



IN THE HIGH COURT OF SOUTH AFRICA

/ES

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: <del>YES</del> / NO	
(2) OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO	
(3) REVISED ✓	
29.3.2016	
<u>DATE</u>	<u>SIGNATURE</u>

CASE NO: 86558/2014

DATE: 29/3/2016

IN THE MATTER BETWEEN

WILLEM PETRUS NEL

FIRST APPLICANT

AFRIFORUM NPC

SECOND APPLICANT

AND

SELLO

FIRST RESPONDENT

THABO

SECOND RESPONDENT

KHUTSO

THIRD RESPONDENT

HAPPY SKOHOSANA

FOURTH RESPONDENT

THE UNLAWFUL OCCUPIERS:  
(The remaining extent of farm Bultfontein 107)

FIFTH RESPONDENT

THE COMMANDING OFFICER:  
HAMMANSKRAAL POLICE STATION

SIXTH RESPONDENT

THE CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY

SEVENTH RESPONDENT

THE MINISTER: HUMAN SETTLEMENTS

EIGHTH RESPONDENT

THE MINISTER OF POLICE

NINTH RESPONDENT

PLASTIC PACK (PTY) LTD

TENTH RESPONDENT

UNIVERSAL PULSE TRADING 367 (PTY) LTD

ELEVENTH RESPONDENT

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## JUDGMENT

MSIMEKI, J

### INTRODUCTION

- [1] There are three applications in this matter. The main application has been brought by Mr Willem Petrus Nel. Mr Nel ("Nel"), in the main application, seeks an order restraining first to fifth respondents from enticing, instructing, encouraging persons to invade or unlawfully occupy any portion of the remaining extent of the farm Bultfontein 107 in Gauteng Province held by Deed of Transfer T39946/2014 ("the farm"). There are other related prayers. In respect of sixth respondent Mr Nel seeks an order "authorising and directing the sixth respondent and in general the South African Police Services to do everything reasonably necessary to prevent any further persons from unlawfully entering upon and/or claiming portions of the farm and/or clearing, erecting structures or constructing on or doing anything to invade the farm". The application was brought *ex parte* and on an urgent basis. The main application is opposed. The second application concerns a Rule 30 application which has been brought by sixth respondent. Second applicant gave notice of its intention to oppose the Rule 30 application. The third application concerns the joinder of ninth, tenth and eleventh respondents. Sixth respondent gave notice of his intention to oppose the application in so far as it concerns the Minister of Police. Other than filing

the notices to oppose, second applicant and sixth respondent filed no answering affidavits relating to the Rule 30 application and the joinder application.

### **BRIEF FACTS**

[2] Nel contends that he, for the past twenty years and more, has been living on the farm. Soetdoringrand Beleggings (Pty) Ltd, according to Nel, owned the farm. A certain Boshof and Van Eden were directors of the company. They did farming on the farm until they stopped because they feared for their lives. The two directors asked him to occupy the farm, to farm and to protect the farm from neglect and criminal conduct. He then farmed with 500 Brahman cattle, some fifteen lions and three tigers. Boshof and Van Eden, during 2006, sold the farm to Absa Property Development (Pty) Ltd ("Absa"). The idea behind the deal was that Absa would develop the farm and build low cost houses. This did not materialise. The farm, according to Nel, during 2014, was sold to Plastic Pack (Pty) Ltd. It appears that Universal Pulse Trading 367 (Pty) Ltd could now be the owner. This is not very clear.

Second applicant brought an application seeking an order allowing it to join the application as second applicant. This application was granted. Second applicant, after sixth respondent had filed his answering affidavit, filed a replying affidavit. Sixth respondent then filed a notice in terms of Rule 30 calling on second applicant –

"to either withdraw its replying affidavit and its notice of motion or to rectify the irregular step or steps and to comply with the applicable provisions of the Uniform Rules and the State Liability Act within five (5) days hereof, failing which the sixth respondent will approach the above honourable court for an order to set aside the following documents:

5.1 the replying affidavit; and

5.2 the application of 15 May 2015 with costs."

The application of 15 May 2015 relates to the joinder of ninth, tenth and eleventh respondents. Second applicant did not comply with the notice. Sixth respondent then brought an application in terms of Rule 30. Second applicant did not file an answering affidavit.

[3] Sixth respondent's application seeks an order:

1. to the extent necessary, condoning the late filing of the sixth respondent's application in terms of Rule 30 of the Uniform Rules of Court ("the Rules");
2. setting aside the second applicant's replying affidavit;
3. directing the second applicant to pay the costs of this application;
4. further and/or alternative relief.

[4] Sixth respondent's application is accompanied by a supporting affidavit of Ms Nangamso Qongqo, a senior State Attorney representing sixth respondent. She, in her affidavit, deals with the Rule 30 application and second applicant's reply to sixth respondent's answering affidavit. In the affidavit, the deponent summarises the history of the matter. This is that on 5 December 2014 first applicant obtained the *rule nisi* returnable on 22 January 2015. The rule has been extended several times. Sixth respondent was affected by the rule as shown above. On 21 April 2015 sixth respondent filed his answering affidavit resisting confirmation of the rule. First applicant did not reply to sixth respondent's answering affidavit. Second applicant was joined as a party as shown above. Second applicant then filed its replying affidavit referred to above. The replying affidavit was received by sixth respondent on 7 May 2015. On 15 May 2015 second applicant caused to be delivered an application

in terms of which it sought to have ninth, tenth and eleventh respondents joined in the proceedings as parties. Sixth respondent on 11 June 2015 gave applicants notice in terms of Rule 30 notifying them that the replying affidavit constitutes an irregular step as contemplated in Rule 30. The affidavit explains why the step is irregular. *Inter alia*, the deponent explains that the replying affidavit does not comply with Rule 6(1) read with Rule 6(5)(e) of the Uniform Rules of Court as it has not been accompanied by a founding affidavit laying the basis for the relief sought against sixth respondent. The document, according to the deponent, seeks to provide a reply on behalf of first applicant who, in these proceedings, is a party in his own right. The deponent further contends that the document is replete with opinions and inadmissible hearsay evidence. Examples are provided.

- [5] Regarding the application to join ninth, tenth and eleventh respondents, the deponent contends that a notice, by sixth respondent, was given to second applicant telling it that the delivery of the application dated 15 May 2015 constituted an irregular step. This, because the application was an endeavour "to fix the first applicant's problem at the tail end of the first applicant's case" as first applicant's affidavit "contravened the provisions of the State Liability Act 20 of 1957 by failing to cite and/or join the Minister of Police". Further, that was also an endeavour to "fix first applicant's defective founding affidavit which failed to disclose first applicant's *locus standi*". In an attempt to solve part of the problem, so it was further contended, second applicant also tries to join the "purported owner of the farm", the tenth and eleventh respondents. Second applicant, according to sixth respondent, did not heed sixth respondent's complaints.

- [6] Adv J G C Hamman ("Mr Hamman"), for second applicant, submitted that the court granted an order on 8 September 2015. Paragraphs 2 and 3 thereof read as follows:

- "2. Any respondent, including the Minister of Police, if he so wishes to oppose, must file their respective answering affidavit/s in the joinder application or file their notice/s in terms of Rule 6(5)(d)(iii) within 15 days after date of this order;
3. In the event that any party mentioned in prayer 2 above fails to file its answering affidavit/s in the joinder application or fail to file its notice in terms of Rule 6(d)(d)(iii) (*sic*) within 15 days after date of this order, the second applicant will be entitled to proceed with the joinder application on an unopposed basis on 27 October 2015."

The issue of costs was reserved.

- [7] Mr Hamman further submitted that a Rule 30 notice ought to have been served on all the parties. What is clear is that the Rule 30 notice was served on first and second applicant. At any rate these are the parties affected by the Rule 30 notice.
- [8] Mr Hamman further submitted that the Rule 30 notice was served way out of time. Informed that there was an application for condonation, he responded by saying that the condonation only related to the Rule 30 notice and not the answering affidavit referred to in paragraphs 2 and 3 of the court order dated 8 September 2015. His submission seems to be correct. There is no answering affidavit by sixth respondent in respect of the joinder application. Even if the condonation application covered the joinder application, this would, in my view, not assist sixth respondent in the absence of the answering affidavit. Sixth respondent's answering affidavit in the

court file relates to the main application only. At any rate the answering affidavit is dated 16 April 2015 while the court order is dated 8 September 2015.

[9] Ms Qongqo's affidavit indeed deals with the necessary condonation relating to the Rule 30 application. It seeks condonation for the late filing of the application in the event that the court is of the view that the Rule 30 application has been filed late. Mr Hamman, by submitting that the condonation application only had something to do with the Rule 30 application, in my view, was conceding that such an application indeed existed. Ms Qongqo, in her affidavit, explained that the parties had an understanding though "not documented" that "all the applications would be heard together". This, according to her, delayed the bringing of the Rule 30 application which all the parties are aware of. The reason advanced, in my view, is understandable and acceptable. Condonation for the late filing of the Rule 30 application is accordingly granted.

[10] As alluded to above, second applicant failed to file an answering affidavit in the Rule 30 application. Sixth respondent too failed to file an answering affidavit in the joinder application.

[11] Second applicant merely filed a replying affidavit. This you do once you have filed a founding affidavit. This, second applicant did not do. Nowhere does second applicant expressly join forces with first applicant who filed a founding affidavit. At least one would have expected second applicant to file an affidavit or say in an affidavit that it aligns itself with the contents of first applicant's founding affidavit and therefore making first applicant's founding affidavit, its affidavit. Apart from the fact that

second applicant has been joined as second applicant, second applicant seems to be acting independently from first applicant. Catharina Cornelia Cooks, deponent to second applicant's affidavit, in her affidavit, states that she is employed by second applicant and that she is "duly authorised to depose to this affidavit on behalf of the second applicant". She does not incorporate first applicant's affidavit into her own affidavit and thereby making the affidavit second applicant's affidavit. Her affidavit is not a confirmatory affidavit either. It is not surprising that Mr Mokotedi for sixth respondent submitted that, without any basis, second applicant filed a replying affidavit. This approach, in my view, is not proper. Mr Mokotedi's submission as well as sixth respondent's contention, have merit. Second applicant's replying affidavit should be set aside.

- [12] Coming to the joinder application, sixth respondent did not file an answering affidavit as directed by the court on 8 September 2015. All sixth respondent did was to file a notice of opposition to the joinder application. This is insufficient. The founding affidavit in the joinder application stands uncontroverted. The application, in my view, should succeed.

### COSTS

- [13] Second applicant having succeeded in the joinder application, it follows that sixth respondent ought to bear the costs of the joinder application. Equally, sixth respondent having succeeded in the Rule 30 application, second applicant ought to pay the costs of the Rule 30 application.



**ORDER**

[14] The following order is made:

1. Second applicant's replying affidavit is set aside.
2. Second applicant is ordered to pay the costs of the Rule 30 application.
3. The joinder application succeeds. The Minister of Police, Plastic Pack (Pty) Ltd and Universal Pulse Trading 367 (Pty) Ltd are joined to the proceedings as ninth, tenth and eleventh respondents.
4. Sixth respondent is ordered to pay the costs of the joinder application.

  
M W MSIMEKI  
JUDGE OF THE GAUTENG DIVISION, PRETORIA

86558/2014

HEARD ON: 27 OCTOBER 2015  
FOR THE 2<sup>ND</sup> APPLICANT: ADV J G C HAMMAN  
INSTRUCTED BY: HURTER SPIES ATTORNEYS  
FOR THE 6<sup>TH</sup> RESPONDENT: ADV K M MOKOTEDI  
INSTRUCTED BY: STATE ATTORNEYS