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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2022 – 058996

[1] REPORTABLE: N

[2] OF INTEREST TO OTHER JUDGES: N

[3] REVISED

Date: **17/07/2024**

Signature: **S Aucamp AJ**

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY

First Applicant

and

KABELO CONLEY LESUFI

First Respondent

Summary: Local Authority – Unlawful Structures – Erected without approved building plans – Local Authority may apply to interdict the unlawful work and may seek an order for the demolition of the unlawful structures – National Building Regulations and Buildings Standards Act 103 of 1977.

JUDGMENT

AUCAMP AJ;

[1] The respondent, the registered owner of a certain immovable property, Erf 1[...] Spruitview, Extension 1, Registration Division IR, Province of Gauteng, situated at 1[...] K[...] Street, Spruitview, Extension 1 (*“the property”*).

[2] In 2020 due to complaints due received from members of the community and a subsequent inspection carried out by the City of Ekurhuleni, it was noticed that the respondent was carrying on building works at the property, which works were in contravention of *inter alia* the National Building Regulations and Building Standards Act, Act 103 of 1977 (*“the Act”*) and the relevant provisions of the Ekurhuleni Town Planning Scheme. The inspection resulted in a verbal warning having been issued to the respondent to desist from the said unlawful activities.

[3] The verbal warning resulted in the respondent having prepare this and submitted the required building plans in terms of Section 4(1) of the Act for consideration and approval by the City of Ekurhuleni as far as and in relation to the building works that had already been commenced with and the intended completion thereof. The building plans were eventually approved by the City of Ekurhuleni in October 2022.

[4] It subsequently transpired that the respondent abandoned the intended and approved building works and instead continued to execute certain construction works in respect of which no amended building plans were submitted to the City of Ekurhuleni for approval. The unlawful construction works resulted in further notices having been issued to the respondent by the City of Ekurhuleni.

[5] The conduct of the respondent contravenes the Act and/or the Ekurhuleni Town Planning Scheme at least in the following respects:

a. the approved building plans provided for a double storey unit whereas the respondent continued to construct multiple single storey units; and

b. the respondent deviated from the approved foundation position of 4 meters from the boundary wall to a mere 2.5 meters’ distance from the boundary wall.

[6] The respondent ignored all notices issued by the City of Ekurhuleni calling upon him to desist from the unlawful conduct. Consequently, the City of Ekurhuleni issued an application against the respondent and claiming an order calling for *inter alia* the demolishing of all illegal structures at the property.

[7] The respondent initially failed to enter an appearance to oppose the application resulting in the application being placed on the unopposed roll on 23 March 2023. Notwithstanding, the respondent attended the hearing, and indicated to the court that he intended to oppose the application.

[8] The unopposed court afforded the respondent a further opportunity to oppose the application by postponing the application to the oppose roll. The court however, directed the respondent to deliver his answering affidavit by no later than 24 April 2023. The respondent was furthermore referred to Legal Aid South Africa, the WITS Law Clinic and the Pro Bono Office to obtain legal assistance.

[9] The respondent failed to approach any of the Legal Aid South Africa, the WITS Law Clinic and the Pro Bono Office. Equally, the respondent failed to deliver his answering affidavit in compliance with the Directives issued by the unopposed court. Furthermore, the respondent not only continued to complete the building work in continuous contravention as aforesaid but continue to advertise the facilities for hire to members of the public.

[10] The continuous unlawful conduct of the respondent resulted in the City of Ekurhuleni having approached the urgent court on 30 May 2024. Again, the respondent appeared at the urgent hearing, unrepresented and without having delivered an appearance to oppose the application and/or an opposing affidavit. Windell J stood the matter down in order to afford the respondent a further opportunity to oppose the application.

[11] The urgent court ultimately granted an order interdicting the continuation of the respondent's unlawful conduct but refrain from having granted the demolishing order and directed that same be dealt with in the ordinary course.

[12] The application came before me on 21 May 2024. The respondent, failed to file its answering affidavit but appeared in person at the hearing before me.

[13] The respondent did not contest the fact that he had acted unlawfully and orally explained that he had submitted amended building plans to the city of Ekurhuleni for consideration, in line with the now amended building structures at the property, and that he was awaiting the City's approval thereof. To the extent that I am able to have any regard to these submissions, especially given the failure of the respondent to have delivered an answering affidavit, I was advised by counsel for the applicant that the City of Ekurhuleni has received the amended plans but will not be able to approve same. As a consequence, the structures erected by the respondent would remain unlawful.

[14] The respondent's efforts to uplift not only himself but others not only should be applauded but encouraged. The economical challenges facing this country desperately are in need of efforts employed by people such as the respondent to uplift themselves and those for whom they have, sometimes without any obligation, taken responsibility for. That being said, these efforts must take place within the boundaries of the law.

[15] The purpose of the Act, is to provide for the promotion of uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities for the prescribing of building standards and for matters connected therewith. It is used to prevent chaos, lawfulness and catastrophic consequences.¹

[16] The Town Planning Scheme, 2014 deals with issues of zoning, building lines and lines of no access, use of land or buildings, development conditions, parking and loading facilities, amenity and appearance of buildings, the administration of land development rights and law enforcement.

¹ Berg River Municipality v Zelpy 2065 (Pty) Ltd 2013 (4) SA 154 (WCC) at [26]

[17] Legislation is for the efficient running of municipalities and for the greater good of all that falls within its jurisdiction.

[18] In terms of section 4(1) of the Act no person shall, without the prior approval in writing of the local authority, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of the Act. Section 4(4) of the Act provides that a person who erects a building in contravention of section 4(1) is guilty of an offence and liable on conviction to a fine not exceeding R100 for each day on which he was engaged in so erecting the building.

[19] In *Berg River Municipality v Zelpy 2065 (Pty) Ltd*, Rogers J Held that:²

“The broad scheme of the Act in my view is this, Firstly, a person may not erect a building without approval from the local authority in the form of approved plans (ss 4 – 7). If he erects a building without such approval, he is guilty of an offence (s4(4)). In addition, the local authority may apply to interdict the unlawful work and may seek an order for the demolition of the unlawful structures (s21).”

[20] The structures erected by the respondent outside the approved building plans were buildings in respect of which plans and specifications were required to be drawn and submitted in terms of the Act.

[21] It is not denied that the actions of the respondent are and remain unlawful, that he has had ample opportunity to correct same and that he failed to adhere to the notices issued to him as well as the urgent court order granted against him.

[22] Equally, it remains undisputed that the respondent had ample opportunity to obtain legal assistance and to properly oppose this application, inter alia by filing an answering affidavit. In this regard, in *Belete Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in liquidation) and Others*³ the Supreme Court of Namibia held:

² 2013(4) SA 154 (WCC) at [25].

³ (SA19/2012) [2013] NASC 18 (15 November 2013) at [17]

“It follows from what has just been said that the appellant has not complied with the Rules of the Court that regulate the prosecution of appeals in material aspects. In reaching this conclusion, it has been borne in mind that appellant is a layperson who represents himself before the Court. The appellant implored the Court to overlook his procedural non-compliance and determine the substantive issues that he asserts underlie the appeals, namely, the satisfaction of the judgement of the District Labour Court mentioned above. However, we cannot overlook the Rules which are designed to control the procedures of the Court. Although a Court should be understanding of the difficulties that lay litigants experience and seek to assist them where possible, a court may not forget that court Rules are adopted in order to ensure the fair and expeditious resolution of disputes in the interest of all litigants and the administration of justice generally. Accordingly, a court may not condone non-compliance with the rules even by lay litigants where non-compliance with the rules would render the proceedings unfair or unduly prolonged.”

[emphasis added]

RELIEF

[23] In the result I make the following order:

Order

[24] The structure was already erected by the respondent on the property, Erf 1[...] Spruitview, Extension 1, Registration Division IR, Province of Gauteng, situated at 1[...] K[...] Street, Spruitview, Extension 1 (*“the property”*) is to be demolished by the respondent on or before 17 August 2024.

[25] Should the respondent fail to give effect to the order in 1 above, the applicant is authorised to gain access to the property and to take all such steps required in order to demolish the unlawful structures.

[26] Any and all costs associated with the demolition referred in 2 above, shall be for the account of the respondent.

[27] The respondent is directed to pay the applicant's costs of this application, such costs to be taxed on the party and party scale such costs to be taxed in accordance with Scale B of Uniform Rule 67A.

S AUCAMP
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 17 July 2024.*

HEARD ON: 21 May 2024

DATE OF JUDGEMENT: 17 July 2024

For the Applicant: Adv N Naidoo
Instructed by Chiba Attorneys

For the Respondent: No representation