IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: B1781/2024

Date: 15 July 2024

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

[redacted]

15 July 2024 .....
DATE SIGNATURE

In the matter between:

PASTOR RAYMOND SONO First Applicant

FOUNTAIN OF LIFE WORSHIP CENTRE Second Applicant
Registration number: 2012/115666/08

and

SHERIFF OF THE HIGH COURT, TSHWANE NORTH First Respondent

SAVDEV LAND 1 (PTY) LTD Second Respondent
Registration number: 2001/010247/07

JUDGMENT

MINNAAR AJ:

INTRODUCTION:

[1] The applicants brought an urgent application in terms of which an interim interdict is sought in the following terms:

a. Pending finalisation of a petition, under case number 51054/2013, the first respondent be interdicted from destroying any structures and/or buildings on the relevant immovable property ("the property").

b. Pending finalisation of an application under case number B3740/2023, to declare the settlement agreement between the applicants and the second respondent *null* and *void,* the respondents are interdicted from evicting the applicants from the property.

[2] The application was allocated for hearing on Thursday 11 July 2024 at 10h00. An answering- and replying affidavit was delivered.

[3] At the commencement of proceedings, counsel for the applicants submitted that the applicants will seek my recusal as I have made a ruling on an application between the same parties on 18 December 2020 under case number 62896/2020. On a question by the court as to the basis of this purported recusal application, counsel for the applicants indicated that the applicants will not pursue the request for my recusal.

[4] It is a trite legal position that a litigant must make out its case in the founding affidavit. A litigant is not entitled to supplement his case in the replying affidavit nor be allowed to obtain an interim order and be permitted to supplement his/her papers to ensure a proper case will be presented on the return date.

[5] The requirements for interim interdicts are well known.[1] The applicants must prove:

a. that they enjoy a *prima facie* right;

b. an injury suffered or reasonably apprehended;

c. that the balance of convenience favours granting the interim interdict; and

d. the absence of similar protection by another ordinary remedy.[2]

[6] These general principles provide the lens through which the court must assess the applicants' claim for interim interdictory relief. It should be borne in mind that an interdict is an "*extraordinary remedy*"[3] and as such due compliance must be proved to obtain such extraordinary relief.

[7] The remedy is a discretionary remedy.[4] It is trite that no comprehensive

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1 Requirements first laid down by Innes, J. A. in ***Setlogelo v Setlogelo*** *infra* at 227 and adapted by the court in ***Webster v Mitchell*** 1948 (1) SA 1186 (W).

2 ***LF Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v L F Boshoff Investments (Pty) Ltd*** 1969 (2) SA 256 (C) at 267.

3 ***Setlogelo v Setlogelo*** 1914 AD 221 at 223

4 ***Knox D'Arcy and others v Jamieson and others*** *1996 (4) SA 348 (A)*

rule can be laid down for exercise in judicial discretion in granting or refusing interdicts,[5] but the court must decide on the circumstances of each case.[6]

[8] Regarding interlocutory interdicts the court possesses a general and overriding discretion whether to grant or refuse an application for interlocutory relief.[7] This means that an applicant who establishes the requisites for an interlocutory interdict is not necessarily entitled to that relief.[8] The factors applicable to interim interdicts[9] should not be considered separately or in isolation.[10]

***Prima facie* right:**

[9] The Applicants' case regarding their *prima facie* right is their alleged entitlement to be in occupation of the property.

[10] The applicants' entitlement to the property is the subject of a long history of litigation between the first- and/or second applicants and the second respondents.

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[5] ***Prinsloo v Luipaardsclei Estates and Gold Mining Co Ltd*** *1933 WLD 6 at 25*
[6] ***Kemp, Sacs & Nell Real Estate (Edms) Bpk v Soll*** *1986 (1) SA 673 (O) at 689I – 690A*
[7] See for example ***Messina (Tvl) Development CO Ltd v SAR&H*** *1929 AD 195 at 215;* ***Yusuf v Abboobaker and Pitermaritzburg Local Road Transportation Board*** *1943 NPD 244 at 247;* ***Knox v D'Arcy****-supra*
[8] ***Yusuf****-supra;* ***Limbada v Dwarka*** *1957 (3) SA 60 (N) at 628B-F.* ***Rizla International BV v Suzman Distributors (Pty) Ltd*** *1996 (2) SA 527 (C) at 536C-D*
[9] Par 12-*supra*
[10] ***Olympic Passenger Services (Pty) Ltd v Ramlagan*** *1957 (2) SA 382 (D) at 383E-F;* ***Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton*** *1973 (3) SA 685 (A) at 691F-G;* ***Beechman Group Ltd v B-M Group (Pty) Ltd*** *1977 (1) SA 50 (T) at 540E;* ***Bredenkampo v Standard Bank of South Africa Ltd*** *2009 (5) SA 304 (GSJ) at 314H*

[11] Having regard to the history herein, the premise of the applicants' entitlement to the interim interdict is the petition (application for special leave to appeal) under case number 51054/2013 and the application to declare the settlement agreement *null* and *void* under case number B3740/2023.

[12] The settlement agreement was entered into between the first applicant and the second respondent on 1 November 2013. On 27 August 2019, Klein AJ made the following order under case number 51054/2013:

"1. The settlement agreement dated the 1st of November 2013, as Annexure "A" is hereby made an order of court.

*2. The respondent (*the first applicant in casu*) to, within 7 (seven) days:*

2.1 To dismantle all temporary erected structures on the property.

2.2 To remove the said structures from the said stand.

2.3 To clear the said stand in to the position it was on or before the 24th June 2103.

2.4 To vacate the stand

alternatively to the above, should the respondent fail to do so within 7 (seven) days from the order, the Sheriff to give effect to 2.1, 2.2 and 2.3 hereinabove and evict the respondent from the stand.

3. Payment of the amount of R120 500.00 (one hundred and twenty thousand and five hundred rand.

4. Interest on the amount a tempora morae from date of order to date of final payment at the rate of 10.5%.

5. Costs of the application."

[13] Despite requesting reasons for the order by Klein AJ, and two attempted applications for leave to appeal, the order by Klein AJ was never challenged or set aside. That order stands and can be executed upon.

[14] In December 2020, the second applicant brought an urgent application under case number 62896/2020. In essence, the second applicant sought interim relief to interdict the execution of the order by Klein AJ. I dismissed this application on 18 December 2020.

[15] The second respondent, under case number 51054/2013, proceeded to apply for a variation of the order by Klein AJ. The first applicant was cited as a respondent therein and the application was opposed. On 11 March 2024, Neukircher J made the following order:

"A. Paragraph 2.1 of the order of Klein AJ is varied to read as follows:

"2.1 dismantle all temporary and permanent structures on the property."

B. The respondent is ordered to pay the costs of the application."

[16] The first applicant then sought leave to appeal against the order by Neukircher J. On 15 April 2024, Neukircher J dismissed the application for leave to appeal with costs to be taxed under Scale A.

[17] Section 17(2)(a) and (b) of the Superior Court's Act 10 of 2013 provides:

"(2) (a) Leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division.

(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal <u>on application filed with the registrar of that court within one month after such refusal</u>, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave." (my emphasis).

[18] From the above, it is evident that any further appeal process against the order by Neukircher J, in terms of which she dismissed the application for leave to appeal, had to be made to the Supreme Court of Appeal within one made from 15 April 2024. Such an application had to be filed with the registrar of the Supreme Court of Appeal.

[19] In the application before me, the first applicant annexed their 'petition' to the order of Neukircher J as annexure "RS4" to their founding affidavit. From this 'petition' the following is evident:

a. The document was filed with the Registrar of this court on 4 June 2024.

b. The document is incomplete as it contains no grounds for special leave to appeal.

c. There is no indication that the document was filed with the Registrar of the Supreme Court of Appeal.

[20] During argument, the counsel for the applicants submitted that this document was delivered to the relevant Registrar in the appeals section in this Division and that this Registrar will ensure that this document be delivered to the Supreme Court of Appeal. Proof of compliance in this regard will then be made available on the return date prayed for (being 27 August 2024).

[21] This is not how the process for special leave to appeal operates. In this regard, the provisions of section 17(2)(b) of the Superior Courts Act are clear and specific.

[22] Having regard to the above, it is evident that this document does not comply with the provisions of section 17(2)(b) of the Superior Courts Act.

[23] On the challenge that the application for special leave to appeal is out of time as it was not filed within one month from the date of the refusal of the application for leave to appeal, the applicants' counsel submitted that section 17(2)(b) provides for condonation and that such condonation will be sought and proof of same will be submitted on the return date herein.

[24] It is indeed so that section 17(2)(b) of the Superior Court's Act provides for an extension of time on good cause shown. The predicament for the applicants is however that there is no proof in their papers that there is an application for such an extension of time.

[25] In the absence of such an application for extension, the execution of the order against which special leave for appeal is sought is not suspended as provided for in section 18 of the Superior Court's Act.[11]

[26] It thus follows that there is no application for special leave to appeal which can be the subject of the interim relief claimed by the applicants.

[27] On the papers before me, there is no proof that the application to declare the deed of settlement *null* and *void* was ever served. The second respondent pertinently raises this aspect in its answering affidavit.

[28] According to the applicants' counsel, there was service of the application and proof of same will be provided on the return date. Once again, the trite position that a litigant must make out his case in the founding papers has not been met by the applicants.

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[11] *Panayiotou v Shoprite Checkers (Pty) Limited and Others* 2016 (3) SA 110 GJ

[29] In terms of the provisions of the Uniform Rules of Court, legal processes are to be delivered before it can come into existence. In terms of the definition of 'deliver' in Rule 1 of the Uniform Rules of Court, deliver entails both filing with the registrar and service upon all parties.

[30] In the absence of service, the purported application to declare the deed of settlement *null* and *void* has not been delivered and such there is no such application that can be the subject of any order sought by the applicants.

[31] Even in the absence of, or irrespective of, the purported application to declare the deed of settlement *null* and *void*, the applicants elect to ignore the order given by Klein AJ on 27 August 2019 (which was subsequently varied by Neukircher J on 11 March 2024). In this order, the demolishing of structures and vacating of the property was specifically ordered. Whether the settlement agreement is declared *null* and *void* would be of no consequence or effect to the second respondent's rights in terms of the property concerning the applicants' occupation of same.

[32] Considering the above, the applicants have failed to make out a case that they have a *prima facie* right herein that is worthy of protection.

Apprehension of irreparable harm:

[33] The applicants' apprehension of irreparable harm is premised on

a mere allegation that there is such harm. In this regard, the following is stated in paragraph 8.3 of the founding affidavit: *"I further submit that there is a well-grounded apprehension of irreparable harm to us if the interim interdict is not granted."*

[34] The applicants fail to provide any substantiation for this assertion and as such it is not of any assistance to them.

[35] Considering the above this court is not convinced that, should the application be dismissed, the applicants stands to suffer irreparable harm.

Balance of convenience:

[36] Save to state that the balance of convenience favours the applicants, no specifics are provided by them to support this allegation.

[37] The court has the discretion whether to grant an interdict in cases where the *prima facie* right of the applicant may have been established but is open to doubt.[12] This discretion "*usually will resolve itself into a nice consideration of the prospects of success and the balance of convenience… the weaker the prospects of success, the greater the need for the balance of convenience to favour* [the applicant]".[13]

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12 ***Olympic Passenger Service (Pty) Ltd v Ramlagan*** 1957 (2) SA 382 (D) 383 C – D.

13 *Supra* 383 E – F.

[38] As already stated, there is no application for special leave to appeal nor an application to set aside the settlement agreement before this court and such there is no application upon which the prospects of success can be determined. The order of Klein AJ, which went beyond simply making the settlement agreement an order of court also stands and can be executed upon.

[39] The applicants have failed to show that the balance of convenience would favour them if the order is granted.

Suitable alternative remedy:

[40] As with the aspect dealing with balance of convenience, no satisfactory details are provided in the applicants' papers as to any suitable alternative remedy.

[41] Within the context if interlocutory interdicts, the requisite of no other satisfactory remedy is closely linked with that of 'irreparable harm'[14] for if the injury will be irreparable if allowed to continue, an interdict will be the only remedy. On the other hand, if there is some other satisfactory remedy it follows that the injury cannot be described as irreparable.

[42] I am not convinced that the applicants made out a case on either

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[14] ***Ncongwane v Molorane*** 1941 OPD 125 at 130

the requirements of no other satisfactory remedy nor of irreparable harm.

[43] Premised on all of the above, I am not convinced that the applicants met the requirements for an interim interdict.

[44] A further aspect that calls to be mentioned is annexure "RS6" to the founding affidavit. This is a note by the Sheriff upon which the applicants rely to base their urgency on. Counsel for the applicants pertinently conceded this aspect at the hearing.

[45] If this document is scrutinised the following is evident:

a. It appears to be a standard note from the Sheriff to inform someone to make contact with the Sheriff.
b. No case number is mentioned.
c. There is no date on the note.
d. The Sheriff or his Deputy has not signed the note.
e. The words "*You have 48hrs to vacate the premises*" are written on the note but there are no details provided as to what premises reference is made to.
f. The words "*Attoney* (sic) *and the Plaintiff are ferious* (sic) *to demolish, they want to develope* (sic) *houses"* are also written on the document.

[46] On the style and form of this note, the Court finds it difficult to accept that this is a formal document issued by the Sheriff which could have triggered urgency herein.

[47] On all the evidence before me, I am not satisfied that the applicants have made out a case for urgency or for the interim relief they are seeking and as such the application stands to be dismissed.

COSTS:

[48] The second respondent seeks a dismissal of the application with costs on the scale as between attorney and client.

[49] On my reading of the papers, the application is premised on opportunism to frustrate the second respondent from exercising its rights as enunciated by Klein AJ and expanded by Neukircher J.

[50] The history of the applicants' involvement in this property is protracted and it is not the first time that they have been unsuccessful in seeking urgent interim relief relating to the property.

[51] In light of the above, there is no reason why the second respondent should not be entitled to costs on the scale as between attorney and client.

[52] It is further a trite principle that litigants are entitled to finality in their litigation. Despite the order by Klein AJ on 1 November 2013, the second respondent is still faced with ongoing, and opportunistic litigation by the applicants (for instance: throughout the founding affidavit no challenge is levied against the second respondent's ownership of the property, this aspect only comes to light in the replying affidavit).

ORDER:

The following order is made:

[1] The application is dismissed.

[2] The first- and second applicants, jointly and severally the one paying the other to be absolved, to pay the costs of this application on the scale as between attorney and client.

[redacted]

Minnaar AJ

Case number	: B1781/2024
Heard on	: 11 July 2024
For the Applicants	: Adv C M T Molopane
Instructed by	: Malatji Attorneys
For the Second Respondent	: Adv Van der Vyfer
	: Adv J W Kloek (heads of argument)
Instructed by	: Barnards Incorporated
Date of Judgment	: 15 July 2024