

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2022/7132

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
DATE: 14/3/2022

In the matter between:

MOGALE CITY LOCAL MUNICIPALITY

Applicant

and

CHAMDOR TRAINING GROUP NPC

(Registration No: 1995/010798/08)

First Respondent

**ANY FURTHER UNKNOWN AND UNLAWFUL
OCCUPIER[S] OF: REMAINDER OF PORTION [....] OF
THE FARM, WITPOORTJIE 245 IQ AND REMAINDER OF
THE FARM KAGISO 273 IQ, LOCATED AT NO. [....] JACOB
STREET, CHAMDOR, KAGISO**

Second Respondent

**DEPARTMENT OF HUMAN SETTLEMENTS, URBAN
PLANNING & COOPERATIVE GOVERNANCE &
TRADITIONAL AFFAIRS: GAUTENG**

Third Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] This urgent application was argued on 8 March 2022 and I handed down the following order on 10 March 2022:

“1. The first respondent and/or second respondents are interdicted from denying and/or preventing the applicant and its officials or its prospective constructors, access to the property described as Remainder of Portion [...] of the farm, Witpoortjie 245 IQ and Remainder of the farm Kagiso 273 IQ, located at No. [...] Jacob Street, Chamdor, Kagiso in the Gauteng Province.

2. The costs of this application shall be determined at the hearing of the application in Part B of the notice of motion.

Introduction

[2] The applicant is a local authority and in this urgent application it seeks an order that the first and second respondents be interdicted from denying or preventing the applicant and its officials or its prospective contractors access to property that it is the owner of. The first respondent is a not-for-profit company that occupies the property with which the application is concerned.

[3] In part B of the application it seeks a declaratory order to confirm its ownership and a further declaratory order confirming the termination of a lease agreement between itself and the first respondent, and the eviction of the first respondent.

[4] It also seeks an eviction order against other illegal occupiers, collectively identified as the “second respondent.”

[5] The third respondent, the Department of Human Settlements, Urban Planning & Cooperative Governance & Traditional Affairs: Gauteng, abides the judgment.

Urgency

[6] The application is urgent as the applicant requires access to the property in order to fulfil its obligations to the community it serves, and to conduct social and economic initiatives that form part of the provincial economic strategies. These strategies relate to job creation, economic empowerment, skills development and the alleviation of poverty. The applicant is a role player in the Gauteng Mega Business Hub being implemented in the province, and the timeous fulfilment of the applicant's obligations are by their very nature urgent.

The applicant's ownership of the property

[7] The applicant's allegation of ownership is substantiated by a deed of transfer and a deed search attached to the application.¹ It is therefore entitled to all the rights that flow from ownership.

[8] When the applicant gave notice of a breach of the lease in 2021, the first respondent denied the existence of a lease agreement between the applicant and the first respondent. It alleged instead that the lease agreement was between the first respondent and the Republic of South Africa.

[9] The property was however transferred to the applicant as the Republic's successor in title already in 2006.

[10] In the answering affidavit, the first respondent alleges that the lease agreement was already cancelled in 1998 when it was agreed that the property be transferred to the first respondent as part of a settlement agreement in litigation. The first respondent therefore admits that the lease is no longer in place but disputes the applicant's ownership rights.

¹ Annexures "MCLM-1" and "MCLM-2" to the founding affidavit at page 02-49 to 02-57.

[11] The first respondent also relies on non-joinder in that the third respondent ought to have been joined as a co-applicant as it was the rightful owner of the property. There is no merit in the contention as the title deed reflects the name of the applicant, and the third respondent does not seek any relief in the application.

[12] In support of its allegation that the applicant is not the owner of the property, the first respondent relies on a letter on the letterhead of the Gauteng Provincial Government, Housing and Land Affairs, confirming a recommendation from the Gauteng Land Committee that is still to be ratified that the property be transferred to the first respondent free of payment.

[13] Nothing in the correspondence amounts to the acquisition of real rights by the first respondent or the existence of a *ius in personam ad rem acquirendam*, and the inference that the applicant is the owner of the land as reflected in the title deed seems to be irresistible. The question of ownership is however a matter to be decided in Part B of the application.

[14] The applicant submits that it requires the order sought in order to fulfil its obligations and duties as a local authority. There is nothing in the papers that suggest that the applicant ought not be permitted to exercise its ownership rights in respect of the property and its rights and duties as a local authority by entering the property in order to fulfil its obligations and duties as local authority and as owner.

[15] I therefore granted the order as set out above.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **14 March 2022**

COUNSEL FOR THE APPLICANT: G M MAMABOLO

INSTRUCTED BY: MOLATSI SELEKE INC

COUNSEL FOR FIRST RESPONDENT: P M MAKHAMBENI

INSTRUCTED BY: JAKES NCALA & MAJA ATTORNEYS

DATE OF THE HEARING: 8 March 2022

DATE OF ORDER: 10 March 2022

DATE OF JUDGMENT: 14 March 2022