

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH AND SOUTH GAUTENG HIGH COURT, PRETORIA)

DATE: ¹³12 October 2009
CASE NO: 57648/2009

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES NO.	
(2) OF INTEREST TO OTHER JUDGES: YES NO.	
(3) REVISED.	
13/10/2009 DATE	 SIGNATURE

In the matter between:

THE CITY OF TSHWANE METROPOLITAN

MUNICIPALITY

APPLICANT

AND

FREEDOM FRONT PLUS

FIRST RESPONDENT

AFRIFORUM

(SECTION 21 COMPANY)

SECOND RESPONDENT

FJC BEYERS

THIRD RESPONDENT

JUDGMENT

PHATUDI (J)

- [1] The Applicant instituted this application on a semi-urgent basis seeking relief as set out in the Notice of Motion. The key prayer sought is '[D]eclaring that the judgment, and more particularly the interim order made by Mr Justice Prinsloo in an interim application brought under case number 38183/2007, do not, upon a proper interpretation thereof, prohibit the signage posting concerning the 2010 FIFA World Cup Tournament that the City of Tshwane is obliged to make at various gateways, in and around and in the City of Tshwane, in order to comply with its obligations in terms of the FIFA 2010 Host City Agreement between the City of Tshwane and FIFA;'
- [2] At the commencement of the hearing, Mr Pelser, Counsel for the Respondents, submitted that the Respondents intend to raise two points *in limine*, to wit: (i) Urgency and (ii) Non-joiner of FIFA and South African Local Organising Committee as well as the Minister of Arts and Culture. He submitted that I must make a ruling if the Respondent should first deal with the said *points in limine* or not.
- [3] Mr Maleka, counsel for the Applicant, duly assisted by Mr Mothle, submitted that counsel for the Respondent cannot tender evidence but must argue his case on what is

contained in the affidavit. He referred me to NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS v PHILLIPS AND OTHERS 2002 (4) SA 60 (W) where Heher J followed the principle set out in PROKUREURSORDE VAN TRANSVAAL v KLEINHANS 1995 (1) SA 839(T) that a party must state his case on affidavit and if not done, cannot be raised.

- [4] I then dismissed the application to first deal with the said points in limine, but to submit or mention them in his opposing argument.
- [5] Mr Maleka submitted that the kernel of this application is embodied in the relief sought in prayer 2.1 of the Notice of Motion or, in the alternative, prayer 2.2.
- [6] He submitted that this court is to determine if the Interim Court Order by my brother Prinsloo J, as it appear on page 58, upon a proper interpretation thereof, does prohibit the signage posting concerning the 2010 FIFA World Cup

Tournament that the City of Tshwane is obliged to make at various key gateway points.

[7] He, upon my enquiry of these gateway points, referred me to 9 (nine) "*key gateway points*" set out at paragraph 9.3.1 – 9.3.9 of the founding affidavit.

[8] My brother's Order dated 28 August 2007 state, as read on record by Mr Maleka, that

'2. Hangende die beregting van die B-gedeelte van die Kennisgewing van Mosie, word die 1ste, 4de en 5de respondente verbied om op roete-en rigtingswysers onder sodanige respondente se beheer die naam Pretoria met die naam Tshwane te vervang...'

[9] Mr Maleka submitted that the word "vervang" is translated to mean, among others, "substitute" or "replace". He further submitted that the promotional advert intended to be erected at the 9(nine) "*key gateway points*" is neither a direction signage nor the replacement or substitute of any signage bearing the name Pretoria on but a Welcome signage. He referred me to the examples of the said promotional advert

annexed to founding affidavit marked RM6 at page 99-101 of the paginated bundle.

[10] On enquiry as to what words will be on the promotional advert on those "*key gateways points*", he (Mr Maleka) submitted that the wording will be considered by the committee in line with what it has been agreed on in terms of "Host City Agreement" concluded by and between Federation International De Football Association (FIFA), 2010 FIFA World Cup Organising Committee South Africa (LOC) and City of Tshwane Metropolitan Municipality (Host City). He further referred me to a letter marked RM7 at page 182 which set out the names to be used as per agreement both on International and Domestic references. He said that those names will be considered by the committee.

[11] Addressing the semi-urgency, Mr Maleka submitted that the implementation process of the host city's obligations in terms of the Fifa agreement (as set out in annexure RM10 at page 186) is scheduled to commence by August 2009 and completed by no later than 31 March 2010. He submitted

that should the Applicant await the adjudication of the main application set down for hearing on 25-26 March 2010, the Host City (applicant) will not be ready by June 2010. The implementation process needs a period of no less than 8 months to complete.

- [12] Mr Maleka submitted that it will be in the public interest, specifically the people of this town and the country not to loose the hosting of the memorial event, 2010 World Cup. He added that even the Respondents concede thereto as per the wording at paragraph 11 and 12 of the opposing affidavit that states:

- '11 Die Respondente wil dit onomwonde stel dat die Respondente ten gunste is van 'n suksesvolle Wereldbekertoernooi gedurende 2010 en, tewens, daarna uitsien...
- 12 Die Respondente verlang dat die Wetreldbekertoernooi in 2010 'n sukses is.'

- [13] In addressing the court on the approach to adopt in interpreting the order of Prinsloo J, Mr Maleka submitted that

if the order is clear and unambiguous, then such order be followed and if not clear, then the reasons stated in the judgment must be visited in determining its meaning or intended to mean.

[14] In rebuttal thereto Mr Pelser, counsel for the Respondents, submitted that the Respondent opposed this application in fear that the word Pretoria would be substituted with that of Tshwane. The Respondent's attitude is to preserve the heritage in preserving the name Pretoria. He said that the Applicant created the impression in the mind of the Respondent that the Applicant intended to substitute the name Pretoria with that of Tshwane.

[15] He further submitted that had the Applicant stated clearly why it had to be in court today, the Respondent would not have opposed. He submitted further that the Applicant is welcome to proceed as contracted with FIFA subject to the conditions that the name Pretoria is as well promoted as in the FIFA's Host City for the 2010 website. He referred me to an extract of the website annexed at page 146 marked CK4.

[16] Mr Pelser further submitted that the Respondent is not opposing the erection of the promotional adverts at the "*key gateway points*" but the substitution of the name Pretoria with that of Tshwane on the en-roete signage.

[17] In my evaluation of the evidence tendered and submission made by both counsel for the Applicant and the Respondent, it is clear and common cause that the order of Prinsloo J, prohibits (verbied) the substitution of the name Pretoria with that of Tshwane on all en route and direction signage pending finalisation of Part B of the main application in case 38183\2007.

[18] In my view, the erection of promotional advert at the identified 9(nine) key gateway points is not prohibited by the said interim order.

[19] The wording on the promotional advert to be erected is the issue that is not before this court for consideration. I will thus not deal with it.

[20] The Respondent conceded that the interim order prohibits only the removal or substitution of the word Pretoria with that of Tshwane on the en route signage.

[21] The 2010 FIFA World Cup Tournament is indeed an event not for the town only but for the country. The event will benefit all South African alike. It is even better said in Sepedi that "***Moeng tla ka geso gore reje ka wena***".

[22] It is on that basis I find that the Applicant's application stands to be granted.

[23] It is trite law that costs follow the event. The Respondent stands to be mulcted with costs.

[24] I as a result thereof, make the following order;

[24.1] The interim order made by Mr Justice Prinsloo in an interim application brought under case number 38183\2007, does not prohibit the signage posting

concerning the 2010 FIFA World Cup Tournament that the City of Tshwane is obliged to make at various gateways, in and around and in the City of Tshwane, in order to comply with its obligation in terms of the FIFA 2010 Host City Agreement between the City of Tshwane and FIFA.

[24.2] The Respondent is ordered to pay the Applicants costs on party and party scale including the costs of 2 (two) counsel.



AML PHATUDI
JUDGE OF THE NORTH GAUTENG HIGH COURT

Heard on: 6\10\2009

For the Applicant: Adv MALEKA

Instructed by: Messrs MATABANE INCORPORATED

For the Respondent: Adv PELSER

Instructed by: Messrs WILLIE SPIES

Date of Judgment: 13 OCTOBER 2009