

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 39712/2021

1. REPORTABLE: **YES** / NO
 2. OF INTEREST TO OTHER JUDGES: **YES** / NO
 3. REVISED.
- DATE: 28/07/2023

In the matter between:

XANADU ECO PARK HOMEOWNERS
ASSOCIATION

Applicant

and

MADIBENG LOCAL MUNICIPALITY

First Respondent

MADIBENG LOCAL MUNICIPALITY:
MUNICIPAL MANAGER

Second Respondent

MADIBENG LOCAL MUNICIPALITY:
MUNICIPAL ADMINISTRATOR

Third Respondent

WELLAHAIROI CC

Fourth Respondent

JUDGMENT

Van der Westhuizen, J

[1] The applicant approached this court by way of urgency seeking interim relief pending the institution of an action within 30 days from the date of the interim order being granted. The interim relief is directed at the order that was granted by Collis, J. on 17 January 2023. In that order the first to third respondents were directed to re-issue a notice of expropriation, for the purposes of installing and connecting a sewerage pipeline for the Rietfontein sewerage works, and to consider all objections received thereto. The property affected was described as: a portion of portion 132 of the farm Rietfontein [...], Registration Division JQ, held under Deed of Transfer T2[....]8.

[2] It transpired that the respondents did not comply with that order. Instead, the respondents negotiated a consent by the owner of the said property to register a servitude for the purposes of installing and connecting a sewerage pipeline for the Rietfontein sewerage works.

[3] Despite acknowledging that the order was granted ordering the re-issue of the expropriation notice and to follow the relevant procedures in that regard, the respondents attempted to circumvent that order by following a different process of their choice. It is to be recorded that initially the first to third respondents attempted to obtain consent from the owner of the said property, the fourth respondent, for the registration of a servitude as mentioned earlier. The fourth respondent was unwilling to grant the consent and the first to third respondents opted to expropriate the said property. The procedure followed in that regard was non-compliant with the provisions of PAJA, and the court granted an order setting aside the decision to expropriate and granting the further relief as recorded above.

[4] The vexed issue of the non-compliance with the order of Collis, J., resulted in the applicant approaching this court on an urgent basis for the relief as recorded above. The premises upon which the urgent application was launched, was that the respondents opted to again seek consent from the fourth

respondent for the registration of aforementioned servitude. Allegedly, the respondents obtained the required consent to the registration of a servitude. This was conveyed to the applicant in a letter dated 26 June 2023. In that letter the respondents indicated that events subsequent to the order granted by Collis, J., have overtaken the order thus rendering it moot. The alleged events related to the subsequent obtaining of consent to register a servitude.

[5] In opposing this urgent application, the respondents have raised points *in limine*. Those related to: the alleged non-urgency of the matter; non-joinder of interested parties; alleged non-compliance with the principles regulating motion proceedings; failure to make out a case for an interdict; and alleged mootness of the order by Collis, J.

[6] Generally, non-compliance with a court order would be considered urgent for redress to the applicant of an urgent application. I ruled that this application was urgent and heard argument on the merits of the application.

[7] There is no merit in the point *in limine* of non-joinder. The order by Collis, J., would of necessity compromise any rights that interested parties may have in respect of the said property. Those rights would be addressed in the directed “new” expropriation procedures to be undertaken.

[8] Furthermore, there is no merit in the point *in limine* of alleged failure to make out a case for the relief that was sought for what follows.

[9] The real defence raised to this urgent application, and in my view the only defence raised, was the alleged mootness of the court order issued by Collis, J. In this regard, the deponent to the answering affidavit merely fobs off the non-compliance with the said court order. The approach is clearly one where the respondents did not like the order, they simply ignored the order and applied their own mechanism to achieve their aim.

[10] It is trite law that an order or decision stands until set aside by a competent court. In the present instance the order of Collis, J., stands until it is set aside

by an order, either rescinding it, or it is set aside by a court of appeal. None of those procedures were followed by the respondents.

[11]Where a party chose to follow a specific process, it is bound by that process until finality has been reached thereon. It cannot change midway and seek to follow a less stringent path. More so, where the assistance of a court has been invoked and the court has directed that a particular procedure was to be followed, e.g. where the effect of the order so granted results in an interdict being granted, whether in the form of a mandamus or the like. The order in the present instance was granted in favour of the applicant. Only the party in whose favour the judgment and order was granted, can abandon the judgment in its favour. However, in this instance, the applicant did not do so and opted for the enforcement thereof as it was entitled to do.

[12]Furthermore, a party cannot of its own accord force an alleged mootness of a granted court order to entitle it to a less stringent procedure to circumvent compliance with a granted court order, particularly where an interdict was in place.

[13]In the present instance, the alleged mootness was a result of the respondents simply ignoring the order and following a different approach. In my view, the respondents' conduct was a deliberate flaunting of their obligations and responsibilities in terms of the order. A classic contemptuous attitude towards the court and a refusal to be bound by the court's decisions.

[14]It follows that the application stands to succeed.

I grant the following order:

1. The rules and practice directives pertaining to service and time periods are dispensed with and this matter be heard as an Urgent Application in terms of the provisions of Rule 6(12)(c) of the uniform rules of Court.

2. The Respondents, pending finalisation of the action to be instituted referenced in prayer 3, be and is hereby interdicted and restrained from:

2.1 Taking any further steps in the process of expropriation of Portion 132 of the farm Rietfontein [...] Registration Division JQ held under deed of transfer T2[...].8. (Hereinafter “The Property”)

2.2 Registering a servitude on the Property in favour of the Respondents to enable the construction of sewerage line as envisaged in the Respondents’ Expropriation Notice dated 19 April 2021.

2.3 Constructing or in any way installing a sewerage pipeline on the Property.

2.4 Connecting any pipeline traversing the Property to the Rietfontein Wastewater Treatment Plant: Madibeng Municipality.

3. The Applicant is ordered to institute action within 30 days of the date of the granting of this order, claiming:

3.1 An Order directing the Respondents to provide proof to the Applicant that the matter was remitted for reconsideration taking into account the requirements of the Promotion of Administrative Justice Act.

3.2 In the event that the Respondents can prove that the matter was so remitted, an Order directing the Respondents to provide proof that the representations and objections to the proposed expropriation of the Property was considered.

3.3 In the event that the Respondents can prove that the submissions and objections of the effected parties, including the Objections of the Applicant submitted to the Respondent during February 2023, was considered, an Order directing the Respondents to make available the decision taken as

well as the reasons therefore, in terms of the provisions of the Promotion of Administrative Justice Act.

3.4 In the event that that Respondents cannot prove that they have remitted the matter and have considered representations made as aforesaid, an order confirming the Second and/or Third Respondents to be in contempt of Court.

4. The First, Second, Third and Fourth Respondents are to pay the cost of this Application on an attorney and client scale including the costs of two counsel where so employed.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Applicant: F Botes SC
D de Kock

Instructed by: Langenhoven Pistorius Modihapula Inc.

On behalf of Respondent: M R Maphutha

Instructed by: Matlala von Metzinger Attorneys

Judgment Reserved on: 19 July 2023

Judgment Handed down: 28 July 2023