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

CASE NO.: 53875/13

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 7 March 2025

E van der Schyff

In the matter between:

WILLOW ACRES HOMEOWNERS ASSOCIATION NPC

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

DOUBLE QUICK PROPERTIES 208 (PTY) LTD

Second/Third Respondent

ABSA BANK LIMITED

Fourth Respondent

AND

KUNGWINI LOCAL MUNICIPALITY

Applicant

and

DOUBLE QUICK PROPERTIES 208 CC

First Respondent

WILLOW ACRES HOMEOWNERS' ASSOCIATION NPC

Second Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] This matter has a protracted history. Double Quick Properties 208 CC (later Double Quick (Pty) Ltd, referred to as Double Quick 208) erected an illegal structure on Erf 7[...], Willow Acres Ext. 8. Kungwini Local Municipality accordingly applied under case number 23145/09 for an order, among others, that the building be demolished. Kungwini Local Municipality was disestablished and absorbed into the City of Tshwane Metropolitan Municipality in 2011. Neither Kungwini Local Municipality before its disestablishment, nor the City of Tshwane Metropolitan Municipality (hereafter referred to as the municipality or Tshwane Metropolitan Municipality) prosecuted the application to finality.

[2] Willow Acres Home Owners Association ("Willow Acres"), the applicant under case number 53875/13, launched this application already in 2013 to obtain a *mandamus* directing the municipality to comply with its duties to enforce compliance with the relevant statutory and other requirements that buildings within its jurisdictional area comply with approved building plans and zoning, and are not illegally erected. Willow Acres seeks an order directing the City of Tshwane Metropolitan

Municipality to persist with and prosecute the application issued under case number 23145/09 to finality.

- [3] The two applications, respectively issued under case numbers 53875/13 and 23145/09, were consolidated. Willow Acres and the Tshwane Metropolitan Municipality share the view that the building erected by Double Quick 208 must be demolished. Double Quick 208, was in final liquidation when the application by Willow Acres was instituted. On 12 July 2024, however, the order for the final winding up of Double Quick Properties 208 (Pty) Ltd was set aside, and Double Quick Properties 208 (Pty) Ltd was discharged from liquidation. Willow Acres subsequently filed a notice of substitution in terms of rule 15 of the uniform rules of court, and Double Quick Properties 208 (Pty) Ltd substituted the second and third respondents, the erstwhile liquidators.
- [4] For purposes of the order that stands to be granted, the true nature of the juristic person Double Quick Properties 208, and the time of its conversion from a closed corporation to a private company, is irrelevant. The recent development in Double Quick 208's chameleonic juristic nature, is that I was informed during the hearing on 4 March 2025, that the recently discharged-from-liquidation Double Quick 208 (Pty) Ltd, commenced business rescue proceedings, by its board resolving that the company commence with business rescue proceedings and the resolution being filed as prescribed in section 129 of the Companies Act 71 of 2008.
- [5] No affidavit was filed by or on behalf of Double Quick Properties (Pty) Ltd confirming under oath that it commenced voluntary business rescue proceedings. Counsel for Willow Acres and Tshwane Metropolitan Municipality regarded it their duty as officers of the court, to inform the court of the information communicated to them by Double Quick 208 (Pty) Ltd.'s legal representative.
- [6] I was tempted to disregard information that do not constitute evidence before the court. However, if the information is correct, and in the absence of an application in terms of s 133(1)(b), such an approach would have been futile. The presumed development in any event does not affect Willow Acres' application under case number 53875/2013 and the relief sought by it.

- [7] Counsel for the City of Tshwane Metropolitan Municipality submitted that the order ultimately sought by Willow Acres is just a reflection of the *status quo* since the municipality is clearly prosecuting its application to hold Double Quick 208 accountable for its actions by seeking a demolition order. As a result, counsel contends that the order should not be granted, and if Willow Acres is awarded costs, the costs should be limited to the date when the municipality filed its replying affidavit.
- [8] I disagree. As for the proceedings under case number 53875/2013, Willow Acres is entitled to the relief as set out in the draft order handed up when the matter was argued. It should not be for an entity like Willow Acres to take the Tshwane Metropolitan Municipality to task for neglecting its statutory functions. This is also the reason why Double Quick 208's juristic nature is of no concern for the order sought by Willow Acres. The order sought by Willow Acres is to oblige the Tshwane Metropolitan Municipality to fulfill its statutory duties. With regard to the history of this matter, the filing of a replying affidavit and heads of argument in itself would have been cold comfort to Willow Acres. The recent development that proves to be an obstacle in the finalisation of the application under case number 23145/2009 emphasises the need to grant the relief sought by Willow Acres.
- [9] As far as costs are concerned, I agree that the matter was rather complex and that the services of two counsel are justified. I am, however, of the view that the complexity of the issues raised justifies a cost order on scale B.
- [10] As for application 23145/2009, in the absence of an application in terms of section 133 (1)(b) of the Companies Act 71 of 2008, or any submissions that the voluntary business rescue proceedings are bogus, or an abuse of court process, this court cannot continue with the legal proceedings. There is, however, no obstacle preventing this court from granting an order for certainty to be obtained regarding Double Quick 208 (Pty) Ltd's position.

ORDER

In the result, the following order is granted:

Re: Case number 53875/2013

1. A mandamus is issued whereby the **CITY OF TSHWANE METROPOLITAN MUNICIPALITY** ("the Municipality") is directed to persist with and prosecute the application issued in this court and commenced under case number 23145/2009, as fast as reasonably possible and effectively to finality, subject to the general moratorium imposed by Section 133 of the Companies Act, 71 of 2008;
2. The Municipality is ordered to pay the applicant's costs under case number 53875/2013, including the costs of two counsel on scale B, where so employed.

Re: Case number 23145/2009

1. The application is postponed *sine die*;
2. Double Quick 208 (Pty) Ltd is ordered to file an affidavit accompanied by the necessary documentary proof, confirming its status as being in voluntary business rescue, within three days of this order being served via email to its attorney of record, Hennie Kotzé Attorneys;
3. In the event that no such affidavit is filed, the applicant in case number 23145/2009 may re-enroll the application, supplemented to the extent necessary, before Van der Schyff J after having obtained a date from her secretary, and the notice of set down may be served on Double Quick (Pty) Ltd via email to its attorney of record Hennie Kotzé Attorneys:
 - 3.1. In the event that papers are supplemented, Double Quick 208 (Pty) Ltd must be served with the supplemented papers before a date for the hearing of the application is arranged;
4. The issue of the City of Tshwane Metropolitan Municipality's wasted costs caused by the postponement is reserved.

E van der Schyff

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For Willow Acres HomeOwners' Association NPC:

Instructed by:

Adv. JF van der Merwe

AJ van Rensburg Inc.

For the Tshwane Metropolitan Municipality:

With:

Instructed by:

Adv. JA Motepe SC

Adv. K Mapengo

Mothle Jooma Sabdia Inc.

Date of the hearing:

Date of judgment:

4 March 2025

7 March 2025