

CASE NUMBER-initials
YEAR-MONTH-DAY

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 069077/2023

DATE: 16-08-2023

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

21.09.23

In the matter between

CHRISTINE FUNDISWA KHUMALO

Applicant

and

TOBAGO BODY CORPORATE

Respondent

J U D G M E N T

YACOOB, J: The applicant approaches this Court on an urgent basis for relief against the respondents, who are the body corporate and trustees of the body corporate relevant to a unit that she owns.

She seeks relief interdicting harassment and

declaring certain actions unlawful, in that they have apparently deactivated access tags associated with her unit and have prevented her tenants having free access to the property.

She also seeks the restoration of non-prepaid water and electricity supply, and the restoration of access tags.

The applicant instituted an application for relief with exactly the same relief, and, in addition, relief relating to an amount that was debited to her levies on 14 July this year. That notice of motion was dated 21 June, probably mistakenly.

According to the applicant, the reason why she instituted this application urgently, was because on 9 August, which is Wednesday last week, she was informed that tags for her new tenant would not be made available because of outstanding levies.

She then instituted this application on 11 August, which was the Friday, and after this court's urgent roll had closed, and set the matter down irregularly for today, which is Wednesday.

The only reason given for that lateness was that the event that prompted the application occurred on Wednesday.

The respondents were asked to notify of their opposition as soon as possible, and to file their answering

affidavit by 2 o' clock on Monday afternoon.

The respondents filed a notice of opposition on 15 August, and have not yet filed an answering affidavit. They have, instead, filed a practice note and heads of argument and have argued their opposition.

Ms Bevilacqua, who appears for the respondents, says that her clients would like to file answering affidavits.

I am not satisfied that the applicant has set out in her affidavit a sufficient basis for setting the matter down irregularly on a Wednesday, or for giving the respondent such a short time to respond.

Although she states that the email arrived on 9 August, which said that they would not be given the tags, she does not explain sufficiently in the affidavit that it is impossible for the tenant otherwise to enter the complex and what the prejudice is.

I have to balance this against the irregular set down and the inconvenience to the respondents, whose version is not before the Court.

I am not satisfied that this is sufficiently catered for, and therefore I find that the degree of urgency which has been imposed was not justified.

I make absolutely no finding regarding any other degree of urgency which may later be argued for. In my view, it is appropriate that the respondents file an

answering affidavit and that they do so with some urgency.

The applicant can then take whatever steps she needs to do in order, or if necessary, to do whatever she requires.

I therefore make the following order;

(1) The matter is struck from the roll for want of urgency, specifically for want of the degree of urgency imposed.

(2) The respondents are to file any answering affidavit by close of business on Friday.

(3) The applicant is to pay wasted costs of today.

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YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 21 September 2023