

Summary of the Judgment

Yacoob J

On the 8th July 2020 the City of Ekurhuleni Metropolitan Municipality (the City) approached the court on urgent basis for an order interdicting the first to the ninth respondents (the community) from acting in a manner that impedes the continuation of a project being carried out by the tenth respondent.

Project was previously conducted by different service provider and they were consultations with the community. Under the current service provider consultations were not held. The community has therefore objected to the process and the manner in which the tenth respondent has identified his subcontractors. Memorandum was delivered which demands that the project continue with the community's involvement as had previously been promised to the community, failure to do that the community stated that they will be a total shutdown.

It is on the back of this threat that the City approached the court and the court found that the matter is urgent. The respondents did not have any legal representation however they were in court and Miss Sikhosana spoke on their behalf. The community indicated that they wanted engagement and for things to be done properly.

Was an engagement necessary between the City and the community, if yes should the project be halted in the meantime?

A Bona fide engagement is essential, 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. Section 152(1) (e) of the constitution states that an object of local government is "to encourage the involvement of the communities and community organisations in the matter of local government". This applies particularly to projects that have direct impact on the community and where the community's feelings are too high.

Taking the above into consideration it will be in the interest of justice to make an order which will hopefully foster the extra curial resolution of the matter.

The following order was made:-

1. Matter is urgent, failure by the applicant to adhere to the uniform rules of court is condoned.
2. Matter is postponed to the 7th September 2020.
3. Applicants to consult with the interested parties.
4. Applicants to file a report with the outcome of the engagements and supplement its papers if necessary by 24th July 2020.
5. Respondents to file any answering affidavits and any supplementary affidavit by Wednesday 05th August 2020.
6. Replying affidavit to be filed by the Applicants on Thursday 13th August 2020.
7. Heads of Argument and Practice Notes to be filed by Friday 21st August 2020.
8. Pending the hearing on the 7th September 2020 or any other date to which it may be postponed, first to the ninth respondents and any person associated with them are interdicted from:-
 - a. Performing all forms of intimidations directed to the employees of the tenth respondents and the property belonging to the tenth respondent or the respondent's employees.

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9. Applicant's and the tenth respondent are to suspend work pending the hearing on the 7th September 2020 or any other date to which it may be postponed.
10. Members of the Ekurhuleni Metropolitan and of the South African Police Services are authorised to assist in accordance with the order.
11. Matter can be set down on the same papers duly supplemented if any new event occurs and requires the order to be revisited.