IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

REPORTABLE:

OF INTEREST TO OTHERS JUDGES:

REVISED

29 March 2018

CASENUMBER: 97167/16

In the matter between:

RIVER GATE PROPERTIES (PTY) LTD	**First Applicant**
CHRISTIAN HENDRIK JOHNSEN JNR	**Second Applicant**
and	
MOHAMED ASMAL N.O	**First Respondent**
SHAHEEM ASMAL N.O	**Second Respondent**
ZAHEER ASMAL FAMILY TRUST	**Third Respondent**

SIGNATURE

JUDGMENT

Molahlehi J

Introduction

[1] This is an application in terms of which the applicants seek an order declaring the structures erected or being erected on Erf 2541, at Three Rivers Township, Vereeniging (the property) by the respondents to be unlawful and that they should for that reason be demolished.

[2] Another order sought by the applicants is to prohibit the respondents from permitting occupation of any of the buildings that are subject to these proceedings until such time that a valid certificate of occupation in terms of section 14 (1) (a) of National Building Regulations and Building Standard Act[1] (NBSA) has been issued by the third respondent, the Emfuleni Metropolitan Municipality (the municipality). They also seek an interdict prohibiting the municipality from finalizing the removal of the restrictive conditions contained in Title Deed T14/86529 in terms of the Gauteng Removal of Restrictions Act,[2] and the rezoning application in terms of s 56 of the Town Planning and Township Ordinance.

[3] The first and second respondents have as representatives of the third respondent opposed the application and have also filed an application for the admission of the supplementary opposing affidavit.

[4] The complaint of the applicant is that the respondent erected residential units on the property:

(a) Without the approval of building plans by the municipality in terms of s 4 of

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[1] National Building Regulations and Building Standard Act 103 of 1977

[2] Gauteng Removal of Restrictions Act 3 of 1996

the NBSA.

(b) In contravention of the Municipality Town Planning Scheme.

(c) In contravention of the conditions imposed by the title deed on the property.

The parties

[5] The first applicant, Rivergate Properties (Pty) Ltd, is a private company duly registered in terms of the company laws of the Republic of South Africa and is involved in the business of property development. It has, for the purpose of this judgment, developed properties across the street from the alleged illegal construction by the respondents.

[6] The second and third applicants are co-owners of erf 239 and 244 Three Rivers Vereeniging, both whom also complain that they are negatively affected by the development of the alleged illegal structures.

[7] The first and second respondents, Mr Mohammed Asmal and Mr Shaheen Asmal are businessmen in charge of the third respondent, Zaheer Family Trust, which owns the property that is the subject of the present dispute.

[8] The third respondent is the Emfuleni Local Municipality established in terms of Chapter 2 of the Local Government Municipal Structures Act.[3] In addition to all other local authority functions, it is also a regulatory body, responsible amongst other things for the control of any building activity within its jurisdiction in terms of the NBSA. It is in this respect responsible for ensuring that the development Standards and Planning Schemes are complied with.

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[3] Act number 117 of 1998.

[9] It is common cause that the Trust has developed on the property high density and low-cost residential units which the applicants allege are intended for students' residences. The development in question is on erf 2541 which is a consolidation of erf 243 and 244. At the time of the consolidation, it would appear the building plans were approved for a residential property on erf 244. The property on that erf was demolished without the approval of the municipality.

[10] There are thirty residential units on the property which have been constructed in contravention of the Town Planning Scheme. In terms of the current zoning, the land is zoned as "Residential 1" which allows for the erection of one dwelling.

[11] On 11 February 2015, the first applicant's attorneys addressed the letter to the municipality complaining that the respondents had commenced with building activities on the property in contravention of the Town Planning Scheme and zoning conditions.

[12] The law enforcement officer of the municipality responded to the applicant's letter on 20 February 2015 and advised that the building, on erf 244 had not been completely demolished, but that bricks had been delivered on the site, a sign that building works were about to start. He further gave assurance that the municipality would ensure that no building would take place before the approval was granted.

[13] The applicant's attorneys followed up with the municipality about the progress of their complaint in a telephone conversation which was subsequently confirmed in an email dated 6 October 2015. The email confirmed that Mr Makumana had advised:

"65.1 On Thursday, 22 October 2015, the municipality had attended at

the Trust's land and that he had taken photographs of the illegal construction taking place;

65.2 The Municipality was in the process of launching an application against the Trust to cease the illegal building activities;

65.3 An application of such nature would take approximately two months to be finalized and that the municipality was not allowed to take any physical steps against the illegal building activities."

Application: supplementary answering affidavit.

[14] As indicated earlier in this judgment the respondents have applied for condonation for the admission of the supplementary answering affidavit. The application is opposed by the applicants.

[15] The request for the admission of the additional affidavit is based on the following:

(a) The additional information regarding the racial slur allegedly made by one of the members of the applicants against Mr Zaheer and the African workers at the site. The reason for not providing the information in the answering affidavit was because "it was not anticipated that the applicants would require detailed information regarding the allegation."

(b) That the municipality had during April 2017, provided the preliminary approval of the plans of the buildings.

(c) That they would suffer prejudice if the request for the admission of the additional affidavit was refused and that the refusal would not

serve the interests of justice.

[16] It is trite that in motion proceedings only additional affidavits will be permitted by approval of the court, on satisfactory explanation as to why it should be allowed. The explanation is required to show why the information was not initially dealt with in the answering affidavit.

[17] In terms of rule 6 (5) (a) of the Uniform Rules of Court (the Rules), the court has the discretion to permit the filing of additional affidavit/s. In *Goldfields (Ltd) and Others v Motley Rice LLC,*[4] the court in dealing with the issue of an additional affidavit/s in motion proceedings said that the factors to take into account in considering such an application are as follows:

> "The existence of the discretion of the court in all cases (constitutional and otherwise) ensures that the court is always in a position to balance the interest of the parties and to protect its own process, if necessary through costs orders. In this context there is no party which is a priori immune from the court's power to protect its process through costs orders."[5]

[18] In my view, the two main points that need consideration in the assessment of whether or not to allow the supplementary affidavit, in this case, concerns the additional information about the racial slur allegedly made by one of the applicants' members and information regarding the preliminary approval of the plans.

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[4] *Goldfields (Ltd) and Others v Motley Rice LLC* 2015 (4) SA 299 (GJ) para 32. See also *Rhoode v De Kock and Another* 2013 (3) SA 123 (SCA) at 129C-D

[5] *Goldfields* para 32

The racial slur

[19] The allegation that one of the applicants' members had hurled a racial slur at Zaheer was raised in the answering affidavit of the respondents. According to them, this is the real motive of the applicants' complain about the development. The opposition to the development according to them is because the applicants do not want people of colour in the area. In other words, the application for the demolition of the development is racially motivated and used to prevent people of colour moving into the area.

[20] The applicants disputed having hurled any racial slur at any of the respondents and that these proceedings were motivated by a wish to avoid people of colour from moving into the area. They further contended that the allegation was vague as it did not indicate when, by whom and to whom were the racial slurs made.

[21] In my view, the circumstances described by the respondents as to why all the relevant information concerning the alleged racial slur was not dealt with in the founding affidavit provides no satisfactory explanation justifying the admission of the supplementary answering affidavit for the reasons set out below.

[22] In the first instance, the allegation concerning racial slurs is a serious matter that affects the fundamental rights to the dignity of the victim who is on the receiving end of such statements. The right to dignity is a core fundamental human right which is reflected in various international legal instruments. The racial slur alleged to have been made by the respondents is an affront to human dignity, not only to the applicants but also members of the Indian community.

[23] Similarly, however, the person who is alleged to have made the racial slur suffers

the indignity if the allegation is unfounded and being used as a ploy to avoid dealing with the real issues confronting the parties.

[24] It follows from the above that the respondents ought to have dealt with all the details and substantiated the allegation in their answering affidavit.

[25] It is not good enough to simply say that they did not anticipate that the applicants would require the details relating to the allegation. There is thus no satisfactory explanation as to why the issue was not fully dealt with in the answering affidavit. The information regarding the statements made to the police was in existence at the time the answering affidavit was drafted but was left out.

[26] In any case, the additional information which the respondents seek to place before this court through the supplementary answering affidavit does not advance their case because there is no connection between the alleged racial slur and the failure to comply with the building regulations. Put in another way, the racial slur is for the purposes of determining the relief sought by the applicants in the present matter, irrelevant in that even if it could be proven that the allegation was made that would not detract from the criminal conduct of contravening the NBSA and undermining the rights of their neighbours.

Preliminary approval of building plans

[27] In the answering affidavit, the respondents in opposing the application rely on "deemed provision" concerning the building plans. The details as to where and when the building plans were applied for were not provided in the answering affidavit.

[28] In relation to the building plans the municipality explained, in its affidavit, to abide by the order of the court, that the applicants launched their complaint about the illegal conduct of the respondent during March 2015. This is before the alleged submission of the plans by the respondents.

[29] The municipality issued the compliance notice to the respondents during May 2015 with a follow-up in October 2015. And about the demolition of the structure in erf 244, the facts indicate that that took place before the respondent applied for such demolition on 28 May 2015.

[30] The municipality in its affidavit states that up to March 2017, no approved building plans were in existence and that all the structures on the property are unlawfully developed.

Estoppel

[31] The respondents contended that the municipality was estopped from raising the invalidity of the approval. The municipality explained that the approval was erroneously granted. The official upon whose conduct the respondents relied on stated that he did not have authority to give any preliminary approval and thus his conduct was unlawful.

[32] In its affidavit the municipality explained the circumstances whereby the "preliminary approval came about and as stated confirmed that it was illegal.

[33] The application of the doctrine of estoppel received attention in *RPM Bricks (Proprietary) Limited v City of Tshwane Metropolitan Municipality,*[6] where the court

[6] *RPM Bricks (Pty) Ltd v City of Tshwane Metropilitan Municipality* 2007 (9) BCLR 993 (T)

held that there are limitations to the application of the defence of estoppel in cases involving organs of state such as the municipalities.

[34] In the Law of South Africa (LAWSA), the application of estoppel to cases involving illegality or invalidity is set out as follows:

> "Estoppel is not allowed to operate in circumstances where it would have a result which is not permitted by law. A defence of estoppel will therefore not be upheld if its effect would be to render enforceable what the law, be it the common law or statute law, has in the public interest declared to be illegal or invalid."[7]

[35] In dealing with the defence of estoppel against an organ of state, Boruchowitz, J in Eastern Metropolitan Substructure v Peter Klein Investments (Pty) Ltd,[8] found that because of the equitable nature of estoppel a balance between individual and public interest should be made in considering whether estoppel should apply.[9] The learned Judge further said:

> "Regardless of its technical ambit in terms of s 33 of the Constitution, reasonable administrative action is a value to which expression must be given when developing the common law in terms of s 39(2) of the Constitution. A rule of law which permits an organ of State, through its own carelessness or neglect, to deprive the defendant of a statutory right of recourse and then to render itself immune from a defence to that deprivation, which estoppel would offer the defendant is, in my view, inconsistent with the culture of justification of which the right to reasonable administrative action is an important part. To permit the

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[7] W.A. Joubert et al *The Law of South Africa* 2nd ed (2005) at 423 para 673

[8] *Eastern Metropolitan Substructure v Peter Klein Investments* 2001 (4) SA 661 (W)

[9] Ibid para 37 - 39

plaintiff to take advantage of the established rule against the raising of an estoppel where there is no alleged or minimal countervailing benefit to the plaintiff would, to my mind, be inconsistent with the entrenched constitutional value of reasonable public administration. I assume for present purposes that the defendant cannot establish or easily prove damages against the plaintiff.

To allow the plea of estoppel in the limited and peculiar circumstances of the present case would, to my mind, prevent hardship and injustice and give content to the object of the Constitution and basic values underlying it."[10]

[36] The defence, estoppel was found to have no application to an organ of state in *Ntozini v Kenton-on- Sea Transitional Local Council.*[11] In that case, the court held that:

"There are two salient points. Firstly, the powers of a local transitional council are confined. It cannot do what its statutes forbid. It also cannot do what they do not authorize. Because it is obliged to comply with its statutes anything it does or contracts to do which directly or indirectly precludes it from complying with them is ultra vires. Secondly, its function as an arm of government requires it to perform its functions fairly for the benefit of those sections of the community it is duty-bound to serve. It cannot ordinarily prevent itself from doing so by waiver or by conduct giving rise to estoppel (*Hoisain v Town Clerk, Wynberg* 1916 AD 236; *Potchefstroom se Stadsraad v Kotze* 1960 (3) SA 616 (AD) at 623G–H)."[12]

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[10] *Eastern Metropolitan Substructure* para 37-38

[11] *Ntozini v Kenton-on- Sea Transitional Local Council* 1999 JDR 0695 (E)

[12] Ibid at 15

[37] In *Minister of Transport NO and Another v Prodiba (Pty) Ltd,*[13] the High Court relying on the authority of *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty),*[14] upheld the defence of estoppel on the basis that the department of transport was estopped from relying on the failure of internal processes which were unknown to the applicants. The SCA disagreed and found that the two authorities did not support the conclusion reached by the court below.

[38] In explaining the correct approach to adopt the SCA, per Navsa ADP as he then was, quoted its decision in *RPM Bricks* where Ponnan JA in dealing with this issue explained:

> "Estoppel cannot, as I have already stated, be used in such a way as to give effect to what is not permitted or recognised by law. Invalidity must, therefore, follow uniformly as a consequence. That consequence cannot vary from case to case. 'Such transactions are either all invalid or all valid. Their validity cannot depend upon whether or not harshness is discernible in a particular case.'"[15]

[39] About the facts, which are similar to those of the present matter the SCA found that:

> "By not embarking on a competitive bid process, particularly given the nature and scale of the services to be provided, including the cost implications, Mr Mahlalela erred fundamentally. By concluding the agreement without the approval of his employer and political principal and/or of the Cabinet, he acted without authority. By concluding the agreement and incurring a liability for

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[13] *Minister of Transport NO. v Prodiba (Pty) Ltd* 2015 JDR 1127 (SCA)

[14] *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* 2008 (3) SA 1 (SCA)

[15] Ibid para 23

which there had been no appropriation, he not only erred, but acted against mandatory statutory prescripts and against the constitutional principles of transparent and accountable governance. For all these reasons the agreement is liable to be declared void *ab initio*."[16]

[40] It follows from the above discussion that the preliminary approval which the respondents relied on was invalid and therefore cannot be regarded as constituting special circumstances justifying the admission of the supplementary answering affidavit.

[41] It is further clear that the jurisdictional facts prescribed by s 7(6) of the NBSA do not exist and more importantly it is undisputed that the respondents commenced and continued with the building project without prior written approval by the municipality and what aggravated the situation is that they continued to contravene the law despite the notice of compliance issued to them by the municipality. And also the official on whose statement they relied on stated very clearly that he did not have authority to issue the approval. It, therefore, means the case is based on an invalid preliminary approval.

[42] The other point raised by the respondents in seeking to have the supplementary answering affidavit admitted is the contention that the preliminary approval is an administrative decision that stands and must be enforced unless and until set aside by the court. This argument is based on the principle enunciated in *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others.*[17] In that case, the

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[16] *Prodiba (Pty) Ltd para 40*

[17] Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6)SA 222 (SCA) at 242

SCA in dealing with that principle said:

> "The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."[18]

[43] The Constitutional Court explained the application of the *Oudekraal* principle in *Merafong City v Anglogold Ashanti (Pty) Ltd* where Cameron J, writing for the majority explained the principle as follows:

> "Hence the central conundrum of *Oudekraal*, that "an unlawful act can produce legally effective consequences", is constitutionally sustainable, and indeed necessary. This is because, unless challenged by the right challenger in the right proceedings, an unlawful act is not void or non-existent, but exists as a fact and may provide the basis for lawful acts pursuant to it. This leads to a logical corollary, which this Court recognised in *Giant Concerts*, that an own-interest litigant may be denied standing "even though the result could be that an unlawful decision stands."(footnotes omitted)[19]

[44] The learned Judge further explained that:

> "But it is important to note what *Kirland* did not do. It did not fossilise possibly unlawful – and constitutionally invalid – administrative action as

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[18] *Merafong City v Anglogold Ashanti (Pty) Ltd* 2017 (2) SA 211 (CC)

[19] Ibid para 36

indefinitely effective. It expressly recognised that the *Oudekraal* principle puts a provisional brake on determining invalidity. The brake is imposed for the rule-of-law reasons and for good administration. It does not bring the process to an irreversible halt. What it requires is that the allegedly unlawful action be challenged by the right actor in the right proceedings. Until that happens, for the rule of law reasons, the decision stands.

Oudekraal and *Kirland* did not impose an absolute obligation on private citizens to take the initiative to strike down invalid administrative decisions affecting them. Both decisions recognised that there might be occasions where an administrative decision or ruling should be treated as invalid even though no action has been taken to strike it down. Neither decision expressly circumscribed the circumstances in which an administrative decision could be attacked reactively as invalid. As important, they did not imply or entail that, unless they bring court proceedings to challenge an administrative decision, public authorities are obliged to accept it as valid. And neither imposed an absolute duty of proactivity on public authorities. It all depends on the circumstances."[20]

[45] In a separate judgment, Jafta J found the proposition in both decisions in *Oudekraal* and *Kirland* that an invalid administrative decision is valid until set aside "collides head-on with the principle of legality which is an integral part of the rule of law."[21]

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[20] *Anglogold Ashanti* para 43-44

[21] Ibid para 89

[46] In explaining how the misapplication of the principle in *Oudekraal* has muddled the law the learned Judge said:

> " Because of the misapplication of the principle laid down in *Oudekraal,* it has become necessary for this Court to determine the scope and content of that principle. Its misapplication has muddled up our law, turning on its head basic principles like: an illegal administrative act has no legal force and as such cannot be enforced. This is a principle that flows from the rule-of-law principle of legality which is to the effect that an illegal administrative act, although it may exist in fact, does not exist in law and consequently it may not be enforced because it is not binding. This is so because an administrative act derives its legal force from its validity. Simply put an invalid act is unenforceable.
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> . . . Significantly what this means for present purposes is that the rule of law is entrenched as part of our Constitution and in turn that means that any administrative act inconsistent with the rule of law is invalid and therefore has no legal force and consequently cannot be enforced. This is because the Constitution is our supreme law and any conduct that is inconsistent with it is invalid."[22]

[47] In my view, although Cameron J and Jafta J hold contradictory views about the principle to apply when dealing with the issue of an invalid administrative decision, that does not detract from the real principle. The basic principle is that neither *Oudekraal* nor *Kirland* expressly circumscribed the circumstances in which an

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[22] *Anglogold Ashanti* para 107-108

administrative decision can be attacked reactively or collaterally as being invalid. Also of importance is that the judgments did not seek to make a principle that entrenches the effectiveness of an unlawful and constitutionally invalid administrative decision everlasting. This is because the decision would exist in fact and not in law.

[48] In the present matter, the applicants state that the Trust was issued with the notice of compliance which it ignored. It is thus not a *bona fide* developer who relied on preliminary approval by the official of the municipality.

The legal principles

[49] The issue of illegal structures erected on land is governed by section 4 (1) read with s 4 (4) of the NBSA which provides that:

> "No person shall, without prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of the Act....Any person ... in contravention of the provisions ...shall be guilty of an offence and liable on conviction to a fine not exceeding R100 for each day on which he was engaged in so erecting such building"

[50] The objective of the NBSA as stated in *Lester v Dlambe Municipality* and Another,[23] by Madjiet JA, is:

> "To provide uniformity in the law relating to the erection of buildings in the area of jurisdiction of local authorities and to prescribe buildings standards."[24]

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[23] *Lester v Dlambe Municipality and Another* 2015 (6) SA 283 (SCA)

[24] Ibid para 19

[51] In terms of 4 (4) of the NBSA, it is a criminal offence to erect a building without the approval of the municipality as required in terms of the provisions of s 4 (1) of the NBSA.

[52] The remedy of demolition of a building that has been constructed in breach of s 4 (1) of the NBSA can either be under the provisions of s 21 of the NBSA or under private (neighbour) law in terms of s 7 (1) (b) (ii) (bb) of the NBSA.

[53] Section 21,[25] provides *locus standi* to approach the magistrate court for the demolition of a building erected without compliance with the requisites of the NBSA by either the municipality or the Minister. In other words individuals affected by non-compliance with the statutory requirements do not have *locus standi* to approach the magistrate court for an order of demolition. An individual may in certain circumstances seek a *mandamus* to compel either the Minister or the municipality to act.

[54] It is clear from the reading of s 21 of the NBSA that the remedy for breach of s 4(1) gives rise to the remedy in public law. In this respect the magistrate on application by the local authority or the Minister has authority to prohibit any

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[25] Section 21 of the Act reads as follows: "Order in respect of erection and demolition of buildings- Notwithstanding anything to the contrary contained in any law relating to magistrates' courts, a magistrate shall have jurisdiction, on the application of any local authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorizing such local authority to demolish such building if such magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this Act or any approval or authorization granted thereunder."

person from commencing or proceeding with an erection of a building or demolition of a building that does not comply with the law.

[55] In *Lester,* the High Court asked the question why statutory breach which gives rise to the same claim under the private or public law can afford the court discretion under private law and not under public law. In answering that question on appeal, the SCA said:

> "The answer is simply that the law cannot and does not countenance on-going illegality which is also a criminal offence. To do so, would be to subvert the doctrine of legality and to undermine the rule of law."[26]

[56] The complaint of the applicants in the present matter was triggered by the disqualifying factors envisaged in s 7 (1)(b)(ii) of the NBSA. The case of the applicants is that the units were erected or being erected in a manner that is objectionable and also that they derogate from the value of the neighbouring properties. The complaint in that regard relates to the erection of buildings done without compliance with the provisions of the NBSA. In dealing with the conduct similar to the present the court in *Standard Bank of SA Ltd v Swartland Municipality and Others*,[27] said:

> "The unauthorised and illegal conduct of the third respondent [in unlawfully erecting a structure without approved plans] is *contra boni mores* and contrary to public policy, and cannot be condoned by the court. It militates against the doctrine of legality, which forms an important part of our legal system, and

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[26] *Lester* para 23

[27] 0*Standard Bank SA Ltd v Swartland Municipality and Others* 2010 (5) SA 479. See also *Standard Bank SA Ltd v Swartland Municipality and Others* 2011 (5) SA 257 (SCA)

more especially since the Constitution became the supreme law of the country".[28]

[57] The remedy of an individual whose rights in terms of s 7(1) (b) (ii) of the NBSA have been breached may approach the court on the basis of common law private (neighbour) law.

[58] It is undisputed in the present matter that the buildings in question were erected by the respondents with no approved building plans by the municipality. Although the Trust contended that the plans were submitted to the Municipality on 2 November 2016, there is no proof of such. The municipality insisted that the buildings were erected without approved building plans and thus, as stated somewhere else in this judgment, the structures on the property are unlawful.

[59] The removal of the restrictive conditions made by the municipality on 12 March 2017 does not assist the case of the respondents in that the decision was made on condition that "all illegal structures be demolished" by the respondents.

[60] In light of the above, I find that the applicants have made out a case for the relief sought in the notice of motion.

Order

[61] In the premises, the following order is made:

1. The buildings erected or being erected on erf 2541Three Rivers

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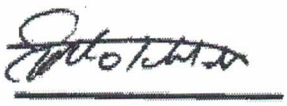
[28] *Standard Bank SA Ltd v Swartland Municipality and Others* 2010 (5) SA 479 para 22

Township, Vereeniging without the approval of building plans by the Third Respondent in terms of section 7 of the National Building Regulations and Building Standards Act, and as required by section 4 of the Building Act; and in contravention with the Vereeniging Town Planning Scheme and in contravention of the restrictive conditions relating to the title deed conditions of the property, is declared unlawful.

2. The First and Second respondents, in their capacity as trustees of ZAHEER Asmal Family Trust, or its successors-in-title, are ordered to demolition the illegal structures erected on the property under the control and management of the Municipality and in accordance with the provisions of the Building Act.

3. In the event that the Respondents (or the Trust) fails or refuses to complete the demolition within 21 days from date of this order, the Municipality is directed to carry out the demolition and claim the costs relating thereto from the Trust.

4. Respondents are to pay the costs of this application.



E Molahlehi

Judge of the High Court;

Johannesburg

Representation:

Counsel for the Applicant: Adv LGf Putter SC

Instructed by: CHANTELL TIMM Inc.

Counsel for the Respondent: Adv GW Raath

Instructed by: ROSSOUW & PRINSLOO Inc.

Heard on: 02 November 2017

Delivered on: 29 March 2016