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IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

IASA MOOSA

and

MOHAMED SAYED CASSIM

Appellants

AND

THE COMMUNITY DEVELOPMENT BOARD

Respondent

CORAM: JANSEN, HOEXTER, GROSSKOPF, JJA GALGUT et NICHOLAS, AJJA

HEARD: 18 September 1986

DELIVERED: 28 November 1986

J U D G M E N T

NICHOLAS, AJA

This is an appeal against an order made by VAN DER

WALT

WALT J on an application brought in the Witwatersrand Local
Division. The applicant was the COMMUNITY DEVELOPMENT

BOARD. The respondent was AHMED MOHAMED CASSIM

who, when the application was launched, was in occupation of
the dwelling known as 26 B Twentieth Street, Pageview,

Johannesburg. CASSIM died before the application was heard

and, apparently by consent, his executors testamentary were
substituted as the respondent. VAN DER WALT J granted an
order as prayed, namely -

"Vir die uitsetting uit die woning bekend
as Twintigstestraat 26B, Pageview, Johannes-
burg, geleë te Erf 301 (voorheen 621)
Pageview, Johannesburg, van die Respondent
en alle ander persone wat die genoemde
eiendom deur of namens hom okkupeer."

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The Court a quo refused an application for leave to appeal, but leave was subsequently granted by this Court in terms of s. 20(4)(b) of Act No 59 of 1959.

In this judgment I shall, for the sake of convenience, refer to AHMED MOHAMED CASSIM and to the present appellants as "CASSIM".

The Community Development Board ("the Board") is an autonomous statutory body established under s.2 of the Community Development Act, No 3 of 1966 ("the Act"). Until September 1984 the Minister of Community Development was responsible for the administration of the Act, and the powers of the Board were exercisable subject to his approval. With effect from 17 September 1984, however, the State President, acting.....

acting in terms of s. 26 of the Republic of South Africa
Constitution Act, No 110 of 1983 ("the Constitution Act")
assigned the powers, duties and functions entrusted to the
Minister of Community Development in terms of certain Acts
and portions of Acts "relating to his responsibility for the
administration of local government, housing and works for the
White population group", to the Minister of Local Government,
Housing and Works (Whites). One of the Acts concerned was

"(15) The Community Development Act, 1966 (Act
3 of 1966), excluding sections 2,3,4,5,6
7,11 and 12; the administration thereof
within an area which has, by way of a general
law, been declared an area for use by the
White population group and in so far as the
execution thereof has no consequence outside
of such an area."

At.....

At the same time the State President assigned the powers, duties and functions of the Minister of Community Development in terms of certain Acts and portions of Acts "relating to his responsibility for the administration of housing and works relating to the Indian population group" to the Minister of Local Government, Housing and Agriculture (Indians). One of the Acts concerned was

"(5) The Community Development Act, 1966 (Act 3 of 1966), excluding sections 2,3,4,5,6 7,11 and 12; the administration thereof within an area which has, by way of a general law, been declared an area for use by the Indian population group and in so far as the execution thereof has no consequence outside of such an area."

A similar assignment was made in respect of the administra-

tion

tion of housing and works for the Coloured population group.

MUSER, the deponent to the Board's founding affidavit, is the regional representative of the Department of Administration for White Own Affairs, which falls under the Department of Local Government, Housing and Works (Whites) and which, he alleged, is responsible for the handling of all matters affecting Pageview, in which the premises concerned are situated. He said that he was duly authorized to represent the Board in these proceedings.

There was little dispute as to the material facts, most of which were deposed to by one DU TOIT in an affidavit supporting that of MUSER.

DU TOIT.....

DU TOIT was from 1 January 1984 to 30 September 1984,

regional representative, Johannesburg, of the Department of

Community Development. CASSIM had, with effect from

1 November 1979, occupied the premises concerned under a

lease between the Board and CASSIM. It was provided in clause 3

that "the lease is on a monthly basis and ... may be termi-

nated by either party on one month's written notice.

Such notice to take effect and terminate on the first and

last day respectively of the particular month." DU TOIT

said that he was "a standing committee (one man)" appointed

in terms of s. 8(1) of the Community Development Act,

No3 of 1966. This provides:

"8.-(1) The Minister may appoint one or more

standing

standing committees, consisting of one or more members of the board or of one or more officers in the Department or of one or more such members and one or more such officers, to carry out, subject to such conditions as he may determine, such of the functions of the board as he may, after consultation with the board, specify, and any such standing committee may for the proper carrying out of such functions perform all the duties imposed upon the board in respect of the carrying out of such functions: Provided that the board shall not be divested of any function which has so been specified to be carried out by a committee."

He annexed to his affidavit copies of the appointments concerned, both of which were dated 9 September 1980. One reads:

"AANSTELLING VAN EN DELEGASIE VAN BEVOEGDHEDE AAN VASTEKOMITEES (EENMAN) INGESTEL INGEVOLGE ARTIKEL 8 (1) VAN DIE WET OP GEMEENSKAPSONTWIKKELING, NO 3 VAN 1966.

Kragtens die bevoegdheede my verleen by artikel 8(1) van die Wet op Gemeenskapsontwikkeling No. 3 van 1966, stel ek STEPHANUS JACOBUS MARAIS STEYN,

Minister

Minister van Gemeenskapsbou, beamptes met die range van Streekverteenwoordiger, Ondersekretaris en hoër range in streekkantore van die Departement van Gemeenskapsbou, as Vastekomitees (Eenman) aan met bevoegdhele om namens die Gemeenskapsontwikkelingsraad besluite te neem in verband met die beëindiging van huurooreenkomste of okkupasie (waar h huurooreenkoms nie bestaan nie) ten opsigte van Gemeenskapsontwikkelingsraad-eiendomme en die betreding en besitname van Gemeenskapsontwikkelingsraad-eiendomme kragtens artikel 18(1) van die Wet op Gemeenskapsontwikkeling, No. 3 van 1966.

(Geteken S.J.M. Steyn"

The other appointment is substantially in similar terms, save that the following appears in the place of the passage I have side-lined:

"... met bevoegdhele om kennisgewinge wat voortspuit uit besluite in verband met die beëindiging van huurooreenkomste of okkupasie (waar h huurooreenkoms nie bestaan nie) ten opsigte van Gemeenskapsontwikkelingsraad-eiendomme en die betreding en besitname van Gemeenskapsontwikkelingsraad-eiendomme kragtens artikel 18(1) van die Wet op Gemeenskapsontwikkeling No. 3 van 1966, wat namens die Gemeenskapsont-

skapsont--.....

skapsontwikkelingsraad geneem is, te onderteken."

Acting as such committee, DU TOIT decided on behalf of the Board to terminate CASSIM's lease, and arising out of that decision, to give notice of such termination. On 31 August 1984, he signed a notice addressed to CASSIM that "the said lease will terminate and expire on 30th September 1984." The notice was served on CASSIM personally on 31 August 1984.

Notwithstanding the said notice, CASSIM remained in occupation of the property and was still in occupation thereof at the time of his death.

The defences raised in CASSIM's answering affidavit did not go to the merits of the application, but were technical in nature. They included the following:

(a) He

(a) He disputed the authority of MUSER to act on behalf of the Board.

(b) He alleged that the notice terminating the lease was invalid.

(c) He denied

"...for the reasons that follow, that all matters pertaining to Pageview may in law be handled by the Department of White Own Affairs and (averred) that in law the matter of housing comprised within community development as this pertains to Pageview is to be handled by the Administration for Indian Own Affairs and that as the representative of the Administration for White Own Affairs the deponent may not be granted the relief that he seeks in his Notice of Motion."

There were other contentions raised but in

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the view which I take of the matter, it is unnecessary to set them out or to deal with them.

(a) MUSER's AUTHORITY

In terms of s. 2(1) of the Act, the Board is

"a body corporate capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the exercise of its powers and the performance of its functions and duties under this Act."

In his answering affidavit, CASSIM denied that MUSER was authorized to act on behalf of the Board in this matter,

inasmuch as he attached no resolution of the Board confirming his authority. In reply MUSER said that he was authorized by virtue of a ministerial delegation, but stated that in any event the Board had ratified and confirmed his

conduct.....

conduct in bringing the application, and had authorized him to proceed therewith. He annexed to his replying affidavit a copy of the document recording the ratification and authorization.

Relying on the case of South African Milling Co.

(Pty) Ltd v Reddy, 1980(3) SA 431 (S E C L D), CASSIM's

counsel contended in the Court a quo that the Board could

not, after objection had been taken to the authority of a

person purporting to act on behalf of a company, amend its

foundling affidavit by relying on a ratification that did not

exist when the objection of non locus standi was taken.

VAN DER WALT J, however, agreed with the decision in Baeck &

Co (SA) (Pty) Ltd v van Zummeren & Another, 1982(2) SA 112 (W)

(in.....)

(in which GOLDSTONE J declined to follow the earlier case) and held that MUSER was in fact authorized to act on behalf of the Board.

In this Court Mr. Unterhalter, who appeared on behalf of CASSIM, conceded, correctly in my opinion, that he could not urge that the learned judge's conclusion was wrong. The objection to MUSER's authority has accordingly fallen away.

(b) INVALIDITY OF NOTICE OF TERMINATION OF LEASE

Mr. Unterhalter's submission, as I understand it, was that the only action which could be taken pursuant to a notice by a "standing committee (one man)" terminating a lease, was extra-judicial action in terms of s. 18(1) of the

Act.....

Act. This provides:

"18.-(1) If a tenant or other occupier of immovable property belonging to the board fails -

- (a)
- (b) to vacate such property on or before the date on which he has lawfully been required by the board to do so, the board may, after having given seven days' notice (in the case of any such property occupied for residential purposes), or thirty days' notice (in the case of any such property occupied for any other purpose), by letter delivered either to such tenant or other occupier personally or to some adult person living on the property, or, if such letter cannot be so delivered, by letter affixed to the outer or principal door of any building erected on such property, or by registered letter addressed to such tenant or occupier at the address where the property is situated, without having obtained any judgment or order of court, by resolution declare that such property may be entered upon and taken

possession.....

possession of."

I do not think that there is any merit in the point. The legislature did not, in providing a summary remedy in s. 18(1), exclude proceedings for ejectment in a court of law. Under the ministerial appointments the committee is authorized to perform a number of functions: to take decisions in connection with termination of leases or occupation, and in connection with entry upon and taking possession of Board property; and to sign notices arising out of decisions in connection with the termination of leases or occupation, and the entry upon and taking possession of Board properties. Each of these functions is separate and distinct. If the giving of notice falls within the scope of the ministerial authority

authority, then it is a valid notice, and it matters not whether or not it is followed by a notice under s. 18(1).

The notice to CASSIM was within the authority, and that concludes the matter. Upon the expiry of the notice, the Board was entitled, if it so choose, to take steps by way of legal proceedings to obtain possession of the property.

(c) MATTER IS OWN AFFAIRS OF INDIAN POPULATION GROUP

In summary, CASSIM's reasons for the third contention are these:

CASSIM is a member of the Indian group in terms of the Population Registration Act, 1950.

He has resided in Pageview since August 1960.

The whole of Pageview was in 1960, and for many years before that, inhabited by members of the Indian group.

Many

Many members of the Indian group have since been removed from the area, but about 67 families (comprising some 250 people) still live there.

CASSIM's removal from his home in Pageview would interfere with his way of life and the pursuit by him of his culture, traditions and customs as an Indian; and his removal and that of other members of the Indian group presently residing there would interfere with their established way of life in respect of the observance of their religion, the education of their children, the conduct of their communal activities, and their social intercourse generally.

It was concluded that the matter of such removal therefore specially or differentially affects the Pageview Indian community and, in terms of s. 14(1) of the Constitution Act, is an own affair in relation to such group. By reason of the Board's denial, in effect, that this is such an own affair, the question has arisen whether the matter is an own affair

affair of the Indian population group, and that question falls to be decided by the State President in terms of s. 16(1)(a) of the Constitution Act, which provides-

"16.-(1)(a) Any question arising in the application of this Act as to whether any particular matters are own affairs of a population group shall be decided by the State President, who shall do so in such manner that the governmental institutions serving the interest of such population group are not by the decision enabled to affect the interests of any other population group, irrespective of whether or not it is defined as a population group in this Act."

It was accordingly submitted by Mr. Unterhalter that if there was a question whether the matter was own affairs of the Indian population group, that question had to be decided by the State President and that until such decision had been made, no order for ejectment could be granted.

It is not clear to me what bearing all this has on the right of an autonomous statutory body to claim the ejection of its lessee from the leased premises after the lease has terminated. Nevertheless I shall examine the question whether CASSIM's ejection can be regarded as own affairs of the Indian population group.

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S. 14(1) Provides:

"14.-(1) matters which are specially or differentially affect a population group in relation to the maintenance of its identity and the upholding and furtherance of its way of life, culture, traditions and customs, are, subject to the provision of section 16, own affairs in relation to such population group.

(2) Matters coming within the classes of subjects described in Schedule 1, are, subject to the provisions of section 16, own affairs in relation to each population group."

In my opinion, the question whether CASSIM's eviction is own affairs of the Indian population group must be determined, not with reference to s. 14, but with reference to s. 98 of the Constitution Act.

The application for CASSIM's ejection is one brought

by

by the Board in the exercise of its powers under the Community Development Act. . . Ss. (1) of s. 98 of the Constitution Act provides:

"98-(1) Any Act of Parliament or other law which at the commencement of this Act is administered by a Minister of the Republic or in a department of State controlled by such a Minister and which relates to a matter referred to in section 14 shall, notwithstanding the fact that it relates to such matter, be regarded as a general law for the purposes of this Act until, and except in so far as, its administration is assigned under section 26 to a Minister of a department of State for own affairs of a population group."

(My emphasis)

The Community Development Act is a law which at the commencement of the Constitution Act was administered by a Minister of the Republic, and it related to matters referred

to

to in s. 14 of that Act. The Community Development Act must accordingly be regarded, subject to the exceptions at the end of the subsection, as a general law for the purposes of the Constitution Act. (In terms of s.100 "general law" means any law dealing with general affairs" and "general affairs" means matters referred to in section 15". In terms of s. 15 general affairs are matters which are not own affairs of the population group in terms of s. 14).

As pointed out above, the State President did make assignments under s. 26 of the Constitution Act. The effect was that the administration of the Community Development Act within the area of Pageview (which had been declared an area for use by the White population group) was assigned to

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the Minister of Local government, Housing and Works (Whites).

The Board annexed to its replying affidavits copies of proclamations duly published in the Government Gazette, which defined with reference to "General Plan 626/94" group areas for occupation and ownership by members of the White group. A copy of an extract from General Plan 626/94 was annexed as Annexure "G". From the Proclamation and Annexure "G" it is clear that Pageview, including the property which was leased to CASSIM, is such a group area.

It was objected on behalf of CASSIM, however, that Annexure "G" was not admissible in evidence because there had not been compliance with s. 18(1) of the Civil Proceedings Evidence Act, No 25 of 1965, which provides -

"18.

"18.(1) Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from proper custody, any copy thereof or extract therefrom proved to be an examined copy or extract or purporting to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted, shall be admissible in evidence."

In my opinion this objection is wide of the mark. S. 5 of the Civil Proceedings Evidence Act provides that

"... Judicial notice shall be taken of any law or government notice, or of any other matter which has been published in the Gazette ..."

General Plan 626/94 was incorporated by reference in the relevant proclamations, and the Court was accordingly required to take judicial notice of it, even though no copy was produced in evidence. For the convenience of the Court

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the Board attached Annexure "G", whose correctness was not challenged by CASSIM, and in consequence the Court was entitled to assume that it was common cause that it accorded with the General Plan, which could, had any dispute been raised, have been referred to by the Court itself.

Then it was argued that the relevant assignment by the State President to the Minister of Local Government, Housing and Works (Whites) was only "in so far as the execution thereof has no consequence outside of such area"; that the eviction of CASSIM from the property would have a consequence outside the area of Pageview as he and his family would have to be re-housed elsewhere; and that accordingly the particular matters arising in the present application ...

plication do not fall within the purview of the assignment.

Even if that argument is valid, it does not support a conclusion that CASSIM's ejectment is own affairs of the Indian population group. The consequence would only be that the Community Development Act would in terms of s. 98(1), be regarded so far as its administration in the area of Pageview is concerned, as a general law for the purposes of the Constitution Act.

I am accordingly of the opinion that there is no basis for contending that CASSIM's eviction is own affairs of the Indian population group. If any question in that regard can be said to arise, it is not "a question arising in the application of" the Constitution Act. It has been raised

raised by CASSIM in connection with an application for
ejection by the Board acting under a different Act. There
is therefore no occasion for a decision by the State Presi-
dent under s. 16(1)(a) of the Constitution Act.

There remains a final point to be dealt with, which
was raised for the first time on appeal, namely, that by
reason of the State President's assignment on 15 September
1984, the powers of the Board to institute the proceedings
for ejection were taken away.

In terms of s. 15(2)(b)(iv) of the Act the Board
has power, with the approval of the Minister given either
generally, or in a particular case, to let property belong-
ing to the Board. In terms of s. 15(2)(i) the Board has
power -

"(i)

"(i) generally to perform all such acts as in the opinion of the board are necessary for or incidental to the attainment of the objects for which the board is established."

The institution of legal proceedings to obtain possession of the Board's property, the lease of which has terminated, plainly falls within that general power.

The mere fact of the assignment of the administration of the Act from the department of one Minister of State to that of another cannot ipso facto affect the powers of a Board established under that Act.

This point too is without substance.

There was no answer to the Board's evidence that it leased the premises concerned to CASSIM, that the lease had

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been terminated on notice duly given and that CASSIM had thereafter unlawfully remained in occupation.

The appeal is accordingly dismissed with costs, including the costs of two counsel.

H C NICHOLAS, AJA

JANSEN, JA
HOEXTER, JA
GROSSKOPF, JA
GALGUT, AJA

} Concur