



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

Case No.: 4894/2023

Reportable: YES/NO

In the matter between:

SANDILE LOCAL RESIDENTS

1st Applicant

VATHISWA MAKHAMBA

2nd Applicant

VICTOR GCORA

3rd Applicant

MSEKELI MTHIYO

4th Applicant

BONAKELE NDIKHO

5th Applicant

MZEKELO MADIKANE

6th Applicant

ALBERT STUURMAN

7th Applicant

And

**MEC FOR THE DEPARTMENT OF TRANSPORT
SAFETY AND LIAISON**

1st Respondent

**THE SUPERINTENDANT GENERAL, HEAD OF
DEPARTMENT, DEPARTMENT OF TRANSPORT
SAFETY AND LIAISON**

2nd Respondent

JUDGMENT

Cengani-Mbakaza AJ

Introduction

[1] At paragraph 1 of the notice of motion, the applicants who are cited in their capacities as co-owners of the Sandile main road to good condition. The applicants further seek an order directing the respondents to initiate the necessary steps within 30 days and complete compliance within 120 days from the date of the order, as set out at paragraph 1 of the notice of motion.

[2] The applicants further apply that, should the respondents fail to comply with the order (if granted), the respondents should be directed to report back to the court, detailing steps taken to comply with paragraph 1 of the notice of motion to the court's satisfaction.

[3] The respondents in this matter are as follows: The first respondent is the Member of the Executive Council for Transport Safety and Liaison in the Eastern Cape (the department). The first respondent is the political head of the department established in terms of the Constitution of the Republic of South Africa (the Constitution). The second respondent is cited and sued in his official capacity as the person responsible for the administration of the entire department led by the first respondent.

[4] The respondents contest the application raising the preliminary points of non-joinder and *locus standi*. Both parties have set out their respective cases in the affidavits and annexures contained in the court's index bundle spanning pages 1-180.

The applicants' case.

[5] The founding affidavit of Ms Vathiswa Makhamba which is accompanied by a list of confirmatory affidavits comprehensively set out the applicants' case, covering the application's background, the road condition supported by the photographic evidence of the road, drainage pipes, bridges and other infrastructure.

[6] The applicants state that the grievance regarding the road linking communities to Ugie and Ngcobo has been a long-standing issue, with complaints being repeatedly lodged with councillors and the local municipality. Despite these efforts, their concerns have been met with no tangible results, as officials would be appointed and leave office at the end of the term without taking meaningful steps to address the issue. It is common cause that the municipal officials visited the communities but failed to fulfil their commitment to report back to the communities' grievances despite the oversight role under the current counsellor.

[7] The applicants describe the road as extremely bumpy, making travel gruelling experience particularly in emergency situations where access to medical facilities is crucial. The road's poor state also results in substantial vehicle wear and tear, translating to high maintenance costs for vehicle owners.

[8] The inaccessible road from Ugie to Ngcobo significantly disrupts their daily lives, affecting their ability to shop, access banking services and get to work, thereby compromising their overall well-being including the learners' ability to get to school. The November 2023 photographs attached to the papers, illustrate the road's deplorable state: a rough, uneven surface pockmarked by potholes and the stripped off gravel due to flood erosion, revealing a lack of maintenance and re-gravelling over years.

[9] The poorly positioned drainage pipes impede water flow, causing flooding and resulting in a slippery road surface and further compromising road safety. The drainage pipes are severely clogged with mud and debris, having been blocked for an extended period.

[10] The confirmatory affidavits of the third to seventh applicants go beyond standard confirmation, as they also vividly describe the deplorable state of the

nearby gravel roads, highlighting the significant obstacles they pose to accessing medical emergencies, schools, shopping and other essential services.

The respondents' case.

[11] The answering affidavit deposed by Andile Fani, Acting Head of the department raises concerns about the non-joinder of the district and local municipalities. He asserts that these entities are responsible for road maintenance in Engcobo and Chris Hani municipalities as delegated by the Provincial Government. Therefore, they are the interested parties who may be prejudiced by the litigation outcome and thus should be joined. Furthermore, the respondents assert that the applicants are not interested parties in these proceedings.

[12] On the merits of the application, the respondents aver that the department is responsible for maintaining approximately 42 000 kilometres of the roads, implying significant scope of the responsibility. Approximately 10 % of the roads are surfaced, while about 90% are gravel roads.

[13] The department oversees a total of 6 districts, each managed by a District Road Engineer responsible for ensuring comprehensive care of the road network. The department receives funding from the National Department of Transport, which allocates approximately R1 billion annually. These funds are utilised for road maintenance, including blading of the road surfaces and re-gravelling of the roads where blading is not feasible.

[14] The maintenance cost is approximately R500 000 per kilometre, with gravel roads usually requiring biannual blading, adjusted according to road conditions and local economic activity. The department is also responsible for maintaining the paved road network, which includes resealing, rehabilitation and resurfacing of all provincially proclaimed roads, at a close approximately R1.8 million per kilometre.

[15] Given the budget limitations and costly nature of road maintenance, the department engaged with municipalities to enable them to prioritise road maintenance based on the unique circumstances of these respective communities.

One area that was identified as needing was the Sandile Road. The respondents claim that the Integrated Developmental Plan for Sandile road was completed in December 2023.

[16] The respondents further contend that the considerable progress has been made since the budget was approved and contractors appointed. Furthermore, the respondents submit that considering the time required for the site establishment and community engagement, the photographs dated 13 February 2024 show substantial advancement making the order unnecessary.

The applicants' reply.

[17] In their reply, the applicants argue that the respondents failed to adequately motivate their opposition to the application. Moreover, despite the commencement of road construction, the applicants note that the work has since stopped and the road poor conditions remain a concern.

[18] The applicants counter the non-joinder claim by asserting that the main gravel road is a provincial road clearly within the department's jurisdiction. The applicants assert that the department has exclusive responsibility for maintaining and repairing gravel road, as the constitutional and legal mandate. The applicants further dispute being informed about the integrated developmental plan as suggested by the respondents. Furthermore, the applicants re-iterate their legal standing in the proceedings.

Discussion.

[19] This court has carefully considered the comprehensive oral submissions which are consistent with the papers filed by both parties. The heads of argument in the court's bundle have been thoroughly examined and acknowledged.

The preliminary issues.

[20] The principles governing *locus standi in iniudicio* have been extensively addressed in various cases.¹ In *Firm-O-Seal CC v Prinsloo & Van Eeden Inc and Another*², the Supreme Court of Appeal (SCA) has recently reaffirmed that *locus standi* is a mechanism that is controlled by the court itself. A court determines *locus standi* by assuming that the facts are true. The applicant must demonstrate a direct interest and current interest in the proceedings which is not speculative or theoretical. According to the SCA, *locus standi* intersects both procedural and substantive law.³

[21] Our Constitution, specifically section 38, deals with the enforcement of rights. It allows individuals or anyone acting on their behalf to approach a competent court and allege that a right in the Bill of rights has been infringed or threatened. The purpose of section 38 of the Constitution is to ensure that individuals and groups have access to the courts to enforce their rights. Basically, its purpose is to safeguard human rights.

[22] In this instance, the applicants have sufficiently demonstrated their *locus standi* showing that the deplorable road conditions violate their rights not only to the freedom of movement but also to access essential services including healthcare and education, as evident from the founding affidavit including their confirmatory affidavits. Therefore, this preliminary issue cannot succeed.

[23] Similarly, I find no merit in the challenge regarding non-joinder in these proceedings. While the applicants did approach the local municipalities with their grievances, the reference to the municipalities merely illustrate the events preceding the litigation. These demonstrate that the applicants exhausted all the internal remedies which are within their reach before seeking judicial intervention.

[24] The Constitution outlines the respondents' functional responsibilities within the transport sector including roads, traffic management and public transport. As already noted in their answering affidavits, the respondents' acknowledgment of their

¹ *Neugarten and Others v Standard bank of SA Ltd* 1989 (1) SA at 808D-809E; *Watt v Sea Plant Products BPK* [1998] 4 All SA 109 at 113H.

² (483/22) [2023] ZASCA 107; 2024 (6) SA 52 (SCA) (27 June 2023) at para 6.

³ Footnote 2 above.

constitutional role speaks volumes about their accountability and commitment. Therefore, the respondents' acknowledgment of their role is not only important but constitutionally mandated. In a nutshell, the respondents' involvement in the case is warranted.

[25] As acknowledged by the respondents, the municipalities operate with delegated powers based on internal arrangement. Moreover, their constitutional mandate as outlined in section 152(1) of the Constitution focuses on local governance and not explicitly on infrastructure like roads. It may well be true that the municipalities have an interest in the matter. However, considering the respondents' awareness of its enormous role in road construction and infrastructure, such interest is not direct and substantial as contemplated under Rule 10 of the Uniform Rules of Court. Thus, given the respondents' overarching role in these proceedings and the municipalities' mandate stemming from it, there is no basis to conclude that the municipalities would suffer prejudice from the outcome of this case.

The merits of the application.

[26] The matter involves a final mandatory interdict by the applicants. The three requisites governing final interdict are well settled. They are clear rights, an injury committed or reasonably apprehended and the absence of any other satisfactory remedy.⁴ As the authorities highlight, a clear right is a right which can be clearly established.⁵ A final interdict is a drastic remedy, therefore, a court will not in general grant interdict when the applicant can obtain adequate redress in some other form of ordinary relief.⁶ It is a well-established principle that the *onus* is on the applicant to allege and establish on a balance of probabilities that he has no alternative remedy.⁷

[27] In the present matter, the applicants have clearly demonstrated the rights that are being infringed upon, as well as the harm caused by the deplorable road conditions. With no other adequate remedy available, the applicants have exhausted

⁴ Setlogelo v Setlogelo 1914 AD 221 at 227.

⁵ Edrei Investments 9 (Pty) Ltd (in liquidation) v Dis-Chem Pharmacies (Pty) Ltd 2012 (2) SA 553 (ECP) at p 556B-C.

⁶ Mabece-Tilana Incorporated v Basson and Others (504/2020) [2020] ZAECHGHC 24 (10 March 2020) para 10.

⁷ Erasmus v Afrikander Proprietary Mines Ltd 1976 (1) SA 950 (W) at 965H.

all the avenues for relief by repeatedly approaching local government entities, which failed to address the issue.

[28] Despite the respondents' papers, their submissions lack clarity and effectively counter to the issues at hand. The repetitive requirements for a final interdict do not resonate with the facts presented in their answering affidavits. The deplorable state of the road is a common cause fact having created a well-known crisis. The incomplete construction of the road does not resolve the issues raised. In the result, the application must succeed.

[29] The last issue involves structural interdict with the applicants requesting the court's supervision of the mandatory interdict. The applicants require that the respondents should submit progress reports on road construction with the court retaining oversight and ensuring compliance to its satisfaction.

[30] Considering the significance of separation of powers and the risks of judicial overreach, I conclude that this order would be inappropriate. As the applicants are represented, they are presumably aware of the remedies applicable to them in the event of non-compliance with the court order.

Order

[31] The following order is issued:

1. The respondents are directed to repair, fix, resurface and take the necessary steps to restore the Sandile main gravel road located at Ngcobo district within 120 days from the date of this order.
2. The respondents shall pay costs of this application on scale A as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court, jointly and severally the one paying the other to be absolved.

N CENGANI-MBAKAZA

JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

Counsel for the Applicants : Mr T.A Nkele
NKELE ATTORNEYS
MTHATHA

Counsel for the Respondents : Adv. Maliwa
Instructed by : STATE ATTORNEY
MTHATHA

Date heard : 13 March 2025

Date delivered : 12 June 2025