

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NUMBER: 5516/2015

5 DATE: 12 OCTOBER 2015

In the matter between:

SOUTH AFRICAN FAMILIES ASSOCIATION Applicants
AND 21 OTHERS

And

10 **CITY OF CAPE TOWN AND 3 OTHERS** Respondents

J U D G M E N T

WEINKOVE, AJ:

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This matter comes before me as a matter of urgency. It was originally launched on 26 March 2015. I have heard argument from both sides in the matter. I propose to give a short judgment. The matter has been heard as a matter of urgency and the papers are prolix. As far as the question of urgency is concerned, I am satisfied that the applicant was entitled to move this application as a matter of urgency and **AN ORDER IN TERMS OF PRAYER 1 OF THE NOTICE OF MOTION IS GRANTED.**

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5516/2015

Insofar as the prayer 2 of the notice of motion is concerned, I am satisfied that the respondent did not comply with their statutory obligations in terms of the Constitution and did not engage the applicants' in a general public and meaningful public participation in respect of their preference to establish the route known as the phase 2A construction.

I accordingly feel that the applicants' are entitled to an order in terms of prayer 2 of the notice of motion directing the respondents' to comply with their statutory obligations and to engage the applicants' in a general, public, meaningful participation in regard to the implementation of the road transportation plans for the area of Wynberg. It may mean that the respondents' will have to determine or be persuaded to use another route, but that is a matter for negotiation between them and a public participation.

At the end of the day, the respondent will have to make a decision in this matter and that will have to comply with its statutory obligations in making that decision. **I THEREFORE GRANT AN ORDER IN TERMS OF PRAYER 2 OF THE NOTICE OF MOTION.** Insofar as prayer 3 is concerned, the applicants' ask that pending their compliance with the statutory obligations for public participation, the respondent should be interdicted from enforcing the termination of the lease

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5516/2015

agreements, from evicting or causing any of the applicants' to be evicted from their homes and from demolishing or causing to be demolished the properties occupied by the applicants'.

5 The extent of this relief seems to me to be too extensive in certain respects. **I AM PREPARED TO GRANT AN INTERDICT ENFORCING THE TERMINATION OF LEASES TO BE ONLY GIVEN ON NOTICE AND IN GIVING SUCH NOTICE, THERE MUST BE STATUTORY COMPLIANCE WITH THE**
10 **REQUIREMENTS FOR PUBLIC PARTICIPATION. SIMILARLY, BEFORE PROPERTIES ARE DEMOLISHED OR CAUSED TO BE DEMOLISHED, THERE MUST BE COMPLIANCE WITH STATUTORY REQUIREMENTS IN REGARD TO PUBLIC PARTICIPATION.**

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As far as evicting or causing to be evicted any applicants' from their homes, this is too a wide a claim in the sense that it may be necessary to evict certain applicants' from their homes for reasons other than in respect of the implementation of the road
20 transportation for the plans for the area of Wynberg. **I ACCORDINGLY GRANT AN ORDER IN TERMS OF PRAYER 3 INCORPORATING PRAYER 2 AND 3(4) OF THE NOTICE OF MOTION.**

25 As far as the prayer 4 is concerned of the notice of motion,
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5516/2015

that is reviewing and setting aside the decision to terminate the leases, those decisions were taken and it would be moot for this Court to make an order reviewing or setting aside those decisions. If the persons affected have any claims, they will have to bring them separately, but **THE RELIEF CLAIMED IN PRAYER 4 OF THE NOTICE OF MOTION IS NOT GRANTED.** As far as prayer 5 is concerned, that is declaring the demolition of the council owned properties to have been unlawful, again it is not possible to determine the factual circumstances of these demolitions. Applicants' contend the properties were demolished in order to frighten or coerce the tenants affected by this property to vacate their homes.

The respondent has said that those demolitions were affected because the persons have been lawfully evicted from their homes and the properties were in a dilapidated state and constituted a danger and that it was extremely costly to the Municipality to maintain those properties and keep them under security pending the determination as to what is to finally occur with them.

I accordingly do not believe that the papers in this matter establish that the demolition of the properties was per se unlawful. **THERE IS A DISPUTE OF FACT IN THIS RESPECT AND ON THESE PAPERS I CANNOT RESOLVE THEM.** As far

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5516/2015

as an order directing the respondents' to comply with their public participation obligations in regard to phase 2A of the tender is concerned, the respondents' have indicated that it is complying with that obligation, it has had participation
5 meetings with persons affected and that an application of this nature was not necessary. It is clear to me from the reading of these papers that it was necessary to alert the respondent to its obligation to have public participation in respect of the design and construction of phase 2 of the tender and that the
10 applicants' were justified in bringing an application of this nature to point out that these incidents of public participation had not occurred.

It was only after these papers were served and during the
15 period of time that the respondent was busy preparing a replying affidavit that meetings were held and public participation did occur. In that respect, it is clear that applicants' themselves participated in those meetings that were held and it is clear to me that the respondent must have
20 realised that they were under an obligation to conduct meetings of this nature.

I ACCORDINGLY GRANT AN ORDER IN TERMS OF PRAYER

6 OF THE NOTICE OF MOTION. Finally as far as the question
25 of costs is concerned, applicants' had been successful in

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obtaining relief and **THE RESPONDENT IS DIRECTED TO PAY
THE COSTS OF THIS APPLICATION WHICH COSTS SHALL
INCLUDE WHERE APPLICABLE THE COSTS OF EMPLOYING
TWO COUNSEL.**

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WEINKOVE, AJ