




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

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	NOT REVISED.
10/07/2020	
DATE	SIGNATURE

CASE NO: 15245/2020

In the matter between:

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Applicant

and

RITA SIKHOSANA

First Respondent

LUIS MBALANE

Second Respondent

VUSI MNGONI

Third Respondent

NOMALUNGELO MNQABASHE

Fourth Respondent

CHRISTOPHER MOTSIPI

Fifth Respondent

OLGA CHILOANE

Sixth Respondent

REMEMBRANCE CONSWA

Seventh Respondent

THANDI NKOSI

Eighth Respondent

THE UNKNOWN INDIVIDUALS GATHERING & OR

TRESPASSING AT FARM 73 IR, DAVEYTON also known as

DAVEYTON EXTENSION 14, WITH THE INTENTION TO

PROVOKE THE EMPLOYEE AND INTERFERE WITH THE

CONSTRUCTION WORK AT DAVEYTON EXTENSION 14

Ninth Respondent

MOTHEO CONSTRUCTION GROUP (PTY) LTD

Tenth Respondent

CITY OF EKURHULENI METROPOLITAN POLICE

DEPARTMENT ("Daveyton")

Eleventh Respondent

SOUTH AFRICAN POLICE SERVICES ("Daveyton")

Twelfth Respondent

JUDGMENT

YACOOB J:

1. The applicant, the City of Ekurhuleni Metropolitan Municipality ("the City"), approaches this court on an urgent basis for an order interdicting the first to ninth respondents ("the community") from acting in a manner that impedes the continuation of a project being carried out by the tenth respondent.
2. The project had previously been conducted by different service providers and carried out in consultation with the community, but it had ground to a halt for various reasons and the City has now appointed the tenth respondent who has attempted to resume operations. The community has objected to the process and also to the manner in which the tenth respondent has identified subcontractors.
3. During approximately the third week of June work was disrupted by protests. On 24 June a memorandum was delivered which demands that the project continue with community involvement as had previously been promised to the community by the MMC of Human Settlements, Mme Lesika, failing which there would be "total shutdown".

4. On the back of this obvious threat the City approached the Court. I am satisfied that the matter is clearly urgent.
5. The community was not legally represented at the hearing nor were any affidavits filed. However certain of the members of the community were present in person at court, including the first, third, fourth and fifth respondents, and the first respondent, Ms Sikhosana, spoke on their behalf. I pause to note that, as with most matters at present, the matter was heard by means of video conference, and a link was made available in court to allow the community to join the hearing.
6. Ms Sikhosana communicated that the respondents would like to file an affidavit and in fact had attempted to attest to one but that two police stations they had attended were closed due to Covid-19. She said that the memorandum had been written in anger and that they apologised for the threat of total shutdown. They simply wanted engagement and they wanted things to be done properly. According to her the community wants to resolve the issues.
7. In response it was submitted by Mr Sithole for the City that the MMC was more than happy to engage but that the project could not be halted in the meantime. On being asked to provide a date on which the MMC could meet with the community he obtained instructions to the effect that 17 July would be possible.

8. It is unacceptable for the community to use force in order to coerce the City to engage with it and to try and get its way. The court cannot condone threats made by the community. Communities and all members of our society must be encouraged to turn to the courts rather than to forceful action when there is a problem.
9. On the other hand the City cannot rely on its better resources to bulldoze its decisions through particularly in a matter with a history of consultation and community involvement.
10. In addition when the City agrees to engage with the Community but insists that the project will continue in the meantime, questions arise about the *bona fide* nature of that engagement. The City, as the level of government closest to the people, has a particular obligation to transparency, responsiveness and care.
11. In terms of section 152(1)(e) of the Constitution an object of local government is “to encourage the involvement of communities and community organisations in the matters of local government”.
12. This applies particularly in a project which has a direct impact on the community, and in a situation in which community feeling is particularly high.
13. In my view *bona fide* engagement is essential, and it is necessary if the engagement does not result in a resolution for these important issues to be fully ventilated in and decided by a court.

14. For these reasons I consider it to be in the interests of justice to make an order which will hopefully foster the extra curial resolution of the matter, and if not, will allow all the issues to be properly ventilated before a court in due course, where that court is not hamstrung by the fact that the project is now a *fait accompli*.

15. Mr Sithole informs me that a date has been obtained on the opposed roll of 7 September. The matter can therefore be postponed to that date.

16. For these reasons, I make the following order:

- (1) The matter is urgent and the applicant's failure to adhere to the Uniform Rules of Court is condoned.
- (2) The matter is postponed to the Opposed Roll of 7 September 2020.
- (3) The applicant is directed to engage with the respondents and all interested parties with a view to reaching a resolution of the issues. This engagement process is to be completed by 17 July 2020, including a meeting between the MMC and community members and any other meetings that are considered appropriate.
- (4) The applicant is directed to file a report with this court setting out the processes undertaken in the engagement, and the outcome thereof, by 24 July 2020. The applicant may simultaneously supplement its founding papers if necessary.

(5) The respondents are to file any answering affidavits to the founding affidavit, the report and any supplementary affidavit, by Wednesday 05 August 2020.

(6) The applicant is to file any replying affidavit by Thursday 13 August 2020.

(7) The parties are to file heads and practice notes by Friday 21 August 2020.

(8) Pending the hearing of this matter on 7 September 2020 or any other date to which it may otherwise be postponed, the first to ninth respondents and any person associated with them are interdicted from

a. trespassing, invading and or gathering at the construction site described as Remaining Extent of farm, Daveyton No. 73 also known as "Daveyton Extension 14 housing project" for the purposes of: -

b. intimidating, obstructing, disrupting, interfering and threatening, provoking the applicant's employees and or the employees of the tenth respondent.

c. performing any act of violence or causing violence or making any threat or instigating any threat by any other means, such as throwing stones to any authorised persons at Daveyton Extension 14.

d. instigating any person or member of the public to perform acts designed to intimidate, obstruct, disrupt or interfere with the

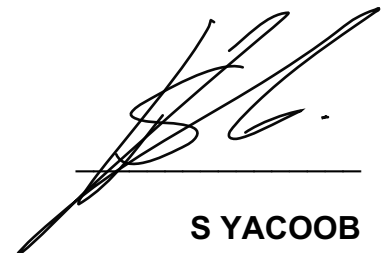
applicant's appointed contractors' employees together with its subcontractors.

- e. conducting demonstration or gathering at any place closer than 200 metres from the perimeter of any of the Daveyton Extension 14 construction site and
- f. from invading and attending to Daveyton Extension 14 for the purposes of constructing their own top structures "dwellings" in order to settle or reside in.

(9) Pending the hearing of this matter on 7 September 2020 or any other date to which it may otherwise be postponed, the applicant and the tenth respondent are to suspend work at Daveyton Extension 14.

(10) The members of the Ekurhuleni Metropolitan Police and of the South African Police Services are authorised to assist the applicant in securing the Daveyton Extension 14 housing project in accordance with this order should the need arise.

(11) Should any new event occur which requires this order to be revisited before 7 September 2020, the parties may set the matter down on the same papers duly supplemented.

A handwritten signature in black ink, appearing to be 'S YACOOB', written over a horizontal line.

S YACOOB

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

For the applicant:

Mr Sithole

Instructed by:

Tshivhase Kinstler Attorenys

For the first to ninth respondents:

In person.