

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 2168/2020

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED.
Signature <i>[Signature]</i>	
Date <i>19/6/2020</i>	

In the matter between:

INVESTEC PROPERTY (PTY) LIMITED
(REGISTRATION NUMBER: 1947/025753/07)
and
CHINA CITY LIMPOPO (PTY) LIMITED
(REGISTRATION NUMBER: 2013/231965/07)
DEVLAND CASH AND CARRY (PTY) LIMITED
(REGISTRATION NUMBER: 1997/003371/07)
POLOKWANE MUNICIPALITY

APPLICANT**FIRST RESPONDENT****SECOND RESPONDENT****THIRD RESPONDENT**

JUDGMENT

MAKGOBA JP

[1] The Applicant brought an urgent application against the Respondents for an order in the following terms:

- 1.1. A declaratory order confirming the cancellation of two lease agreements entered into in respect of ERF 5678, Pietersburg Extension 12 Township, Polokwane (“the Subject Property”).
- 1.2. For First Respondent to be interdicted from conducting any retail activities on the subject property not permitted in terms of the zoning of the property as “Industrial 1” in terms of the Polokwane / Perskebult Town Planning Scheme, 2016 in contravention of the Polokwane Municipal Planning Bylaw, 2017 and other legislation inclusive of the Spatial Planning and Land Use Management Act 26 of 2013 and Occupational Health and Safety Act 85 of 1992, its regulations and any other relevant municipal bylaw.
- 1.3. The eviction of the First and Second Respondents pursuant to the granting of the relief referred to in paragraph 1.1 above.
- 1.4. Should the premises not so be vacated, that the Sheriff of this Court with the assistance of South African Police Service be authorised and directed to evict First and Second Respondents from the property.
- 1.5. A mandamus to be granted against the Third Respondent, directing Third Respondent to enforce the provisions of the Scheme, its Bylaws relating to electricity, hygiene, health and safety, the provisions of Spatial Planning and Land Use Management Act and the National Building Regulations and Building Standards Act 103 of 1977 and

commence with prosecution against First Respondent in terms of such legislative provisions.

1.6. Costs against any party opposing the application on the scale as between attorney and client.

[2] The application is opposed only by the First Respondent. The Second Respondent filed an affidavit in support of the application and the Third Respondent has not participated in the proceedings even though relief is also sought against both the Second and Third Respondents.

[3] The following facts are common cause:

3.1. It is common cause between the parties that a lease agreement was concluded between the Applicant and the Second Respondent on the 24 April 2013. This lease agreement may for the sake of convenience be referred to as the "main lease" to distinguish same from the sub-lease entered into between the Second Respondent and the First Respondent.

3.2. In terms of clause 13 of the main lease agreement, the Second Respondent was entitled to use the property for the purpose of conducting its business, provided that such use does not contravene any town planning conditions applicable in respect of the property.

- 3.3. In terms of clause 14 of the main lease agreement the Second Respondent was entitled to sub-let a portion of the leased premises, but it was specifically provided that any sub-letting will not affect in any way whatsoever the obligations of the Second Respondent in terms of the lease agreement.
- 3.4. Clause 16 of the main lease agreement emphasized that the Second Respondent is prohibited from contravening “any law, bylaw, ordinance, proclamation or statutory regulation or the conditions of any license relating to or affecting the occupation of the property or the carrying on of the lessee’s operations in the property.
- 3.5. The sub-lease concluded by the Second Respondent and the First Respondent on the 21 February 2014 was with the incorporation of the main lease as an annexure thereto. In terms of clause 7.1 of the sub-lease the First Respondent acknowledged that it is fully aware of the terms and conditions of the main lease agreement.
- 3.6. In terms of clause 9 of the sub-lease, the leased premises was only to be used for purpose of a “Wholesale and Retail business, and for no other purpose whatsoever”. The Second Respondent did, however, not warrant that for the leased premises to be used as such.
- 3.7. Clause 11 of the sub-lease specifically provides that the First Respondent is obliged to, at its own costs, obtain Municipal approval of

the business to be carried on and prohibited the use of the leased premises for any “illegal or improper purposes”.

Factual Background

- [4] On or about the 25 February 2014 the Applicant consented to the conclusion of a sub-lease between the First Respondent and Second Respondent. By that time the First and Second Respondents had already concluded the sublease on 21 February 2014. Taking into account the aforesaid consent granted, no need existed for the Applicant to peruse or consider the contents of the sub-lease concluded.

- [5] The subject property is zoned “Industrial 1” in terms of the Polokwane / Perskebult Town Planning Scheme, 2016 (“the Scheme”) and allows for the following primary land uses: “*Warehouse, Builder’s yard, Mortuary, Industry, Public Garage, Service Industry, Panel Beating and Scrap Yard*”. As part of the secondary land use rights for which either a special consent or written consent is required from the Municipality the subject property may also be utilised for purposes of “*Crematorium, Noxious Industry, Special Use, Telecommunication Structures, Dwelling Unit (sub-ordinate to main use) and Cafeteria*”.

- [6] In the present case it is common cause that no such special consent or written consent was granted by the Municipality and accordingly the subject property may only be used for the aforesaid primary land use rights in terms of the Scheme. The First Respondent, however, is utilising the subject property for purposes of retail and is conducting shops from the subject property. "Shops" is defined in terms of the Scheme and is not one of the primary use rights allowed under an "Industrial 1" zoning.
- [7] The Applicant engaged the services of its town planner at the end of January 2020 to investigate and compile a report regarding the lawfulness of the First Respondent's activities on the subject property. In his report the town planner, Mr Jaco Daniel Du Plessis concluded that the relevant Scheme is contravened. The summary of the town planner's report is the following:
- 7.1. The zoning of the subject property is "**Industrial I**" and such zoning does not permit the subject property to be utilised for purposes of "Shop".
- 7.2. A distinction should be drawn between "wholesale trade" and "shops". "Wholesale trade" specifically excludes "retail trade and trading as a shop".
- 7.3. No application was made to the Municipality to obtain "special consent" in terms of clause 32 of the Scheme and therefore the subject property

may only be utilised for the primary land use rights allowed for in “Industrials 1” zoning.

7.4. The existing shops in the China Mall, operated by the First Respondent, are accordingly unlawful because the Scheme is contravened.

- [8] The town planner, Mr Du Plessis arrived at the conclusion that the relevant Scheme is contravened after the current zoning of the subject property was investigated by him and confirmed with reference to a zoning certificate issued by the Municipality and also having investigated the provisions of the Scheme. The town planner’s report is attached as Annexure “FA8” to the founding affidavit.
- [9] In addition to the aforesaid, the Applicant procured an occupational health and safety audit report that was conducted by Messrs OHSAC Safety Consultants. The findings in the occupational health and safety audit report stated that the First Respondent’s shopping mall scored 2% in terms of the Occupational Health and Safety Act 85 of 1993 and the relevant regulations as mentioned in the report.
- [10] The aforesaid health and safety audit report can be summarized as follows:
- 10.1. The China Mall failed with regard to the provision of fire extinguishers and fire control with reference to photographic evidence.

- 10.2. As far as the emergency exits are concerned, same do not comply with the relevant legislative provisions and regulations.
- 10.3. Electrical safety in the China Mall is horrendous with reference to photographic evidence and creates a massive fire risk.
- 10.4. The China Mall furthermore does not comply with waste management requirements again with reference to photographic evidence.
- 10.5. As far as hygiene is concerned, it is demonstrated, with reference to photographic evidence, that a container is utilised as a toilet and sewerage is overflowing.
- 10.6. No safety file or health and safety documentation could be produced by the China Mall.

The Occupational Health and Safety Audit Report is attached to the founding affidavit as Annexure "FA9".

- [11] On the 7th February 2020 the Applicant's attorneys addressed a letter to the First and Second Respondents. In terms of the letter, the Second Respondent was, in terms of the lease agreement, placed in breach and was afforded 10 days within which to remedy the breaches, failing which it was recorded that the Applicant may elect to cancel the lease agreement. On the 11 February 2020 the Second Respondent, in turn, caused a breach letter to be sent to the First Respondent.

On 18 February 2020 a letter was received from the First Respondent's attorney. In this letter the breaches were denied and it was stated that certain approvals were obtained from the Municipality.

[12] The Applicant purported to cancel the main lease agreement with the Second Respondent on the 26 February 2020 on the ground that the breaches referred to in the Applicant's letter of 7 February 2020 were not remedied. Similarly the Second Respondent also elected to cancel the sub-lease on the 28 February 2020.

[13] The Applicant contends that because of the breaches of the main lease agreement and the sub-lease, both such agreements have been cancelled, yet the First Respondent remains in unlawful occupation of the subject property and continues with its unlawful activities thereon.

The Second Respondent is not challenging the Applicant's cancellation of the lease agreement and has already vacated the premises, that is, the subject property.

Issues

[14] The following issues are to be determined in this matter:

14.1. Whether the First Respondent is in breach of the sub-lease agreement.

14.2. Whether the main lease agreement and the sub-lease were lawfully

cancelled by the Applicant.

- 14.3. Whether the Applicant is entitled to evict the First Respondent from the subject property.
- 14.4. Whether the Applicant has made out a case for a mandamus order against the Third Respondent (Municipality).

The Law

[15] The Applicant alleges that the First Respondent is acting unlawfully on the subject property in contravention of numerous legislative provisions and bylaws which are to the severe detriment of the Applicant as registered owner. These contraventions of the legislative enactments and bylaws are:

15.1. Contravention of the

- 15.1.1. Municipal Planning Bylaw, 2017 ("the Bylaw").
- 15.1.2. Polokwane / Perskebult Town Planning Scheme, 2016 ("the Scheme").
- 15.1.3. Spatial Planning and Land Use Management Act 26 of 2013 ("SPLUMA") and
- 15.1.4. National Building Regulations and Building Standards Act, 103 of 1977 ("the Building Standards Act").

15.2. The contravention of the Occupational Health and Safety Act, 85 of 1992 ("the Health and Safety Act").

- [16] The Polokwane / Perskebult Town Planning Scheme, 2016 is an approved Scheme as contemplated in section 57 of the Town Planning and Township Ordinance, 1986 (Ordinance 15 of 1986) and is applicable to all land and buildings within the area of the Scheme, denoted on the Map as confirmed in Part I of the Scheme.

The purpose of this town planning Scheme shall be to co-ordinate the harmonious development of the area to which it relates in such a way as almost effectively intended to promote the health, safety, good order, amenity, convenience and general welfare of such area, as well as efficiency and economy in the process of such a development.

- [17] In terms of section 19(3) of the Scheme no person shall use or cause or allow to be used, any land or building or part thereof for a purpose other than for which is provided for in the Scheme.

- [18] Section 26 of SPLUMA provides that:

“(1) An adopted and approved land use scheme-

(a) has the force of law, and all land owners and users of land, including a municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;

(b).....

(c)

(2) *Land may be used only for the purposes permitted-*

(a) *by a land use scheme;*

(b) *by a town planning scheme, until such scheme is replaced by a land use scheme; or*

(c) *in terms of subsection (3)".*

[19] SPLUMA provides in section 32 thereof that:

"(1) A municipality may pass by-laws aimed at enforcing its land use scheme.

(2) A municipality may apply to a court for an order-

(a) interdicting any person from using land in contravention of its land use scheme;

(b) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or

(c) directing any other appropriate preventative or remedial measure".

[20] In addition to the aforesaid section in SPLUMA, section 58 thereof provides that:

"(1) A person is guilty of an offence if that person-

(a) contravenes section 38(3);

(b) uses land contrary to a permitted land use as contemplated in section 26(2);

(c) alters the form and function of land without prior approval in terms of this Act for such alteration;

(d)

(2) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 20 years or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment”.

[21] Section 4 of the Building Standards Act provides that:

“(1) No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications - are to be drawn and submitted in terms of this Act .

(2).....

(3).....

(4) Any person erecting any building in contravention of the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R 100 for each day on which he was engaged in so erecting such building”.

[22] Section 14(1) of the Building Standards Act provides that the local authority shall issue a certificate of occupancy in respect of the building to the owner of a building or any person having an interest therein if it is of the opinion that such building has been erected in accordance with the provisions of the Act. Subsection (4) of the Act provides that the owner of the building or any person having an interest therein shall be guilty of an offence if he occupies or uses such building without being issued with the certificate of occupancy.

[23] The essence of the grounds upon which the Applicant relies in alleging a breach of the sub-lease agreement and incidental thereto the lease agreement between Applicant and Second Respondent are:

23.1. Contravention of the Town Planning Scheme by the First Respondent;
and

23.2. Contravention of the Occupational Health and Safety Act 85 of 1993, inclusive of general safety regulations, major hazard installations pertaining to fire, emergency exits, electrical safety, hygiene safety and first aid.

- [24] The First Respondent contends that the Applicant has failed to make out any case that even if it is correct that the alleged “Industrial I” zoning of the property does not allow for the use of the property in the manner utilised by First Respondent, that the use of the property affects “the co-ordinated and harmonious development of the area”.

The test in this regard was established in the case of **Pick’n Pay Stores Limited and Others v Teasers Comedy and Review CC and Others** **2000 (3) SA 645 (W)** at 653F where it was held:

“The test whether a use is “incidental to” another is whether it is legitimately part of that other use when viewed objectively. To determine whether the use to which the land is being put contravenes the legislative provisions, the question is whether, viewed objectively, such alleged infringing use is legitimately part of or incidental to the use permitted by the town planning Scheme. Any use of property which in no way affects the co-ordinated and harmonious development of the area is not a contravention”.

- [25] The general purpose of a town planning scheme is in my view the co-ordination and harmonious development of the area to which it relates in such a way as will most effectively tend to promote the health, safety, good order, amenity, convenience and general welfare of such area as well as efficiency and economy in the process of such development.

It is against this backdrop that Southwood J in **City of Tshwane Metropolitan Municipality v Grobler 2005 (6) SA 61 (TPD)** said at page 65:

"It is therefore the duty of the relevant local authority to enforce the provisions of its town-planning scheme.....And owners and occupiers of property governed by the scheme are obliged to use the property and any building thereon in conformity with the provisions of the scheme and comply with any lawful directives given to them by the local authority in relation to such use".

See also: **United Technical Equipment Co (Pty) Ltd v Johannesburg City Council 1987 (4) SA 343 (T)** at 348H-1; and **Johannesburg City Council v Bernard Lewis Construction 1991 (2) SA 239 (W)** at 242E-G.

[26] In paragraph 12 of the **Grobler** judgment it is furthermore stated that:

"[12] This deliberate flouting of the law in the face of lawful attempts by the applicant to perform its statutory duty warrants a special costs order. To permit such conduct would result in anarchy particularly in a city where it is notorious that contraventions of the Scheme in circumstances such as the present are widespread".

[27] In the matter of **United Technical Equipment** (supra) at 348 I – J the Full Court per Harms J (as he then was) stated that:

“The respondent has not only a statutory duty but also a moral duty to uphold the law and to see to due compliance with its town planning scheme. It would in general be wrong to whittle away the obligation of the respondent as a public authority to uphold the law; a lenient approach could be an open invitation to members of the public to follow the course adopted by the appellant, namely to use land illegally with a hope that the use will be legalised in due course and that pending finalisation the illegal use will be protected indirectly by the suspension of an interdict”.

[28] In the case of **Lester v Ndlambe Municipality 2015 (6) SA 283 (SCA)** the Supreme Court of Appeal had to deal with a situation where the Appellant had contravened the provisions of section 4(1) of the National Building Regulations and Building Standards Act 103 of 1977. The Appellant had erected a building without submitting plans and specifications to the Municipality for approval.

Majiedt JA at paragraph 23 stated the following:

*“[23] The answer is simply that the law cannot and does not countenance an ongoing illegality which is also a criminal offence. To do so, would be to subvert the doctrine of legality and to undermine the rule of law. In **United***

Technical Equipment Co (Pty) Ltd v Johannesburg City Council the Full Court was seized with an appeal against the granting of an interdict in the Local Division in terms whereof the appellant company (qua respondent a quo) was restrained from using property which was zoned residential in terms of the Town Planning Scheme, for business purposes (offices). It was common cause that by using the property as offices, the appellant was committing an offence”.

- [29] It is clear from the cases referred to above that Courts have a duty to ensure that the doctrine of legality is upheld and to grant recourse at the instance of public bodies charged with the duty of upholding the law.

With reference to the present case it is therefore imperative that the First Respondent should obey the law in respect of the zoning of property and erection of buildings. The Court will not countenance the First Respondent's ongoing statutory contraventions and is enjoined to enforce the provisions of the Municipal bylaws and the town planning scheme.

Breach and Cancellation of the main lease and sub-lease Agreements

- [30] It is common cause that the subject property is zoned “Industrial I” in terms of the zoning certificate which forms part of the Court papers in this matter. The primary rights allowed for the subject property are warehouse, builder's yard, mortuary, public garage, service industry, panel beating, and scrap yard.

It is furthermore common cause that the First Respondent conducts none of the abovementioned businesses on the subject property. Instead the First Respondent conducts a business of retail trade or shops. This is clearly in contravention of the Scheme and SPLUMA.

- [31] Clause 9 of the sub-lease agreement between the First and Second Respondents specifically provided that the premises were to be used by First Respondent for the purpose of “a wholesale and retail business”. This provision in the sub-lease is clearly in contravention of the Scheme and SPLUM. It is common cause that the Municipality did not grant any “special consent” or “written consent” in terms of the Scheme for the First Respondent to use the subject property otherwise than as “Industrial I”.

I may point out that the Scheme refers to “shops” or “retail” which is not a primary or secondary land use falling within the zoning of “Industrial I”. The First Respondent, in its answering affidavit readily conceded that the subject property is utilised for purposes of retail.

- [32] The lease agreement as well as the sub-lease specifically prohibits any contravention of the town planning scheme read with the provisions of the Bylaw and SPLUMA. Any approval that might have been granted by the Municipality in terms of the Building Standards Act is subject to the zoning of “Industrial I”.

[33] Mr Van der Merwe SC, counsel for the Applicant submitted that once this Court makes a finding that the Scheme is contravened by the utilisation of the structures erected on the subject property, it follows that no lawful approval could have been granted by the Municipality, allowing for the subject property to be used for retail purposes. This, Counsel submitted, would fall foul of the provisions of section 7(1)(a) of the Building Standards Act.

I agree.

[34] Mr Uys SC, Counsel for the First Respondent conceded, correctly in my view, that once I make a finding that the Scheme is contravened by the conducting of a business of retail trade or shops by the First Respondent, then a breach of the sub-lease agreement is established.

I accordingly make a finding that the First Respondent is in breach of the sub-lease agreement. This also renders the Second Respondent to be in breach of the main lease agreement.

[35] Regarding the contravention of health and safety regulations by the First Respondent, the Applicant relies upon the occupational health and safety report that was compiled by Messrs OHSAC Safety Consultants and attached as Annexure "FA9". The First Respondent's shopping mall scored a dismal 2% in the audit report.

The report concludes that massive health and safety, fire and hygiene risks are created by the First Respondent requiring immediate intervention.

The Municipality also conducted its own investigation and compiled a report, a copy of which is annexed to the Second Respondent's affidavit marked Annexure "D4" wherein the Municipality comprehensively lists the shortcomings of the First Respondent as far as the relevant health and safety and fire prevention regulations are concerned. By virtue of contravening these regulations concerning health and safety, the First Respondent is in breach of the sub-lease agreement.

Disputes of Fact

[36] Counsel for the First Respondent argued that there are irresolvable material disputes of fact on the papers. He listed the following as material disputes of fact:

36.1. First Respondent's alleged breach of the sub-lease agreement.

36.2. The alleged failure by the First Respondent to have remedied any possible breach that may have existed.

36.3. The alleged contravention of the town planning Scheme by First Respondent.

36.4. The veracity and validity of the audit report relied upon by Applicant and non-compliance with specified legislative instruments inclusive of the Building Standards Act.

[37] It is trite that in motion proceedings where different versions are contained the Court should follow a common sense and robust approach.

In the case of **Soffiantini v Mould 1951 (3) SA 307 (O)** at 308 Prince JP said the following:

"If by a mere denial in general terms a respondent can defeat or delay an applicant who comes to Court on motion, then motion proceedings are worthless, for a respondent can always defeat or delay a petitioner by such a device. It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits".

[38] I am of the view that there are no material disputes of fact in this matter. It is indisputable that the First Respondent conducts a business of retail trade or wholesale and retail on the subject property zoned "Industrial I" in contravention of the Scheme and SPLUMA. This aspect alone renders the First Respondent to be in breach of the sub-lease agreement.

This much has been conceded by the First Respondent in its answering affidavit. On this aspect alone, the Applicant validly cancelled the lease agreement and the sublease.

Because of the valid cancellation of the lease agreement and the sub-lease, the First Respondent is currently in unlawful occupation of the subject property. The aforesaid unlawful occupation warrants the First Respondent's eviction.

- [39] There is no merit in First Respondent Counsel's submission that there exists any material disputes of fact that render the issues in this matter irresolvable on the papers. I therefore make a ruling that this matter be decided on the papers as they stand.

Interdictory Relief

- [40] For more than a century our law has authoritatively required an applicant seeking a final interdict to:

- (1) demonstrate a "clear right".
- (2) show an injury in the form of irreparable harm actually committed or reasonably apprehended and
- (3) the absence of an alternative remedy.

See **Setlogelo v Setlogelo 1914 AD 221 at 227.**

- [41] The Applicant in the present case is the registered owner of the subject property and is entitled to enforce the provisions of the Scheme, the Bylaw, SPLUMA as well as the Building Standards Act against the First Respondent

and compel the Municipality to enforce such legislative provisions. In addition to the aforesaid, the Applicant was entitled to enforce the provisions of the lease agreement and in terms of the Health and Safety Act prevent the First Respondent from contravening same.

Consequently, the Applicant has a clear right to the interdictory relief sought against the First Respondent and the Municipality.

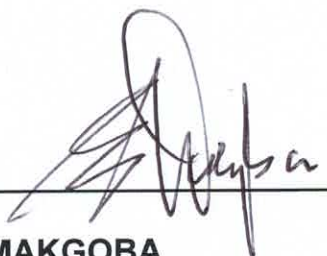
- [42] A contravention of the Scheme, the Bylaw and the provisions of SPLUMA, in itself, constitutes harm because the Scheme operates to the benefit of the owners of property falling within its jurisdictional area and if same is contravened property owners within its jurisdiction are detrimentally affected. The unlawful activities of the First Respondent moreover create massive risks to the Applicant which would translate to irreparable harm if the interdictory relief is not granted.

- [43] I am of the view that the Applicant has no alternative remedy but to approach this Court for the interdictory relief to be granted against the First Respondent and the Municipality. Despite the cancellation of the lease agreements and despite the Applicant's demand, in writing, to vacate the subject property, the First Respondent refuses or neglects to do so and will continue with its unlawful activities on the subject property unless interdictory relief is granted.

[44] In the premises, the following order is granted as prayed in the Notice of Motion:

1. It is declared that the lease agreement concluded between the Applicant and the Second Respondent on the 24th April 2013 in respect of Erf 5678, Pietersburg Extension 12 Township, Polokwane ("the subject property") is cancelled.
2. It is declared that the sub-lease agreement concluded between the First and Second Respondents in respect of a portion of the subject property dated the 21st February 2014 is cancelled.
3. That the First Respondent be and is hereby interdicted from conducting any retail activities on the subject property, not permitted in terms of the zoning of "Industrial I" in Polokwane / Perskebult Town Planning Scheme, 2016, ("the Scheme"), in contravention of the Polokwane Municipal Planning Bylaw, 2017 ("the Bylaw"), the Spatial Planning and Land Use Management Act 16 of 2013 ("SPLUMA"), the Occupational Health and Safety Act 85 of 1993, its Regulations and any other relevant municipal bylaw.
4. The First Respondent and all those persons or entities holding occupation of the subject property through it, be and are hereby evicted from the subject property and are ordered to vacate same within a period of 30 (thirty) days from date of this order.

5. That should the First Respondent and all those persons or entities holding occupation of the subject property through it, fail and / or refuse to vacate the subject property within 30 (thirty) days from date of this order, that the Sheriff of the High Court, with the assistance, if necessary, of the South African Police Service, is authorised and directed to evict the First Respondent from the subject property.
6. That a mandamus is hereby issued against the Third Respondent, directing the Third Respondent to enforce the provisions of the Scheme, the Bylaw, its bylaws relating to electricity, hygiene, health and safety, the provisions of SPLUMA and the National Building Standards Act, 103 of 1977, against the First Respondent and commence with prosecution steps against the First Respondent in terms of such legislative provisions.
7. That the First Respondent pays the costs of this application which costs shall include the costs of two Counsel.

A handwritten signature in blue ink, appearing to read 'E M Makgoba', is written over a horizontal line.

**E M MAKGOBA
JUDGE PRESIDENT OF THE
HIGH COURT, LIMPOPO
DIVISION, POLOKWANE**

APPEARANCES

Heard on : 12 June 2020

Judgment delivered on : 19 June 2020

For Applicant : Adv M P Van der Merwe SC
Adv J A Venter

Instructed by : Edelstein Farber Grobler Inc
c/o Kirk Twine Attorneys

For First Respondent : Adv J C Uys SC

Instructed by : Yammin Hammond Inc
c/o Kampherbeek & Pogrand Attorneys