



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO. EL 358/2024

In the matter between:

GRAHAME ARTHUR GRAVETT

APPLICANT

and

**SIYAVUYA POWER PROJECTS
(PTY) LTD**

FIRST RESPONDENT

**BUFFALO CITY METROPOLITAN
MUNICIPALITY**

SECOND RESPONDENT

REASONS FOR ORDER

Rugunanan J

- [1] On 18 November 2024 the order attached hereto as 'Annexure A' was handed down electronically to the parties. This followed argument in the matter on 14 November 2024. Subject to what is mentioned at the

conclusion hereof the terms of the order accord substantially with the relief claimed by the applicant in the notice of motion.

[2] The application was not launched on urgency. But the relief given to the applicant, and by implication against the first respondent (the respondent), necessitated a decision without delay.

[3] What follows are reasons for the order.

[4] This is done somewhat tersely.

[5] The pressing demands of recess duty in the urgent court at Makhanda at this time of the year factor in that regard.

[6] The full spectrum of historic factual detail set out in the parties' affidavits and the arguments on their behalf are a matter of record. Except for what is mentioned herein, a literal recital is unnecessary.

[7] On the facts, the order endeavoured to balance competing ownership interests in land use while asserting the rule of law.

[8] That, essentially, is the axis of the matter.

[9] The second respondent is the Buffalo City Metropolitan Municipality (the City). It is an organ of state. It conserved its involvement in the proceedings.

[10] The erven owned by the applicant and the respondent are located in Meisies Halt, Gonubie. They have a common boundary.

[11] The title deed to each property imposes the restriction:

'The land shall be used for residential and agricultural purposes only and no store or place of business or industry whatsoever may be opened or conducted on the land ...'

- [12] The parties' ownership of their respective properties and the applicable conditions of title are matters not in dispute. According to the respondent, there is a factual dispute on the question whether it is in breach of the restriction.
- [13] The applicant claims that the property is used as an industrial depot – the respondent is actively involved in the business of constructing high voltage powerlines, operating a fleet of light and heavy motor vehicles and employing a substantial staff.¹
- [14] The respondent maintains that there is no manufacturing or industrial processes associated with powerline construction activity being conducted on its property. It asserts that the applicant's founding papers supported by photographs are emotive, exaggerated and are of no assistance to the Court in understanding the business activities which the respondent pursues on its property.
- [15] It denies that the property is used as a depot for industrial purposes. The property is occupied by its employees and employees of Eskom and is used rather as a storage depot for vehicles, machinery, equipment, steel and cable essential for its business involving *inter alia* the electrification of various urban and rural areas. Currently, the respondent is involved in the 'Pembroke-Neptune 400 KV powerline' project.
- [16] The project is intended to provide infrastructure for the supply of electricity to various community users and is scheduled for completion by 20 December 2024. The project is supported by the City.
- [17] By letter dated 22 November 2023 the City notified the respondent that the property:

¹ The effect of the respondent's activities on the applicant are detailed in the founding affidavit at paras 34, 37 *et seq* where the applicant complains of the transformation of the character of his property from that of a pleasant, quiet rural environment to an industrial area.

'is zoned for Agricultural Zone purposes in terms of the Buffalo City Zoning Scheme and the use of the property for an office and depot is not permitted'.

- [18] The letter is attached to the respondent's answering papers and is referred to as a 'cease and desist letter'. No issue is taken with its contents.
- [19] The respondent was directed to cease the operation of the office and depot within 30 days.
- [20] The respondent argued that agricultural use self-evidently includes storage, and that its utilisation of its property as a storage depot is for a constitutional purpose.
- [21] The argument is semantic.
- [22] Pertinent for present purposes is that the declaration in the letter followed 'a site inspection' by the City – the organ that has constitutional and administrative competence in matters of local and municipal planning. The City has made its determination. Its legitimacy is not an issue *lis pendens* before this Court.
- [23] It is not without legal consequences. It exists in fact and remains in force until set aside or temporarily uplifted.
- [24] On 8 March 2024 the respondent caused publication in a local newspaper (the Daily Dispatch) of its application with the City for a temporary departure from the title deed conditions and zoning regulations. Its outcome was still pending as at the date of the hearing of this matter.

- [25] The application does not mechanically suspend the City's determination or anaesthetise the title deed restriction. This springs deeply from the rule of law.²
- [26] In its answering affidavit the respondent appreciates the legal necessity of a temporary departure from the restrictive title deed condition given the importance of the current project. It may be said with justification that its application signifies an acknowledgment that the prevailing use of its property does not accord with the title deed restriction or the applicable bylaw/s and legislation.³
- [27] From this perspective, there is no factual dispute regarding breach of the restriction occasioned by use.
- [28] Such use is unlawful. The growth of multiple businesses and urban sprawl over decades (dealt with in considerable detail in the answering papers) affords no justification for such use. Nor does the contention that the respondent's involvement in the current project advances the provision of electrical reticulation in a sustainable manner in fulfilment of the constitutional obligation on all municipalities.
- [29] Without question, the developmental obligations of municipalities as organs of state are entrenched in the Constitution, obliging them to prioritise the basic needs of the community in the provision of municipal services (which include water and electricity) and to promote the social and economic development of the community.⁴
- [30] The Constitution is the ultimate embodiment of the rule law.

² As articulated in the context of what was said by the Constitutional Court in *MEC for Health Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2014 (3) SA 481 (CC) para 103.

³ i.e. the Municipal Spatial Planning and Land Use Management Bylaw 62 of 2016, and the Spatial Planning and Land Use Management Act 16 of 2013.

⁴ *Joseph v City of Johannesburg* 2010 (4) SA 55 (CC) generally paras 34-40 but specifically at 70F.

- [31] All law must be viewed through its prism. The legitimacy of the City's declaration (and by extension the title deed restriction) is still intact. To contend that the obligations imposed by the Constitution to provide electrical infrastructure and/or services justifies a balance of convenience that favours the continuance of the respondent's use of the property contrary to the restriction, is irrational. It defeats the rule of law.
- [32] The Constitution does not sanction unlawful conduct for advancing its mandate to organs of state.
- [33] Town planning and zoning restrictions restrict the rights of all owners in an area. The restrictions are enacted in the interests of a class of persons, namely the residents of the area. They have the requisite legal standing to interdict violations without proof of actual harm.⁵ An immediate neighbour is included in that class and has a special interest in upholding the restrictions.⁶
- [34] Contravention of a zoning scheme requires a swift remedy.⁷ By itself its breach constitutes a sufficient injury that qualifies as sufficient harm to justify the granting of a final interdict.⁸ There is no reason why an interdict should not be granted even though another remedy (e g a criminal prosecution) may follow for unlawful conduct.⁹
- [35] The propositions are trite. They are evidenced by the authorities to which the applicant referred in argument and are referenced in the footnotes herein.
- [36] It is inconsequential whether at the time of the institution of these proceedings on 27 February 2024 (prior to publication of the respondent's legal notice in the local newspaper) the applicant was of the belief that no other remedy was available.

⁵ *De Winnaar and others v Viveiros and others* [2020] ZAFSHC 45 para 12 citing was approval *Intercap Ferreira Mainliner v Minister of Home Affairs* 2010 (5) SA 367 (WCC) para 135.

⁶ *De Winnaar and others v Viveiros* para 7.

⁷ *Makgosi Properties (Pty) Ltd v Fichard N O* [2016] ZAGPJHC 374 para 22.

⁸ *De Winnaar and others v Viveiros* para 34.

⁹ *De Winnaar and others v Viveiros* para 12.

- [37] The applicant owns his property. He has a legally recognised interest in enforcing the City's zoning scheme¹⁰ of which the respondent is in contravention. Its unlawful conduct necessitates that the applicant be granted the interdict.
- [38] On the appropriate test in motion proceedings, the common cause facts support this.¹¹
- [39] As the longevity of the contravention subsists until completion of the project on 20 December 2024 (indicated in the respondent's heads of argument) it was considered practically feasible to suspend the operation of the interdict to that date – the applicant indicating in argument that he would have no objection thereto.
- [40] The order stands.

S RUGUNANAN
Judge of the High Court

TO: CLARK LAING INC.
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¹⁰ *Visagie and another v Kalema Holdings (Pty) Ltd and another* [2022] ZAFSHC 150 para 37.

¹¹ *NDPP v Zuma* 2009 (2) SA 277 (SCA) para 26, as observed by Harms JA, motion proceedings were designed for the resolution of legal disputes based on common cause facts.

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Transmitted electronically via email at 09h30 on 17 December 2024.