and/or industrial purposes;

46.5.2.1.2 Use for the dumping and/or storage of cement, cement columns and other materials not related exclusively to agricultural or residential use; and

46.5.2.1.3 Use for accommodating persons and/or storing business/industrial goods in structures/buildings erected in contravention of the title conditions of the property without building plans approved by the local authority.

46.5.2.2 Removal of all buildings, partially completed buildings, foundations for buildings, building materials and rubble related to buildings in contravention of title condition 2 that provides that: "Not more than one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith shall be erected on the land" and/or for which no building plans have been approved by the local authority.

46.5.3 Regarding part 1.3 of the Order:

46.5.3.1 Removal of all cement, cement columns and other rubble introduced onto the property after 28 January 2014;

46.5.3.2 Not commencing or recommencing with the use of Portion [...] Nooitgedacht in any way impermissible in terms of the Environmental Management Act, 1998 (Act 107 of 1998), the title conditions applicable to the property and/or the zoning of the property, including the uses listed in 46.5.2.1 above.

47.6 The Applicants are herewith authorised to enter onto and inspect Portion [...] Nooitgedacht for purposes of verifying compliance with this Order on the following conditions:

47.6.1 Such inspection must be undertaken no less than 30 (thirty) days from the date of this Order;

47.6.2 Such inspection must be undertaken between 08h00 and 17h00 on a week's day;

47.6.3 The Applicants must give the Respondents at least forty eight (48) hours written notice of such inspection and who will be undertaking the inspection on the Applicant's behalf;

47.6.4 The Applicants may, in their exclusive discretion, record their inspection of the property whether photographically or otherwise;

47.6.5 The Respondents must give the Applicants and/or their representatives unfettered access to all parts of the property and all buildings thereon at the time of the Applicants' choosing subject only to the Applicants having complied with the conditions

herein imposed;

47.6.6 A representative of the Respondents shall accompany the Applicants and/or their representatives on the inspection.

47.7 Should the First and/or Second Respondent fail to strictly comply with this Order including the conditions of inspection aforementioned and/or in any way breach the conditions of suspension imposed herein, the Applicants may approach the above Honourable Court for an order for the said person's committal to prison, on the same papers, supplemented as necessary.

47.8 The First and Second Respondents are ordered to pay the costs of this application on a scale as between attorney and own client, jointly and severally, the one paying, the others to be absolved.

[48] As regards the costs of the interlocutory application heard on 31 March 2015, I make the following Order:

48.1 The First and Second Respondents are ordered to pay the taxed costs of the interlocutory application heard on 31 March 2015, inclusive of the costs of preparation of opposing papers, and the costs of the Applicants' attorney's travel from Prince Albert in the Western Cape, on a party and party scale.

M D MOHLAMONYANE

[Acting Judge of the High Court of

South Africa,

Gauteng Division, Pretoria]

APPEARANCES:

For the Applicants: Mr G. Erasmus instructed by Erasmus Attorneys, Pretoria and Prince Albert.

For the First and Second Respondents: Adv. C. Tshavhungwa instructed by Tshisevhe Gwina Ratshimbilani Inc. Johannesburg.

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