IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: B5673/2023

Date of hearing: 17 October 2023

Date delivered: 23 October 2023

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

20/10/23 [redacted]

DATE SIGNATURE

In the matter between:

INCASA BODY CORPORATE	**Applicant**
and	
RISE PROPERTY SOLUTION	**First Respondent**
RUDOLPH KROG	**Second Respondent**
OYENIYI AKADI	**Third Respondent**
BEAUTY BANKOLE	**Fourth Respondent**

JUDGMENT

SWANEPOEL J:

[1] This application came before me in the urgent court. The deponent to the founding affidavit, who appeared in person, says that he is the president of the 'respondent' (which should read applicant), which is the Icasa Body Corporate. He attached a constitution of the so-called body corporate which was signed by a number of the owners of the Icasa sectional title scheme at a meeting held on 22 July 2023. The constitution has as its theme "Reclaiming ownership of Incasa Body Corporate common property." The deponent says that he is authorized to act for the body corporate by virtue of the constitution.

[2] The first respondent is the managing agent for the scheme, who was appointed by the actual trustees of the body corporate. Second to fourth respondents are three of the six trustees of the body corporate.

[3] Applicant seeks, firstly, an interdict restraining respondents from either personally, or through another person, acting on behalf of the body corporate. Secondly, applicant seeks an interdict restraining respondents from bringing the body corporate into disrepute. Thirdly, applicant seeks to interdict respondents from controlling, administering or managing the common property of the body corporate.

[4] The founding affidavit is devoid of any factual context, save for a bald allegation that respondents intend to hold a meeting on 11 October 2023, which is apparently a threat to applicant, and which would bring the applicant into disrepute. There is no factual basis laid for this averment.

[5] Applicant relies on a finding by an adjudicator who was appointed in terms of section 54 of the Community Schemes Ombud Service Act, Act 9 of 2011. The complaint was brought by one Maligana Edward Musehane, evidently one of a group of breakaway owners of the scheme. The relief sought in the adjudication was the following:

[5.1] That first respondent must relinquish its management role of the scheme;

[5.2] That the board of trustees be dissolved and new trustees be appointed;

[5.3] That foreign nationals be ordered to make available their residents' permits;

[5.4] That the identity of service providers be made known to owners, and their accounts audited.

[5.5] That all the files of the body corporate to be 'availed'.

[6] The adjudicator held against the applicant in respect of all the relief sought, either on the basis that no case was made out, or that the relief sought was moot. However, somehow, the applicant interpreted the adjudicator's findings to mean that it granted them leave to hold their own general meeting, and to choose their own trustees. To that end they drafted their own "constitution", and they held a meeting of aggrieved owners on 24 July 2023. At this meeting new "trustees" were chosen, and it is those trustees who now drive this application.

[7] The application is riddled with difficulties. From a procedural point of view, applicant has not complied with the directive that requires an applicant to specifically deal with the grounds for urgency. Applicant vaguely refers to a meeting which was to be held by respondents on 11 October 2023, but not only does applicant not say why the meeting is a matter of concern, applicant also set the matter down for a date after the meeting had already been held, and the proverbial horse had bolted.

[8] From a substantive point of view, applicant suffers from a number of difficulties. Respondents say that second to fourth respondents are three of the lawfully elected trustees of the board of trustees, who are

solely allowed to act for the body corporate. Not only must I accept the respondent's version where it is in conflict with the applicant's version[1], the facts also strongly support the respondent's averment. Applicant's members do not seem to understand that they cannot simply hold their own meeting and install a rival board of trustees. They also do not understand that nothing in the adjudicator's finding gives them that authority. I believe that it is clear that the applicant does not have locus standi. The deponent to the founding affidavit could, therefore, also not be authorized by the non-existent applicant to act on its behalf.

[9] A further problem is that respondents say that there are three trustees who have not been joined, which is fatal in itself to the application. The other three trustees have a direct and substantial interest in the outcome of this matter, and they should have been joined as parties to the proceedings.

[10] Finally, applicants have not made out any case for the relief sought. They have not shown a clear right, or at least a prima facie right to the relief sought. They have alleged that they will be irreparably harmed should the order not be granted, but they have not supported that averment with any evidence. Applicants have also not shown that they have no alternative remedy. It is not sufficient for an applicant merely to make the bald allegation that the requirements for an interdict have been met. It must provide a factual basis for the averment.

[11] From the above it will be clear that the application must be dismissed. Respondents argued that the costs must be paid by the deponent *de bonis propriis*. Respondent's argument is that applicant does not exist. It has no legal personality, and any costs order granted against it will not be satisfied. Respondents say that the only manner by which they may recover costs is if the deponent is made to pay the costs.

---

[1] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (AD)

[12] Reluctant as I am to award costs against a person who is clearly not legally qualified, and who has taken a mistaken, but probably bona fide position on the adjudicator's findings, I must agree with respondents. The only way in which respondents can recover their costs is if the deponent is ordered to pay the costs.

[13] I therefore make the following order.

[13.1] The application is dismissed.

[13.2] Mr. Emmanuel Sibadela is ordered to pay the costs of the application *de bonis propriis.*

[redacted]

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

COUNSEL FOR APPLICANT:	**None. Mr Sibadela in person**
ATTORNEY FOR APPLICANT:	**None.**
COUNSEL FOR RESPONDENT:	**Adv. Z Schoeman**
ATTORNEY FOR RESPONDENT:	**Kleynhans & Swanepoel Inc.**
HEARD ON:	**17 October 2023**
JUDGMENT HANDED DOWN ON:	**23 October 2023**