REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: 34247/2021

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

02/08/21
....
DATE SIGNATURE

In the matter between:

HENNING PETRUS NICOLAAS PRETORIUS **1ST APPLICANT**

Identity number [….]

H P N BESTUUR (PTY) LTD **2ND APPLICANT**

REGNO.
2019/168242/07
and

KHUTSO NAKETSI COMMUNAL PROPERTY

ASSOCIATION **1ST RESPONDENT**

KHUTSO NAKETSI AGRI (PTY) LTD **2ND RESPONDENT**

REG NO. 2019/168181/07

THE MEC RURAL DEVELOPMENT AND LAND

REFORM: NORTH WEST PROVINCE **3RD RESPONDENT**

JUDGMENT

JUDGMENT HANDED DOWN VIA EMAIL DUE TO COVID 19. JUDGMENT DEEMED TO HAVE BEEN HANDED DOWN ON 2nd AUGUST 2021.

BOKAKO AJ

INTRODUCTION AND BRIEF BACKGROUND

1. The Applicants approached this Court on an urgent basis seeking an interim order against the First, Second and Third Respondents. The Respondents are to be interdicted from the threat, harassment and intimidation of the Applicants. They are also to be interdicted from removing the Applicants or preventing them to access the farming operation and farms of First Respondents as broadly and specifically stated in the notice of motion. The interdict is also an amendment of Shareholders Agreement and management structure of the Second Respondent. The Applicant is the Director of the 2nd Applicant The 1st Respondent is Khutso Noketsi a communal property association with registration number 08/1143/A at 99 De Rust 478 JQ and the 2nd Respondent is Khutso Noketsi Agri PTY (LTD), a private company incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 2019/168181/07 at D27 De Rust 478JQ, Skeerpoort, North West. The 3rd Respondent in the MEC Rural Development and Land Reform North West Province, the administrative Head of the Department of Rural Development and Land Reform of the North West Province.

2. The application is opposed. Counsel for the respondent raised the issue of jurisdiction and urgency. I find it necessary to deal only with the issue of urgency.

3. First Respondents filed notice of intention to oppose on the 15th July 2021 and subsequently followed by an answering affidavit on the 20th July 2021. The relief sought by the Applicants emanate from a land purchase transaction by the Minister of Rural Development and Land Reforms in relation to several farms which includes but not limited to portions of Farm Skeerpoort 477, portion of the farm de Rust JQ 487 and the remaining extent of farm Rondeklip 459 SQ and portion 15 of Farm Hartebeeshoek 498 JQ, in the eastern part of the North-West Province.

4. The government agreed with Applicants to partner with the First Respondent and create Second Respondent on 30/70% shareholding arrangements with business going concern to produce crops that are profitable farming for at least a period of five years since June 2019. The Government deemed it fit that in terms of the parties written and signed policy documents and shareholders agreement, a transactional adviser be appointed to oversee the implementation of the Shareholders Agreement as the way it should be.

5. The land purchased was from the Applicants to the First Respondent in terms of the Restitution of Land Right Act. That process was successfully done and the Applicants were duly paid purchase price of the land in issue. The dispute emanates whereas the Applicants

wanted sole management of the Second Respondent under the auspices that it is owed money for the funding, interest and that shares of the First Respondent held within the Second Respondent were transferred by one of the First Respondent's beneficiary and a co-director within the Second Respondent as a security to the funding, interest of 7% until the Government has paid funding of the project of the Second Respondent. The farming operations are conducted in terms of a written agreement between parties whereby the 2nd Respondent leases from the 1st Respondent.

6. The Applicant contends that on the 7th of July 2021, the 1st and the 2nd Respondent held a meeting and resolved that the Applicant were to be removed from the farm on the 31st of July 2021. These contentions are vehemently denied by the Respondents.

7. Subsequent to the meeting the Applicant sought an undertaking from the Respondents in that the Respondents will not act upon the threats. The Respondent did not respond on such an undertaking. The purpose of this application is therefore to interdict and restrain the Respondents from pursuing the unilateral resolution taken on the day in question.

8. The Applicant contends that, he was approached by the Government through the 3rd Respondent. They bought his property with the suggestion of keeping him involved in the farm for continuity, productivity, profitability whilst transferring skills to the members of the

1st Respondent. There is a business plan or proposal in place, lease agreement and shareholder's agreement entered into by parties.

9. During 2021, the 3rd Respondent appointed a transactional advisor to oversee the implementation of the agreements in place. According to the Applicant this appointment was done unilateral without his knowledge nor his input. Subsequently the advisor imposed draconic amendments of the business structure which had conditions and further insisted on a new shareholder's agreement. Therefore, due to threats imposed by the advisor including the removal of the Applicants, amongst others such threats led to this application. These threats started emanating from the month of May 2021 by the transactional advisor. They became clear on the 7th of July 2021. The Applicant further contended that his removal and proposed change of the structure is breach of contract.

10. The Respondents contends that this application is not urgent, the Applicant failed to comply and to meet the requirements of Rule 6(12) (b) of the Uniform rules of this court. The affidavits of the Applicants contained inadmissible evidence in that it refers to particulars of claim which were not part of the founding documents. In their replying affidavit they had attached particulars of claim that were not signed and the Respondents were not given opportunity to comment on them as they were not forming part of the founding documents.

11. The main contention in this matter pertains to a resolution taken on the 7th July 2021 by members of the first Respondent which the first applicant is also a director therein. Applicants delayed for about six days before launching this application which was only issued on the 13th of July in addition the Applicant`s obligation to set out exactly the circumstances which render the matter urgent were not accurately articulated further emphasising that this matter is not significantly urgent to be heard at the time selected by the Applicant.

12. It was also submitted by the Respondents that the Applicants seek Respondents to be interdicted and restrained in amending its own management structure and Shareholders Agreement, on the same breath the Applicant is alleging to have “100% shareholdings”, in essence, the relief sought for interim interdict is against the Applicants.

13. The Respondents submitted that It is undesirable in cases of this nature in which the facts relied upon are disputed to choose to settle the dispute of facts on affidavit. The determination of the question whether a real and genuine dispute of facts exists is a question for the court to decide.

14. The Applicant have created their own misfortune in that on the 7th of July 2021 the first Respondent took a resolution against the Applicants following their failure to comply with the contractual obligations. The

Board of the first Respondent made findings in this regard while the Applicants decided not to attend the meeting.

15. The Applicants became aware of the resolution as of the 7th July 2021, however delayed in bringing this urgent to this court. Further contending that there is no case made by the Applicant to satisfy the requirements of the Rule 6 (12) (b). contending that Applicants have a redress in a form of issuing summons to recovery of any funds owed to them or refer the matter to an arbitration. Further contending that Applicants basis is founded on the monies owed to the Applicants by the 1st and the 2nd Respondents.

THE LAW ON URGENCY

16. The law on urgency is clear. Urgent applications must be brought in accordance with the provisions of rule 6(12) of the Uniform Rules of Court, with due regard to the guidelines set out in cases such as a well-known case of Luna Meubel vervaardigers (Edms) Bpk v Makin and Another.

17. It is trite that Practice Directives requires an applicant, in an urgent application, to set out clearly the circumstances which extract the matter to be urgent. It is further emphasised that while an application may be urgent, it may not be sufficiently urgent to be heard at the time

selected by the applicants. Further to the aforesaid, the Practice Directives provide that should the practices regarding the proceedings in urgent application not be adhered to, and the application not be enrolled on a date or at a time that is justified, the application will not be enrolled and an appropriate cost order will be made.

18. In the judgment of East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and others it was held: “The import thereof is that the procedure set out in Rule 6(12) is not there for the taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent.

19. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial readdress at a hearing in due course. The only reason thus far by the Applicant was, should this matter not be heard on urgency, it will take a while for this matter to see its days in a normal motion roll. Such was refuted by the Respondent. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial readdress in the application in due course.

20. The rules allow the court to come to the assistance of a litigant because of the latter, were to wait for the normal course laid down by the rules, it will not obtain substantial readdress. In my view this matter deserves effective time in court, there is substation redress. It is important to note that the rules require absence of substantial redress.

21. This is not equivalent to irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in this regard.

22. In the well-known and widely approved judgment, if a matter becomes opposed in the urgent motion court and the papers become voluminous there must be exceptional reasons why the matter is not to be removed to the ordinary motion roll. The urgent court is not geared to dealing with a matter which is not only voluminous but clearly includes some complexity and even some novel points of law.

23. The abovementioned principle was once again considered, and confirmed, in the case of Mogalakwena Local Municipality Vs the Provincial Executive Council, Limpopo and others The Court confirmed: It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent's and the administration of

justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights.

24. Before I consider the urgency or merits of the application, and in terms of the Practice Directives of this division. The enrolment shall be guided by when urgency arose and the nature of urgency and at the hearing of the matter the court shall first consider whether the enrolment is accordance with the preceding sub-paragraphs before it deals with urgency and or merits of the application. In this case it is not in dispute that a resolution was taken on the 7th July 2021 by members of the first Respondent, the Applicants only launched this application on the 13th of July 2021 six days after. Bearing in mind that threats started as early as May 2021.

25. In my view the Applicant had failed to show a good cause of dispensing with the rules in their papers. It is evident that the alleged threats emanated in May 2021 allegedly threatened by the transactional advisor, during submissions the 7th of July resolution was projected prominently as the cause of this application. It is also clear that there are factual disputes of facts in respect of the Applicants rights and the Respondent`s. This court will not deal with this issues, the focal point its urgency. It is therefore uncalled for in such matters were facts relied upon are disputed and the Applicant choose to resolve this matter on affidavits.

26. Therefore, this court finds no evidence of imminent threats, harassment and intimidation. The Respondents were adamant in saying they have never corresponded with the Applicants regarding their removal and currently no intention of removing the Applicants. Even though they do not dispute the fact that a resolution was taken on the 7th of July 2021 it so happens that procedurally it was inappropriate.

27. Pertinently on the applicants own version the matter cannot be rendered urgent to the extent that the applicants have requested for removal of the matter this in my view puts an end to the question of urgency.

28. In my view the applicants have not made out a case for urgency. If there is any urgency, it is self -created. Having regard hereto, it is not necessary to deal with the points *in limine.*

29. It is also evident to me that the concerns of the applicants regarding harassment, intimidation and removal by the respondent is misplaced and unjustified. I am of the view that the facts and circumstances set out in the Applicant's affidavit do not constitute sufficient urgency for the application to be brought as an urgent application. There is no urgency whatsoever.

Order:

In the result I make the following order

1. The matter is struck from the roll with costs.

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T BOKAKO
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 27 July 2021

Date of judgment: 02 August 2021

Appearances:

Counsel for the Applicants	**: F Botes SC with Adv De Kock**
Instructed by:	
Counsel for the 1st	**: M Malowa SC**
Instructed by:	**Shuping Attorneys**
Counsel for the 3rd Respondent	**: Adv S Vobi**
Instructed by	**: The State Attorney, Pretoria**