REPUBLIC OF SOUTH AFRICA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE YES/NO

(2) OF INTEREST TO OTHER JUDGES YES/NO

(3) REVISED

2/3/2012
DATE

SIGNATURE

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO. : 27808/2011

ABSEQ PROPERTIES (PTY) LTD	Applicant
and	
MAROUN SQUARE SHOPPING CENTRE (PTY) LTD	First Respondent
ORION PROPERTIES 14 (PTY) LTD	Second Respondent
CITY OF JOHANNESBURG	Third Respondent
SCHABORT DOGTERS TRUST	Fourth Respondent

JUDGMENT

ANDRÉ GAUTSCHI AJ

Introduction

[1]. The applicant is the owner of a small convenience shopping centre in Fourways. The first and second respondents, as owners of two contiguous pieces of land in the close vicinity of the applicant's shopping centre, are in the

process of the establishment of a township and rezoning in order to permit them to develop a considerably larger shopping centre as well as offices and residential accommodation on their properties. I shall refer to the first and second respondents collectively as "the respondents".

[2]. The applicant seeks, at this stage, an interim interdict to stop the township establishment process in respect of the proposed Fourways Extension 56 Township pending determination of final relief in the form of a declarator and/or review of certain decisions of the third respondent (the City of Johannesburg).

[3]. The salient facts are the following :

3.1 The applicant owns erf 1789 Fourways Extension 33 Township on which a 3 300m² shopping centre has been erected. The centre is made up of 30 shops, all fully let, aimed at supplying convenience goods, restaurants and other services to the surrounding residential neighbourhoods and offices. The anchor tenant is Woolworths with a store of approximately 800m².

3.2 At the time when the present proceedings commenced, the first respondent was the registered owner of the Remaining Extent of Portion 30 of the Farm Zevenfontein 407 JR measuring 7,1567 hectares ("Portion 30") and the second respondent (Orion Properties 14 (Pty) Ltd) the registered owner of the Remaining Extent of Portion 60 of the Farm Zevenfontein 407 JR measuring 14,5257 hectares

("Portion 60").

3.3 The fourth respondent (the Schabort Dogters Trust) had previously been the registered owner of Portion 60, which it transferred to the second respondent on 10 December 2008.

3.4 The third respondent is an authorised local authority for purposes of the Town-Planning and Townships Ordinance, 15 of 1986 (T) ("the Ordinance"), which governs all applications to establish townships in the area of jurisdiction of the third respondent. Such applications must be submitted to the third respondent in terms of Part C of Chapter III of the Ordinance.

3.5 During July 2008, a town planner (Mr Druce) submitted two separate township applications to the third respondent. The application in respect of Portion 60, on behalf of the fourth respondent, was referred to as the proposed Fourways Extension 56 Township, and that in respect of Portion 30, on behalf of the first respondent, as the proposed Fourways Extension 57 Township. They were advertised in the newspapers and the Provincial Gazette on the same dates.

3.6 On 10 December 2008, while these applications were pending, Portion 60 was transferred by the fourth respondent to the second respondent. The third respondent was not advised of this fact.

3.7 On 2 March 2010 Mr Druce applied to the third respondent for the merging of the two townships (Fourways Extension 56 and Fourways Extension 57) into one township, to be known as Fourways Extension 56. He submitted further amended documents including a layout plan to the third respondent during July 2010.

3.8 On 23 September 2010 the third respondent approved the applications made by the first and fourth respondents to establish a single township, Fourways Extension 56, on Portions 30 and 60.

3.9 On 12 January 2011, the third respondent gave notice in the Provincial Gazette that it had received an application to establish Fourways Extension 56 Township, which notice was given in terms of sections 69(6)(a) read together with 96(3) of the Ordinance. The notice stated that the advertisement represented an amendment of the original application as submitted on 23 July 2008.

3.10 Ms Baikie, a town planner, came across this advertisement and advised the applicant thereof. The applicant instructed her to object to the proposed amendment, apparently in an attempt to buy time to allow the applicant to consider the implications of the amendment. This was the first that the applicant knew of the applications to establish the township(s).

3.11 In order to avoid the delays such an objection could cause, the

amendment to the application was withdrawn and the applicant was advised thereof by letter dated 23 February 2011.

3.12 The applicant and its agents thereafter attempted to obtain documentation regarding the original application(s) and the approval thereof.

3.13 On 26 January 2012, portion 60 was transferred by the second respondent to the first respondent, with the result that the first respondent presently owns the entire proposed Fourways Extension 56 Township.

Unreasonable delay

[4]. The respondents allege that the applicant delayed unreasonably in bringing the application for interim relief, both under the common law and under section 7 of the Promotion of Administrative Justice Act No. 3 of 2000 ("PAJA"). They rely on the fact that the applicant was not vigilant in watching out for publications and for that reason did not know of the publications of the compulsory notices advertising the applications for the establishment of the township(s). There was some suggestion that the applicant's town planner, who had alerted the applicant in January 2011 to the publication of the amendment to the application, knew of the application prior thereto and that her knowledge was therefore to be imputed to the applicant. The applicant has however stated that it had not used this particular town planner as its agent prior to January 2011

(which cannot be disputed). That is a factual position which I must accept for purposes of this application. I must therefore find that the applicant in fact did not know of the applications to establish a township(s) prior to January 2011.

[5]. Section 7(1) of PAJA provides as follows :

> "(1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date—
>
> (a) subject to subsection (2)(c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2)(a) have been concluded; or
>
> (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons."

[6]. The clock starts ticking not only when the person concerned becomes aware of the administrative action, but also where it might reasonably have been expected to have become aware of the administrative action and the reasons. Mr Raath S.C. for the respondents submitted that, had the applicant not adopted a supine attitude, it would have become aware of the notices which had been published in 2008, commencing the township establishment process, and, had it become an objector, would have been advised of the third respondent's decision of 23 September 2010 to establish the township. (There was no publication to the public at large of the decision of 23 September 2010 but objectors would have been advised thereof.) I do not perceive section 7(1)(b) of PAJA to require a person to peruse every newspaper and Government Gazette for notices which might affect them. This is not a situation where constructive notice will suffice. The requirement that the clock starts

ticking when a person "might reasonably have been expected to have become aware" has, as a fundamental component, the word "reasonably". What the respondents expected of the applicant in this matter is not to my mind reasonable. Once the applicant was not expected to have discovered the published notices, it was not expected to be a party to the township establishment process, and would not have been advised of the decision of 23 September 2010. It cannot, to my mind, reasonably be criticised for not having known of that decision until January 2011.

[7]. Mr Raath relied on the case of Associated Institutions Pension Fund and Others v Van Zyl and Others[1] which criticised the applicants (respondents on appeal) for their supine attitude. However, in that case the applicants had knowledge of the administrative decision affecting their rights, but were supine in investigating the reviewability of the decision. That is distinguishable from the present case, where the applicant did not have knowledge of the decision.

[8]. Once it became aware of the decision in January 2011, the applicant attempted to obtain information concerning the establishment of the township, and met with some resistance from the third respondent and the respondents' town planner. It finally obtained information in April 2011 and launched its application in July 2011. That was not an unreasonable delay, either under section 7(1) of PAJA or under the common law. I did not understand Mr Raath to contend that a delay from April to July 2011 was unreasonable. The entire

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1 2005 (2) SA 302 (SCA)

attack was that the applicant failed, through what the respondents contended was a supine attitude, to have acquired knowledge of the 23 September 2010 decision. As I have said, that criticism is unfounded.

[9]. There is a further principle which needs to be considered. A court has a discretion to refuse to grant an interim interdict when there was an undue delay in launching or pursuing the proceedings[2]. However, a delay from April to July 2011 is not an undue delay which would induce me to exercise a discretion against the applicant, if all the other requirements for an interim interdict were met.

The applicant as an interested person

[10]. The applicant's shopping centre, as I have said, is close to the proposed shopping centre of the respondents. The latter is a mere 400 or 500 metres to the west as the crow flies, and one kilometre by road. It may be accepted that the proposed shopping centre will compete directly with the applicant's shopping centre.

[11]. The applicant did not become aware of the notices published in terms of section 69(6)(a) of the Ordinance, and for that reason did not become an objector. The applicant however relies on section 69(6)(b) of the Ordinance. Section 69(6) reads :

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2 See for instance Juta & Co Ltd v Legal and Financial Publishing Co (Pty) Ltd 1969 (4) SA 443 (C); Chopra v Avalon Cinemas SA (Pty) Ltd and Another 1974 (1) SA 469 (D)

"(6) After the provisions of sub-sections (1) and (2) have been complied with –

(a) the local authority may, in its discretion, give notice of the application by publishing once a week for 2 consecutive weeks a notice in such form and such manner as may be prescribed;

(b) The local authority or the applicant with the consent of the local authority shall forward a copy of the application to –

(i) the Transvaal Roads Department;

(ii) every local authority whose area of jurisdiction is situated within a distance of 10km from the land in respect of which application has been made;

(iii) every local authority or body providing any engineering service contemplated in Chapter V to the land contemplated in sub-paragraph (ii) or to the local authority contemplated in sub-section (1);

(iv) any other department or division of the Transvaal Provincial Administration, any State department which or any other person who, in the opinion of the local authority, may be interested in the application,

and every such department, local authority, body, division or person may, within a period of 60 days from the date on which a copy of the application was forwarded to him or it, or such further period as the local authority may allow, comment in writing thereon : Provided that an applicant who has forwarded a copy in terms of this paragraph shall submit proof to the satisfaction of the local authority that he has done so."

[12]. The applicant contends that, as the owner of a shopping centre in the close vicinity, it would undoubtedly be commercially affected by the establishment of the far larger shopping centre on Fourways Extension 56 and that it was therefore a "person ... interested" for the purposes of section 69(6)(b)(iv). The respondents on the other hand contend that the *eiusdem generis* rule dictates that "person ... interested" has to be interpreted as being of the same *genus* as the other organs of officialdom mentioned in section 69(6)(b), and that the applicant was therefore not a "person ... interested" for purposes of the section. It falls to be decided what is meant by that expression in its context.

[13]. The expression "interested person" is not an unknown one in legislation. In looking at the expression as used in other legislation, one finds that generally a wide meaning is given thereto.

[14]. In *Ex parte* Stubbs N.O. : In re Wit Extensions Ltd[3], Slomowitz AJ was concerned with the proper interpretation to be placed on the words "interested person" as used in section 73(6)(a) of the Companies Act, 61 of 1973, as substituted by section 5 of the Companies Amendment Act, 59 of 1978. The section as amended broadly provides that the court may, on application by any interested person, order that the registration of a deregistered company be restored. He came to the conclusion that "the words 'interested person' must be given the widest possible connotation so as to include any person who has a financial interest of any sort, whether actual or contingent, in or against a company, or relating to it, or with which interest that company might be concerned, provided however that the financial interest in question is not negligible."[4]

[15]. In Boshoff v Nel[5], Lichtenberg J considered the expression "person interested" in section 34(3) of the Civil Proceedings Evidence Act, 25 of 1965, which deals with the admissibility of documentary evidence as to facts in issue, and does not allow as admissible in evidence any statement made by a "person interested". He found[6] that the interest was not confined to a monetary interest,

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3 1982 (1) SA 526 (W)

4 At 531B-C

5 1983 (2) SA 41 (NC)

6 At 44F-G

but also included a personal interest, whether financial or otherwise, as long as such a personal interest was not too remote.

[16]. In T J Jonck BK h/a Bothaville Vleismark v Du Plessis N.O. en 'n Ander[7], Hattingh J was concerned with the expression "interested person" as used in section 65 of the Close Corporations Act, 69 of 1984, which provides that a court may on application by an interested person find that the incorporation of, or any act by or on behalf of, or any use of, a corporation constitutes a gross abuse of the juristic personality, and declare that the corporation shall be deemed not to be a juristic person. He found[8] that the expression was not to be interpreted too restrictively, but at the same time also not so widely as to include an indirect interest, and that the expression incorporated a more concrete interest, namely a material, relevant and direct interest, which should be limited to a mere financial or monetary interest. He found that a creditor of a close corporation was undeniably such an interested person.

[17]. In South African Football Association v Sandton Woodrush (Pty) Ltd and Another[9], Spoelstra J was concerned with the expression "interested person" within the meaning of section 24(1) of the Trade Marks Act, 194 of 1993. He found that the expression meant the same as the expression "person aggrieved" as used in the previous Trade Marks Act, 62 of 1963, and referred to persons "who are in some way or other substantially interested in having the

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7 1998 (1) SA 971 (O)

8 At 986C-D

9 2002 (2) SA 236 (T)

mark removed from the register" and who had "a genuine and legitimate competitive interest in the trade to which the offending mark relates"[10].

[18]. The aforegoing may be contrasted with the requirements of an interest for purposes of joinder in litigation. There one finds the narrow concept of a "direct and substantial interest", i.e. an interest in the right which is the subject matter of the litigation, a "legal" interest[11].

[19]. There can be no slavish following of the interpretation given to these words in other legislation. Ultimately, the words must be interpreted in the context as used in the Ordinance. The word "person" as used in section 69(6)(b)(iv) has a wide meaning, and read in isolation might be thought to mean what it says. But the section requires closer analysis.

[20]. The provisions applicable to townships established or to be established within the areas of jurisdiction of authorised local authorities are sections 94 to 104 of the Ordinance. Relevant parts of the procedure envisaged are the following :

20.1 In terms of section 96(1) an owner of land who wishes to establish a township on his land may apply in writing to the relevant authorised local authority.

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10 At 239C-E

11 Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (AD) at 659; Henri Viljoen (Pty) Ltd v Awerbuch Brothers 1953 (2) SA 151 (O) at 165B-170H, especially at 169H-foot and 170H

20.2 In terms of section 96(3), the provisions of sections 69(3) to (11) apply *mutatis mutandis*.

20.3 In terms of section 69(6)(a), the local authority may, in its discretion, give notice of the application by publishing once a week for two consecutive weeks a notice in such form and in such manner as may be prescribed.

20.4 Any person may, within a period of 28 days from the date of the first publication of such notice, lodge an objection with or make representations in writing to the local authority in respect of the application, in terms of section 69(7).

20.5 The persons identified in section 69(6)(b) (including any other person who, in the opinion of the local authority, may be interested in the application) shall receive a copy of the application from the local authority or from the applicant, and may, within 60 days from the date on which a copy of the application was forwarded to him or it, comment in writing thereon (section 69(6)(b)).

[21]. A moment's consideration reveals that virtually every person in the vicinity of a property which is to be developed into a township, whether for business, industrial or residential use, would be, in one way or another, "interested". Some might be interested in the increased noise, others in increased traffic, and yet others, as in the present case, in unwanted competition. The

Ordinance requires giving notice of the application by publication. That is recognition of the fact that there may be a multitude of persons who are interested in the proposed township establishment. They are catered for by such publication.

[22]. One cannot then include the same persons in the words "any other person who ... may be interested". That expression must, in context, bear a different meaning to avoid rendering section 69(6)(a) superfluous. Moreover, to place on the local authority and/or the applicant the burden of furnishing a full copy of the application to every interested person places an impossible task on the local authority which has to form an opinion as to who such persons are.

[23]. The words in question must therefore bear a different meaning to the ordinary meaning, and be far more restrictively construed. The *eiusdem generis* rule propounded by the respondents becomes attractive. There is then a clear delineation between generally and specifically interested citizenry who are given notice by publication and have 28 days within which to lodge objections or make representations in writing, and persons in the form of organs of officialdom and similar entities who will receive copies of the application and are given 60 days within which to comment in writing. Persons in the same *genus* as the other persons mentioned in section 69(6)(b), could include entities such as parastatals, Eskom, Rand Water, Transnet and the like.

[24]. The choice of language as to what is expected of interested persons who receive notice by publication on the one hand and those intended by section 69(6)(b) on the other is illuminating. The former are "to lodge an objection with and/or make representations in writing to ..."; the latter are to "comment in writing". The expectation is clearly that the former will have a personal interest and may express personal views and objections on aspects which adversely affect them. The latter, on the other hand, are probably expected to have an interest of a more public and dispassionate nature, and are therefore merely expected to "comment in writing". That, too, supports the restrictive meaning given to the "person ... interested" in section 69(6)(b)(iv).

[25]. My attention has been drawn to an unreported decision of Gildenhuys J in Linksfield Grove (Pty) Ltd v The Minister of Development Planning and Local Government, Gauteng, N.O. and Others[12]. In that case, a property owner in the close vicinity of a property seeking rezoning, had not objected in terms of section 56 read with regulation 11 and further read with schedules 7 and 8 to the regulation (the equivalent of section 69(6)(a) read with 69(7)), even though it had knowledge of the application for rezoning. The applicant contended that it fell under "other interested person or body" as used in section 131(3)(b), which relates to a hearing on appeal of the objections lodged or representations made. In this regard, Gildenhuys J said[13] :

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12 WLD, Case number 21203/2003, delivered on 4 August 2004

13 At para [28]

> "In my view, the words "other interested person or body" refer to a person or body to whom a copy of the application was forwarded, as envisaged in section 56(6) [the equivalent of section 69(6)(b)]. Such persons or bodies would include service providers, roads authorities and other persons who, in the opinion of the local authority, may be interested in the application. The term cannot possibly have been intended to include every person or body with an interest in the matter, irrespective of whether such person or body lodged an objection or made representations in terms of the Ordinance or not. If that was the correct interpretation, anybody with sufficient interest could simply arrive at the hearing of an application and present oral evidence and argument, where the legislature prescribed time limits for lodging objections or making representations, it could hardly have been its intention that persons who did not observe those time limits be allowed to participate in the hearing. Such an interpretation would render the time limits irrelevant."

Gildenhuys J further found that the applicant had not paid a deposit as required by sections 59(3) and (4) and could therefore not have been a party to the appeal. He does not answer the question pertinently whether the applicant in that case could have been considered to be an interested person in terms of section 56(4)(a)(v), which is in similar terms to section 69(6)(b)(iv), and the case is therefore of no direct assistance one way or the other.

[26]. I agree with the respondents that the expression "person ... interested" as used in section 69(6)(b)(iv) must be interpreted *eiusdem generis*. Although this principle of interpretation must be applied with caution[14], the context makes it clear that the words cannot bear their ordinary meaning. It falls within the class where :

> "Sometimes it is possible to see from the context that it is unlikely that the wide words were intended to have their full width, and then the specific words may furnish the lines on which the obviously necessary restrictions should be made".[15]

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14 R v Nolte 1928 AD 377 at 382

15 Grobbelaar v Van de Vyver 1954 (1) SA 248 (A) at 254H per Schreiner JA

[27]. Mr Louw for the applicant submitted that it is not necessary to construe the expression as a reference to every person in the neighbouring area, but only to a person with a "special interest" in the subject of the proposed development. The applicant points out in this context that the third respondent sent a copy of the applicant to the ward councillor in terms of this provision. Narrowing the expression down to include citizenry with a "special interest" is unhelpful. It still places too onerous a burden on the local authority concerned to identify which of the persons in the neighbourhood would have a "special interest". It is also unnecessary given the fact that publication has taken place, as I have already pointed out.

[28]. Mr Louw also relies on every person's right to procedurally fair administrative action. That overlooks the fact of publication, which is, in the circumstances, adequate notice to the public at large.

[29]. I therefore find that the applicant is not a "person ... interested" for purposes of section 69(6)(b)(iv) of the Ordinance.

Abandonment

[30]. The third respondent's decision was made on 23 September 2010. On 12 January 2011 the third respondent gave notice in the Provincial Gazette of an amendment to the original application as submitted on 23 July 2008. It referred to section 69(6)(a) read together with section 96(3) of the Ordinance.

[31]. The applicant contends that this amounted to a new application and, since one could not have more than one extant application in respect of the same property, of necessity this meant the abandonment or lapsing of the decision of the third respondent made on 23 September 2010. In addition the applicant submitted that the third respondent had clearly decided that the amendment was so substantial that it had to be re-advertised, turning it effectively into a new application.

[32]. There was much debate before me about whether the 12 January 2011 notice should have referred to section 96 or 100. It does not seem to me to matter. Section 96(4) applies while the application is pending before the local authority. If an amendment sought by the applicant is in the opinion of the local authority substantial, it shall give such notice of the amendment as it may deem necessary. Section 100 on the other hand applies after an applicant has been notified in terms of section 98(4) that his application (for township establishment) has been approved. In that event the local authority may consent to an amendment of the documents, unless the amendment is in its opinion so material as to constitute a new application for the establishment of a township. In either event, the notice, which read "This advertisement represents an amendment of the original application as submitted on 23 July 2008", purported to be an amendment of the original application, and not a new application.

[33]. Nothing in that wording could give rise to any reasonable inference (let alone the only probable inference) that the respondents thereby intended to abandon the original decision, or that the original decision could be construed to have lapsed as a matter of law. The submission in this regard is to my mind simply untenable.

Merger of townships

[34]. The applicant contends that the third respondent permitted a merging of two applications, which was impermissible.

[35]. In July 2008 the first and fourth respondents submitted separate applications for township establishment although they were published simultaneously and there was a joint motivation. I assume that separate applications were submitted by virtue of the provisions of section 96(1) that provide that only an owner can establish a township on its land. When it came to the decision, the third respondent decided that a single township should be established.

[36]. It must be remembered that the third respondent is a creature of statute and has only those powers conferred on it by statute[16], which in this matter is the Ordinance. It is not competent to confer upon itself functions or powers that it is not authorised to perform[17]

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16 See for instance Hager and Others v Windhoek Municipal Council 1961 (3) SA 806 (A) at 812F-H

17 Minister of Public Works v Haffejee N.O. 1996 (3) SA 745 (A) at 751F

[37]. I do not however perceive that this decision is in any way beyond the powers of the third respondent. It seems to me that this is in substance no more than imposing a condition, which the third respondent is entitled to do in terms of section 98(2). Mr Louw for the applicant submitted that no condition was in fact imposed, and that imposing such a condition would amount to making new legislation, i.e. arrogating a right to itself which it did not have. It seems to me that the third respondent would have been empowered to indicate to each applicant that it would approve its application subject to the condition that the two townships merge into one. It is not a requirement of any great substance, and was apparently done for administrative convenience. If such a condition could be imposed, then I perceive that the third respondent would have the power to indicate prior to approval that it wished to merge the two applications, and the two townships, into one. It also would not matter in my view whether this was a suggestion or request by the respondents' town planner or was a requirement by the third respondent.

[38]. There is a further consideration, namely whether such a decision is likely to be set aside on review. Not every reviewable administrative act is set aside on review. The court hearing the review has a discretion[18]. If the third respondent exceeded its powers in this regard, it seems to me to be so innocuous and so inconsequential, that I gravely doubt whether any court would deign to set the decision aside for that reason.

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[18] See for instance Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA) at para [28]

[39]. The only question is whether any person reading the published notices might have been misled and denied a proper opportunity of objecting. The purpose of such notice is to give adequate notice to any person who might be interested in objecting to the application[19]. The applications were jointly motivated, and made it clear that the two townships were to be developed as a single entity and the erven would be notarially tied. The establishment of a single township is a logical further step, and changed nothing of substance in relation to the proposed development. It was therefore to my mind unobjectionable, and not incompetent.

The failure to notify the third respondent of the sale of Portion 60

[40]. The applicant points out that the original application in respect of Portion 60 had been made and approved in the name of the fourth respondent, although it had transferred the property to the second respondent as early as 10 December 2008. The applicant refers to the provisions of section 140A of the Ordinance, and submits that the third respondent was not notified of the transfer without delay and that accordingly the original application for the establishment of Fourways Extension 56 Township lapsed prior to the decision of the third respondent on 23 September 2010.

[41]. Section 140A reads as follows :

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19 Stadsraad van Vanderbijlpark v Administrateur, Transvaal, and Others 1982 (3) SA 166 (T) at 193B

"Notice of change of ownership to local authority

140A If land is the subject of an application to a local authority in terms of the provisions of this Ordinance and that land is transferred to any other person before the conclusion of the application concerned, that other person shall, subject to the provisions of section 78, without delay and in writing notify the local authority concerned of such change of ownership, mentioning his name and postal address."

As can be seen, the section defers to the provisions of section 78, which in turn reads :

"Continuation of application by new owner

78(1) Where the ownership of land in respect of which an application for the establishment of a township has been made, has changed and the new owner of such land notifies the Administrator in writing that he wishes to continue with the application, the Administrator may, if the application has not lapsed in terms of section 72, 76 or 77, consent to the continuation of the application subject to any condition he may deem expedient.

(2) An owner who continues with an application in accordance with the provisions of sub-section (1) shall, for the purposes of the provisions of this Chapter, be deemed to be the applicant."

[42]. Section 140A falls under the "General" section of the Ordinance and is of general application, while section 78 falls within the provisions dealing with the establishment of townships and is therefore of more specific application.

[43]. An application for the establishment of a township does not end with the decision approving the application. After a township register has been opened, the authorised local authority can declare an approved township in terms of section 103(1) of the Ordinance. This is what is colloquially known as "proclamation" of a township. Notwithstanding the decision of 23 September 2010, the application continues, and will continue until proclamation, which has not yet occurred. Section 78(1), the provisions of which take precedence over

those of section 140A, merely requires notification by the new owner to the Administrator and a continuation of the application thereafter. The second respondent is therefore not out of time to notify the change of ownership. I am advised in a supplementary affidavit that this has now been done.

[44]. This point therefore also fails.

Various miscellaneous defects

[45]. The applicant complains of various non-compliances with the provisions of regulation 18, which sets out the requirements for the documents and content in respect of township applications. It submits that these requirements are peremptory, because they involve the granting of rights, privileges, immunities and powers subject to compliance with certain formalities. It is not clear to me whether they are peremptory or directory. I would be inclined to think they are directory.[20] However, it is unnecessary that I make a finding on this. The defects complained of are such that, if all the applicant's other arguments have failed, I do not believe there is any reasonable likelihood of the court hearing the review setting the decision aside on the basis of these complaints. In other words, success of a review on this ground is open to considerable doubt.

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20 Compare the contents of the prescribed form in Road Accident Fund matters. Although the submission of the form is peremptory, the manner of completion and contents of the prescribed claim form have been held to be directory : see for instance Nkisimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 (A) at 435A-G; Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A) at 831E-G; SA Eagle Insurance Co Ltd v Pretorius 1998 (2) SA 656 (SCA) at 663A-D

Conclusion

[46]. From the aforegoing, it follows that the applicant has not established a *prima facie* case for the interim relief sought. It is therefore unnecessary that I consider the other requirements of an interim interdict, namely irreparable harm, balance of convenience or the absence of a satisfactory alternative remedy. The applicant's application must in my view fail.

[47]. In the result, I dismiss the application with costs, such costs to include the costs of two counsel.

ANDRÉ GAUTSCHI
ACTING JUDGE OF THE HIGH COURT

Date of hearing	:	8 February 2012
Date of judgment	:	2 March 2012
For applicant	:	Adv L M du Plessis
	:	(instructed by Coetsee van Rensburg Inc)
For first and second respondents	:	Adv R J Raath S.C. Adv J A Venter (instructed by Adriaan Venter Attorneys and Associates)
No appearance for third and fourth respondents		