IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

3/11/19
DATE

SIGNATURE

Case No: 24505/2019

In the matter between:

HOMELESS PEOPLE HOUSING CO-OPERATIVE LTD	First Applicant
OCCUPIERS OF PORTION 8 OF THE FARM WITKOPPIES 393, EKURHULENI	Second Applicant
OCCUPIERS OF PORTION 38 OF THE FARM WITKOPPIES 393, EKURHULENI	Third Applicant

and

THE SHERIFF KEMPTON PARK AND TEMBISA	First Respondent
THE EKURHULENI METROPOLITAN MUNICIPALITY	Second Respondent
THE MINISTER OF THE SOUTH AFRICAN POLICE SERVICES	Third Respondent
COLONEL RAKGALAKANE, STATION COMMISSIONER OF SAPS OLIFANTSFONTEIN	Fourth Respondent
JR 209 INVESTMENTS (PTY) LTD	Fifth Respondent
IDLEWILD FARM (PTY) LTD	Sixth Respondent
IDLEWILD FARMS CC (PTY) LTD	Seventh Respondent
LIBERENI 112 CC	Eighth Respondent
HY-LINE SOUTH AFRICA (PTY) LTD	Ninth Respondent
MALUWHA KWEKERY (PTY) LTD	Tenth Respondent

JUDGMENT

D S FOURIE, J:

[1] This is an urgent application in terms whereof the applicants seek an order:

(a) Declaring that the High Court order under case number 24505/2019 on 19 April 2019 and 26 April 2019 respectively, did not constitute an order for the eviction of members of the second and third applicants as required by section 26(3) of the Constitution;

(b) That the demolition of structures and/or dwellings by the first respondent on 16 May 2019 be declared unlawful and invalid;

(c) That the first respondent be ordered, jointly and severally with such other respondents who participated and/or instructed the demolition of structures, to reconstruct all the structures and/or shacks and/or dwellings that were demolished on 16 May 2019 by or on the instruction of the first respondent.

[2] The fifth to tenth respondents instituted a counterclaim for the winding-up of the first applicant and for an order declaring that the first applicant, as well as a certain S M SONGO, are in contempt of Court. There is also a third application by the said respondents for an order to compel the first applicant to

provide security for costs in terms of Rule 47. The counter-application for winding-up as well as the application to provide security for costs have both been abandoned. I need therefore only to consider the application and the contempt of Court counter-application.

BACKGROUND

[3] The first applicant is a non-profit company that was registered during 2014. As such the first applicant is a community scheme that undertakes initiatives to assist historically disadvantaged people to obtain access to housing and security of tenure.

[4] The first applicant is the registered owner of both Portion 8 and Portion 38 of the Farm Witkoppies 393, Ekurhuleni. It appears to be common cause that the first applicant as landowner was allowing numerous individuals onto its land at its own prerogative.

[5] On 19 April 2019 the fifth to tenth respondents applied for urgent relief before Tuchten J against the first applicant and the *"unlawful invaders"* of Portions 8, 10 and 38 of the Farm Witkoppies. The relief sought was premised on the allegation that a large number of people were in the process of demarcating stands whereas the land in question is currently only zoned for agricultural purposes. On the same day Tuchten J granted an order in terms of which the occupants were interdicted from:

> *"Invading, taking occupation, demarcating and/or performing any unlawful building/construction on Portion 10 … Portion 8 … Portion 38 of the Farm Witkoppies 393, Pretoria, Ekurhuleni."*

[6] The occupiers were also interdicted from building or constructing any dwellings on the properties. The Sheriff was further expressly authorised and instructed to demolish and remove any *"unoccupied structures/dwellings/shacks unlawfully erected at the invaded properties"*.

[7] On 25 April 2019 the Sheriff attended at the properties to execute the order and all unoccupied dwellings were demolished. The actions of the Sheriff in executing this order have not been challenged.

[8] On 26 April 2019 the fifth to tenth respondents filed another urgent application alleging that the first applicant and *"the unlawful invaders"* of the land in question refused to give effect to the order granted by Tuchten J. An order was sought declaring the first applicant and SONGO to be in contempt of the order granted by Tuchten J as well as that the Sheriff be authorised and instructed *"to demolish and remove any unoccupied structures/dwellings/shacks unlawfully erected at the invaded properties"*.

[9] On 26 April 2019 Millar AJ granted an order in terms whereof the first applicant (Homeless People Housing) was declared to be in contempt of the order granted by Tuchten J and the Sheriff was instructed to *"demolish each structure/dwelling erected since 19 April 2019 on the subject properties"*. The relevant part of the order reads as follows:

"5. *The Sheriff is hereby instructed to forthwith attend on the subject properties and:*

5.1 establish the precise number of dwellings and structures erected on the subject properties since 19 April 2019 and allocate a number to each such constructed structure/ dwelling;

5.2 demolish each structure/dwelling erected since 19 April 2019 on the subject properties;

5.3 report to each of the parties and the Court on the amount of structures/dwellings that were constructed on the subject properties as at 19 April 2019 and confirm the precise details of the occupants, which must include the full names and identity numbers of such individuals, if any, of such dwellings;

5.4 to the extent that the structures/dwellings constructed on the subject properties prior to 19 April 2019 are unoccupied, the Sheriff is instructed to demolish those structures/dwellings and the respondents reserve their rights in relation to each decision so taken;

5.5 each party undertakes to co-operate with the Sheriff in each and every respect required for the enforcement of this order."

[10] On 3 May 2019 the Sheriff rendered a return of service in terms of which he reported, *inter alia*, that he had established the number of dwellings and structures erected on the subject properties since 19 April 2019. On 14 May

2019 the parties and their representatives attended a meeting with the Sheriff. According to a transcript of this meeting it appears that:

(a) The legal representative of the applicants indicated that *"we are not disputing the court order ... (but) ... we are disputing the fact that we ... must accept a return a service without any factual documentation or determination ..."*;

(b) Mr Songo, a director of the first applicant, suggested that he should address the people and *"arrange whether they can move on their own on the 16th or on the 26th ... "*;

(c) The Sheriff pointed out that all people who *"were there since the 19th, and of which the order states that all the shacks and the buildings that were erected on the 19th need to be demolished, ... can they vacate the premises themselves ..."*.

[11] It is common cause that on 16 May 2019 the Sheriff attended on the subject properties and demolished all structures, occupied or unoccupied, which had been constructed since 19 April 2019. According to the applicants the demolition of occupied structures was unlawful as the Sheriff failed to comply with paragraph 5 of the order granted by Millar AJ and also because there was no court order authorising the eviction of a person in occupation of a structure.

THE MAIN ISSUE

[12] During argument counsel for the applicants contended that the main issue between the parties is whether there was authorisation for the demolition of occupied structures on 16 May 2019. If there was none, so he submitted, the applicants should succeed with their application. If it were to be found that the order of Millar AJ authorised the demolition of occupied structures, then the application should fail in its entirety. I agree that the main issue is whether there was authorisation for the demolition of occupied structures on 16 May 2019.

[13] It was submitted by counsel for the applicants that on a proper interpretation of both court orders it should be clear that no court order authorised the demolition of occupied structures. This, according to him, is apparent from the order granted by Tuchten J. He pointed out, with regard to the order granted by Millar AJ, that the relief sought in that application (that served before Millar AJ) was restricted to *"any unoccupied structures"*. It was also emphasized in the founding affidavit that once such a structure is occupied as a home, the entire situation changes in which event, according to the deponent, *"I will be obliged to comply with the provisions of the prevention of Illegal Eviction and Unlawful Occupation of Land Act"*. All of these considerations, so it was submitted, provide a clear indication that it was never the intention to apply for or to obtain an order authorising the demolition of any occupied structures. The order granted by Millar AJ should therefore be interpreted accordingly.

[14] There may be some merit in the argument that the applicants in the application before Millar AJ (fifth to tenth respondents in the application before me) never intended to apply for an order authorising the demolition of occupied structures. However, that is not the issue before me. If Millar AJ erroneously granted an order which the applicants did not apply for, the respondents in that application (applicants now before me) could have exercised their remedies in terms of Rule 42 for the variation or rescission of the order or to apply for leave to appeal, whichever option may have been applicable. Furthermore, according to the transcript of the meeting that was held on 14 May 2019, it was clearly indicated on behalf of the applicants that *"we are not disputing the court order"*. The contents of the order granted by Millar AJ is therefore not in issue.

[15] It is the construction, not the correction, of the order granted by Millar AJ which is now being sought. What remains is therefore an interpretation of that order. Put differently, was there in terms of this order authorisation for the demolition of occupied structures on 16 May 2019? As was stated by Froneman J in *Bezuidenhout v Patensie Sitrus Beherend BK* 2001 (2) SA 224 (E) at 229B-D *"an order of a Court of law stands until set aside by a Court of competent jurisdiction. Until that is done the court order must be obeyed even if it may be wrong"*.

[16] The basic rules for interpreting the judgment or order of a Court are no different from those applicable to the construction of documents. In *Firestone South Africa (Pty) Ltd v Gentiruco* 1977 (4) SA 298 (A) at 304D-H Trollip JA gave the following explanation:

"The basic principles applicable to construing documents also apply to the construction of a Court's judgment or order: the Court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules ... Thus, as in the case of a document, the judgment or order and the Court's reasons for giving it must be read as a whole in order to ascertain its intention. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify or supplement it. Indeed, it was common cause that in such a case not even the Court that gave the judgment or order can be asked to state what its subjective intention was in giving it ... Of course, different considerations apply when, not the construction, but the correction of a judgment or order is sought by way of an appeal against it or otherwise ... but if any uncertainty in meaning thus emerge the extrinsic circumstances surrounding or leading up to the Court granting the judgment or order may be investigated and regarded in order to clarify it; for example, if the meaning of a judgment or order granted on appeal is uncertain, the judgment or order of the Court a quo and its reasons therefore, can be used to elucidate it. If, despite that, the uncertainty still persists, other relevant extrinsic facts or evidence are admissible to resolve it."

[17] As was pointed out by Trollip JA, the order must be read as a whole in order to ascertain its intention. If on such a reading the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify or supplement it. It is only when uncertainty in meaning emerges, that extrinsic circumstances surrounding the granting of the order may be taken into account in order to clarify it.

[18] When these principles are applied to the order granted by Millar AJ, it is clear that the learned Judge distinguished between dwellings constructed prior

to 19 April 2019 and those constructed since 19 April 2019. The demolition of dwellings constructed prior to 19 April 2019 is clearly restricted to those dwellings which were unoccupied, whereas the demolition of dwellings erected since 19 April 2019 is unqualified. Paragraph 5.2 of the order clearly states that the Sheriff must *"demolish each structure/dwelling erected since 19 April 2019"*. The word "*each*" refers to every one of two or more structures without any qualification. In short, it means *all* of them, without exception. Paragraph 5.3 of the order also refers to the "*occupants*" of those structures. This clearly implies that not only unoccupied but also occupied dwellings which were erected since 19 April 2019 should be demolished.

[19] The meaning of the order is therefore clear and unambiguous. No extrinsic fact or evidence is admissible to contradict, vary, qualify or supplement it. That includes a reference to the notice of motion and founding affidavit of the application that served before Millar AJ. Put differently, the order remains the only document to be considered. I therefore conclude that the Sheriff was properly authorised to demolish all structures, occupied or unoccupied, that were erected since 19 April 2019.

COUNTER-APPLICATION FOR CONTEMPT OF COURT

[20] The notice of motion in the counter-application contains various prayers. Save for a prayer that the counter-application be adjudicated upon as an urgent application, the other relief sought are as follows:

(a) That the respondents (Homeless People Housing Co-operative Limited as first respondent and S M Songo as second respondent) be held in contempt of Court;

(b) That the suspension of the fine that forms part of the order issued by Millar AJ on 26 April 2019 be uplifted;

(c) That a further fine of R500 000.00 be imposed on the first respondent as a result of its persistent contempt of Court;

(d) That the second respondent be committed to imprisonment for a period of six months;

(e) That the costs of this application be paid by the respondents, jointly and severally, on the scale as between attorney and own client.

[21] It appears not to be in dispute that the second respondent (S M Songo) has never been formally joined to these proceedings. He is merely cited as a respondent. It is also common cause that the first part of the order granted by Millar AJ (paragraphs 3 and 4 thereof) in terms whereof the first respondent was declared to be in contempt of the order granted by Tuchten J, is now subject to appeal proceedings.

[22] During argument counsel for the applicants in the counter-application indicated that, as the relief sought in paragraphs 20(b) to (d) above are now all subject to an appeal, I should, for the moment, *"ignore them"*. He nevertheless

persisted with the relief sought in paragraph 20(a) above, i.e. that the respondents in the counter-application be held in contempt of Court, and as far as the second respondent (Songo) is concerned, that he also be held in contempt of the order granted by Tuchten J.

[23] The effect of the pending appeal is that the relief sought in paragraphs 20(b) to (d) will have to be postponed *sine die.* This raises the question why should only part of the contempt application be dealt with in a piecemeal manner where there was not even a formal joinder of the second respondent? Furthermore, the outcome of the pending appeal may affect, not only the relief sought to be postponed, but also the relief sought in paragraph 20(a) above (contempt of Court) in so far as it relates to the order granted by Tuchten J. The adjudication of only part of this application may also create the possibility of piecemeal appeals in future. Such a proliferation of proceedings in the same application will not be in the interests of justice. The determination of only one issue in isolation from others is therefore, in these circumstances, undesirable. For these reasons I am of the view that the counter-application should be postponed in its entirety to be heard by the same judge after the appeal has been finalised.

COSTS

[24] I have already concluded that the application cannot succeed. The question arises whether I should grant an order for the payment of costs against all the applicants or only against the first applicant. As was already pointed out above, the first applicant is a community scheme that undertakes initiatives to

assist historically disadvantaged people to obtain access to housing and security of tenure. It is also not in dispute that the first applicant as landowner of the property concerned was allowing numerous individuals onto its land at its own prerogative. The deponent on behalf of the first applicant makes it clear that the ultimate aim of the first applicant is the provision of housing for its members.

[25] This is not a case where the so-called invaders occupied land belonging to the respondents concerned. They occupied land which is the property of the first applicant. The only reasonable conclusion is that they did so as part of an initiative by the first applicant to assist them to obtain access to housing. Under these circumstances I am not convinced that the occupiers should also be held responsible for the payment of costs. It should be pointed out that the first respondent (Sheriff) abided the decision of the court and did not ask for any costs to be awarded in his favour.

ORDER

In the result I grant the following order:

1. The applicants' application is dismissed;

2. The first applicant is ordered to pay the costs of the application, excluding costs of the first respondent (Sheriff);

3. The counter-application for contempt of court is postponed *sine die*;

4. All costs pertaining to the counter-application are reserved.

D S FOURIE
JUDGE OF THE HIGH COURT, PRETORIA.
3/11/19