



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 No: 4586/2018

In the matter between:

MANGAUNG TOWNSHIP COMMUNITY
WORKING GROUP (COMMONLY KNOWN
AS MUCPP COMMUNITY WORKING
GROUP)

Applicant

and

COMMTECH COMPREHENSIVE SCHOOL
AND SCHOOL GOVERNING BODY

First Respondent

UNIVERSITY OF FREE STATE

Second Respondent

[In its capacity of being part of the outreach
project **MUCPP Project**]

MR BILLYBOY RAMATLHELE

Third Respondent

[In his capacity as the University of Free
State Community engagement for **MUCPP**
Project]

**MEMBER OF EXECUTIVE COUNCIL FOR
THE DEPARTMENT OF HEALTH
FREE STATE PROVINCE**

Fourth Respondent

**MEMBER OF EXECUTIVE COUNCIL FOR
THE DEPARTMENT OF EDUCATION
FREE STATE**

Fifth Respondent

**MASTER OF THE HIGH COURT N.O.
BLOEMFONTEIN**

Sixth Respondent

PROFESSOR BASSIE WESSELS

Seventh Respondent

[Interested Party]

THE REGISTRAR OF DEEDS N.O.

Eighth Respondent

**PREMIER OF FREE STATE PROVINCIAL
GOVERNMENT**

Ninth Respondent

[Interested Party]

HEARD ON: 13 JUNE 2019

JUDGMENT BY: LOUBSER, J

DELIVERED ON: 27 JUNE 2019

[1] This is an application for certain relief against mainly the First Respondent. In terms of the amended Notice of Motion handed in without objection during the hearing of the application, the following relief is sought:

"(a) Directing the First Respondent to return the control, possession and occupation of the premises commonly known by Mangaung Community as MUCPP situated at 19057 Singonzo Street, Rocklands, Bloemfontein, a property owned by Free State Provincial Government, the Ninth Respondent.

(b) Interdicting the First Respondent from engaging in the following activities:

(i) Unlawfully using force to evict the Applicant from the premises owned by the Provincial Government of Free State Province, situated at 19057 Singonzo Street, Rocklands, Bloemfontein.

- (ii) *Unlawfully assaulting and preventing the Applicant and its members' access, possession, control and occupation of the premises.*
- (c) *Declaring the conduct of the Second Respondent, for stating that the First Respondent is the rightful owner of the premises owned by the Provincial Government, Free State Province and that the Applicant be instructed to hand over the keys to the First Respondent, be declared unlawful.*
- (d) *Ordering that the Applicant are to occupy the premises commonly known as MUCPP, being a property of Free State Provincial Government situated at 19057 Singonzo Street, Rocklands, Bloemfontein.*
- (e) *Costs of suit."*

[2] This relief is claimed following an incident that allegedly took place on 13 September 2017 at the premises mentioned in the Notice of Motion. According to the facts alleged in the Founding Affidavit, members of the Applicant were assaulted, insulted, robbed and

evicted from the premises by teachers, staff members and some learners of the First Respondent on that day.

[3] In opposing the application, the First, Second, Third, Fourth and Fifth Respondents raised an objection to the *locus standi* of the Applicant in the proceedings. Having read the application papers, it appeared to me that this objection needed to be addressed first, and I therefore requested counsel to address the Court on this issue only.¹ This judgment therefore concerns the issue of *locus standi* of the Applicant only.

[4] In the Founding Affidavit, it is explained that a certain Trust, the MUCPP Trust, was registered in 1994. In terms of the Deed of Trust, which forms part of the papers submitted by the Applicant, this Trust has 16 (sixteen) trustees, and bears the name Mangaung – University of the Orange Free State Community Partnership Programme Trust. The "*Community Working Group*", who is the Applicant in the present proceedings, is defined in the Deed of Trust as "*the group of members of the beneficiary community who take part in the activities of the Trust and which group is co-ordinated by the Trust.*" The deponent to the Founding

¹ See: Giant Concerts CC v Rinaldo Investments (Pty) Ltd 2013 (1) BCLR 251 (CC) at par. 58

Affidavit, Mr. M. J. Khethelo, states that he is one of the representatives of the Community Members elected to represent them at the Trust on 19 September 2012.

[5] The Deed of Trust provides for 3 (three) working groups which will liaise closely with the management committee of the Trust, namely the Community Working Group (the present Applicant), the Academic Working Group and the Bloemfontein Health Services Forum. The Deed further provides that the Trust may take action in a court of law and may defend any proceedings that are instituted against the Trust. No such powers are bestowed on any of the working groups of the Trust. In presenting argument at the hearing of the application, Mr. Ponoane appearing for the Applicant, conceded that the Applicant is not a legal persona or juristic entity separate from the Trust. Incidentally, the Trust itself is not a party to the application at all.

[6] On 13 December 2018 the First, Fourth and Fifth Respondents served a Rule 7(1) Notice requiring proof of Mr. Khethelo's authority to have signed a Founding Affidavit on behalf of the Applicant on 6 September 2018 and to bring the Application on 10 September 2018. In reply hereto, the Applicant filed a Resolution

signed on 6 February 2019 *"to ratify, mandate and support the application ... brought by Mr. M J. Khethelo on behalf of MUCPP elected Community Group, and sign any further papers in the proceedings."* This Resolution was therefore passed some 5 (five) months after Mr. Khethelo has launched the application on behalf of the Applicant.

[7] A further development in the sequence of events needs mentioning here. It transpired during the hearing of the Application that the Trustees of the MUCPP Trust had signed a Resolution on 22 January 2019 to terminate the Trust. It became common cause between the parties that the Sixth Respondent formally acknowledged the termination of the Trust on 25 April 2019, almost 2 (two) months before the hearing. To be fair to the Applicant, I also need to mention that this information was apparently received by the Applicant a few days before the hearing.

[8] In the founding papers, the Applicant points out that the property in question was always in the lawful possession, occupation and control of the Applicant, in partnership with the Second and Fourth Respondents, without any disturbance, since the year 1994. The Second and Third Respondents mention in their opposing affidavit

that the premises boasts a number of improvements, for instance a building with offices, halls and a guesthouse. Apparently there is also a community health centre, or clinic, according to the Applicant. The Applicant goes on to say that, at some point, the Fifth Respondent had allowed the First Respondent to use the premises for exams and for sporting activities. The school premises of the First Respondent is adjacent to the premises in question. Later on, certain disputes arose between the Applicant and the First Respondent, and it was these disputes that apparently led to the incident of 13 September 2017. In the opposing papers, the fact that the Applicant has been in control of the premises for a considerable period of time, is not seriously disputed.

- [9] The authorities on legal standing clearly point out that such standing is not only a procedural question but also a question of substance. The Applicant has to show that it is the rights-bearing entity, or is acting on the authority of the entity, or has acquired its rights.² The phrase *locus standi in iudicio* is commonly used in another context, namely that it is a requirement that a party to litigation must have a direct and substantial interest in the right,

² Land and Agricultural Development Bank of SA v Parker 2005 (2) SA 77 (SCA) at par. 44. Sandton Civic Precinct (Pty) Ltd v City of Johannesburg (2009) 1 All SA 291 (SCA) at par. 19.

which is the subject matter of the litigation, and in the outcome of the litigation.³

[10] As far as trusts are concerned, it is trite that the property of a trust vests in the trustee. A beneficiary of the trust does not have *locus standi* to institute proceedings against other parties to protect or recover trust property for the trust.⁴

[11] Coming back to the facts of the present matter, it is evident on the Applicant's own version that it is not a juristic person, but only a functionary of the MUCPP Trust, which Trust has not authorised the Applicant to institute the proceedings on its behalf. It is further evident, having regard to the Deed of Trust, that the Applicant Working Group owes its existence to the Trust, and that it functions under the auspices of the Trust. It follows that, in this sense, the Applicant has no *locus standi* to move for the relief set out in the amended Notice of Motion.

[12] The question now is whether there is any other basis on which the Applicant can claim *locus standi in iudicio*. In this respect it is appropriate to refer to the Founding Affidavit again. In the affidavit,

³ Jacobs v Waks 1992 (1) SA 521 (A) at 534

⁴ See for instance: Harms, Civil Procedure in the Superior Courts, Issue 57, page A - 59

the deponent says that he is a resident, a community leader and a representative of the community members of Mangaung Township elected to represent them at the MUCPP Trust. He further states that he has a right to bring the application in terms of the provisions of Section 38 of the Constitution.

- [13] Section 38 of the Constitution provides that where it is alleged that a right in the Bill of Rights has been infringed or threatened, the following persons may approach a competent court for relief: (a) anyone acting in their own interest, (b) anyone acting on behalf of another person who cannot act in their own name, (c) anyone acting as a member of, or in the interest of, a group or class of persons, (d) anyone acting in the public interest, and (e) an association acting in the interest of its members. As for (d), there is no allegation in the application papers that the Applicant is acting for the sake of the public interest. It is only (c) that can maybe find any application here, because the deponent is acting on behalf of a group of persons, as the name of the Applicant in the amended Notice of Motion clearly indicates. This is, of course, if it is accepted that a right in the Bill of Rights has been infringed, as alleged.

[14] At best for the Applicant in this respect, the proceedings before me can be defined as a group or class action in circumstances where the group is acting separately and independently from the Trust. Mr. Ponoane, for the Applicant, stressed the point in argument that the Applicant has established a direct and substantial interest in the affairs of the Trust, and as such, it has *locus standi* to bring the application. Although there may be some merit in this submission at a first glance, it leads to another dilemma for the Applicant.

[15] It has been held that a party seeking to represent a class or group of persons in court proceedings, should first apply to court to do so.⁵ The certification by a court to proceed with a class or group action, involves questions relating to the definition of the class, the identification of some common claim or issue, some evidence of a valid cause of action, the suitability of the representative, and that a class action is the most appropriate procedure for the adjudication of the underlying claims.⁶ Needless to say, the deponent in the present matter, has not approached the court for the necessary certification to proceed on behalf of the group of people called the Mangaung Township Community Working

⁵ Mukaddam v Pioneer Foods (2013) ZACC 23 at par. 40

⁶ Pretorius v Transnet Second Defined Benefit Fund 2014 (6) SA 77 (GP), Trustees for the time being of the Children's Resource Centre Trust v Pioneer Foods (Pty) Ltd 2013 (2) SA 213 (SCA)

Group. It is important to note that the Group obviously represents the community of the Mangaung Township, and can therefore not be regarded as a group of only a few persons acting outside the auspices of the Trust. The Applicant cannot claim *locus standi* on the basis of a group or class action in the absence of certification by a Court.

[16] There is, however, another basis on which the Applicant may have shown *locus standi*, and that is the basis provided by the Mandament van Spolie. Since legal standing also involves questions of substance, as we have seen, this issue calls for further consideration. By means of the Mandament, physical possession is protected and the relief in terms thereof arises solely from deprivation of possession, otherwise than through legal procedure. All that a Plaintiff has to allege and prove, is that he was in peaceful and undisturbed possession of the property.⁷

[17] The cause of the Plaintiff's possession is irrelevant, and it is also irrelevant that the Defendant has a stronger right or claim to possession. Also irrelevant is the fact that the possession of the

⁷ Impala Water Users Association v Lourens N.O. (2004) 2 All SA 476 (SCA)

claimant is wrongful.⁸ The Plaintiff only has to prove unlawful deprivation in the sense that it took place without his consent or due legal process.⁹

[18] In the present case, the Applicant is a group of community members, representing the community of Mangaung Township, who claim that they were in undisturbed possession of the premises, and that they have been unlawfully deprived of that possession by the First Respondent. The relief they claim, is undeniably based on the Mandament. For this reason only, they have shown *locus standi* in the matter.

[19] As for the launching of the Application without authority to do so, there are a host of authorities stating that such proceedings may be ratified subsequently, as happened in the present instance.¹⁰ The fact that the proceedings were only ratified afterwards, therefore does not stand in the way of the Application as such.

[20] In the premises, the following orders are made:

⁸ Yeko v Qana 1973 (4) SA 735 (A)

⁹ Ivanov v North West Gambling Board (2012) 4 All SA 1 (SCA)

⁹ Wightman v Headfour (Pty) Ltd 2008 (3) SA 371 (SCA)

¹⁰ For the authorities, see Harms, *supra*, par B6.8 on page B 37, 38

1. The Applicant has the necessary *locus standi* in the proceedings.
2. The application may be enrolled again for further hearing.
3. Costs of the proceedings relating to *locus standi*, to be costs in the cause.



P J LOUBSER, J

For the Applicant:

Mr. M J Ponoane

Ponoane Attorneys

BLOEMFONTEIN

For First, Fourth and Fifth Respondents:

Advocate M. J Merabe

Instructed by:

The State Attorney

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For Second and Third Respondents:

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