

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

CASE NO: 2024-059416

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
11/06/2025

In the matter between:-

**SANDTON CROWNE PROPERTIES
(PTY) LTD**

Applicant

and

**THE MUNICIPAL MANAGER: CITY OF
EKURHULENI METROPOLITAN MUNICIPALITY**

1st Respondent

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

2nd Respondent

THE EKURHULENI APPEAL AUTHORITY

3rd Respondent

**3[...] K[...] ROAD (PTY) LTD
THE MEMBER OF THE EXECUTIVE COMMITTEE
FOR THE GAUTENG DEPARTMENT OF ROADS
AND TRANSPORT**

4th Respondent

5th Respondent

JUDGMENT

Mfenyana J

Background

[1] This application, which served before me in the urgent court, is a rehash of an application that served before Yacoob J on 10 July 2024. In that application, the applicant, Sandton Crowne sought an order, *inter alia*, interdicting and restraining the fourth respondent (Kloof) from implementing a decision of the second respondent (the Municipality), pending the finalisation of an appeal lodged by the applicant before the Appeal Authority of the Municipality, alternatively pending a review application instituted by the applicant in the same application. Accordingly, the application was fashioned as Part A and Part B, with Part A being the interim injunction sought as previously stated. Part B is the review application, which was to be heard on an unspecified date and in accordance with Rule 53 of the Rules of Court.

[2] Having considered the matter, the learned judge granted an interim order couched in the following terms:

“ a. Part A of this application is urgent and the failure to comply with the rules

and time periods pertaining to forms and service is condoned.

b. The fourth respondent is interdicted from acting on the decision of the second respondent dated 15 August 2023, attached as annexure RS30 to the Founding Affidavit, by continuing with any earthworks or construction activities on Erf 2[...] Bedfordview Extension 2 pending the outcome of the applicant's pending appeal filed in terms of section 99 of the Ekurhuleni Metropolitan Municipality Spatial Planning and Land Use Management By- Law.

c. *The fourth respondent is to pay the costs of part A on scale C.*"

[3] At the heart of the present application is whether the order of Yacoob J finally disposed of Part A of the application, such that upon the determination of the appeal, the urgency which attached to the application dissipated, or whether it remains alive until the final determination of the review application. For a proper and logical determination of the application at hand, a rundown of the proceedings before Yacoob J is warranted.

Proceedings before Yacoob J

[4] Discernible from the papers is that before Yacoob J, the applicant sought an order in the following terms:

"1. ...

2. *That the Fourth Respondent is interdicted from acting on the Decision of the Second Respondent ("the Municipality), dated 15 August 2023 (attached as Annexure "RS30" to Founding Affidavit), by commencing or continuing with any earthworks or construction activities on Erf 2[...] Bedfordview Extension 2 ("subject property"), pending the outcome of the Applicant's Appeal filed in terms of Section 99 of the Ekurhuleni Metropolitan Municipality Spatial Planning and Land Use Management SPLUM Bylaw ("Bylaw").*

3. *In the alternative to paragraph 2 above, that the Fourth Respondent is interdicted from acting on the Decision of the Municipality, dated 15 August 2023 (attached as Annexure "RS30" to Founding Affidavit), by commencing or continuing with any earthworks or construction activities on the subject property, pending the final determination of Part B of this application (the review application).*"

[5] In Part B, the applicant sought *inter alia*, an order reviewing and setting aside the decision of the Municipality referred to in Part A, as well as any site development plan and building plans approved by the Municipality.

[6] In dealing with the application, Yacoob J considered that the appeal was yet to be determined by the Appeal Authority, notwithstanding the fourth respondent's contentions regarding its validity. On this ground, *inter alia*, the learned judge concluded that to interdict the fourth respondent from acting on the decision of the Municipality pending the outcome of the review application was at that stage premature. The interim interdict was thus granted pending the outcome of the appeal, which had already been lodged at the time of hearing the application.

[7] The decision of the Appeal authority was communicated on 11 March 2025, after a period of almost ten months after it was lodged, dismissing the appeal. It is only after the appeal was dismissed that the applicant considered it appropriate to approach this court again, for an order interdicting the fourth respondent from implementing the decision, pending the finalization of Part B (the review).

Before this court

[8] In the present application, as was the case before Yacoob J, the applicant avers that, as the owner of an adjoining property, it is entitled to be notified of the application by the fourth respondent for the development of drive-through restaurants on the Property in dispute. It contends that it was not notified. It further avers that the Scheme does not allow drive-through restaurants, which may also not be granted as a special consent use, as the Property is zoned "Business 3". It is on these grounds, *inter alia*, that the applicant seeks to review the decision of the Municipality, which it states is also a violation of the procedural requirements stipulated in the by-laws.

[9] Following the dismissal of the appeal, on 13 March 2025, the applicant proceeded with the necessary steps to advance the review application and informed the fourth respondent and the Municipality of its intention to expedite the review application by filing an amended notice of motion and a further supplementary affidavit by 28 March 2025. Simultaneously, the applicant enquired from the Municipality about the status of the rule 53(1) record, as it had not been received at that stage. It is common cause that the record was dispatched by the Municipality on 18 March 2025. The Municipality also explained the reason for the delay in dispatching the record, being a seeming cost-saving measure in the event the

appeal was decided in favour of the applicant. In those circumstances, the Municipality opined that it would not have been necessary to file the record.

[10] The applicant contends that the matter is urgent as construction activities by the fourth respondent could render the review application moot and cause irreparable harm to its property and tenants if the *status quo ante* is not preserved. The applicant further contends that it acted promptly by filing the appeal on 22 May 2024 when it became aware of the decision of the Municipality. It added that the appeal would suspend the operation of the decision of the Municipality. Following the filing of the appeal, the applicant sought an undertaking from the fourth respondent that it would not implement the decision of the Municipality until the appeal had been finalized. When this was not forthcoming, the applicant approached the court and instituted the proceedings before Yacoob J. At that stage, the fourth respondent had apparently proceeded with some activities on the Property despite the pending appeal.

[11] In opposing this application, the fourth respondent avers that the applicant instituted two separate proceedings, both of which were pending before separate fora, one being the internal appeal and the second, the review application. These were filed on 22 May and 30 May 2024, respectively. Concerning Part A, the fourth respondent contends that the order of Yacoob J brought an end to Part A of the application, and when the appeal was dismissed by the Appeal Authority due to lack of *locus standi* on 11 March 2025, the interim interdict granted by Yacoob J lapsed.

[12] The fourth respondent further contends that the applicant delayed the review for approximately 10 months, from the time it was instituted, and took no steps to prosecute the review. Thus, the fourth respondent avers that the application is an abuse of the process of the court, instituted by the applicant for an ulterior motive in order to secure a financial benefit from the development, and is therefore *mala fide*. In this regard, the deponent to the founding affidavit, Mr Andrea Maria-Angelo Pompa (Pompa), asserts that it is not clear whether the present application forms part of Part A or B of the application. Importantly, the fourth respondent contends that the present urgent application is a result of the applicant's inaction and is therefore self-created.

[13] The remainder of the answering affidavit details events which took place between August and October 2024 in the process of negotiation between the parties, initiated by Ms Penny Cavaleros whom Pompas refers to as the controlling brain behind the applicant, and the owner of Village View shopping centre. Of relevance is that the fourth respondent contends that the applicant has no issue with any alleged non-compliance with the by-laws, but seeks to acquire a stake in the development.

[14] Regarding urgency, the fourth respondent contends that the matter is not urgent, alternatively that urgency is self-created owing to the unreasonable 10-month delay by the applicant. Consequently, the review application is without merit and has no reasonable prospect of success as the applicant also failed to ensure that the record was dispatched within 15 days after service of the application, further contends the fourth respondent. The fourth respondent thus avers that the application should be dismissed with costs, including costs of two counsel.

Submissions

[15] The fourth respondent submits that the 10-month delay in prosecuting the review has a ripple effect in that every subsequent activity has been delayed by that amount of time, when the parties could have already been arguing the review application.

[16] Importantly, the fourth respondent avers that the applicant lacks *locus standi* to institute the review proceedings in that as an own interest litigant, it is required to demonstrate that it has a direct and sufficient interest in the dispute. The fourth respondent relied on the decision of the Constitutional Court in *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others*¹ for this proposition, and that the rights the applicant seeks to assert are its own². Mr Both submitted on behalf of the fourth respondent that the high watermark of the applicant's case is that there will be competition against its tenants, who are not party to these proceedings, and that is fatal to the applicant's case. The applicant's contention in this regard is that own

¹ (CCT 25/12) [2012] ZACC 28; 2013 (3) BCLR 251 (CC) (29 November 2012).

² Ibid at para 31.

interest litigation is broader than the traditional common law standing as the fourth respondent wants this court to believe, and that the applicant in its founding papers clearly states that it is the owner of an adjacent property and an operator of the Village View shopping centre and receives services from the Municipality.

[17] With regard to balance of convenience the fourth respondents submits that it stands to lose a substantial amount of money as it has already spent over R5 million on the development. Should the development be interdicted again, their existing tenants would walk away, and the fourth respondent would be liable for damages. In that way, it has a lot to lose, and the balance of convenience favours it.

[18] The fourth respondent further disputes that the applicant has no alternative remedy. In this regard counsel submits that if the applicant succeeds in the review, which according to the fourth respondent is a remote possibility, a demolition order may be an option, although not desirable. This was rejected by the applicant on the basis that the case relied on³ by the fourth respondent as *in BSB International Link CC v Readam South Africa (Pty) Ltd*⁴ the Supreme Court of Appeal (SCA) noted that it is not a simple thing to order demolition. In any event, if regard is had to the photographs taken on the property, it is clear that not much has been done in relation to construction.

[19] As was set out in the answering affidavit, the fourth respondent contends that the allegations pertaining to the actions of Cavaleros stand undisputed, and that the true motive in bringing the application is an ulterior motive⁵ for the applicant to acquire the rights to the development by extortion given the threats made by Cavaleros, which is an abuse of process. To this, the applicant's counsel submitted that issues that may adversely affect the town planning scheme should be considered and evaluate the soundness or otherwise of the objections raised upon application of legal principles. 'Neither the identity of the litigant who raises the objection, nor the motive is relevant'. Counsel added that the statements made were in the context of settlement negotiations and not extortion as the applicant suggests.

³ *Lester V Ndlambe Municipality and Another* 2015 (6) SA 283 (SCA).

⁴ 2016 (4) SA 83 (SCA).

⁵ *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* (CCT66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC) (14 November 2022).

He further cited *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* ⁶ where the Constitutional Court highlights the importance of considering the socio-economic impact of proposed developments to members of a specific community.

[20] Mr Both submitted that Yacoob J decided not to grant the interim order pending the review, and therefore Part A became *res judicata*. He further submitted that this court is not bound by what was decided by Yacoob J. Yacoob J specifically noted that such relief would be premature. She did not dismiss the relief sought by the applicant pending review. Both added that the issue cannot be brought back to life as the applicant seeks to do. On this issue, Mr Venter submitted on behalf of the applicant that the fourth respondent's submissions are contradictory and inconceivable, as finality is a requirement for *res judicata*. This is indeed so, and nothing more need be said in this regard.

[21] In reply, Mr Venter submitted that the fourth respondent has nothing on the merits and are trying to put up skittles to avoid dealing with the merits. He stated that the fourth respondent cannot say that this court is not bound Yacoob J's order and in the same breath argue on *res judicata*. On delay, the applicant submitted that they could not have prosecuted the review while dealing with the appeal and exhausting an internal remedy as required in section 7(2) of PAJA.

[22] He explained how a Municipality determines which properties are adjoining properties, which in any event the fourth respondent has conceded in its answering affidavit. I understand the plaintiff to be saying in this regard that the fourth respondent had always known that the applicant's property is an adjoining property, and that is the reason the reason they sent a notice by registered mail, which never reached the applicant.

[23] On *locus standi*, the applicant cited the decision in *Pick n Pay Stores v*

⁶ 2007 (6) SA 4 CC.

Teazers Comedy and Revue CC ⁷ (3) SA 645 where the court found that the applicants have the necessary *locus standi* if they fall within the same town planning scheme.

[24] The applicant further relied on *BEF v Cape Town Municipality* ⁸ in stating that the town planning scheme operates in the interests of the people directly affected by it, and that dispels the notion of lack of *locus standi* raised by the fourth respondent, the applicant further submitted.

[25] In *JDJ Properties v Umngeni Local Municipality*⁹, Plasket AJA (as he then was) noted in relation to a party's standing to review a decision of the Municipality that the elements of administrative action as defined in PAJA are distinct from lack of standing, the latter being concerned with 'the interest that an applicant may have in proceedings, and whether that interest is sufficient to enable that applicant to challenge the exercise of the public power concerned.' Thus, Mr Venter submits that a litigant's interest is sufficient to clothe him with the necessary *locus standi*.

[26] These authorities, Mr Venter submitted, dispel the notion of the fourth respondent on *locus standi*. I agree with Mr Venter on this issue. As in *Pick n Pay*, the applicant, as a neighbour, could potentially be affected by the planned development and is in the precise position as the applicant that case.

[27] For the sake of completeness, I consider it imperative to set out the parties' respective submissions on whether the applicant has satisfied the requirements for an interim interdict. The fourth respondent's contention is that the applicant has not satisfied the requirements for the granting of interim relief and seeks to interdict lawful conduct. It further contends that the applicant lacks the *locus standi* to institute the review application. At the risk of repetition, I note that the fourth respondent argues that the applicant has failed to demonstrate that it will suffer harm, the fourth respondent further avers, a point which is denied by the applicant.

⁷ 2002 (3) All SA 147 (W).

⁸ 1983 (2) SA 387 (C).

⁹ 2013 (2) SA 395(SCA), 1971 (1) SA 57 (A).

[28] The applicant, on the other hand, argues that this being the second time Part A has been brought before court, the issues of urgency, the applicant's *prima facie* right, irreparable harm, absence of an alternative remedy, and the balance of probabilities have all been decided in its favour by Yacoob J. I have no reason to differ with her on this. It would serve no purpose to revisit this aspect of the application in any further detail.

[29] The applicant's case in this respect is that the Municipality's decision to grant consent use to the fourth respondent is flawed due to procedural defects, including a failed public participation process. It argues further that it was excluded from the public participation process and did not receive proper notice, preventing it from objecting to the application, which issues will no doubt play themselves out in the pending review. Whatever the decision of the review court, and whether the fourth respondent is successful in the preliminary issues it wishes to raise, or vice versa, is not for this court to determine.

Discussion

[30] In determining whether the matter is still urgent, given the determination by Yacoob J, this court should have recourse to the circumstances that prevailed at that time, and whether there has been any change to those circumstances. Linked to that question is whether there was any delay attributable to the applicant in determining the review, and whether it had a negative effect on the urgency of the matter.

[31] Relative to the urgency of the matter, the issues that were canvassed before Yacoob J are that after the appeal was lodged, the fourth respondent attempted to act on the decision of the Municipality and proceed with construction, despite that the appeal was still pending. This much is also alluded to in the judgment of Yacoob J. Those circumstances are still prevalent in the present application.

[32] The common cause facts are that, notwithstanding that the review has not been finalized, the fourth respondent has once more attempted to implement the decision of the Municipality. The fourth respondent is not ignorant of this fact, having conceded (albeit for a different reason) that the circumstances relied on by the

applicant in instituting the application, which served before Yacoob J, are materially the same as in the present application. That being the case, it follows that the same urgency that was found to exist then, exists now. The fact of the matter is that the relief sought in this application is not new, as it is precisely the same relief that was sought in the previous application. The relevant facts and circumstances are also the same. It is not in dispute that the application was necessitated by the fourth respondent's insistence on ignoring the pending review and proceeding with construction. I therefore agree with the applicant's submissions that the review application would be rendered moot if construction were to continue.

[33] The interpretation ascribed by the fourth respondent to the order of Yacoob J is mischievous. The judgment states clearly that reference to the pending review was premature in light of the appeal. It could not be entertained at that stage as the appeal had not yet been determined, and therefore, internal remedies had not been exhausted. The appeal has come and gone. Surely, that cleared the way for the applicant to pursue that relief. Yacoob J did not shut the door on the applicant. There can be no reason to disentitle the applicant from obtaining urgent relief in those circumstances. Without adequate protection by this court, the applicant stands to suffer irreparable harm if the decision of the Municipality is implemented while the review is still pending. Consequently, the issue of *res judicata* cannot be sustained.

[34] It follows, therefore, that as the review has not been finalised, the urgency of the matter cannot be disputed as the possibility of the fourth respondent acting on the decision of the Municipality looms large, leaving the applicant exposed. This is the very basis for the present application. The respondent's averment that Part A is *res judicata* is therefore without merit. It is worth noting that the fourth respondent's submission that the applicant adopted a supine approach to the review application is not correct. At the time it was instituted, the appeal was pending before the Appeal Authority. This is the same reason the court did not deal with it. In any case, the Municipality, whose duty it was to dispatch the record, did not consider it appropriate to do so while the appeal was still pending. That should be the end of the matter. The applicant have also questioned why the applicant sat back for 10 months as they aver, and did not enrol the review. The applicant in this regard also points out that what is remaining at this point for the review to be heard is for the fourth

respondent to file an answering affidavit.

[35] In *Ferreira v Levin N.O and Others; Vryenhoek and Others v Powell N.O and Others*¹⁰, the court held that “(a) *prima facie* right open to some doubt exists where there is a prospect of success in the claim for the principal relief albeit that such prospect may be assessed as weak by the judge hearing the interim application. ... there is no further threshold which must be crossed over before proceeding to a consideration of the other elements of an interim relief ...”¹¹

[36] Of relevance for purposes of the present application is whether the applicant has satisfied the requirements for the relief it seeks. I have already stated that the threat of the fourth respondent proceeding with construction is a harm apprehended by the applicant. Given the fourth respondent’s insistence on proceeding with construction despite the pending review, that harm is not only reasonable but also real.

[37] Indeed, the authorities relied on by the applicant are in the relevant respects on all fours with the facts of the present application and appear to have been carefully selected in view of their application to this case and provide the context within which this application should be decided.

Conclusion

[38] The applicant has made out a proper case for the granting of the relief sought. In the circumstances, the application succeeds.

Costs

[39] In relation to the costs, both parties agree that the review court would be the appropriate forum to deal with the issue of costs, and not the court that deals with the interim interdict. This appears to be a reasonable consideration if regard is had to the contentions of both parties which might be relevant to the review application.

¹⁰ 1995 (2) SA 831 (W).

¹¹ Ibid at 838.

Order

In the result, I make the following order:

- a. The fourth respondent is interdicted from implementing the decision of the second respondent dated 15 August 2023 and commencing or continuing with any construction activities on Erf 2[...] Bedfordview Extension 2, pending the final determination of the review application instituted by the applicant on 30 May 2024.
- b. The costs of this application shall be costs in the review.

S MFENYANA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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Date of judgment: 11 June 2025