



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 6054/2022

In the matter between:

METSIMAHOLO LOCAL MUNICIPALITY

Applicant

And

UNLAWFUL OCCUPIERS OF AND PERSONS
INTENDING TO UNLAWFULLY OCCUPY THE
LAND KNOWN AS WONDERFONTEIN SASOLBURG,
FREE STATE PROVINC ALSO KNOWN AS THE
REMAINDER OF THE TOWNSHIP, SASOLBURG
EXTENSION 58, PARYS REGIONAL DIVISION,
FREE STATE

1st Respondent

ECONOMIC FREEDOM FIGHTERS (“EFF”)

2nd Respondent

HEARD ON: 15 DECEMBER 2022

JUDGMENT BY: DANISO, J

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII on 26 APRIL 2023. The date and time for hand-down is deemed to be 26 APRIL 2023 at 13H00.

- [1] The applicant (“the Municipality”) is the owner of the land Wonderfontein, Sasolburg (also known as the Remainder of the Township, Sasolburg Extension 58) and Parys Regional Division in the Free State Province (“the land”).
- [2] On 2 December 2022, the Municipality launched an urgent *ex parte* application (Part A) seeking an order authorizing the service of the notice of contemplated eviction proceedings in terms of section 4(2) of the Prevention of Illegal Eviction From and Unlawful Occupational of Land Act, 19 of 1998 (“PIE”) on the respondents together with an interdict prohibiting the respondents from erecting and/or occupying any building structures on the Municipality’s land pending eviction of the respondents (Part B).
- [3] The application was triggered by a notice issued by the EFF on 1 December 2022 stating the following:

“Dear Commissaries and Fellow Fighters

1. *This serves to remind you of the Land Occupation program that will take place in Wonderfontein, in Metsimaholo, on **Monday the 05th of December 2022**.*
2. *Furthermore, all members of the Provincial Command Team, Fezile Dabi Regional Command, Team and EFF Councillors in the region are expected to convene in Metsimaholo no later than **9:00 AM** on the said date.*
3. *Moreover, Provincial Command Team, Fezile Dabi Regional Command Team and Councillors are encouraged to bring along their bakkies to the program.*

NB: No apology will be accepted.

Hope the above finds you in order.

Revolutionary Regards.

Cmsr: Malefane Msimanga

Provincial Secretary.”

- [4] According to the Municipality, the notice was meant to mobilize community members to illegally invade the Municipality's land on 5 December 2022.
- [5] Having heard the submissions by the Municipality's counsel, I was not persuaded that the EFF's notice constituted an incitement to invade the Municipality's land. I also held that the issue raised in the Municipality's papers was too abstract and hypothetical as at that time, there was no evidence of land being demarcated or structures being built on the land and taking into account the Municipality's own submission that the "land invasion" was planned to take place on 5 December 2022, the Municipality was thus entitled to return to court when the respondents' intentions had become clear consequently, the application was struck from the roll due to lack of urgency.
- [6] Approximately a week later on 9 December 2022, the Municipality launched a fresh application on the basis that evidence of the planned land invasion has become available. Photographs taken on 5 December 2022 showing a large number of community members in long queues being attended by members of the EFF were attached on the papers as proof that the EFF was assisting the community members with registration for residential stands.
- [7] The Municipality also referred to Facebook Posts by a Mr Victor Nyembe and other participants gloating and confirming that registration for stands was taking place. They wrote:

"Thank You EFF we're going to get our land in Wonderfontein. The EFF leadership is busy registering people for residential stands in Zamdela Municipal Offices next to Sonny Garage and people have come in enormous numbers. Database is also captured and collated too and when we leave here, we going straight to the promised land of Wonderfontein in unstoppable numbers..."

The Municipal Manager and the Executive Mayor of Metsimaholo Local Municipality have sent five Municipal Security Guards to protect the Wonderfontein area and to stop the needy from occupying that land. Ooooooh what a shame!!!!....How can you stop the floods with a sift."

- [8] And:

“First cardinal pillar of the EFF, expropriation of land without compensation currently underway in Metsimaholo. When we started with Mooidraai they said they’re going to remove us there and today they are saying the very same thing with Wonderfontein. All that is left is proper services in Mooidraai. The Provincial Leadership of the EFF just 1 month in office and they are already here to be part of land distribution. Let’s give people land to have dignity. No one is going to remove us from that land. This is going to be another successful project by the EFF. We’ll continue registering people until Friday.

#expropriationoflandwithout compensation.

#onemillionmembership.

#EconomicFreedomFighters”

I am reliably informed that the Municipal Manager and Executive Mayor of Metsimaholo Local Municipality, Cllr Jeff Zwane went to the high court of Bloemfontein last week Friday of the 2nd December 2022 to bar, stop and interdict people from occupying the “Wonderfontein” land. Unfortunately, the Bloemfontein, the Bloemfontein high court had dismissed their application and told them that their application lacks substance, evidential, gravitas, and full of hearsays.

I have been telling you that the Executive Mayor of Metsimaholo Local Municipality and his friend MM are wasting our service delivery money with barbaric and unnecessary court challenges. They have done it again with a subterfuge fail and a court had proven them to be unfit to hold those respective positions.

Your money is stolen by way of useless and unnecessary court bids and if that money was well used, more roads could have been built and repaired. Infrastructure could have been installed and upgraded. More youth opportunities could have been initiated. Metsimaholo residents, we are in big trouble with this DA incompetent government...”

- [9] The respondents filed a notice to oppose the application. After hearing the arguments on urgency, I was *prima facie* satisfied that the matter was urgent and that the Municipality could not be afforded substantial redress if it had to follow the normal course laid down by the rules of court accordingly, I granted a *rule nisi* returnable on 2 February 2023 on the following terms:

“2.1 The Respondents are interdicted and restrained from:

- 2.1.1 *Erecting any home and/or abode and/or dwellings and/or other structures on the property known as **Wonderfontein, Sasolburg, Free State Province** also known as the **Remainder of the Township, Sasolburg Extension 58, Parys Regional Division, Free State Province** ("the land");*
- 2.1.2 *Taking any occupation and/or occupying and/or inhabiting any home and/or dwelling and/or abode and/or other structure which might be erected on the land, or any portion thereof.*
- 2.2 *Authorising the Applicant, its officials and/or employees and/or contractors, assisted by the Sheriff and/or the South African Police Services to give effect to the provisions of this order by:*
 - 2.2.1 *Removing and/or demolishing any vacant and/or unoccupied structure erected on the land at the time of the granting of this order;*
 - 2.2.2 *To take all reasonable steps in order to give effect to this order.*
3. *The respondents are granted leave to file answering affidavits by 12pm on Monday, **12 December 2022**.*
4. *The applicant to file the replying affidavit by 12pm, Wednesday the **14th of December 2022**.*
5. *The costs shall stand over."*

[10] The proceedings resumed on 15 December 2022.

[11] In advancing the basis of its case, the Municipality maintains that a case has been made out for the granting of an interdict pending the eviction of the respondents. The land that the respondents intend to invade has not been developed as it has not been approved for housing by the department of Cooperative Governance, Human Settlements and Traditional Affairs.

- [12] The land is also unfit for human habitation. It lacks basic infrastructure for reticulation, drainage, water supply, electricity and sewerage facilities and these services can only be attended to after the land has been approved for housing. Land invasions impedes the Municipality's compliance with its constitutional obligations. Already there is a backlog in development of land for low-cost housing and a large percentage of the community is in need of safe and basic housing therefore by embarking on self-help mechanisms, the respondents are prejudicing those who have been vetted and qualified for allocation of houses by "jumping the queue." Furthermore, by occupying undeveloped land the respondents are also exposing themselves to health and safety risks.
- [13] It is argued that should the respondents be allowed to invade the land the Municipality would be saddled with exorbitant legal costs for eviction of the respondents and the removal of the unauthorised structures.
- [14] The respondents' answering affidavit is deposed to by Ms Selloane Motjeane, a PR councillor in Metsimaholo Local Municipality and regional secretary of the EFF.
- [15] The affidavit was due on 12 December 2022. It was only filed a day later on 13 December 2022. The respondents seek condonation for the late filing of the answering affidavit. They attribute the delay to the inability to procure legal representation timeously and also aver that the Municipality is not prejudiced by the late answering affidavit.
- [16] I agree. A delay of one day is indeed miniscule. The respondents' explanation for the delay is acceptable and no prejudice has been indicated by the Municipality by the respondents' ineptitude on that basis, the application for condonation is granted.
- [17] In the answering affidavit, the fact that the EFF has been registering members of the community for allocation of stands on the Municipality's land is not disputed. The application is opposed mainly on technical grounds namely

that: the matter is not urgent because some of the community members are already occupying the land, those who have been registered by the EFF for allocation of the stands have not taken occupation yet and there is no proof that their occupation is imminent the Municipality is merely anticipating that since they have been registered the next step would be occupation. For that reason, so it is submitted the application must be struck from the roll.

- [18] In the alternative, the respondents submit that the application must be dismissed based on the grounds that the Municipality has failed to establish the requirements for an interdict. The respondents submit that there are people who are already in occupation of the land and an interdict is intended to be a remedy for an ongoing or future conduct therefore it cannot be enforced against people who are already in occupation of the land. An interdict is also incompetent against those who have registered for allocation of the stands as they have not occupied the land yet and if they do occupy the land the Municipality has an alternative remedy in that, it can institute eviction proceedings.
- [19] The respondents further state that an interdict cannot be granted against unidentified persons as it would be difficult to determine who is bound by the order and that would result in the Municipality using the order against anyone and everyone. The balance of convenience also does not favour the granting of the interdict because there is no land occupation currently taking place.
- [20] It is trite that on the return day of a *rule nisi*, the court is entitled to revisit the issues that were raised in the papers as the basis of urgency in order to determine whether the *rule nisi* ought to be confirmed or not.¹
- [21] In this matter, the respondents' objection against the urgency of the application is premised on the incorrect view that because the impugned conduct is neither current, ongoing or imminent therefore there are other

¹ *Delta Corporation (Pty) Ltd v Van der Merwe* 2002 JDR 0893; *Phakedi v Dr Kenneth Kaunda District Municipality and Another* [J1461/11] [2011] ZALC JHB 83 (2012) 33IJL 700 (LC) 22 September 2011.

alternative remedies available to the Municipality instead of launching an urgent application.

- [22] The provisions of Uniform Rule 6(12) (b) are clear, the test for urgency is whether the applicant can obtain substantial redress in due course to protect its rights. Harm is merely a requirement for launching an application on urgent basis. See also *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd*² for that reason, I hold that there is no merit to the respondents' objection in this regard.
- [23] Except to allege that there are people already occupying the land with their families inexplicably, the identity of those people has not been disclosed in the answering affidavit. No attempt has also been made by the said occupants to identify themselves by filing confirmatory affidavits in that regard.
- [24] I also find it quiet peculiar that the circumstances under which those occupants relocated themselves to the Municipality's land are also not explained including the basis upon which the EFF designated itself the responsibility of registering members of the community for allocation of the stands on the Municipality's land.
- [25] I am also not persuaded that the order is or would be ineffectual merely on the basis that the respondents have not been identified by their names in the papers. In *Communicare v The Persons Whose Identities Are Unknown to the Applicant but who unlawfully occupy the remainder of the consolidated farm Bardale no. 451, Division of Stellenbosch better known as Fairdale and Others (CPD case no. 7970/03, unreported)* it was held that:

"the persons in occupation of land can be viewed as an ascertainable group, even though their names might not be known. Through the process of service more information concerning the identities of the group may become known. In the ordinary

² [2011] ZAGPJHC 196.

course no relief would be granted against unlawful occupiers under section 4 of the PIE Act (the Act) until notice has been given by a method approved by the court. When the eviction proceedings ultimately serve before the court, it will be necessary to assess the adequacy of the notice and whether an effective order against sufficiently identified parties can be granted.”

- [26] I am aligning myself with this dictum for the reason that, on the facts germane to this matter the respondents are cited as: “*unlawful occupiers and persons intending to unlawfully occupy the land*”. Upon being served with these proceedings³ the respondents opposed the application. In my view, by accepting service, opposing the application and also averring that there is a group that is already occupying the land and another which is yet to occupy the land the respondents have placed themselves squarely within the confines of being “*the ascertainable group even though their names might not be known*” therefore, it would not be difficult to determine who is bound by the order.
- [27] In terms of section 6 of PIE, the Municipality is enjoined with powers to prevent occupation and to also seek eviction of occupiers of the land on the basis of either unauthorised occupation or occupation of land which is unsafe or inhabitable.⁴ It is indisputable that the land that has been earmarked for invasion by the respondents is inhabitable as it has not been developed for housing. For all these reasons, the application succeeds.
- [28] With regard to costs, I am alive to the plight of the indigent members of the society, the inhumanity and degradation which comes with being landless and the failure of the state to uphold its constitutional obligation to provide housing to the indigents⁵ therefore, I do not intend saddling the respondents with a cost order.

³ Annexure “A”, “B” and “C” of the founding affidavit are copies of proof of service of the application on the respondent’s attorneys by email and by the Sheriff respectively.

⁴ *Port Elizabeth Municipality v Various Occupiers* (CCT 53/03) [2004] ZA CC7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 OCTOBER 2004) para 25.

⁵ In terms of section 26(1) and (2) of the Constitution Act, 108 of 1996 everyone is entitled to adequate housing. The state is obliged to ensure the “realization and progression” of this right.

[29] I make the following order.

1. The rule *nisi* (Part A) granted 15 December 2022 is hereby confirmed.
2. There is no order in respect of costs.

N.S. DANISO, J

APPEARANCES:

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