



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
Date: 7th May 2019 Signature _____	

CASE NO: 2019/14358

DATE: 7TH MAY 2019

In the matter between:

SEBOTHOMA, KILEKE FRANS, for and on behalf of:

TSWELOPELE HOUSING ASSOCIATION

First Applicant

TSWELOPELE HOUSING ASSOCIATION

Second Applicant

MOSEHLE, HILDA

Third Applicant

TWALA, MORRIA

Fourth Applicant

MAAKE, MACK

Fifth Applicant

and

TSHABALALA, MPUME

First Respondent

KGATLAMPE, JOYCE

Second Respondent

MORERWA, WILLIAM

Third Respondent

NTULI, KENNY

Fourth Respondent

NDLOVU, OWEN

Fifth Respondent

THANDAZA, TAFENI

Sixth Respondent

FOUR OTHER RESPONDENTS

Seventh to Tenth Respondents

FIRST NATIONAL BANK

Eleventh Respondent

JUDGMENT

Adams J:

[1]. This is an opposed urgent application by the applicants for an interim order *inter alia* freezing a bank account opened by the first to the seventh respondents with First National Bank. In their notice of motion the applicants, who claim to be the owners of a building known as Waterford Court, situate at 4 Jager Street, Hillbrow, Johannesburg, prays for an order in the following terms:.

1. Dispensing with the forms and rules pertaining to the service and time periods as in terms of the urgency, and also that this application be heard as urgent in terms of rule (6) of the uniform rules of Court.
2. That the above Honourable Court condone the manner of service by the attorneys of record of the applicants effecting service and permitting the matter to be heard as one of urgency in terms of rule 6(12) of the uniform rules of Court.
3. Ordering that the account opened in favour of the respondents 1 to 7 and held at First National Bank, be frozen with immediate effect pending the finalization of this matter on an urgent roll and any subsequent appeal regarding the merits of this case that might follow.
4. That the above Honourable Court grant an order compelling the respondent not to open a similar account at any bank for the purposes of collecting rental, water and electricity payment from the tenants of Waterford Court, no 04 Jager Street, Hillbrow, Johannesburg.
5. Costs be ordered against the respondents 1 to 7.

[2]. This application is in the context of a fight between occupiers of the building in question. There are apparently two camps, both of which claim to be the owners or in control of the said building. The applicants claim that they are entitled to collect rental and other municipal charges and for that purpose they have a bank account. The first to seventh respondents claim that they are in charge of the building and are entitled to control the monies and the funds, and for that purpose they have caused a bank account to be opened with First National Bank. At face value, the majority of the occupiers in the building are in support of the cause of the respondents, who claim that they have through legitimate means taken over the management of the building by democratic processes in relation to the Housing Co – operative, which has the right to control the management of the building.

[3]. However one views this matter, there are number of factual disputes between the parties, which in my view cannot be resolved on the papers before me. These disputes were also apparent in an urgent application previously brought by the applicants for other interdictory relief. That application was struck from the roll for lack of urgency.

[4]. As I indicated above, there are a number of factual disputes between the parties, which cannot be resolved on the papers. In addition, I am not persuaded that the applicants have made out a case for the relief sought, which is in effect to freeze a bank account operated by the respondents. In that regard, I am of the view that the applicants have not complied with the requirements for the granting of the interim interdict. They have not, in my judgment, demonstrated a *prima facie* right, nor have they satisfied me that there is no alternative remedy available or that they would suffer irreparable harm if the relief prayed for is not granted.

[5]. More importantly is the fact that, in my judgment, the applicants have not even begun to make out a proper case for urgency.

[6]. Rule 6 (12) (b) of the uniform rules of court reads as follows that:

'(b) In every affidavit or petition filed in support of the application under para (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he would not be afforded substantial redress at a hearing in due course'.

[7]. I am of the view that there is no urgency in this matter. Further, the applicants have not shown cause why they would not be afforded substantial redress at a hearing in due course if the matter is not heard on an urgent basis.

[8]. I am not convinced that the applicants have passed the threshold prescribed in Rule 6(12)(b) and am of the view that the application ought to be struck of the roll for reasons given above.

Costs

[9]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[10]. I can think of no reason why I should deviate from this general rule.

[11]. I therefore intend awarding cost against the first and sixth respondents in favour of the applicant.

Order

Accordingly, I make the following order:-

- (1) The applicants' urgent application be and is hereby struck from the urgent court roll.
- (2) The first, third and fourth applicants, jointly and severally, the one paying the other to be absolved, shall pay the cost of the first to seventh respondents.



L R ADAMS

Judge of the High Court

Gauteng Local Division, Johannesburg

HEARD ON:	2 nd May 2019
JUDGMENT DATE:	7 th May 2019
FOR THE APPLICANTS:	Ms Mogapi
INSTRUCTED BY:	Mogapi Attorneys
FOR THE RESPONDENTS:	Advocate
INSTRUCTED BY:	Vermaak & Partners Attorneys