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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2024/070674

(1) **REPORTABLE: NO**

(2) **OF INTEREST TO OTHER JUDGES: NO**

(3) **REVISED: YES**

(4) **Signature: _____**

Date: 26/02/25

In the matter between:

CITY OF THSWANE METROPOLITAN MUNICIPALITY

Applicant

and

GEORGE ASABA

First Respondent

GABSA CONSOLIDATED PROP (PTY) LTD

Second Respondent

JUDGMENT

Kumalo J

INTRODUCTION

[1]. On 16 July 2024, an interim order was issued by this court directing the First and Second Respondents to submit building plans in respect of the construction of buildings on Remainder ERF 1[...] on 5[...] L[...] Street and Remainder 1[...] on 5[...] L[...] Street, Pretoria West, Pretoria for approval by the Applicant within 5 days of the order.

[2]. Further, the order authorised the Applicant that should the Respondents fail to submit the building plans, the Applicant is authorised to demolish the

building structures and that the cost of the demolition be borne by the Respondents.

- [3]. Further, pending the outcome of the of the proceedings referred to above, relating to the approval of the building plans referred to, the Respondents were interdicted from proceeding with the construction of any building structures on the Remainder of the ERFs referred to in paragraph 1 *supra*.
- [4]. The return date was 9 September 2024. On said date, the *rule nisi* was extended and the matter set down on the opposed motion court of 17 February 2025. The matter was heard on 19 February 2025.
- [5]. Counsel for the Respondent argued before this Court that the order of 16 July 2024 was obtained on false information and would not have been granted had the court been aware of the true status of the situation.
- [6]. He argued that it was incorrect that the Respondents had not submitted plans. Plans were submitted and there was no construction on ERF 1[...]. He admitted that there were construction works on ERF 1[...] but such construction seized after the court order interdicting his client or any other person from continuing with such construction.
- [7]. To further compound the problem, counsel for the Respondent advised this court that soon thereafter, the buildings were invaded by illegal occupiers who currently are still in occupation of the said buildings and invited the court to do an inspection *in loco* if it so desired.
- [8]. I accepted the invitation and the inspection *in loco* was undertaken to the premises. The court was accompanied by members of the Tshwane Metropolitan Police Department to whom I am grateful.
- [9]. Upon arrival at the premises, it was noted that entrances thereto were heavily secured. We could not enter the premises on the main gate situate on ERF 1[...] and had to use a side gate situated on the 1[...] premises.

- [10]. It was noted that there was a single-story building on ERF 1[...] and a multi-story building with four floors. This was contrary to counsel's assertion that there was no construction on 1[...] but only the single-story building.
- [11]. The court took a tour of the four-story building and noted that there were people occupying the building. The inside staircases were a hazard with no guide rails. There were visible electric wires everywhere and leaks of water.
- [12]. It was further noted that curtains in several apartments where the same and when one pipped in, it appeared that they were not occupied. Those that were occupied and when I asked the people when they moved in, most indicated that they moved in around September, October of last year. Some indicated that they moved in around December 2024.
- [13]. All the people that we spoke to indicated that they were renting and paying an amount of two thousand rands to the caretaker whose name is Alfred. Unfortunately, we did not meet Alfred.
- [14]. The Court then moved over to the buildings located on ERF 1[...] which had four building apartments like the one on ERF 1[...]. Two of these buildings were four-story buildings and the other two were three-story buildings. We however could not access the three-story buildings.
- [15]. What was found in the two other buildings that we managed to get access to was like what was found in the other building situated on ERF 1[...]. Again, the people we managed to speak to in these buildings confirmed that they were renting and paying an amount of R2000.00 per month.
- [16]. I need to mention that on the way out, we met some lady carrying a baby. When asked how long has been living there, she told us that she was living with her aunt and she moved in when she was four months pregnant. The child she was carrying would not have been more than two months old.

- [17]. I am mentioning the above because Mr. Mhlanga made much of an argument on this issue to bolster the submission that the city cannot demolish these structures as they are currently inhabited, and it would require the process of eviction in terms of section 4 of the Prevention of Illegal Evictions Act.... to be followed. I do not agree with his arguments in this regard and my reasons will follow herein later.
- [18]. This court was presented with an album of photos taken by the Applicant's building inspectors on various dates before and after it had obtained the interim interdict to prevent the Respondent from continuing with the construction on these sites/erfs.
- [19]. Of particular concern to this court is that there are photos taken on 28 August 2024 that indicate that the Respondents continued with construction works after they were interdicted from doing so. These include photos of construction workers working normally and constructions tools lying around. This was in flagrant disregard of the order of this court.
- [20]. For example, there are photographs depicting foundations being laid. One can see from these photos wheelbarrows, concrete wires etc. During our inspection of the premises, the buildings had been completed which clearly demonstrates that the Respondents went ahead with their construction project even though they had not submitted any plans for approval.
- [21]. The Respondents have instead, applied for rezoning. This is not how the law works. One does not build and subsequently apply for rezoning as if it is an afterthought.

The applicable statutory provisions

- [22]. Section 4(1) of the National Building Regulations and Building Standards Act provides that: *"No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act"*.

- [23]. Clearly the Building Act prohibits the erection of buildings without the submission of building plans and/or their approval by the City responsible.
- [24]. Further, Section 4(4) of the Building Act makes it a criminal offence for any person who erects any building in contravention of the provisions of subsection (1) and such person may be liable on conviction to a fine.
- [25]. Section 21 of the Act grants the Applicant the necessary *locus standi* to seek an order prohibiting the Respondents from commencing or proceeding with the erection of any building or authorising the Applicant to demolish such building if the court is satisfied that such erection is contrary to and does not comply with the provisions of the Building Act.
- [26]. *In casu*, on 16 July 2024, the Court ordered the Respondents to submit for approval the plans for the structures that it had put up on ERFs 1[...] and 1[...].
- [27]. Respondents on their answering affidavit filed on 5 September 2024 alleges that they submitted plans in respect of ERF 1[...] on 3 June 2024 and paid an amount of R21,294.00 in respect thereof. However, further on in their answering affidavit allege that they submitted plans to the City on 3 February 2023 which plans were drawn by a certain Mbiza.
- [28]. This allegation is denied by the Applicant, and they allege attached documents do not indicate that they were ever submitted to the City. There is no stamp from it to confirm that they received them.
- [29]. More disturbing is the fact that the Respondents admit that they proceeded with the construction of the buildings – without the approval of their plans by the city. Their justification for this serious infraction is the allegation that they commenced with the construction of the buildings in June 2023 at which point they believed their architect had submitted the building plans to the Applicant.

- [30]. The submission of building plans does not accord one the right or permission to build. One needs approval first before one can build and I am of the firm view that the Respondent were very much aware of this requirement but opted to go ahead as they are the law unto themselves.
- [31]. I have alluded to the fact that the court went on an inspection in loco and found that the Respondents had dispute a court interdict in place, went ahead and continued with the construction on Erf 1[...] and completed those structures.
- [32]. The Applicant inspectors took pictures of the premises on 28 August 2024 which showed certain buildings on a foundation phase. However, when this court visited the premises, those buildings were three story high. A clear indication that the Respondent had in flagrant disregard of the Court order of 16 July 2024 went ahead with the construction of these buildings.
- [33]. Mr. Mhlanga argued further that some time in September 2024, the buildings were invaded by a group of person who now occupy these buildings illegally and suggested in veiled fashion that the provisions of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998 would have to be complied with or that they should have been joined in the matter.
- [34]. The steps preceding this application were launched long before any occupation of the units and in fact long before the completion of construction. Even if it might be that the units were occupied by the time of the belated answering affidavit, no particulars were furnished as to when these occupiers commenced their occupation.
- [35]. They clearly commenced their occupancy when the respondent had been (repeatedly) informed of the municipality's contentions regarding the unlawfulness of the construction. The respondent clearly permitted occupancy of the units either in contravention of the Act and the Regulations.

- [36]. This is evidenced by the fact that those that we met at the said premises, confirmed that they were renting and pay to a certain Alfred whose office was around the corner.
- [37]. Again, I could not fathom how these people could have entered the premises without the Respondents' consent. On our arrival for the inspection, the gates were locked and fortified.
- [38]. In my view, these occupiers should look to the Respondents for the relief of any prejudice they might suffer but the Respondents cannot claim a procedural benefit because of their own unlawful actions. This point is therefore rejected.¹ In fact and in my view, this was done deliberate to claim this procedural benefit and further delay the inevitable.
- [39]. In conclusion, I find that, on the facts, the Respondents have contravened in flagrant disregard the court order of 16 July 2024 and the provisions of section 4(1) of the Building Act.
- [40]. No building plans have been submitted as per the order of the court of 16 July 2024. To further compound matters, the Respondents continued with the constructions of these structures knowing very well that there is a court order interdicting them from doing so.
- [41]. The application for rezoning does not in my view assist them. This was an after thought and a way to delay the inevitable.
- [42]. Apart from the declaratory relief, the municipality is entitled to the "demolition" relief. This would include the works unlawfully erected on Erfs 1[...] and 1[...].

¹ See also City of Tshwane v Styger (12306/2020) [2022] ZAGPPHC 173 (31 March 2022)

[43]. On the issue of costs, not only should the customary rule that costs should follow but, having regard to the brazen unlawful conduct of the respondents and their tardiness in prosecuting their opposition to the application, coupled with the nature of the "defences" raised, I am of the view that a punitive costs order is warranted.

[44]. In the circumstances, the following order is made:

Order

1. The rule nisi issued on 16 July 2024 is confirmed.
2. The erection of building works at the properties situated at 5[...] L[...] Street (Erf 1[...]) and 5[...] L[...] Street (Erf 1[...]), Pretoria West, Pretoria (the properties), whereby the dwelling houses have been converted into three multiple storey buildings (one building at Erf 1[...] and two buildings at Erf 1[...]) contrary to the zoning certificates issued in respect of the properties and which works have been done without building plans approved by the City of Tshwane Metropolitan Municipality (the offending Works), are declared unlawful and declared to be in contravention of section 4(1) of the National Building Regulations and Standards Act 103 of 1977 and the Regulations promulgated thereunder.
3. The City of Tshwane Metropolitan Municipality is authorised to enter the properties and to demolish the offending works, which shall include all the works whereby the dwelling houses were converted into four and three multiple storey buildings and which shall include the electricity, water drainage and sewerage installations installed in connection therewith and such costs of demolishing will be borne by the respondents.
4. The respondents shall pay the costs of this application on a High Court scale, including costs of two counsel in terms of scale C of Rule 67A of the Uniform Rules of Court.

KUMALO MP J

Judge of the High Court of South Africa

Gauteng Division, Pretoria

Counsel for the applicant: Adv T Seneke SC and Adv S Mbeki

Instructed by: Leepile Attorneys Inc

Counsel for the respondents: Adv L Mhlanga

Instructed by: Precious Muleya Attorneys Inc