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

Case Number: 022833/2024

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

DATE 23 April 2025

SIGNATURE

In the matter between:

MAKOTI NTHABISENG MAGDELINE	First Applicant
SELAHLA SEWELE SARAH	Second Applicant
SELOMO NTHABISENG SALAMINAH	Third Applicant
MASHAU FUMANI GOLDWIN	Fourth Applicant
SINGO ROFHIWA MILLICENT	Fifth Applicant
MADIBA LERATOTO MARIA MOSIMA	Sixth Applicant
NONYANE SHARMAIN NTWANANO	Seventh Applicant
NICK MOTEBELE	Eighth Applicant
MUGWENA TSHIFHIWA ARABI	Nineth Applicant
CHARITY MANGANYI	Tenth Applicant

NYIKO MUKHARI

Eleventh Applicant

and

INDLUPLACE PROPERTY MANAGEMENT (PTY) LTD

First Respondent

INDLUPROP I (PTY) LIMITED

Second Respondent

TSHIDI MOKOU

Third Respondent

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Fourth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file system of this matter on CaseLines. This matter was heard in open court on the 11 February 2025. The date for hand-down is deemed to be 23 April 2025.

JUDGMENT

DOMINGO, AJ

Introduction

[1] This is an application brought by eleven applicants who reside at Quagga Estate, Erf 2[...] R[...] Road, Pretoria West (hereinafter referred to as "the property") managed by the first, second and third respondents. The applicants are seeking the following relief from the respondents.

- 1.1 That the first, second and third respondents be ordered to restore electricity and water services permanently at the property, as it is unconstitutional to block the applicants' electricity procurement as alleged;
- 1.2 That the first, second and third respondents take full responsibility regarding the applicants' livelihood as well as the conditions at the

property, hence the applicants pay the full rental fees at the end of each month in accordance with the lease agreement;

- 1.3 Lastly, to prevent future occurrences that amount to ill-treatment of the respective applicants who are tenants at the property managed by the first, second and third respondents and that the latter take full responsibility regarding the applicants' lease agreements not based on individual leaseholders as the complaints of the applicants are collectively similar to the issue of living conditions at the property.

[2] The first, second and third respondents oppose the application, and at the outset raise the following three points *in limine*:

- 2.1 The applicants have failed to make out a case in its founding affidavit for the relief sought;
- 2.2 Misjoinder of the third respondent, having no direct or substantial interest in the matter;
- 2.3 The relief sought by the applicants is immensely vague and ambiguous.

Issues requiring determination

[3] The first set of issues called upon for determination is whether the applicants have made a case for the relief sought in its notice of motion after the determination of the points *in limine* raised by the respondents.

[4] The second issue called upon for determination is costs *de bonis propriis* against the applicants' attorneys.

First and third point in limine

[5] I will deal with the first point *in limine* (failure to make out a case) together with the second point *in limine* (the relief sought is immensely vague and ambiguous) together as they are interlinked.

[6] The applicants seek a final interdictory relief as part of the relief sought. The respondents have submitted that, it is trite, that in order to be successful in seeking interdictory relief, the applicants will have to show (i) that they have a

clear right; (ii) an injury actually committed or reasonably apprehended; and (iii) the absence of an alternative remedy. All three requirements must be present and be satisfied. The discretion of a court to refuse a final interdict, provided the three requisites are present is very limited.¹

- [7] The applicants have produced no facts or evidence regarding the purported maintenance issues, including issues relating to utilities at the premises. There are no facts or evidence regarding the factual background on why, when and how their electricity and water supply was cut.
- [8] The applicants have failed to advance any facts or evidence relating to any purported present, future, or past ill-treatments of any of the eleven applicants, or by any of the respondents.
- [9] Neither the Founding Affidavit, nor the Confirmatory Affidavits of the applicants set out any facts to determine or evaluate on what basis the applicants formulated the relief they seek.
- [10] The determination as to whether a right is clear is a matter of evidence. To establish a clear right, the applicants must prove on a balance of probability, facts which in terms of substantive law establish the right relied on.²
- [11] The applicants have failed to address and meet any one of the three requirements for the final interdictory relief sought. The failure to advance facts and evidence renders me incapable to determine or evaluate the existence of any clear rights, injury committed or reasonably apprehended by the applicants and there is the absence of an alternative remedy.
- [12] The relief sought by the applicants to order the respondents to restore the electricity and water, to order the respondents to take full responsibility regarding the applicants livelihood as well as the conditions at the property and

¹ See Supreme Court of Appeal decision in *Hotz and Others v University of Cape Town* 2016 4 All SA 723 (SCA).

² LAWSA Vol. 11, 2nd Ed. 397.

to order the respondents to prevent future occurrences of ill-treatment is unsubstantiated, vague, ambiguous, unenforceable, without any logic and bad in law.

[13] In *Eke v Parsons*³ the Constitutional Court held as follows:

“If an order is ambiguous, unenforceable, ineffective, inappropriate, or lacks the element of bringing finality to a matter or at least part of the case, it cannot be said that the court that granted it exercised its discretion properly. It is a fundamental principle of our law that a court order must be effective and enforceable, and it must be formulated in language that leaves no doubt as to what the order requires to be done.”

[14] The applicants have failed to make out a case for the relief sought and the relief sought is vague and ambiguous, thus I am in agreement with the submissions made by the respondents counsel that it would be impossible for any of the respondents to determine the obligations flowing from a order in such terms, rendering the order unenforceable.

[15] The applicants have failed to make out a case for the relief sought and the relief sought is indeed immensely vague and ambiguous, I accordingly uphold the respondents first and third points *in limine*.

Second point in limine

[16] The respondents second point *in limine* is the misjoinder of the third respondent, having no direct or substantial interest in this matter.

[17] The first applicant alleges on the one hand that the third respondent, Mr Tshidi Mokou is an agent of the first respondent and on the other hand, that the third respondent holds the leases with the applicants.

[18] It has been submitted that the third respondent does not have any direct and substantial interest in this matter and the applicants have failed to make out any

³ [2015] ZACC 30 para 74.

case against the third respondent or advance any facts upon which it can be found that the third respondent was correctly joined in his personal capacity.

[19] Having considered the submission made above in respect of the second point raised *in limine*, I find merit in the submission as the applicants have failed to provide any facts or evidence to make out a case against the third respondent in joining him in his personal capacity.

[20] I accordingly uphold the second point *in limine*.

Costs de bonis propriis

[21] Counsel on behalf of the respondents has referred me to the *Multi-Links Telecommunications LTD v Africa Prepaid Services Nigeria Ltd; Telkom SA SOC Limited & Another v Blue Label Telecoms Limited & Others*⁴ case, in which the principles relating to costs order *de bonis propriis* against legal practitioners were re-stated and explained as follows:

“Only in exceptional circumstances and pursuant to a discretion judicially exercised is a party ordered to pay costs on a punitive scale. Even more exceptional is an order that a legal representative should be ordered to pay the costs out of his own pocket. It is quite correct...that the obvious policy consideration underlying the court’s reluctance, to order costs against legal representatives personally, is that attorneys and counsel are expected to pursue their client’s rights and interests fearlessly and vigorously without undue regard for their personal convenience. In that context they ought not to be intimidated either by their opponent or even, I may add, by the court. Legal practitioners must present their case fearlessly and vigorously, but always within the context of set ethical rules that pertain to them, and which are aimed at preventing practitioners from becoming parties to deception of the court. It is in this context that society and the courts and the professions demand absolute personal integrity and scrupulous honesty of each practitioner.

⁴ [2013] 4 All SA 436 (GNP) paras 34 and 35.

It is true that legal representatives sometimes make errors of law, omit to comply fully with the rules of court or err in other ways related to the conduct of proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are dishonesty, obstructions of the interests of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, gross incompetence and a lack of care.”

[22] The applicants’ application before this court is fatally flawed and bad in law.

[23] Counsel for the applicants have placed no facts before the court to allow me or the respondents to remotely determine what the applicants’ case is about.

[24] The applicants’ papers submitted in this application were riddled with case law and legislation, none of which were relevant. The applicants’ heads of argument were also riddled with lengthy quotes from various case law, none of which were applied to any facts or contextualised in order for me or the respondents to determine its application to ‘non-existing’ facts. It failed to advance any argument in support of the requirements for the relief sought having been met.

[25] Our courts have in exceptional circumstances ordered costs *de bonis propriis*. In the *Silinga and Others v Nelson Mandela Metropolitan Municipality*⁵ the court stated:

“An order that a legal practitioner (or for that matter a representative litigant) should pay the costs personally carries with it obviously serious consequences that necessarily impinge upon the rights and interests of that representative. It

⁵ (CA266/2017) [2018] ZAECHC 50 (26 June 2018) para 11.

is for this reason that, in dealing with such cost orders, a practice has been developed by the courts to afford the affected party notice of the intention to impose such an order and an opportunity to make representations or submissions prior to such order being made and is based upon constitutionally protected fundamental rights to a fair hearing.”

[26] In the present matter, the respondents’ answering affidavit stated that they would be seeking an order that the applicants’ attorneys be ordered to pay costs of the application *de bonis propriis*.

[27] In *Hlumisa Technologies (Pty) Ltd and Another v Voigt N.O. and Others*⁶ the court stated that notice in an answering affidavit that a cost order *de bonis propriis* is being sought is sufficient in terms of notifying the affected party of the intention to impose such an order.

[28] In the present matter, it was also submitted by Counsel on behalf of the respondents that on the 8 April 2024, and before delivering the respondents’ answering affidavit, the respondents’ attorneys advised the applicants’ attorneys of the flawed application and offered them an opportunity to withdraw the application, failing which the respondents’ attorneys would seek costs *de bonis propriis*.

[29] Furthermore, on the 4 February 2025 in an email correspondence to the respondents’ attorneys, the applicants’ attorneys indicated that they would furnish the respondents with a notice of withdrawal. The respondents’ attorneys replied through email correspondence on the 4 February 2025, that they would proceed to argue costs *de bonis propriis* and urged the applicants’ attorneys to be present at the Pretoria High Court at 10h00 on 10 February 2025. They also informed the applicants’ attorneys that a copy of this email correspondence would be uploaded onto CaseLines and brought to the Judge’s attention.

⁶ (111/2018) [2020] ZAECHC 133 (1 December 2020) para 22.

[30] Despite the aforesaid warnings and the notice that a cost order *de bonis propriis* would be sought by the respondents, the applicants' attorneys persisted with the application.

[31] However, the applicants' attorneys on the eve of the hearing of this matter, on the 10 February 2025, uploaded a notice of withdrawal as attorneys of record. While this case was heard in open court on the 11 February 2025, it must be noted that the opposed motion roll was set down for the week starting from the 10 February to 15 February 2025.

[32] This application is wholly misconceived, and it is with profound displeasure that I express my discontent at the behaviour by the applicants' attorneys which falls short of and materially deviates from the standard expected of legal practitioners, to the detriment of the eleven applicants.

[33] In the premises, I grant the cost order *de bonis propriis*.

Order

[34] I hereby make the following order:

1. The applicants' application is dismissed.
2. The applicants' attorneys are to pay the first, second and third respondents cost *de bonis propriis*.

W DOMINGO
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES

For the Applicant: No appearance

For the Respondent: ADVOCATE C ERASMUS instructed
by MJS ATTORNEYS

