

REPUBLIC OF SOUTH AFRICA



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

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

03/2/2023
.....
DATE

.....
SIGNATURE

Case no.: **25559/2021**

In the matter between:

LUNESH SINGH

APPLICANT

and

THE BODY CORPORATE OF ST TROPEZ

RESPONDENT

Coram:

Dlamini J

Date of Request for reasons:

03 November 2022

Date of delivery of reasons:

03 February 2023

These reasons are deemed to have been delivered electronically by circulation to the parties' representatives via email and same shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

- [1] On 8 September 2022, I made a draft order dated 8 September 2022 an order of this court. The following are my reasons for this order.
- [2] This is an application wherein the applicant seeks an order to restrain the respondent from removing certain motor vehicles parked in certain bays in various Units of the St Tropez complex (St Tropez).
- [3] The respondents instituted a counter application, where the respondent seeks an order compelling the applicant to remove certain motor vehicles parked in various in certain parking from St Tropez.
- [4] The applicant is Mr. Lunesh Singh an adult male and a member of the respondent. The applicant owns units 22, 23, 25, and 31.
- [5] The respondent is the body corporate of the ST Tropez sectional titles scheme situated. The respondent members are constituted by the owners of the 36 Units located in St Tropez.
- [6] In his founding papers, the applicant testified that he is a member of the respondent and owns several units in the complex, these being units 22, 23, 25, and 31. He says each unit has one allocated undercover parking bay and is allowed to park vehicles in the visitor's parking.

- [7] The applicant avers that on 21 May 2021, the respondent placed notices on the motor vehicles that were parked in the parking bay of his 4 units. The applicant says the respondent has abused its powers and targeted vehicles parked in his 4 units, denying the residents of the 4 units their right to parking.
- [8] In addition to opposing this application, the respondent launched a counter application, where the respondent sought an order compelling the applicant to remove certain vehicles from ST Tropez.
- [9] The respondent testified that the applicant has unlawfully parked a number of the applicant's vehicles either on common property or on parking bays that have been specifically allocated to other owners.
- [10] The respondent further submit that the applicant has not obtained the trustee's written concern to park the said vehicles. Further, that the applicant has no entitlement to park vehicles belonging to his private business on the parking bays and common areas of St Tropez.
- [11] The question to be asked is whether the respondent is entitled to remove the applicant's vehicles.
- [12] Guiding us is Rule 3 of the Conduct Rules as prescribed in terms of section 10 (1) (b) of the Sectional Titles Schemes Management Act, 8 of 2011 read with regulation 6 of the Sectional Titles Schemes Management Regulations of 2016 which provides as follows that;

"The owner or occupier of a section must not, except in a case of emergency, without written consent or approval of the trustees, park a vehicle, allow a vehicle to stand, or permit a visitor to park or stand a vehicle on any part of the common property other than a parking bay allocated to that particular section or parking bay specifically allocated for visitors parking"

- [13] On the evidence presented before this Court, the applicant has not provided any evidence that the applicant had sought the consent or approval of the

trustees to park the vehicles in the manner that the applicant did. The applicant has failed to show any emergency that justifies the illegal parking of his vehicle. There is no doubt and it is apparent that the vehicles interfere with the use and enjoyment of the common property by other members of ST Tropez.

[14] I now turn to deal with the applicant's main application.

[15] In his main submission, the applicant denies that his vehicles are parked on the common property. He argues that his vehicles are parked in their allocated parking bays. Further, those vehicles that had parked in other units have since been removed.

[16] The main application, in my view, is frivolous, the allegations are bald and not supported by any facts submitted in this Court. This is so because the applicant has failed to demonstrate that the respondents have removed any of his vehicles. No attempt has been made by the applicant to seek permission and undertaking that the respondents will not remove the said vehicles. In fact, it is the applicant who has parked his motor vehicles illegally, in parking bays that are not allocated to the parking bays of his 4 units.

[17] In all the circumstances mentioned above, I am satisfied that the applicant's main application should be dismissed and the counter application is granted.

ORDER

1. The order marked X that I signed on 8 September 2022 is made an order of this court.



DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date for Request for Reasons:	03 November 2022
Delivered:	03 February 2023
For the Applicant:	Lunesh Singh (in person) joelsingh@indlovu.biz
For the Respondent:	Adv N.G Louw nlouw@lawcircle.co.za
Instructed by:	Beyers Incorporated Attorneys rasb@beyersinc.co.za