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

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

SIGNATURE DATE: 25 February 2025

Case No. 2025-024502

In the matter between:

LEWRAY INVESTMENTS (PTY) LTD

Applicant

and

CITY OF JOHANNESBURG

First Respondent

DADA MORERO NO

Second Respondent

DADA MORERO

Third Respondent

TSHEPO MALOKA NO

Fourth Respondent

TSHEPO MALOKA

Fifth Respondent

JUDGMENT

WILSON J:

1 On 24 February 2025, I gave an order reversing the eviction of the applicant, Lewray, from its property situated at 7[...] D[...] V[...] Street, Johannesburg. I directed the first respondent, the City, to restore Lewray to peaceful and undisturbed possession of the property, and to repair some of the damage done to the property in the course of the eviction. I directed the City to pay Lewray's costs on the scale as between attorney and client. I indicated when I gave my order that my reasons would follow in due course. These are my reasons.

2 The property is a commercially tenanted building in the Johannesburg central business district. On 21 February 2025, the City, acting through its metropolitan police department, evicted all the commercial tenants operating at the property. It sealed the property off. It welded the entrances to the property shut. The City also started to brick the entrances to the property up, but it is not clear from the papers whether it completed that work.

3 I am far from convinced that the City adequately explained its motives during the course of the eviction, but the City ultimately justified its conduct by reference to its Emergency Services Bylaws. In its papers before me, the City averred that the state of the property constituted a fire hazard, and that it was necessary to act under the bylaws to prevent the property from being used until the fire safety hazards it had identified were addressed.

4 The City annexed four notices alleging contraventions of the bylaws to its answering affidavit. The first of these notices, issued on 21 February 2025, did not relate to the property as a whole, but merely to one of the units within it. During argument, it became clear that it is this notice upon which the City claims to have acted. The copies of the other notices provided to me were substantially illegible, but

I could discern enough to note that the second notice was issued two-and-a-half years ago, and is of no relevance to this application. The third and fourth notices related to a completely different property, and accordingly, as was conceded at the hearing, could not be relied upon to justify the City's conduct.

5 Mr. Mosikili, who appeared for the City, accepted that none of the notices provided a basis to prevent Lewray from accessing its property. He sought only to persuade me that Lewray's access to the property ought to be conditional upon its undertaking to address the fire safety hazards identified in the first of the four notices.

6 I declined to make my order conditional upon the provision of such undertakings, because the City was never lawfully entitled to evict Lewray from its property in the first place.

7 I reached that conclusion for two reasons. First, section 98 (3) of the bylaws, upon which the City relied to evict Lewray, does not entitle the City to completely exclude an owner from their property. The section provides for a member of the City's Fire Brigade Service to issue such instructions as may be necessary to procure compliance with the bylaws. These instructions may include the immediate evacuation of the relevant premises; the closure of the premises until a bylaw violation has been rectified; the cessation of any defined activity; the removal of any immediate threat to any person or property; the taking of specified steps to comply with the bylaws, either immediately or within a specified period; or the issuing of a timetable for the taking of steps necessary to comply with the bylaws. The penalty in case of non-compliance with an instruction issued under section 98 (3) is criminal sanction rather than extrajudicial eviction.

8 At its most extreme, section 98 (3) permits the evacuation or closure of the relevant premises. That means that the premises can no longer be accessed or used by the general public. It does not mean that the City may deprive the owner of possession of the property, thereby making it impossible for the owner to do anything with it, including taking steps to comply with the bylaws.

9 Secondly, no lawful instruction to evacuate or close the property was issued in this case. The written notice of contravention actually issued by the City's Fire Safety Inspector, Mr. Nathaniel Dlamini, on 21 February 2025 merely directed Lewray to "immediately" address a list of specified fire safety hazards present in one of the units at the property. The notice did not require the evacuation or closure of the property. The notice does appear to refer to an earlier instruction to evacuate the property, but that instruction was neither repeated in the notice nor relied upon in this application.

10 It follows that the appropriately empowered official that could have ordered the immediate evacuation and closure of the whole property chose not to do so. In his confirmatory affidavit, Mr. Dlamini said that he did ultimately decide to enforce the notice "by closing the property", but only because unidentified individuals he thought were in charge of the property refused to accept service of the notice. I do not think that it was lawful or rational to respond in this way to an unnamed individual's refusal to accept service of a fire safety contravention notice that does not itself require the evacuation or closure of the property. In any event, Mr. Dlamini's subsequent oral instruction to "close" the property was never confirmed in writing, as the bylaws require. It had no force or effect before me.

11 Accordingly, even if section 98 (3) of the bylaws could be read to authorise excluding Lewray from its property (it cannot), the City did not lawfully exercise such a power in this case.

12 It follows from all this that the removal of Lewray and its tenants from the property was unlawful from the outset. Lewray was spoliated. It is trite that a person spoliated of property is entitled to retake possession of it before the lawfulness of its possession or use of the property are explored. In other words, the City was not entitled to illegally evict Lewray from its property and then bargain the terms on which Lewray would be allowed to retake possession.

13 In all these circumstances, the City acted substantially beyond any lawful power it could reasonably claim to have. It ought to have appreciated this from the outset, and to have restored the property to Lewray at the first opportunity. Instead,

the City insisted on pushing an application to which it must have known it had no defence to a hearing. For that reason, a punitive costs order was plainly justified.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 25 February 2025.

HEARD AND DECIDED ON: 24 February 2025

REASONS: 25 February 2025

For the Applicant: L Hollander
Instructed by Vermaak Marshall Wellbeloved Inc

For the Respondents: T Mosikili
Instructed by Koikanyang Inc