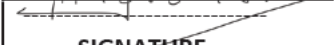




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No. **2024-064900**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED


SIGNATURE
21 June 2024
DATE

In the matter between:

BALEPYE COMMUNAL PROPERTY ASSOCIATION

Applicant

and

**THE DIRECTOR-GENERAL OF THE DEPARTMENT
OF AGRICULTURE, LAND REFORM AND RURAL
DEVELOPMENT**

First Respondent

DOROTHY KGOAHLA

Second Respondent

GIVEN MAENETJA

Third Respondent

BENJAMIN MAENETJA

Fourth Respondent

SOLLY MALATJI

Fifth Respondent

CLIFFORD MAENETJA

Sixth Respondent

This matter was heard virtually (Ms teams) and disposed of in terms of the directives issued by the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

JUDGMENT

KUBUSHI J

[1] The Applicant is a communal property association as defined in the Communal Property Associations Act, 28 of 1996 registered as such with the Department of Agriculture, Land Reform and Rural Development ("the Department") with an adopted Constitution annexed to the founding affidavit as Annexure "IK1". The Applicant was incorporated on or about 26 July 2009.

[2] The Applicant approached Court for an order that the Second to Fifth Respondents be interdicted from convening and/or holding a meeting, purportedly by the Applicant, for and on behalf of the Executive Committee of the Applicant and/or Members of the Applicant on 23 June 2024 at Bulamahlo Day Care Centre or any other place; and further be interdicted from convening or holding any other meetings on behalf of the Applicant and/or its Members whether it be a public or general meeting.

[3] The application is opposed by the Second and Fourth Respondents who appeared in court without any legal representation and affirmed that they were in a position to represent themselves. The other Respondents did not participate in the proceedings. No recourse is sought against the First Respondent which is cited in the papers merely due to the fact that it might have an interest in this application.

[4] The Second and Fourth Respondents have, in opposing the application, raised a number of points *in limine* coupled with defences on the merits. Lack of urgency has been raised as one of the points *in limine*. Due to the outcome that is finally reached in this judgment, the various *in limine* points raised are not addressed. However, since this application is in the urgent court, the point on urgency requires determination.

[5] This matter is urgent. This is so because the meeting in question is to take place on Sunday 23 June 2024, that is, within three days from the hearing of the application. It means that a determination of the application should be made before that date. In order for a matter to be heard in urgent court, the Applicant must show that it will not be afforded substantial redress in due course.¹ The relief sought by the Applicant in the papers is to interdict and prohibit the Respondents from conducting any meeting under the auspice or name of the Applicant. It is common cause that a meeting under the auspice of the Applicant is scheduled to take place on Sunday 23 June 2024. It is, thus, obvious that should the meeting proceed on Sunday the Applicant will not be afforded substantial redress in due course.

[6] It is apparent from the papers that the urgency complained of is not self-created. It is common cause that the date for the meeting of 23 June 2024 was set at the meeting held by the community on 1 June 2024. The uncontroverted evidence of the Applicant's deponent is that he became aware of the meeting on 4 June 2024. He avers further that he immediately approached the Department for assistance in an attempt to stop the meeting but received no response. He, thereafter, approached the Respondents with a request that they provide an undertaking that the meeting will not proceed but received a response indicating that such an undertaking will not be provided. It was only then that on 12 June 2024 that the Applicant approached court for relief.

[7] The interdictory relief sought by the Applicant is final in nature. The relief is sought to secure a permanent cessation of the alleged unlawful conduct of the Respondents. The Applicant seeks the Court to stop the Respondents from distributing notices pertaining to the meeting scheduled to be held on 23 June 2024 and/or from conducting any meeting on 23 June 2024 or any meeting under the auspice or name of the Applicant. Such relief if granted, is without a limitation to time, it is final.

[8] There are three requisites for the grant of a final interdict, all of which must be present and established by the Applicant at the same time. The said requirements are:

¹ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at para 7.

(a) a clear right on the part of the applicant; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.²

[9] It need also be stated that it is trite that where a final order is sought in an application the applicant's case must stand on the allegations alluded to in the founding affidavit, and admitted by the respondent, if not, the application for relief must fail. The general rule, as enunciated by the Court in *Plascon-Evans*,³ is that an applicant who seeks final relief on notice of motion proceedings must, in the event of a dispute of fact, accept the version set up by his or her opponent unless the latter's allegations are, in the opinion of the court, not such to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.

[10] Before the requirements for a final interdict can be discussed, it is necessary to determine whether the Applicant has established a *nexus* between the Respondents and the conduct complained about, that is, the act of convening the meeting of 23 June 2024. For the reasons that follow hereunder, it does not appear that the Applicant has been able to establish, in these papers, that the Respondents are responsible for convening the meeting as alleged.

[11] The Applicant seeks to interdict the Respondents and prohibit them from conducting or convening a meeting under the auspice of the Applicant. For this assertion, the Applicant relies on notices that are circulating in the community informing about the intended meeting. The said notices are attached to the founding affidavit as "PR3", "PR4" and "PR5". The contention is that: in Annexures "PR3" and "PR4" the Fourth Respondent is referred to as a contact person in his capacity as "*The Administrator*" with his contact number mentioned there; in Annexure "PR5" the purpose of the meeting is stated as to elect the executive committee of the Applicant; and, in Annexure "PR4" the names of the Respondents appear and are referred to as "*the top five line-up*". This is the sum total of the evidence that the Applicant adduces in its contention that the Respondents are responsible for convening the meeting under the auspice of the Applicant.

² Setlogelo v Setlogelo 1914AD 221 at 227.

³ Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623 (A).

[12] The Second and Fourth Respondents concede that a community meeting is to be held on 23 June 2024, they, however, dispute the Applicant's allegation that they are responsible for convening that meeting. They argue that the fact that their names are mentioned in the notices does not mean that the meeting is convened by them or that they intend to conduct a meeting under the auspice of the Applicant.

[13] Besides the evidence pertaining to the notices that the Applicant avers are circulating in the community, there is no other evidence that indicates that the Respondents are responsible for convening the meeting. As stated, the Second and Fourth Respondents deny that they are responsible for convening the meeting. They are aware that such a meeting is to take place because a decision was made by the community at an earlier meeting that was held on 1 June 2024. The meeting of 1 June 2024, according to the Second and Fourth Respondents, is one of a series of meetings which commenced in October 2023 where the election of new committee members was an issue on the agenda. The Second Respondent in particular averred that the names stated in Annexure "PR4" are intended to be elected as office-bearers in the positions next to their names and not that they are responsible for convening the meeting. The Applicant in its replying affidavit seems to agree to this averment made by the Second Respondent.

[14] The Applicant seeks final relief on motion proceedings, as already indicated, and due to the dispute of fact that has arisen, the *Plascon-Evans* rule must apply. On the reading of the papers in their entirety, it cannot be said that the dispute raised by the Second and Fourth Respondents is not real and genuine, or that their version raises such obvious fictitious dispute of facts, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it stands to be rejected. And, on that basis alone the application should be dismissed.

[15] As regards the other Respondents, that is the Third, Fifth and Sixth Respondents, even though they did not appear before court, the evidence adduced by the Applicant does not establish the fact that they are responsible for convening the meeting. As such, the Applicant's case against them does not stand, as well.

[16] Consequently, the application is dismissed.



KUBUSHI J

Judge of the High Court

Gauteng Division

Appearances:

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