

THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: A69 / 2023

In the matter between:

SALDANHA BAY MUNICIPALITY

Appellant

and

UNI-FAITH MINISTRIES

First Respondent

ISAK ROEDOLF

Second Respondent

THE OFFICE-BEARERS AND MEMBERS OF

UNI-FAITH MINISTRIES

Third Respondent

Coram: Le Grange ADJP, Wille *et* Nziweni, JJ

Heard: 24 January 2024

Delivered: 31 January 2024

JUDGMENT

WILLE, J:

Introduction

[1] The appellant's application for the eviction of the respondents from a portion of the land housing a church and a storeroom in two prefabricated buildings was dismissed by the court *a quo*. The prefabricated church building and the storeroom were located on certain land designated for a low-cost housing project for over a hundred residential units for the poor, needy, and vulnerable. The appellant sought to evict the respondents so that contractors could prepare and install infrastructure for the proposed housing development. However, the refusal of the respondents to vacate these premises prevented them from performing the necessary work for the housing development to progress.

[2] The appellant was found to have a legal duty and obligation to provide low-cost housing to the poor, needy, and vulnerable, and the development met this constitutional obligation. The appellant provided the required regulatory reports, stating that the two prefabricated buildings on the premises would be demolished. Rather, a permanent brick-and-mortar crèche building would be retained as a crèche and a church. The regulatory reports included a site development plan. Moreover, the necessary environmental approval was obtained, indicating that only the crèche building on the premises would be retained and serve as both a crèche and a church. This is broadly the canvass of the facts before this court on appeal.

Context

[3] In the first instance, the *court a quo* determined that the two prefabricated buildings on the church grounds would have to be demolished for the low-cost housing project to commence. The regulatory reports also indicated the need to demolish these two prefabricated structures on the premises. This was then also one of the main reasons given by the respondents to attempt to prevent their eviction.

[4] This reasoning was upheld in the court of first instance, and this finding remains the primary ground of appeal by the appellant to this court. According to the respondents, there existed the possibility of a dispute between the appellant and the two regulatory bodies over the meaning, content and legal effect of their reports relating to the current retention of the prefabricated buildings on the premises. The appellant's development plans included demolishing these two prefabricated buildings to make way for the low-income housing project. The respondents, conversely, disputed this by denying (unarguable) facts and levelling unjustified accusations against the appellant's employees in this connection. These denials became the foundation of the respondents' shields to the eviction application.

[5] As a result of warranted judicial case management, the appellant's initial hearing was postponed, allowing the respondents to file a supplementary affidavit. It was alleged that this further exacerbated the pace of the development and provision of low-cost housing to the poor, needy, and vulnerable. The appellant sought the respondents' eviction based on the appellant's ownership of the prefabricated buildings leased to the first respondent. These leases have since expired due to the passage of time and have not been renewed.

Consideration

[6] This appeal presents this court with an unusual situation in which it appears that the fate of this eviction application was decided based on a potential dispute between the appellant and two regulatory bodies over the interpretation of an environmental assessment (and possibly other regulatory disputes) that were not materially related to any discrete dispute between the appellant and the respondents.

[7] Further, this was not a minor consideration. I say this because of necessity therefore, an additional burden was seemingly imposed on the appellant in as much as the appellant failed to establish the respondents' occupation of the church (in the prefabricated buildings on the premises) was unlawful. In other words, the potential (or not) of resolving any disagreements between the regulatory bodies and the appellant did not provide a legally justifiable or acceptable reason for preventing the eviction application.

[8] Any potential misunderstandings between the appellant and the interpretation of the regulatory reports were not an issue germane for determining the initial eviction application. I say this because it does not affect the appellant's right to evict an illegal occupant on a portion of its property. The first respondent objected to the eviction application because the church (housed in the prefabricated buildings) was the subject of a specific mention in the regulatory report to be retained and incorporated into the proposed housing development in the brick-and-mortar building together with a crèche.

[9] Consider further that the first respondent was allowed to comment on the appellant's environmental authorization application and was contacted for comment upon its adjudication. The appellant stated that it planned to keep the church and the crèche as part of the proposed development, with the crèche building remaining unchanged and the prefabricated buildings east of this permanent building being demolished.

[10] Moreover, all the regulatory reports unequivocally demonstrated the plan to demolish the prefabricated church buildings and keep the crèche building for use as a crèche and a church. Undoubtedly, the report and the material at the respondents' disposal did not, in any manner or form, give rise to any right of use or occupation to the benefit of the respondents as a matter of law in the form of any 'real' right. Simply put, the regulatory reports were only an expression of the appellant's development plans to enable it to decide whether to action a defined development right.

[11] The first respondent chartered for the stated position that the proposed demolition of the prefabricated church buildings would violate the regulatory reports. This position was misunderstood as the prefabricated church buildings were designated for demolition in all the regulatory reports. Also, the first respondent opposed the eviction application based on an incorrect interpretation of an incorporation statement, which ostensibly justified the church's continued use and occupation of the prefabricated buildings. To the contrary, it was the appellant's case that the demolition of the two prefabricated buildings would not result in any contraventions of the regulatory reports. With this interpretation, I agree.

[12] Also, the reasoning in the court of first instance seemed to suggest that it was common cause that the regulatory reports indeed called for the demolition of the prefabricated church buildings. Thus, any dispute about the content and meaning of the regulatory reports did not touch on the assessment of the shields raised by the respondents to their eviction.

[13] The regulatory bodies issued a letter confirming that the prefabricated church buildings would be demolished but that the church and crèche would be accommodated in the area designated for institutional use in the brick-and-mortar building, which would be retained. The appellant hotly contested its alleged failure to comply with the regulatory reports or any of the conditions imposed therein. The point was further made that the relevant incorporation statement was not a condition to be assimilated into the reports and thus could not be enforced against the appellant.

[14] This was undoubtedly a correct interpretation of the content and terms of the various regulatory reports. This view is fortified by the letter filed by the environmental 'expert' expressing that the relevant report only indicated (at most) that the 'church' references in the reports were to the brick-and-mortar crèche building and not to the prefabricated church buildings.

[15] The respondents' arguments seem to have been confusingly marinated by what they understood to have been conveyed in the various regulatory reports, which they sought to be elevated into shields against their eviction from the prefabricated church buildings. The relevant regulatory reports are very specific in this connection and cannot be the subject of a material dispute (even if they were relevant). This notwithstanding, no requirement of this nature appeared under the conditions of any of the regulatory reports. I say this because it is clearly recorded as a conjunctive as follows:

*'...An existing church and crèche located on...will be retained and incorporated into the proposed development...'*¹

¹ This appears in the description of the authorized activities and the consideration of alternatives in the records of the Environmental Assessment.

[16] This must be so because (a) any condition that is sought to be imposed must aim to minimize any adverse environmental and socio-economic impact and to maximize the beneficial impacts of the authorized activities, (b) conditions which are extraneous to these relevant impacts are by their very nature *ultra vires* and, (c) even if a condition was imposed that the first respondent would be able to occupy the prefabricated church buildings in perpetuity, such a condition would be extraneous to any identified environmental impact and would be *per se* unenforceable in law.

[17] This is well demonstrated by the fact that a purported imposed 'condition' would then become the subject of enforcement that bore no logical nexus to any established or potential environmental concern and would be unlawfully infringing upon the constitutionally protected right of the appellant to lease its premises and to evict an unlawful occupier in circumstances where no contractual relationship persisted between these immediate parties.

[18] It is not the basis for sophisticated reasoning by the respondents to suggest that a one-sided interpretation of the content of the regulatory reports may be utilized as a shield to interfere with the enforcement of the appellant's rights against the respondents who are unlawfully holding over under a lease that expired some years ago and which was not the subject of any renewal. The fact that the leases have expired and have not been renewed was undisputed.

[19] The respondents say that because they were consulted concerning the development project, they acquired rights to the prefabricated leased buildings, which rights would trump any contractual rights which may have endured during the currency of the lease agreements, which have since expired. This cannot be so because one cannot dance at two weddings simultaneously and this would be conflating the marked differences in law between 'personal' rights and 'real' rights.

[20] Moreover, it is not legally sustainable to assert that the respondents acquired certain limited contractual rights in terms of its lease agreements with the appellant, and when those rights came to an end, better and more unlimited rights were born because of certain 'conditions' in regulatory reports (commissioned at the instance of the appellant).

[21] This would suggest further rights to occupy the prefabricated premises in perpetuity absent any agreements. Any such 'condition' would be beyond any regulatory decision-maker's powers and, therefore, invalid.² It is common cause that the crèche building was intended to be retained unchanged. The issue of the demolition of the prefabricated buildings does not bear any nexus or relevance to and with any socio-economic and environmental impact related to the recorded listed activities.

[22] To the contrary, our jurisprudence dictates that an owner of the property who gives possession thereof to another person in terms of a lease agreement which has come to an end is entitled to the eviction of such person unless that person alleges and proves that he or she has a right of possession.³ The appellant discharged the onus resting on it, and it was up to the respondents to allege and prove they had a right of possession. This they did not do.

[23] No legally recognizable right existed in this case, and no constitutional issues were at play. This matter did not involve the right to housing. Further, no constitutional issues were advanced in the respondents' affidavits and these only surfaced through belated arguments.⁴ Thus, no discretion came into play to decide whether to grant an eviction order based on what is considered just and equitable in the relevant circumstances.

[24] It cannot be so that any potential dispute between the appellant and the administrative regulatory authorities regarding the meaning and interpretation of certain environmental authorizations had any bearing on the appellant's right to evict the respondents. This would also incorrectly assume that the provision of alternative accommodation was a legal requirement to obtain an eviction order in circumstances where no legally recognizable right existed for the respondents to possess or occupy the two prefabricated church buildings. Further, the respondents were also not taken by surprise as the appellant, from the outset, intended to retain both the church and

² *Hangklip/Kleinmond Federation of Ratepayers Association v Minister for Environmental Planning and Economic Development: Western Cape and Others* (unreported judgment of Western Cape High Court delivered on 1 October 2009).

³ *Airports Company South Africa Ltd v Airport Bookshops (Pty) Ltd t/a Exclusive Books* 2017 (3) SA 128 SCA.

⁴ *National Director of Public Prosecutions v Phillips and Others* 2002 (4) SA 60 at [37] G-H.

crèche in the brick-and-mortar buildings as part of the proposed development, without any changes.

[25] Regrettably, the respondents opposed the eviction application based on an incorrect interpretation of the incorporation statement, which they also say justified their continued use and occupation of the prefabricated buildings. Moreover, the respondents rather unjustifiably accused the appellant of misleading the court concerning this housing development project. I do not see it this way. The appellant remains constitutionally mandated to devise and implement a comprehensive and coordinated program progressively to realize the right of access to adequate housing within its available resources.⁵

[26] The appellant was under no obligation to provide the respondents with a church. The separation of church and state is a fundamental principle. It is so that a constitutional obligation arises to protect and uphold individuals' rights to freely practice their religion if they do not infringe on the rights of others or break any laws. The principle of separation of church and state, also known as secularism, advocates for the separation of religious institutions and the government. The respondents failed to exhibit any rights to prevent their eviction from these prefabricated buildings. For all these reasons, the appeal must succeed.

Costs

[27] I agree with the appellant that the respondents have yet to seek the protection of the principle expressed in *Biowatch*.⁶ Also, there is no proper constitutional issue before this court. But the enquiry continues as I am enjoined to exercise my discretion judicially in connection with the costs of this appeal and I believe that making any order as to costs would be ill-advised. I say this because, at the end of the day, if any order as to costs were to be levied, it would inevitably fall upon the congregation members of the first respondent to ultimately fund these costs. Further, considering the nature of the respondents' church business, I accept that the appellant may, in any event, be

⁵ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 at 87 C-D.

⁶ *Biowatch Trust v Registrar Genetic Resources* 2009 (6) SA 232 (CC).

hard-pressed to recover any fees from the respondents. For these reasons, I believe it is appropriate to order that no costs are to be levied against the respondents.

Order

[28] I propose the following order to be granted;

1. That the application for condonation (as much as same may have been necessary) is granted.
2. That the appeal is upheld.
3. That the orders of the *court a quo*, including the cost orders, are with this set aside and replaced with the following orders:
 - (a) The first and second respondents and all its members and office-bearers, being the third respondent (including all persons who, with their permission or upon their invitation, occupy and use the church premises) including the church building, situated on Erf 7[...], Vredenburg, are ordered to vacate the said church premises and building within one calendar month of the date of this order and to remove all movable property from the said premises. For the sake of clarity, the church premises are for this order, defined as:

‘...the premises (as demarcated on the aerial photo, attached to the appellant’s founding affidavit under case number 21588/2021) and marked as “JP1” by the rectangular fencing lines to which the arrows are pointed and on which the words ‘Uni-Faith Church’ are written....’
 - (b) The first and second respondents and all its members and office-bearers, being the third respondent, including all persons who, with their permission or upon their invitation, occupy and use the church premises, are interdicted from entering the church premises and Erf 7[...], Vredenburg with effect from one calendar month of the date of this order.
 - (c) With this, the appropriate sheriff of the court is authorized and directed to give effect to the orders to vacate and interdict, as set out in paragraphs 3 (a) and 3 (b) above.

- (d) Each party shall be responsible for their own respective costs of an incidental to the application and the appeal processes.
4. The remainder of the relief sought as 'damages' shall stand over for later determination (if at all appropriate and necessary).

WILLE, J

I agree, and it is so ordered:

LE GRANGE, AJP

I agree:

NZIWENI, J