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

Case Number: 008172/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES/NO

DATE **28/01/25**

SIGNATURE

In the matter between:

PRETORIA EDUCATIONAL CENTRE CC

Applicant

and

CITY OF TSWANE METROPOLITAN MUNICIPALITY

First Respondent

MMASEABATO MUTLANENG

Second Respondent

JUDGMENT

Joyini J

INTRODUCTION

[1] This is an application whereby the applicant seeks relief against the first and second respondents to approve the transfer of certain immovable properties identified below to the applicant in accordance with the provisions of the sale

agreement entered into between the applicant and the first respondent in 2006.¹

- [2] The applicant in this matter is Pretoria Educational Centre CC (“PEC”), a Close Corporation duly registered in terms of the Close Corporations Act of 1984 under registration number: 1990/025759/23. Its main place of business is situated at 4[...] J[...] R[...] Street at the corner of Edmund, Hospitaal and Johannes Ramokhoase Street, Arcadia, Pretoria.²
- [3] The first respondent is the City of Tshwane Metropolitan Municipality, a category “A” municipality established in terms of Section 4 of the Local Government: Municipal Structures Act of 1998. Its main place of business is situated at Tshwane House, 3[...] M[...] Street, Pretoria.³
- [4] The second respondent is Mmaseabata Mutlaneng, an adult female, who is cited in this application in her official capacity as the City Manager of the first respondent. She is employed as such at the office address of the first respondent cited above.⁴
- [5] The respondents oppose the application.
- [6] The court appreciates the insightful and engaging submissions from both parties' legal representatives, which greatly assisted in adjudicating this matter.

BACKGROUND FACTS

- [7] The first respondent (“the City”) is the owner of certain immovable properties within its jurisdiction. On 7 July 2006, the City and PEC entered into an “interim lease agreement”, to operate pending the conclusion of a sale agreement and the transfer to PEC of certain identified immovable properties. The City refused to transfer the properties to PEC. As a result, in 2007, an

¹ Caselines 03-82 to 03-83.

² Caselines 01-10.

³ Caselines 01-11.

⁴ Caselines 01-11.

application was brought before this court under case number 7440/2007 to compel the City to perform in terms of the sale agreement with PEC. Prayers for relief sought under case number 7440/2007 read as follows:

“1. That [the City] be ordered to sign all documentation required by [MDC] to effect registration required by [the City] to effect registration of transfer of the properties in annexure "C" to the notice of motion and that such documentation be signed by [the City] within 10 days of date of service of this order on [the City].

2. That in respect of the sale of the properties listed in annexures 'B', 'D' and 'E' to the notice of motion on the terms and conditions as contained in the deeds of sale which [MDC] has submitted to [the City], [the City] be ordered to take all such steps by not later than 30 November 2007, as may be necessary

—

2.1 to comply with the provisions of section 79(18) of the Local Government Ordinance 17 of 1939; and

2.2 to comply with the provisions of the Municipal Finance Management Act 56 of 2003.

3. That [the City] be ordered to sign all documentation required by [MDC] to effect registration of transfer of the properties listed in annexures 'B', 'D' and 'E' to the notice of motion within 10 days after compliance by [the City] with the provisions of paragraph 2 of this order.

4. That [the City] be ordered to sign the infrastructure cost management fund agreement drafted on 7 November 2006 and as is referred to in paragraph 10.55.5 of the founding affidavit and in paragraph 3 of annexure 'HCB52' to the application, and thereafter to deliver the signed document to the applicant by 30 September 2007.

5. That in the event of [the City] failing and/or refusing to sign any of the documents referred to in paragraphs 1, 3 and 4 of this order, the Sheriff of the High Court for Pretoria Central be authorised to sign such documents on behalf of the first respondent.”

- [8] The City opposed the application to compel it to transfer the Properties. At that stage, its only defence of substance was that it required the properties for social housing purposes.
- [9] On 28 August 2007, Du Plessis J granted a Court Order in favour of PEC.
- [10] In effect, by agreeing to the Order, the City abandoned its defence that certain of the properties were needed for social housing but raised the need for compliance with the statutory measures mentioned in paragraphs 2.1 and 2.2 of the Order. The terms of the Order indicate strongly that the need to comply with the two statutory measures was not an impediment to the transaction but merely a formality which might delay its completion.
- [11] After 13 years of what can only be described as bureaucratic dithering, the City brought the rescission to set aside the Order. The legal basis upon which the City sought rescission was that complying with the Order would force the City into noncompliance with s 79(18) of the Ordinance on Local Authority 17 of 1939, which requires valuation and advertisement of an intention to dispose of municipal property and s 14 of the **Local Government: Municipal Finance Management Act, 56 of 2003**, which prescribes certain processes before property can be sold or transferred by a municipality such as the City. The matter was allocated to Tuchten J.
- [12] On 22 May 2024, Tuchten J, in dismissing the rescission application in City of Tshwane Metropolitan Municipality v Mandela Development Corporation (Pty) Ltd and Others⁵ said the following:

“22. The basis upon which the City seeks rescission is that complying with the Order would force it to act contrary to law. I am satisfied that this is not so. The structure of the Order implies that on the date it was granted, the City was satisfied with the amount of R3 million offered in the draft and that this amount was market related. Otherwise, there would have been no point in

⁵ (7440/2007) [2024] ZAGPPHC 507 (22 May 2024).

consenting to the Order, because no amount of administrative activity could ever have led to compliance with s 79(18).

23. Moreover, PEC has leased the Parcel from the City at a substantial monthly rental pending the conclusion of a sale agreement and transfer away from the City, amounting to more than R16 million.

24. When these simple facts are conjoined to the extraordinary delays in bringing the application for rescission, even after the City on its own version had determined a market value for the Parcel, I am driven to the conclusion that no good cause for the delay has been shown. The rescission was precipitated by an application brought recently against the City in this court under case no. 8172/2022 to compel transfer of the properties for which it had introduced purchasers to the City. I conclude that the City only brought the rescission in response to commercial pressure placed on it to implement the Order and that but for this pressure, the City would have continued to let things slide.

25. To summarise: the City had to show good cause for the rescission it seeks. This would require it demonstrating that it had a basis in law for its refusal to comply with the Order and an acceptable explanation for its delay in bringing the application for rescission. The City has shown neither. The application cannot succeed.

26. The respondents have asked for punitive costs. I have found that the application for rescission was misconceived and inadequately thought through. The fundamental flaw in the application for rescission, from a costs perspective, is that no consideration appears to have been given to establishing a basis for the assertion that the Proposed Purchase Price of R3 million would not, at the relevant time, have constituted fair market value for the proposed sale properties. Although these considerations would justify a punitive costs order, I am persuaded by counsel for the City that the City was motivated by a desire to obtain clarity from a court regarding a situation which its officials found confusing and to uphold, rather than break, the law. I have therefore decided not to impose a punitive costs order on the City. Should the City persist in its determination not to comply with the Order, it might not be so fortunate the next time this matter comes before the court."

APPLICATION FOR LEAVE TO FILE SUPPLEMENTARY AFFIDAVIT

- [13] Counsel for the applicant, in his application for leave to file a supplementary affidavit, submits that the purpose of the supplementary affidavit is to assist the court to have a full picture of the factual matrix in *casu*. This affidavit does not change the cause of action nor introduce a new cause of action. It sets out facts that transpired after all the normal affidavits (i.e. founding, answering, and replying) had been exchanged.⁶
- [14] Counsel also submits that the supplementary affidavit does not in any way prejudice the respondent. Counsel for the applicant concludes by submitting that the interest of justice demands that the supplementary affidavit be allowed.
- [15] Counsel for the respondent did not argue against granting leave to the applicant to file the supplementary affidavit.
- [16] In weighing up the prejudice of allowing the supplementary affidavit on the respondent versus the prejudice on the applicant, the balance again tips in favour of the applicant.
- [17] It is my considered view that the applicant's supplementary affidavit does not prejudice the respondent and it will in fact assist the court in reaching a decision. It should thus be allowed.

ISSUES FOR DETERMINATION AND RELIEF SOUGHT

- [18] The court is called upon to deal with the following prayers:
- “1. That the First Respondent is ordered to sign all documentation required by Applicant to effect the registration of transfer of the following properties within 14 (fourteen) calendar days hereof:*
- 1.1. THE REMAINDER OF ERF 9[...] A[...]**
REGISTRATION DIVISION J.R.
EXTENT 4986 SQUARE METRES
HELD BY DEED OF TRANSFER T11348/1968

⁶ Caselines 07-4 to 07-5.

- 1.2 **THE REMAINDER OF PORTION 1 OF ERF 5[...] A[...]**
REGISTRATION DIVISION J.R.
EXTENT 2084 SQUARE METRES
HELD BY DEED OF TRANSFER G67/1932 (VA6922/1998)
- 1.3 **PORTION 2 OF ERF 5[...] A[...]**
REGISTRATION DIVISION J.R.
EXTENT 296 SQUARE METRES
HELD BY DEED OF TRANSFER T11348/1968
- 1.4 **PORTION 30 OF FARM PRINSHOF No. 3[...]**
REGISTRATION DIVISION J.R.
EXTENT 1151 SQUARE METRES
HELD BY DEED OF TRANSFER T38475/1975
- 1.5 **PORTION 9 OF FARM PRINSHOF No. 3[...]**
REGISTRATION DIVISION J.R.
EXTENT 1023 SQUARE METRES
HELD BY DEED OF TRANSFER T11349/1968
(“the properties”)
2. *In the event that First Respondent fails and/or refuses to sign any of the documents referred to in prayer 1 above, the Sheriff of the above Honourable Court for Pretoria Central, or his duly authorised deputy, is authorised to sign such documents on behalf of First Respondent.*
3. *The Applicant is granted leave, in the event that the First Respondent failing to comply with prayer 1 above, to approach this Court on the same papers, supplemented to the extent required, to seek an order for payment of a fine by the First Respondent.*
4. *First Respondent is ordered to pay the cost of the application on an attorney and client scale, including the cost of counsel on scale C.”⁷*

APPLICANT’S CONTENTION

[19] Counsel for the applicant submits that on 17 May 2024, this court heard the rescission application, and on 22 May 2024 handed down a judgment dismissing the rescission application with costs (“the judgment”). Counsel

⁷ Caselines 08-7 to 08-9.

emphasised that the judgment stated that there is no reason why the transfer of the properties could not have been done nor any reason why they cannot be transferred now. Counsel argues that the judgment effectively disposed of the legal basis of respondent's opposition to the current proceedings.

[20] According to the counsel for the applicant, after the rescission application was dismissed, the first respondent took steps to prepare a draft sale agreement which was sent to the applicant on 26 July 2024. The draft agreement (incorporating the sale agreement concluded between the parties in 2006) was duly signed and delivered to the offices of the first respondent on 5 August 2024. First respondent signed the agreement and communicated this to the applicant on 27 August 2024. Counsel contends that despite having been provided with the requisite documentation to achieve transfer of the properties, first respondent has, to date, failed and/or refused to sign the documentation.

[21] Counsel for the applicant submits that the applicant has lawfully purchased the properties 18 years ago and as a result of the first respondent's obstinate conduct by refusing to give effect to the sale agreement. Counsel contends that the first respondent is fully aware of the judgment that dismissed the rescission application and the Court Order granted on 28 August 2007. The Court Order, *inter alia*, orders the first respondent "*to sign all documentation required by applicant to effect registration of transfer of the properties...*". Counsel for the applicant is of the view that the first respondent deliberately disobeys the order, or neglects to comply with it and as such, the first respondent is in wilful contempt of the Court Order.⁸

RESPONDENT'S CONTENTION

[22] Counsel for the respondents contends the applicant is not entitled to any of the relief sought. Counsel submits that the issue in dispute is whether there is willfulness or *mala fides* in the conduct of the respondents. Counsel disputes that the mandamus orders sought by applicant are warranted, given the

⁸ Caselines 07-3 to 07-12.

context and the subsequent developments. Counsel submits that it is not in dispute that the transfer of the properties was ordered in 2007.

- [23] Counsel referred the court to *Fakie NO v Systems (PTY) Ltd*,⁹ which dealt with the prerequisite for the committal in respect of contempt of court where the following was said: “[9] *The test for when disobedience of a civil order constitutes contempt has come to be stated as whether ‘the breach was committed ‘deliberately and mala fide’. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).’*”
- [24] Counsel for the respondents submits that the answering affidavit filed on behalf of the first respondent clearly sets out that first respondent was always of the opinion, albeit mistaken, that it could not comply with the provisions of the Court Order of 2007, due to constraints, it believed, were created by legislative prescripts.¹⁰ Counsel is of the view that such mistaken belief was dealt with by the application for rescission of the Court Order that was brought before Tuchten J, which led to the judgment of May 2024. Counsel submits that until the judgment by Tuchten J, first respondent was mistaken, not wilful, in the possible disregard of the Court Order of 2007. Counsel argues that in applying the principles held in the case of *Fakie*, it cannot be said that respondents were wilful and *mala fide*, when they were operating under a mistaken belief.
- [25] Counsel further submits that the conduct of the respondents must be weighed up against the bureaucratic processes that ought to be followed by an entity such as the first respondent. Counsel informs the court that since the judgment of Tuchten J, first respondent has, in a space of six months, did the following: (i) the signing of the Deed of Sale; (ii) the appointment of the

⁹ 2006 (4) SA 326 (SCA).

¹⁰ Caselines 01-12 to 01-13.

conveyancers; and the signing the transferring documents. Counsel submits that the abovementioned conduct is indicative of respondents' willingness to comply with the Court Orders and have the properties, which are subject matter of dispute, transferred to applicant.

- [26] Counsel for the respondents argues that, regarding the mandamus relief sought, the applicant cannot compel the respondents to sign all necessary documents for the registration of the property. According to the counsel, the conveyancer, as the appointed legal professional, is responsible for preparing and facilitating the transfer of property documents. It is not within the applicant's purview to require the respondents to sign documents that fall within the duties of the conveyancer. Having said that, counsel submits that as the required documents from the conveyancer have been signed, as of 9 December 2024, the relief sought is moot. Counsel contends that the application brought is at best, premature and at worst fatally deficient and ought to be dismissed with costs on an attorney and client scale.

ANALYSIS

- [27] Despite the regrettable efforts to unnecessarily complicate issues that this court should determine, the issues that must be decided are relatively simple.
- [28] The applicant seeks relief against the first and the second respondents to approve the transfer of immovable properties identified above to the applicant in accordance with the provisions of the sale agreement entered into between the applicant and the first respondent in 2006.¹¹ The applicant does not agree with respondent's version. The respondent opposes the application.
- [29] Counsel for the respondents contends that the applicant is not entitled to any of the relief sought. Counsel submits that the issues in dispute is whether there is willfulness or *mala fides* in the conduct of the respondents. Counsel disputes that the mandamus orders sought by the applicant are warranted,

¹¹ Caselines 03-82 to 03-83.

given the context and the subsequent developments. Counsel submits that it is not in dispute that the transfer of the properties was ordered in 2007.

[30] It is common cause that on 17 May 2024, this court heard the rescission application, and on 22 May 2024 handed down a judgment dismissing the application with costs (“the judgment”). I am persuaded by the argument that the said judgment effectively disposed of the legal basis of respondent’s opposition to the current proceedings. I am surprised that the respondents are opposing this application. There is no reason why the transfer of the properties could not have been done by now.

[31] It is also common cause that the applicant has lawfully purchased the properties 18 years ago and as a result of the first respondent’s obstinate conduct by refusing to give effect to the sale agreement. The first respondent is fully aware of the judgment that dismissed the rescission application on 22 May 2024 and the Court Order granted on 28 August 2007. The Court Order, *inter alia*, orders the first respondent “*to sign all documentation required by applicant to effect registration of transfer of the properties...*”. The first respondent deliberately disobeys the order, or neglects to comply with it and as such, the first respondent is in wilful contempt of the Court Order.¹²

[32] The first respondent (City of Tswane Metropolitan Municipality), as an organ of state, is duty-bound to comply with the orders of this Court, as it is with all of its obligations under the Constitution. It needs to be stressed that the Constitution enjoins organs of state, like the Municipality, to adhere and give effect to its principles and provisions, as they must to the court orders. Where an organ of state fails in its duty, a court must assume an “invidious position of having to oversee state action, to address and correct the failures.

[33] The courts must not hesitate to enforce their orders. Courts have the power to ensure that their decisions or orders are complied with by all and sundry, including organs of state. In doing so, courts are not only giving effect to the

¹² Caselines 07-3 to 07-12.

rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest.

[34] The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.

[35] The remarks of Justice Brandeis in *Olmstead et al v United States* which have been endorsed by this Court, remain apposite here: *“In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. If the government becomes a law-breaker, it breeds contempt for the law; it invites every man or woman to become a law unto himself or herself; it invites anarchy.”*

CONCLUSION

[36] In determining this matter, I must be guided by the well-established principles applicable to applications of this nature. In this regard, I need to draw certain inferences and weigh probabilities as they emerge from the parties' respective submissions, affidavits, heads of arguments and oral arguments by their counsel.

[37] Having considered the history, background, and circumstances of this case and in an endeavour to strike a balance between the interests of the parties, I am persuaded that the applicant has made out a case against the respondents.

[38] On a conspectus of all the evidence placed before court, I am satisfied on a holistic evaluation of the evidence presented that the applicant has made out a case for the relief sought.

[39] I am therefore of the view that the applicant is entitled to the exercise of this court's power to direct the respondents to transfer the immovable properties identified above to the applicant in accordance with the provisions of the sale agreement entered into between the applicant and the first respondent in 2006.¹³

[40] In view of these considerations, it follows that the applicant's application must succeed.

COSTS

[41] The applicant and the respondents in *casu* have both asked for punitive costs. One of the fundamental principles of costs is to indemnify a successful litigant for the expense put through in unjustly having to initiate or defend litigation. The successful party should be awarded costs.¹⁴ The last thing that our already congested court rolls require is further congestion by an unwarranted proliferation of litigation.¹⁵

[42] It is so that when awarding costs, a court has a discretion, which it must exercise after a due consideration of the salient facts of each case at that moment. The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstances which may have a bearing on the issue of costs and then make such order as to costs as would be fair in the discretion of the court.

[43] The applicant purchased the properties identified above 18 years ago and they are still not yet transferred to the applicant. This is as a result of the first

¹³ Caselines 03-82 to 03-83.

¹⁴ *Union Government v Gass* 1959 4 SA 401 (A) 413.

¹⁵ *Socratous v Grindstone Investments* (149/10) [2011] ZASCA 8 (10 March 2011) at [16].

respondent's obstinate conduct by refusing to give effect to the sale agreement of 2006. In this regard, the conduct of the respondents in this matter really leaves much to be desired. I still cannot believe that they are opposing this application without any legal basis even after clarification in the Judgment of May 2024.

[44] The first respondent was warned by Tuchten J (see paragraph 12 above) in the following words: "*I have therefore decided not to impose a punitive costs order on the City. Should the City persist in its determination not to comply with the Order, it might not be so fortunate the next time this matter comes before the court.*"

[45] In light of these considerations and both parties' argument relating to the costs of this application, I am accordingly inclined to grant costs in favour of the applicant on an attorney and client scale, including the cost of counsel on scale C.

ORDER

[46] In the circumstances, I make the following order:

[46.1] The applicant is hereby granted leave to file its supplementary affidavit.

[46.2] The first respondent is ordered to sign all documentation required by applicant to effect the registration of transfer of the following properties within 14 (fourteen) calendar days hereof:

[46.2.1] THE REMAINDER OF ERF 9[...] A[...]

REGISTRATION DIVISION J.R.

EXTENT 4986 SQUARE METRES

HELD BY DEED OF TRANSFER T11348/1968

[46.2.2] THE REMAINDER OF PORTION 1 OF ERF 5[...] A[...]

REGISTRATION DIVISION J.R.

EXTENT 2084 SQUARE METRES

HELD BY DEED OF TRANSFER G67/1932 (VA6922/1998)

[46.2.3] PORTION 2 OF ERF 5[...] A[...]

REGISTRATION DIVISION J.R.

EXTENT 296 SQUARE METRES

- HELD BY DEED OF TRANSFER T11348/1968**
- [46.2.4] PORTION 30 OF FARM PRINSHOF No. 3[...]**
REGISTRATION DIVISION J.R.
EXTENT 1151 SQUARE METRES
HELD BY DEED OF TRANSFER T38475/1975
- [46.2.5] PORTION 9 OF FARM PRINSHOF No. 3[...]**
REGISTRATION DIVISION J.R.
EXTENT 1023 SQUARE METRES
HELD BY DEED OF TRANSFER T11349/1968
(“the properties”)

[46.3] In the event that the first respondent fails and/or refuses to sign any of the documents referred to in paragraph 46.2 above, the Sheriff of the High Court for Pretoria Central, or his duly authorised deputy, is authorised to sign such documents on behalf of first respondent.

[46.4] The applicant is granted leave, in the event that the first respondent failing to comply with paragraph 46.2 above, to approach this Court on the same papers, supplemented to the extent required, to seek an order for payment of a fine by the first respondent.

46.5] The first respondent is ordered to pay the cost of the application on an attorney and client scale, including the cost of counsel on scale C.

T E JOYINI
JUDGE OF THE HIGH COURT, PRETORIA

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Date of Hearing: 23 January 2025

Date of Judgment: 28 January 2025

This Judgment has been delivered by uploading it to the Court online digital data base of the Gauteng Division, Pretoria and by e-mail to the Attorneys of record of the parties. The deemed date and time for the delivery is 28 January 2025 at 10h00.

