

NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT,
PRETORIA REPUBLIC OF SOUTH AFRICA

CASE NO: 21681/2012

DATE:30/04/2012

In the matter between:

AFRIFORUM

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR

LOCAL GOVERNMENT GAUTENG

Second Respondent

MINISTER OF ARTS AND CULTURE

Third Respondent

MINISTER OF PROVINCIAL AND

LOCAL GOVERNMENT

Fourth Respondent

JUDGMENT

This is an urgent application for a temporary interdict. The applicant ("Afriforum"), a company not for profit which strives to protect and promote constitutionally guaranteed human rights, is aggrieved by a decision of the first respondent ("the City") to rename certain major streets within its jurisdiction. In terms of its notice of motion, Afriforum seeks an order interdicting the

City, pending the determination of a review application in relation to the decision of the City on 29 March 2012 regarding the replacing of the 25 street names in Pretoria to be instituted within a time to be determined by this court, from replacing (om te vervang) any route or direction indicators or street name signs in relation to the streets concerned.

2. Only the City opposes the application, the other respondents having formally given notice that they abide the decision of the court.

3. Names in this context have become politically controversial. Afriforum believes that the renaming process, which is not restricted to streets but extends to the very name of the city itself, is being conducted in such a manner that it constitutes an assault on the cultural heritage of a section of the community and thus violates the right to dignity of those concerned.

4. At the same time, Afriforum recognises that the City wishes to give recognition to those persons who played an important part in the history of the broad community of South Africa by giving the names of such persons to streets in the city and by renaming those streets whose names give offence or stand in the way of nation building.

5. The City, under its present democratically elected political leadership, believes for its part that the street names within its jurisdiction reflect an earlier dominant culture and do not take account of the democratic transformation our country has undergone and is still undergoing.

6. The issue of road names is, at a political level, linked to the issue of the very name of the city itself. The greater part of the city which was formerly called Pretoria has been renamed Tshwane. The city of Pretoria is now restricted to a few blocks, in one of which this court is situated. So unless one is being pedantic, the very name of the city itself which an individual chooses to use involves to some degree a political choice.

7. The courts have no place in the dispute at a political level. Even if Afriforum is correct in its general criticism of the way the renaming process has gone, a matter on which I express no

opinion, as Brand JA remarked in *The Democratic Alliance v Ethekwini Municipality* [2011] ZASCA 221 para 38 ... bad politics is something for the electorate to decide. It is not for this court, or any other court, to interfere in the lawful exercise of powers by the council on that basis.

8. The urgency in relation to the application arises because the City is in the process of putting up new road signs to give effect to its decision. The City objected to the matter's being heard as one of urgency. The main contention in this regard is that Afriforum delayed too long in bringing its urgent application and that the urgency is thus self-created by Afriforum. What happened is that Afriforum reacted promptly on learning of the decision and sought an undertaking that the City would not implement its decision pending a review which the applicant intended bringing, giving the City a fairly lengthy period to respond to its request for an undertaking. The City did not respond until the last day of the period so given and then declined to furnish the undertaking and began putting up the new street name boards. Afriforum brought its urgent application within a reasonable time after the City communicated its refusal to halt the implementation of its decision pending the proposed review.

9. It became clear during argument before me that the City used the period offered by Afriforum to consider its position to engage a contractor to manufacture and put up new signs. That means that the City made its decision to decline to provide the undertaking sought and then delayed for tactical reasons to communicate that decision to Afriforum. Ail's fair in love and war, according to the poet and, perhaps, that is so in politics as well. But not in litigation. I exercise the discretion conferred upon me by rule 6(12)(a) in favour of Afriforum and rule that this matter be enrolled and heard as one of urgency.

10. An applicant for an interim interdict must establish a clear right or at least a prima facie right, as well as an apprehension of irreparable injury and the absence of an ordinary or alternative remedy. The applicant must then establish that the balance of convenience is in its favour. The balance of convenience is determined by weighing the prejudice to the applicant if the interdict is withheld against the prejudice to the respondent if the interdict is granted.

11. Under the decision of the City which Afriforum wishes to attack, a total of 25 roads are to be renamed. Of those eight are provincial roads, in respect of which the City gave an undertaking in open court that it would not proceed with the implementation of its decision until the completion of a process by which the City must consult the provincial government. These eight roads include Church Street, about which Afriforum feels particularly strongly. In regard to the provincial roads, there is no imminent threat of harm of any kind, let alone any irreparable harm. Afriforum has in regard to the provincial roads an alternative remedy: it may engage the provincial authorities in an attempt to persuade them to withhold their consent to the renaming of the provincial roads.

12. The papers show that the renaming process in respect of Genl Louis Botha Drive has already taken place. The road has been renamed January Masilela Drive. Afriforum seeks no relief in relation to this road and is content that the new road signs remain in place pending its review.

13. In open court, counsel for the City undertook further that the City would not replace any of the other road signs for a period of six months. Instead, it will put up the "new" names and leave the "old" names in place for that period. The effect of this undertaking, which conditionally on the failure of its application for an urgent interdict, Afriforum accepted, is that

there is no imminent threat of the very harm which Afriforum seeks to prevent by interdict.

14. In regard to Afriforum's proposed review, counsel for the City undertook that the City would cooperate with Afriforum to ensure the swift adjudication of the review by the court and counsel for Afriforum similarly undertook to institute the proposed review application within two weeks of the date of this judgment. The parties were agreed that the proposed review could, if all concerned cooperated, probably be heard in August 2012.

15. In my view the undertaking to leave the "old" name boards in place disposes of the present urgent application because the relief sought by Afriforum is directed at preventing the City from replacing the old with the new, not from putting up the new boards and leaving the old ones in place. Afriforum's notice of motion says as much. Because it may be expected that the court will pronounce finally on the rights of the parties during the period in which the City will leave the old name boards in place, there is no threat of imminent harm. The court hearing the review may competently order that the new name boards be removed. Such an order was made in *The Democratic Alliance v Ethekwini Municipality*, supra.

16. Counsel for Afriforum criticised the decision to put up the new street names but leave the old ones in place on the ground that having two names would cause confusion. I do not agree. In the multi-lingual, multi-ethnic empires of old central and eastern Europe, it was the norm for towns to have more than one name. The name used by any particular person depended in large part on the community with which he or she associated himself or herself.¹ Whether this is a useful historical model for our country is not for this court to say but the

¹For example, Bratislava in present day Slovakia was known to German language speakers as Pressburg and Klaipeda in modern Lithuania was called Memef by German language speakers. In our own country, Kaapstad has for years also been known as Cape Town, without discernable distress to the inhabitants of that city.

practice does not seem to have caused any confusion. I do not think the public will in the circumstances described be confused if a street has two, clearly signposted names.

17. These conclusions render it unnecessary for me to consider the other grounds raised by the City in opposition to the application.

18. I make the following order:

1. The undertakings by the applicant and by the first respondent described in this judgment are noted.
2. Subject to such undertakings, no order is made on the application.
3. The costs of this application are reserved for decision by the court which hears the applicant's review application.

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Judge of the High Court 30 April 2012

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