REPUBLIC OF SOUTH AFRICA

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

CASE NO: 18162/2021

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES

23 September 2022 .....
DATE SIGNATURE

In the matter between:

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY	Applicant
And	
NEW STAR TECHNOLOGY CC	First Respondent
ZHIBING YUAN	Second Respondent

(This judgment is handed down electronically by circulation to the parties' legal representatives by email and uploading to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 23 September 2022.)

JUDGMENT

MIA, J

[1] The applicant seeks a final interdict against the respondents for conduct it alleges contravenes various environmental legislation including the

National Environmental Management Act 107 of 1998 (NEMA), read with section 5 of the National Environmental Management Act: Waste Act 59 of 2008 (the Waste Act); and Chapter 4 of the National Environmental Management Act: Air Quality Act 39 of 2004 (Air Quality Act); National Norms and Standards for the storage of Waste; and National Norms and Standards for the Sorting, Shredding, Grinding, Crushing, Screening or Bailing of general waste. The first and the second respondents opposed the application. The first respondent does not deny that the company commenced operations without authorisation. Instead, the respondents contend that the application is inappropriate and raise points *in limine* as have raised substantive defenses on the merits as well.

BACKGROUND FACTS

[2] It is helpful to understand the context in which this litigation commenced in order to appreciate the relief requested. A brief background follows. The applicant is a metropolitan municipality established in terms of the law[1], serving the East Rand community, and is responsible for the promotion of a safe and healthy environment[2]. The first respondent is a close corporation situated at 4 Robex Road, Activia in Germiston. The second respondent is a member of the first respondent and has his work address at the same address as the first respondent in Germiston. The respondents conduct business recycling plastic and commenced its operation in 2009. The first respondent does not have an atmospheric emission license(AEL) as required by the Air Quality Act. In addition, the first respondent has no application pending for an AEL before the applicant. The first respondent does not have a waste management license (WML) as required by NEMA either. The first respondent has applied for rectification of its unauthorised activities in terms of section 24G of NEMA. The first respondent's application has been suspended, pending the finalisation of a criminal matter which is pending.

---

[1] Section 151 of the Constitution and the Local Government Municipal Structures Act 117 of 1998

[2] Section 152(1)(d) of the Constitution of South Africa

[3] On 26 August 2020, an environmental compliance monitoring officer (ECMO) conducted a site inspection. It revealed that the first respondent was conducting thermal treatment of general hazardous waste without an AEL. The first respondent was required to obtain an atmospheric emission license (AEL) prior to engaging in thermal treatment of hazardous waste. On 20 September 2020, the Environmental Management Inspector (EMI) issued a notice of the applicant's intention to issue a compliance notice in terms of NEMA, read with the Waste Act and the Air Quality Act. The EMI based his decision on the findings that:

> "4.1. New Star Technology had commenced with section 9 NEMWA waste management listed under category A and C GNR 332 of 2014 onsite.
>
> 4.2 New Star Technology has commenced with NEMQA section 21 Air Quality activities listed under category eight, subcategory 8.1 on-site.
>
> 4.3 Sorting, shredding, and recycling of general waste(Plastic) are undertaken on site.
>
> 4.4 Process wastewater is channelled into the municipal sewer system
>
> 4.5 Wet waste from the process is stored outside in an uncovered area."

[4] The applicant's notice afforded the respondents an opportunity to make written representations within 14 calendar days of receipt of the notice. The respondents were required to indicate whether there are compelling and substantial reasons for the environmental management inspector not to exercise his powers in terms of section 31L, to issue a compliance notice that would require the respondents to cease all activities listed in s19 of the Waste Act and s21 of the Air Quality Act. According to the applicant, the inspection of the premises revealed that the respondents were recycling general waste without a waste management license. The first respondent had not registered and was not compliant with the waste norms and standards for 2013 and 2017.

[5] The first respondent was also storing waste materials, sorting and shredding waste plastic without a waste management license, and was not complying with waste norms or standards and or sorting and bailing norms. The Environmental Compliance Management Officer(ECMO) observed that the respondent stored bales of used plastics on the property. These were cut into pieces and fed into a washing machine. Thereafter the plastic was dried and fed into heated plastic processing machines to convert them into pallets.

[6] The ECMO observed that there was an emission as a result of the thermal heat processing of plastic without any abatement equipment installed, whilst the plastics were being processed and converted into pallets. The processing produced an odour and emissions at levels that created a nuisance and this was not managed by the first respondent. The first respondent failed to produce a provisional AEL or an AEL when called upon to do so.

[7] The first respondent responded to the pre-compliance notice and furnished the applicant with written representations. The response indicated that the first respondent did not have a professional AEL or WML. However, they appointed a service provider to assist in applying for a WML, and that an application for an AEL will be lodged with the applicant. They also indicated that they will apply for permission for storage, sorting, shredding, grinding, crushing and bailing of general waste to the Gauteng Department of Agriculture and Rural Development (GDRAD). Notwithstanding the response, the applicants contend that the respondents failed to provide substantial and compelling reasons not to issue a compliance notice in terms of s 31L of NEMA.

[8] Consequently, on 13 October 2020, and in view of the respondents' alleged contraventions the applicant issued a compliance notice to the respondents which required them to:

8.1 cease all activities within 24 hours of receipt of the notice.

8.2 to appoint a suitably qualified specialist within 30 days of the receipt of the compliance notice to remove all process waste in the wastewater pits on-site to a registered and approved landfill site and remove all sludge waste stored on-site to a registered and approved landfill site.

8.3 to submit to the applicant within 45 working days a report regarding all waste disposal manifest and safe disposal certificate.

[9] The applicant states that the respondents failed to seize conducting their business in contravention of the environmental laws and have not complied with the compliance notice. The EMI conducted a further inspection on 16 February 2021. The inspection according to the applicant shows the respondents' conspicuous disregard of the law in that they continue unabated with unauthorised activities in contravention of the environmental laws. This the applicant contends is a clear infringement of a right that affords the applicant the ground for an interdict.

ISSUES TO BE DETERMINED

[10] The issues this court is required to be determine are the following:

10.1 whether the applicant has the standing to apply for an interdict?

10.2 whether the applicant cited the relevant parties?

10.3 whether it is competent to grant a final interdict?

LAW

[11] The law regarding the granting of a final interdict is trite and is guided by the decision in *Setlogelo v Setlogelo*[3] where the requirements were set out namely i) a clear right, ii) an injury actually committed or reasonably apprehended and the absence of a satisfactory alternative remedy. In

[3] *Setlogelo v Setlogelo* 1914 AD 221

Hotz and Others v University of Cape Town[4], the court held that the law regarding granting final interdicts was settled. Once an applicant had proved the three elements that permitted the grant of an interdict, the latitude for refusing the relief if any is limited.

[12] Section 36(1) of the Waste Act provides that:

> "Metropolitan and district municipalities are charged with implementing the atmospheric emission licensing system referred to in section 22, and must for this purpose perform functions of licensing authority as set out in this Chapter and other provisions of the Act."

[13] Section 24G of NEMA makes provision for the consequences of commencing an unlawful activity without a license. Sub section (2) thereof permits the Minister, Minister responsible for mineral resources, or MEC concerned to consider any report or information submitted in terms of subsection (1) and to refuse to issue an environmental authorisation or to issue same subject to conditions.

POINTS *IN LIMINE*

[14] The first point *in limine* raised is whether the applicant was competent to obtain the interdict against the first respondent. The first respondent contends that the applicant is not empowered to launch the application and that the Member of the Executive Council for Environmental Affairs (MEC), has a direct and substantial interest in the matter, ought to be joined, and should pursue the relief sought instead of the applicant. The MEC is the relevant authority that issues the license, thus it is the MEC who must enforce the legislation and lodge the application herein. The first respondent maintains that the applicant is not competent to do so.

[15] The second point *in limine* is that the second respondent is not properly joined. The second respondent contends he has no interest in the matter. He has been incorrectly cited as a party to the proceedings as

---

[4] *Hotz and Others v University of Cape Town* 2017(2) SA 485 (SCA)

the first respondent is a closed corporation. The second respondent continues to state further that there is no application before the court to pierce the corporate veil and therefore the actions of the first respondent cannot be attributed him and the relief sought is not appropriate against him.

[16] The first respondent points out that the conduct which the applicant seeks to interdict is already underway. It highlights furthermore, that the first respondent does not contribute to pollution, but rather assists in recycling waste and in doing so contributes to a clean and safe environment by receiving plastic-related waste and processing it, and converting it into exportable material for international markets. The first respondent also notes that it contributes to the creation of employment and to cleaning the environment by removing waste plastic from the environment.

[17] Furthermore, the respondents contend that the relief sought by the applicant is unwarranted as there are alternative remedies that indicate an interdict should not be granted. This position is based on their view that the applicant has not established that the harm apprehended has taken place as the first respondent is operational only for a while. They also submit that the stoppage of operations will place the livelihood of over one hundred employees in jeopardy. Moreover, they state that an interdict will harm the environment because the plastic would remain on the streets creating pollution. They point out that an interdict is not required as the applicants have not satisfied the court that they have pursued alternative measures and that these are not effective. The respondents contend that the applicant has not prosecuted the criminal case against them to finality. They indicate they have applied for an exemption in terms of NEMA on behalf of the first respondent which would permit the latter to operate the processing plant subject to certain conditions pending the finalisation of the application for licenses.

APPLICANT'S *LOCUS STANDI*

[18] The applicant relied on section 32[5] of NEMA to pursue the application in its own interest and in the public interest so as to protect the environment for present and future generations. Where an applicant has shown a direct and substantial interest the court must permit an applicant the opportunity to pursue the relief. In *Sustaining the Wildcoast NPC and Others v Minister of Resources and Energy and Others* 3491/21 delivered on 1 September 2022, a decision of the Full Court of the Eastern Cape Division Makhanda, the Court stated at paragraphs 44 and 45

> "[44] Where a party has shown a direct and substantial interest in the subject matter of a case, the court has no discretion to exercise. It must grant the intervention.[6]
>
> [45] The generous approach to standing adopted under section 38 of the Constitution is the overriding factor. That section grants *locus standi* to any party alleging the infringement of a right in the Bill of Rights acting in its own interest,[7] on behalf of another person who cannot act in their own interest,[8] in the interest of a

---

[5] S 32. Legal standing to enforce environmental laws.—(1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources—

(*a*) in that person's or group of person's own interest;

(*b*) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;

(*c*) in the interest of or on behalf of a group or class of persons whose interests are affected;

(*d*) in the public interest; and

(*e*) in the interest of protecting the environment.

[6] *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) at 89B - C.

[7] S 38(a)

[8] S 38(b)

group or class of persons,[9] in the interest of the public[10] or as an association acting in the interest of its members.[11]

Therefore so far as the standing of the applicant is concerned I can see no bar to it lodging the application to pursue a group interest namely a community interest or its own obligation provided in terms of the Waste Act[12] the Air Quality Act or NEMA to ensure it protects the environment.

[19] The EMI's enforcing NEMA and compliance with environmental legislation have been delegated[13] to ensure compliance and to take certain steps. The applicant has proven that the EMI's were designated in the matter and there is nothing to gainsay such evidence. The MEC has no legal interest that may be affected by the relief sought, rather the MEC has an interest in ensuring compliance with the legislation. I am satisfied that the applicant has the requisite standing to launch these proceedings in terms of s 32 of NEMA.

[20] The second respondent is a member of the first respondent which is a closed corporation and is the human intellectual personality galvanising the activity that the applicant complains about that causes degradation to the environment. I am satisfied that the applicant has the necessary standing to launch the proceedings and has cited the relevant parties. In the result, the respondents fail on both points *in limine*.

COMPETENCE TO GRANT AN INTERDICT

(a) INJURY REASONABLY APPREHENDED

[21] There is a duty in terms of s 24 and s 152(1)(ii) of the Constitution to protect the environment for the benefit of present and future generations. In circumstances where the designated EMI's are not permitted or able to enforce compliance with environmental laws in terms of ss 31D, 31G, and 31N of NEMA, the applicant will not comply with its obligation to

---

[9] S 38(c)
[10] S 38(d)
[11] S 38(e)
[12] S36 Waste Act
[13] Record, Founding Affidavit, Para 19, CaseLines 01-3, Annexures "COE4" and "COE5"

protect the environment. The appointment of EMIs is an innovation by the MEC's office to ensure the steady realisation required to ensure environmental preservation for the present and future generations. The EMI in the present instance investigated a complaint lodged by a member of the public.

[22] The applicant investigated the complaint received from Mrs. Angelique regarding air pollution at the premises of the respondents. The complainant referred to the burning of plastic which causes a malodourous smell; flies present in the vicinity and the leaking of water on the premises. Upon attending the premises and investigating the complaint the EMI found the respondents were clearly in contravention of various environmental legislation because they do not have an AEL or a WML permitting them to burn plastic. The activity causes injury and harm which impacts the health and well-being of residents and extends to the environment and surroundings that will suffer as a result of the respondents' conduct.

[23] The applicant contends that the respondents' conduct has an immense impact on the environmental well-being and the health of residents in the area. This also impacts on the right to human dignity and life of the residents in the area. Whilst the respondents maintain that their conduct contributes to cleaning the environment by removing plastic, this ignores that the thermal treatment of plastic applied to the collected waste is by the respondent's own admission in contravention of the Air Quality Act as well as the Waste Act. The respondents, after receiving the notice, have continued to conduct the activities, in clear contravention of the law. Upon receiving a notice to cease activities the respondents have continued their activity without producing a license.

(b) AVAILABILITY OF ALTERNATIVE REMEDIES

[24] The applicant contends that an interdict is necessary to stop the respondents from operating in violation of the Waste Act and Air Quality Act. The interdict will ensure that the respondents follow the required

process and apply for a license before commencing any listed activity in the face of their demonstrated proclivity to disobey and disregard the law by operating in contravention of the law.

[25] The applicant does not favour the alternative remedy of issuing a fine and submits that criminal proceeding are not an effective remedy, as no positive results have been derived from pursuit of the criminal case whilst the respondents continue to pollute the environment in clear contravention of the law. This is comprehensible in the circumstances where criminal proceedings are drawn out and may take years before they are finalised and the respondents continue to contravene environmental legislation while the criminal prosecutions unfold. The respondents' conduct continues to impact on the environment and is in contravention of the law whilst a license has not been issued and it is not clear what measures are in place to abate the ensuing pollution. Essentially the thermal treatment and recycling of plastic requires a license as it requires regulation and requires monitoring and to be conducted in accordance with norms and standards that the respondents failed to comply with.

[26] The respondents concede that the first respondent commenced operations without being granted the relevant authorisation by the applicant. Whilst they indicate that steps were taken toward compliance with the environmental legislation as well as the provincial and municipal compliance notices, it is not evident that the activities the first respondent is conducting is in compliance with the norms and standards required. The respondents have appointed an environmental consulting company and submitted applications for authorisation to the applicant, the authorised entity in respect of those authorisations; such authorisation has not been forthcoming. The public participation hearings which the respondents conducted do not indicate that they have complied with the norms and standards in respect of the applications and authorisations which they submitted to the applicant with regard to the activities of the first respondent.

[27] It is evident that there is a clear breach of the environmental legislation by the first respondent. The first respondent conceded the breach but minimises its conduct by stating that it is clearing the environment of plastic. This however does not address the problem of the emissions arising from the burning of plastics. The odour that the EMI's point out resulting from the heating process is not abated. Whilst the respondents' state they engaged with the applicant's employees, however there is no evidence indicating that there is compliance with the norms and standards or that the pollution caused by the heating process is abated satisfactorily and in accordance with the norms and standards. The applicant has approached this court for relief amidst the respondent's reluctance to abide by the applicant's application and implementation of the applicable environmental legislation.

[28] The respondent's view as reflected in the answering affidavit indicate they are intent on continuing with the activities of the first respondent who despite the compliance notice sent on 13 October 2020 notifying the first respondent to cease activities within 24 hours of receipt of the notice; to remove all process waste in the wastewater pits on-site to a registered and approved landfill site and remove all sludge waste stored on-site to a registered and approved landfill site within 30 days and to submit a report to the applicant within 45 working days regarding all waste disposal and safe disposal certificate. It is not evident how the respondents process the waste in compliance with the norms and standards. The applicant submitted that the respondent's admitted conduct suggests that criminal prosecution and a fine would be inappropriate alternative remedies. In the face of the respondents' lack of co-operation in compliance with the environmental legislation, the only option is to stop the conduct.

[29] The purpose of criminal proceedings and a fine may have a deterrent effect. However, in the present matter, where the respondents have demonstrated the intention to pursue the activities of the first respondent

notwithstanding the criminal proceedings, the pursuit of criminal proceedings and payment of a fine would appear, in the context of this legislation, would not have the desired deterrent effect. In order to achieve the objective of environmental protection for the benefit of present and future generations and to prevent pollution and ecological degradation, the respondents must cease the operation of the first respondent until the latter is compliant.

[30] The issuing of a monetary fine is not an adequate deterrent where persons benefit financially from illegal operations and continue to pollute the environment leaving an overarching impact on the environment. I have noted that the MEC may direct that a report be compiled as provided for in s 24G(vii) and (viii) of NEMA. The MEC may then consider the report and refuse to issue an environmental authorisation or issue it subject to further conditions[14]. There are various steps that the MEC may take and ultimately the MEC may defer the decision to issue an environmental authorisation until criminal proceedings have concluded and an applicant has exhausted proceedings pertaining to appeal and review. It follows that the application that the first respondent refers to is not concluded due to such processes. In the interim, and until the application for authorisation to conduct activity is authorised, the first respondent may not proceed uninterrupted with unlawful activity because it is proscribed by legislation to protect the environment. It is necessary to thus cease activity. I am furthermore in agreement with the view held in various decisions that an interdict is appropriate where there is a contravention of the law[15]. In the present matter the

---

[14] (*b*) issue an environmental authorisation to such person to continue, conduct or undertake the activity subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary, which environmental authorisation shall only take effect from the date on which it has been issued; or

(*c*) direct the applicant to provide further information or take further steps prior to making a decision provided for in paragraph (a) or (b).

[15] *Bitou Local Municipality v Timber Two Processors CC and Another* 2009 (5) SA 618 (C) 8 *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council 1987* (4) SA 343 (T), para 347G. *Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC* and Others 2004 (2) SA 81 (SE), para 94

respondent's conduct deserves the same censure. It is evident that there are no alternative remedies available to the applicant that will achieve the desired result.

COSTS

[31] On the issue of costs, counsel for the applicant submits that a punitive cost order would be one way in which to show the respondents the courts disapproval of their conduct in pursuing their business in contravention of the law. The applicant served a notice of compliance in October 2020 and in February 2021, the respondents were still polluting the environment. This they submit justifies a punitive costs order. The first respondent resists such order arguing that the applicant has delayed processing their application and has pursued relief that is inappropriate. I hold the view that the relief requested by the applicants is appropriate. Moreover, the attitude of the first respondent to continue with its conduct in disregard for its impact on the environment is deserving of censure and a punitive costs order.

ORDER

[32] Having considered the above I make the following order:

1. The respondents are interdicted and restrained from conducting section 21 listed activities at 4 Ronbex Road Activia, Germiston without an atmospheric emission license in contravention of the National Environmental Management: Air Quality Management Act 39 of 2004;

2. The respondents are interdicted and restrained from conducting section 19, Category A (Activity 3) listed activities at the same premises without a waste management license in contravention of the National Environmental Management: Waste Act 59 of 2008;

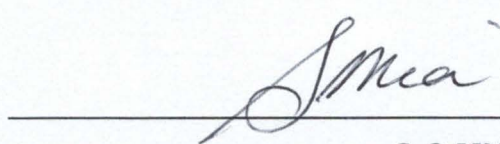
3. The respondents are interdicted and restrained from conducting. Section 19 category C. (Activity five) waste management activity, in contravention of national norms and standards for the storage of

waste, published under Government Notice No.926 in the Government Gazette 37088 of 29 of November 2013.

4. That the respondents are interdicted and restrained from operating a waste facility in contravention of national norms and standards for the sorting, common shredding, grinding, crushing screening or baling of general waste published under Government Notice No. 1093. In the Government Gazette No. 41175 of 11 October 2017.

5. In the event that the respondents fail to comply with the orders above, the applicant is authorized with the assistance of the sheriff and all the South African Police and all Metro Police and or a private security company to demolish and remove all items and illegal structures on the premises which are used by the respondents to conduct listed activities without environmental authorizations from the applicant and Gauteng Department of Agriculture and Rural Development.

6. The respondents are ordered to pay the costs of this application jointly and severally the one paying the other to be absolved on an attorney and client scale.



S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicant	: Adv K Monareng
Instructed by	:Nozuko Nxusani Inc
On behalf of the first respondents	: Adv ME Mathapuhuna
Instructed by	: Mfinci Bahlmann Inc
Date of hearing	: 2 November 2021
Date of judgment	: 23 September 2022