

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 6256/2023

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE: 16 September 2025 SIGNATURE...

In the matter between:

POLOKWANE LOCAL MUNICIPALITY

Appellant

And

SELEMA PLANT HIRE CONSTRUCTION CC

Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **16 September 2025**.

JUDGMENT

Makoti AJ

Introduction

- [1] Long before our Constitution came into being there was the Magna Carta in England which gave us a glimpse of how property rights may be respected, protected and exercised. The same instrument also taught us that citizens had to obey the law of the day. Its article 39 stipulates that the life, liberty, or property rights of the free subjects of the King could not be arbitrarily taken away. The rights may be impacted upon in terms of the law. Though the Magna Carta is English, its vast historical teachings remain with us to this day, which shall be witnessed in this judgment.
- [2] This application lends the dichotomy between the free use or enjoyment of property rights, and the statutory limitations to such enjoyment. The case was instituted by the **Polokwane Local Municipality** (the Municipality) to stop or prevent **Selema Plant Hire Construction CC** (Selema) from conducting alleged illegal activities on its land property. The land property in question is Portion 0, Plot 12, Erf 12, Elmadal Agricultural Holdings, Elmdale, Registration Division LS (the property). It is situated within the geographical area under the management of the Municipality.
- [3] The Municipality alleges that Selema is using the property illegally as storage facility for its construction vehicles. It further contends that the activity is conducted in contravention of its by-laws and planning schemes. I shall revert to this at a later stage.
- [4] Selema is a business entity that hires out civil or construction plant. Its website tells us so. It opposes the application and the relief sought against it by the Municipality. The grounds for opposition will be considered below alongside the grounds upon which the application is predicated. Both parties

asked for costs to be awarded in their favour, contingent of course to them succeeding. that they are successful with the application.

Identification of the issue for determination

- [5] The interdictory relief that the Municipality is seeking is axiomatic, and I foreshadowed it above. It prays for a final interdict to be granted restraining Selema from using the property for parking civil construction plant. From factual point of view this court will be required to determine whether the use of the property amounts to an illegality. If that is proven, the court's focus will turn to decide whether the Municipality has satisfied the requirements for final interdicts.

- [6] The case concerns the enforcement of the Municipality's land use laws, the fundamental question being whether Selema is using the property in contravention of the laws. If it is so, a follow-up question would be '*what appropriate remedy should the court grant upon reaching that finding?*' The converse is however not controversial. That is, should the court find that there is no illegal activity or contravention happening through the use of the property, the case will stop there.

Background

- [7] The Municipality is an organ of state that is reposed with the powers or authority to manage and oversee the use of land properties within its area of jurisdiction. The property referred to above is not different. Its use is subject to the applicable laws. I do not foresee that this point can be contested by anyone. Selema does not dispute in its answering affidavit that the Municipality is legally entitled to adopt and regulate land use matters in its area of jurisdiction.

- [8] Selema is a business entity in the form of Close Corporation. It is duly registered as such and has as its business Portion 0, Plot 12, Erf 12, Elmdale Agricultural Holdings, Elmdale, Registration Division LS. This is the same address where the Municipality alleges the illegal activities are happening. It is the registered owner of the land property, with effect from 10 February 2023.
- [9] The property is listed as an agricultural holding. Its use is regulated in terms of legislation. It is apposite to detail what the nature of an agricultural holding is, from legislative perspective. The **Agricultural Holdings (Transvaal) Act**¹ defines an agricultural holding as:

“agricultural holding” a portion of land not less than 1 morgen (8 565 square metres) in extent used solely or mainly for the purpose of agriculture or horticulture or for breeding or keeping domestic animals, poultry or bees” [Emphasis added]

- [10] Though aged, the legislative definition still holds. Its use of words ‘*solely*’ and ‘*mainly*’ in the act signifies a prohibition to the use of agricultural holding land for purposes other than what is listed in the definition. I go as far as to suggest that land use that deviates from what is permitted or authorised must be properly authorised. Selema and any land owner who intend using land are required to first apply and obtain permission or approval from the Municipality for the intended use, especially where such use would be for a purpose other than agricultural use. In my view this cannot be disputed.
- [11] To ensure that the land owners use their properties in terms of the approved municipal land use scheme the Municipality relies on its officials to conduct inspection and monitor how owners use their land properties. The officials of the Municipality conduct regular inspections on properties in and around the

¹ Act No. 22 of 1919.

Polokwane municipal area. In conducting the inspections, the officials pay visitations to land properties to ensure that every land user does so within the confines of the law. The laws in this regard would be municipal land use scheme or by-laws which have been promulgated to regulate land use matters.

- [12] More directly applicable to the case at hand is the Municipality's own legislation through which it regulates land use. through the Polokwane / Perskebult Town Planning Scheme of 2016 (the land use scheme). The scheme was published for purposes of promulgation on 28 July 2017 in the Provincial Government Gazette, Notice Number 2837 of 2020. The scheme is not under attack and is applicable.
- [13] On 8 August 2022 an official of the Municipality attended at the property to conduct regular inspection. Whilst at the property the said official, Ms Venus Ngobeni, found a number of vehicles parked on the property. According to the Municipality the vehicles are construction vehicles which are stored on the property. Upon making the discovery Ms Ngobeni issued the Respondent with a compliance notice on the same date.
- [14] The compliance notice required the Respondent to cease using the property as a storage facility for construction vehicles. The Municipal official, Ms Ngobeni, visited the property again on 29 August 2022 to conduct another regular inspection. Upon attending at the property she still found the vehicles that she had discovered previously still on the property. She then issued the Respondent with a second compliance notice.
- [15] The second compliance notice dated 29 August 2022 had similar conditions or directives. The notice concluded by informing the Respondent that should

it fail to comply with the directive the Municipality would institute litigation in order to enforce compliance with the Land Use Scheme.

- [16] On 12 February 2022 a notice of demand was issued by the Municipality's lawyers dated 12 February 2023. In the letter the Municipality informed the Respondent that it has contravened the provisions of the Polokwane / Perskebult Town Planning Scheme of 2016 by conducting a storage facility of construction vehicles on the property. It also reminded the Respondent of the previous compliance notices that were issued. It was again demanded that Selema should cease operating a storage facility for construction vehicles on the property, within 7 calendar days from the date of receipt of service of the letter.
- [17] The letter by the attorneys was served by the sheriff of Court. What gave rise to this application is the contention by the Municipality that despite the notices, Selema failed refused or neglected to cease the alleged illegal operation on the property.
- [18] I have indicated that the Respondent opposes this application. It disputes that it is conducting an illegal operation or storage facility on the property. It communicated its position to the Municipality on 6 March 2023 through a letter which contended that it is not and has never conducted storage facility business or operated an industrial manufacturing business on the property. It however conceded that it is the owner of the vehicles that are parked at the said property, but it's doing so without operating any construction business on the premises.
- [19] The Respondent further contents that the allegations that it is conducting a storage facility of construction vehicles on its property are unfounded and untrue. It indicated that it has never conducted any such business and does

not intend to do so at any time in the future. In its letter responding to the allegations raised by the Municipality in its compliance notices, Selema indicated through its lawyers that as the owner of the property it parks its vehicles without operating its business on the property.

[20] Paragraph 2 of the letter from Selema's attorneys reads as follows:

"According to para 3.2 and 3.5 of your letter, your client alleges that our client is conducting/operating a storage facility and an industrial manufacturing business without the necessary land use rights, however, on our client is not and has not at any point intime conducted a storage facility business or operated an industrial manufacturing business on the property."

[21] The letter was in reaction to the demand to cease the illegal activities. To be specific, the letter was a direct response to the one that was addressed to Selema by the Municipality's lawyers. The letter alleges in paragraph 3.2 as follows:

"You have contravened the provisions of the Polokwane/ Perskebult Town Planning Scheme, 2016, in that you're conducting a storage facility of construction vehicles at Plot 12, Elmdale Agricultural Holdings, Elmadale, Polokwane without necessary Land Use Rights."

[22] This statement is consistent with the contents of the compliance notices that were issued by the Municipality. The notices identified the offending conduct as storage of construction vehicles which in scription is made in the letter's manuscript. This is what heralded the conflicting views or arguments between the parties.

[23] The Court file contains photographic images of the property, which also shows the kind of vehicles that are stored on the land. They are the ones that the Municipality contends are construction vehicles. Amongst ham are tipper trucks, TLB's and other heavy equipment which are used on

construction sites. The Municipality contends that the land user must obtain authority or approval to park such vehicles on the property.

- [24] It is common cause that Selema did not obtain approval from the Municipality to park such motor vehicles on the property. The conduct complained of must be looked into within the prism of the Municipality's by-laws and land use scheme. If the conduct is such that it requires Selema to have first obtained approval from the Municipality, then its use of the property without such approval would be offending the prescripts. I deal briefly with the legislative requirements.

Discussion of the case and consideration of the law

- [25] Land use is regulated in terms of the **Spatial Planning Land Use Management Act**² (SPLUMA). The legislation was promulgated to provide a system for the regulation and monitoring of land use. The Municipality is empowered in terms section 24(1) of SPLUMA to adopt and approve a land use scheme for its area. When adopting the scheme, the Municipality was required to first embark in public participation process(es). The land use scheme was adopted in 2016 and it regulates land use within the geographical area of the Municipality.
- [26] The nature of such schemes was discussed by the Court in *Pieterse NO v Lephalale Local Municipality*,³ which was relied on by the Municipality, as both executive and administrative. Importantly, the Court noted that the development of such scheme falls within the remit of the Municipality. A scheme required to include procedures and conditions for the use and

² Act No. 16 of 2013.

³ 2017 (2) BCLR 233 (CC) para 8.

development of land.⁴ A land use scheme has the force of law⁵ and must binds land owners, the Municipality and state-owned enterprises alike.

- [27] Clause 41 of the Municipality's Town Planning Scheme deals with enforcement of the scheme. The scheme reads in sub-clause (3) in the following manner:

"A person who commits or knowingly permits a contravention of any of the provisions of this Scheme or the requirements of any order or notice issued or conditions imposed in terms of this Scheme, shall be deemed to be guilty of an offense."

- [28] Where there are non-compliance or an unlawful use, the Municipality is entitled in terms of the scheme to issue compliance notices to land owners or occupiers to demand compliance.⁶ Such notice is signed by an authorised official of the Municipality. This is important as the Municipality has a duty to not only uphold the law and to ensure that the law is upheld. Critically, the Municipality must ensure that the provisions of its scheme are upheld for the benefit of the public.

- [29] Courts have accepted as clear right the Municipality's right to protect its scheme. I am aligned with the notion expressed in this regard. For instance in *City of Johannesburg v Nair and Another*⁷ (City of Johannesburg) it was held in this connection that:

"[44] Therefore the applicant has an established right which is clearly stated in the City of Johannesburg Land Use Scheme of 2018 thus, it has a "clear right" or "definite right" on any usage of the said property. Furthermore the applicant has a clear right to enforce compliance with the provisions of the Scheme by virtue of the legal

⁴ Section 25(2) of SPLUMA.

⁵ Section 26(1)(a) of SPLUMA.

⁶ Clause 42(1) of the Scheme.

⁷ *City of Johannesburg v Nair and Another* (4532/2020) [2021] ZAGPJHC 803 (27 October 2021).

duty imposed on the applicant to ensure compliance with the said provisions.”

- [30] This is not a new phenomenon. Many years ago a similar approach was adopted in *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council*⁸ in which it was held amongst others as follows:

“... A lenient approach could be an open invitation to members of the public to follow the course adopted by the appellant, namely, to use land illegally with a hope that the use will be legalized in due course and that pending finalisation the illegal use will be protected indirectly by the suspension of an interdict.”

- [31] This extract leads me to Selema’s defense, which is that the Municipality has not satisfied the requirements for interdict. The high watermark of Selema’s defense, relying on *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*,⁹ is that interdict is not a remedy for past contraventions. On its argument the contravention that the Municipality is aggrieved by has already taken place. For that reason Selema argued that the application must be dismissed.

- [32] The principle espoused above and in the authority mentioned in the paragraph are trite and cannot be disputed. That said, however, the argument misses an important consideration, which is that the breach is continuing. It is the kind which, if not stopped, will continue into the future and in a manner that will render the by-law ineffective or nugatory. Municipal laws, as any other, must be protected against persistent infringement. I accept it that the use of property in a manner that is not authorised, or prohibited, constitutes an injury to the Municipality.

⁸ 1987 (4) SA 343 (T) at 348C.

⁹ 2008 (5) SA 225 (SCA) at para 20.

[33] I see no other way from stopping a continuing infringement other than through interdict. In *City of Johannesburg Metropolitan Municipality v Nair and Another*¹⁰ the Court made the following remarks before reaching the conclusion to interdict the respondent in that case from using his property in a manner that contravened the scheme:

“[50] It is clear that the respondents persist in using the property in contravention of the Scheme. The applicant represents the public interests of residents in the area of the Scheme and thus has a duty towards the community to ensure that the activities and acts performed by the respondents are unlawful and in contravention of the Scheme.”

[34] What remains is the question whether the Municipality has proven that it has no alternative remedy. It contends that it has satisfied this requirement, amongst the others. Courts have expressed a view on this issue. In *Berg Rivier Municipality v Zelpy*¹¹ the following was stated regarding any other satisfactory remedy available to the Municipality, and in this case, criminal prosecution:

“refers to the absence of similar protection by any other ordinary remedy. ... the protection afforded by an interdict is the cessation of the unlawful activity; a criminal prosecution does not achieve anything similar – it punishes past conduct (see *Ebrahim v Twala & Others* 1951 (2) SA 490 (W) at 493A-B).” [Emphasis added]

[35] Moreover, it was held in *Lester v Ndlambe Municipality and Others*¹² as follows:

“I conclude by reverting to what Harms J said in *United Technical Equipment, supra*, with regard to the City Council’s obligations to

¹⁰ *City of Johannesburg, supra*.

¹¹ 2013 (4) SA 154 (WCC).

¹² 2015 (6) SA 283 (SCA) at paragraph [27]; also see, *United Technical Equipment Co v Johannesburg City Council* 1987 (4) SA 343 (T).

enforce the law in the face of an ongoing illegality being perpetrated by the appellant company in that case:

“The respondent has not only a statutory duty but also a moral duty to uphold the law and to see to due compliance with its town planning scheme. It would in general be wrong to whittle away the obligation of the respondent as a public authority to uphold the law. A lenient approach could be an open invitation to members of the public to follow the course adopted by the appellant, namely to use land illegally with a hope that the use will be legalise in due course and that pending finalisation the illegal use will be protected indirectly by the suspension of an interdict.” [Emphasis added]

- [36] It goes without saying that the Municipality is entitled to demand that Selema complies with the binding provisions of the land use scheme. This entitles it to demand that Selema should only use the property only for activities related to agriculture. It is clear that Selema does not intend to abide by the scheme, and has no desire to cease its current use of the property. I find that on that basis that the Municipality has made out a case in its contention that there is continuous harm. If Selema is not told by the Court to stop using the property in without approval being granted, it will continue to do so with no end in sight. The scheme will mean nothing if that is allowed.
- [37] I find no reason to not grant the Municipality the relief that it is asking for, and to order Selema to desist from uncontrolled or unregulated use of the property. It has no entitlement to use the property in the manner that it is currently doing, without seeking and obtaining approval from the Municipality in accordance with the scheme. Its denial that it is not using the property as a storage facility for construction equipment is belied by photographic evidence which reveals the opposite.
- [38] Although Selema disputed that it was using the land for storage of the construction vehicles, it did not provide any details of what it is using them

for. It did not plead that the vehicles are used in pursuit for agricultural purposes. During oral hearing of the application a contention was made on behalf of Selema that spatial planning scheme was not applicable. I do not agree with the contention. One can hardly reason that there is land that is not subject to spatial planning policies or laws.

- [39] Another contention that was raised on behalf of Selema was that the policy was not clear on what kind of vehicles can be kept on the land. Clause 7 of the policy was particularly criticised on its behalf. Sub-clause 7.4 of the scheme reads as follows:

“Parking Garages are permitted on “Business 1”, “Business 2”, “Industrial 1”, and “Industrial 2” Use Zones, subject to the following conditions: A site development plan and landscape development plan shall be submitted in terms of Clause 31 of the Scheme.”

- [40] I part company with the notion that the scheme lacks clarity on the question of what may or may not be parked. It unambiguously states that for parking purposes a user has to submit to the Municipality a site development plan and a landscape development plan. The ordinary language of the scheme leaves no doubt on that score. The background to the passing of the scheme stemming from SPLUMA is that the Municipality has to regulate land use.¹³ In my view the scheme leaves no room for doubt in respect of its requirement for land users to submit the plans for garage or parking purposes.

- [41] It is common cause that Selema submitted none of the plans to the Municipality. It has not applied to be authorised to use the property for the purpose of storing construction vehicles, or to have garages on the land. I

¹³ Bothma-Botha Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk [2013] ZASCA 176; 2014 (2) SA 494 (SCA), paras 10 to 12 and in North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd [2013] ZASCA 76; 2013 (5) SA 1 (SCA) paras 24 and 25

would have expected a party that is uncertain about the bounds of a scheme does not just act, or even refuse to comply when told that it is using land unlawfully. A law abiding person takes steps to enquire as to why it is alleged that its use of the land is in contravention of the policy, especially where, as Selema contends, the policy may seem to it unclear. I find its conduct inimical to good and orderly statesmanship. Respect for the law is good citizenship.

Determination of costs

[42] Both parties want costs if they succeed. This accords with the default position that costs follow the cause. It is well settled in our jurisprudence that the determination of costs is a matter within the judicial discretion of the Court, which discretion must be applied judiciously.¹⁴ When granting costs the Court indemnifies the successful party for the expenses which he incurred after having been unjustly compelled to initiate or defend litigation.¹⁵ I find no reason why the costs should not follow the result, which costs must still be just and equitable.

The following order is made

[43] The following order is made:

[43.1] The application is granted in favour of the Municipality and Selema is interdicted and restrained from using the property for storage of construction vehicles or for any other purpose without approval from the Municipality; and

¹⁴ Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and another 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 88.

¹⁵ Kruger Bros & Wasserman v Ruskin 1918 AD 63 at 69.

[43.2] Selema is ordered to pay the costs of this application on normal party and party scale B.



M. Z. MAKOTI

**ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION**

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DATE RESERVED : 13 FEBRUARY 2025

DATE DELIVERED : 16 SEPTEMBER 2025