

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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES NO.	
(2) OF INTEREST TO OTHER JUDGES: YES NO.	
(3) REVISED. ✓	
19/5/2010 DATE	 SIGNATURE

DATE: 11 May 2010
CASE NO: 41787/09

In the matter between:

AMARYLIS INVESTMENTS (PTY) LTD
AND

APPLICANT

GAUTENG PROVINCE DRIVING
SCHOOL ASSOCIATION
CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

FIRST RESPONDENT

SECOND RESPONDENT

JUDGMENT

PHATUDI (J)

- [1] The Applicants seek an order to carry into effect the order I granted on the 2 September 2009, as envisaged in terms of Rule 49 (11) of the Uniform Rules of this Court pending the judgment and order of the appeal lodged by the First Respondent.

- [2] On the 7 April 2010, the Supreme Court of Appeal granted the Respondents leave to appeal to the full court of the North Gauteng High Court. It is trite that an order granting leave to appeal suspends an order appealed against pending an order by the appeal court.
- [3] An application in terms of Rule 49 (11) of the Uniform Rules of the court is aimed at "bringing into effect" an order appealed against pending the appeal court order.
- [4] Rule 49 (11) state that "where an ... application for leave to appeal against...an order of a court has been made, the operation and execution of the order in question shall be suspended, pending the decision of such appeal or application, unless the court which gave such order, on the application of a party, otherwise directs,"(my underline)
- [5] The Applicant, in whose favour my judgment dated 2 September 2009 is, seeks relief that the said order be carried into effect. On the other hand, the First Respondent opposes the application on the basis that the applicant's

application is not only an afterthought, but frivolous, vexatious and an abuse of the court process.

[6] Mr Mathabathe, counsel for the First Respondent, submits that the Applicant concedes in their founding affidavit that the First Respondents prospects of success are more than sufficient. He submits that despite all conceded prospects, the applicant frivolously institutes the application. He submits that that constitutes an abuse of the court process.

[7] Mr Mathabathe further submits that this application is not urgent and that there are no valid grounds for urgency. I immediately informed him that I was requested to furnish the parties with date(s) upon which I am available to hear the application. I provided the parties with 2 (two) dates. It is not that the Applicants instituted the application on an "urgent" basis. I am informed that the parties jointly agreed to be heard on this 11 May 2010. He did not pursue this point from my explanation.

- [8] In evaluating the submissions made by both counsel, I am of the view that prospects of success mean that the Respondent(s) may, on the face of it, succeed on appeal. It does not mean that the Respondent(s) will succeed. Rule 49 (11) grant, in my view, the Court with the discretion to direct that the suspended order be carried into effect pending the decision of the appeal court.
- [9] The suspension of my order creates the status quo to prevail. The status quo is the locking of the gate of an area enclosed by the Applicant. In the event the status quo prevails, the dispute between the parties will remain and may lead to unrests. This is evident from correspondence exchanged between parties subsequent to the Supreme Court of Appeal's order dated 7 April 2010.
- [10] I find it in the best interest of Justice to direct that the "Status" created by my order to prevail pending the outcome of the appeal court.

[11] It is trite that costs follow the event. Counsel for the First Respondent submits that the afterthought and contempt of the Supreme Court of Appeal's order on the part of the applicant warrants an order of costs against the Applicants.

[12] There is no counter application instituted by the First Respondent. There is no other relief sought by the First Respondent other than a dismissal of application with costs.

[13] I, on those bases, find it appropriate to make an order as to costs to that effect. I thus make the following order;

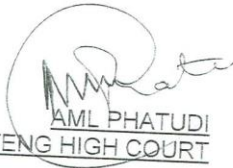
[13.1] That it is directed that paragraph 16.1 and 16.2 of the order made by this Court on 2 September 2009 in case No 41787/2009 shall not be suspended pending the decision Full Bench appeal against such order;

[13.2] That the Sheriff, in whose area of jurisdiction the premises at Erven 849, 851 and 847 Ferndale is

situated, is directed and ordered to take all necessary steps to give effect to 1;

[13.3] That the applicant's shall not be required to furnish security as contemplated in Rule 49 (11);

[13.4] That the applicant is ordered to pay first respondent's costs of this application on party and party scale.



AML PHATUDI

JUDGE OF THE NORTH GAUTENG HIGH COURT

Heard on: 11 May 2010
For the Appellant: Adv Van Rensburg
Instructed by: Messrs TIM DU TOIT & KIE
For the Respondent: Adv Mathabathe
Instructed by: Messrs DOLF MOSOMA ATTORNEYS
Date of Judgment: 11 May 2010