IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Appeal Case Number: 72 / 2023

In the matter between:

RUANN JANSEN VAN VUREN	Appellant
and	
STELLENBOSCH MUNICIPALITY	Respondent

Coram: Wille J *et* Nthambeleni, AJ

Heard: 28 July 2023

Delivered: 2 August 2023

JUDGMENT

WILLE, J:

Introduction:

[1] This unfortunate civil appeal lies from a local district court. The judicial officer in the lower court set aside an interim *spoliation* order initially granted to the applicant. This, together with costs. The core issue for determination in the court of first instance was about the interpreting of various regulations in connection with traffic.[1] More specifically, in this case, the alleged illegal parking of a motor vehicle that belonged to the appellant. This then led to a regrettable conflict between a student and the respondent.

Overview:

[2] The legal argument that was presented before us was about the interpretation of specific regulations. The respondent initially submitted that it could never have been the lawmaker's intention that the sub-criteria of all three sub-regulations (of the regulations) fall to be adhered to together and exist simultaneously to determine if a motor vehicle was abandoned. The respondent says the three sub-regulations provide three discrete occurrences for an infringement to be at play so that the alleged offending vehicle could be deemed abandoned. Thus, for a vehicle to be deemed abandoned, either sub-regulation (a) or (b) or (c) separately or any combination thereof or even all three may find application. The appellant takes a different position and contends that all three of these sub-regulations fall to be present at the same time for any infringement to exist in law. This enquiry and analysis may be interesting and complex but is not necessary or relevant to determine this appeal.

Context:

[3] The appellant conceded that he from time to time illegally parked his motor vehicle on the sidewalk in violation of certain traffic regulations. The appellant resides in an apartment within an apartment block which has a parking space allocated to him for his exclusive use. By way of election, the appellant permitted another resident to use his allocated parking space. Thus, the appellant sometimes illegally parked on the sidewalk.

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[1] Regulation 320 (2) of the National Road Traffic Regulations of 2000 (the “regulations”).

[4] In as much as it may be relevant (which it is not), the appellant also conceded that his vehicle was illegally parked on the sidewalk for a continuous period of at least fourteen days.[2] The respondent accordingly caused to be impounded the applicant's motor vehicle, so it says, in terms of the regulations. For the most part, the respondent relied primarily on the regulation below to remove the appellant's motor vehicle from the sidewalk.

[5] The regulation which the appellant and the respondent were at loggerheads about provides, among other things, that:

'…320 (2) (a) Any vehicle parked in a place where -

(i) the stopping of a vehicle is prohibited in terms of regulation 304…

(b) left for a continuous period of more than -

(i) 24 hours in the same place on a public road outside an urban area…

(ii) seven days in the same place on a public road within an urban area…

(c) found on a public road and to which—

(i) no licence number is affixed, or, in the opinion of a traffic officer, a false licence number is affixed; or

(ii) no other number or anything else is affixed which may, in the opinion of a traffic officer, serve to identify the owner, shall be deemed to have been abandoned by the owner, and such vehicle may be removed by or on behalf of the authority having jurisdiction over the place…'

[6] The abovementioned regulation and any debate about it is irrelevant for several reasons. I say this because the core issue in this appeal is whether the appellant's motor vehicle was legally removed and impounded at the relevant time at the instance of the respondent. I say it was.

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[2] From 18 August 2023 to 1 September 2023.

Consideration:

[7] The appellant advances that the interpretation adopted by the judicial officer in the lower court needed to be corrected. This may be so, but I have no findings or views on this interpretation. The argument is that on a proper interpretation of the regulations, all three sub-conditions set out in the regulations must be complied with and be present simultaneously to permit the respondent to be entitled to have removed the appellant's vehicle. In summary, the appellant argues that the respondent acted unlawfully when it dispossessed the appellant of his vehicle because a violation of all the provisions of the sub-regulations was not present at the same time. On the contrary, the respondent argues that on a plain reading of the regulations, the lawmaker of the subject regulations did not include the word *'and'* between regulations (a), (b) or (c).

[8] Thus, the term *'and'* was intentionally excluded meaning that the lawmaker did not intend to do so, as contended by the appellant. The cohesive argument by the appellant bears some scrutiny. The word '*and'* typically signifies a conjunctive list, meaning each listed condition must be satisfied. Meanwhile, 'or' typically signifies a disjunctive list, meaning satisfying any one condition in the list is sufficient. By way of application, it was submitted that the lawmaker could never have intended that the appellant would be entitled, without any legal recourse, to park his motor vehicle anywhere that he desired if it was legally registered with a number affixed to it. As alluded to earlier, this is not an issue that requires any debate or a definitive answer for the purposes of this appeal and this judgment.

[9] More critical is the enquiry that follows as to the methodology to be employed when interpreting regulations. Many regulations contain a *definition* section that sets forth and defines the key terms used in the regulations. These definitions are important because they suggest that lawmakers intended for a term to have a specific meaning that might differ in important ways from its common usage. Similarly, other or different *provisions* in regulations may find application suggesting that the lawmaker intended a term to have a specific meaning that might differ in important ways from its common usage.

[10] However, nothing should be added to what the text of a regulation states or reasonably implies. If a matter is not covered, it should be treated as not covered. Even though legal texts can sometimes be incomplete because they fail to address specific situations, courts should not fill these gaps with rules. Put another way, general terms are given their general meaning and afforded their full and fair scope without being limited.

[11] The wording of the appropriate regulation that deals with parking of vehicles is clear and unambiguous and must be given its reasonable meaning.[3] Thus, the appellant may not park his vehicle to encroach upon a sidewalk. If he does so, the respondent may impound and remove the vehicle in terms of the empowering provision in the regulations.[4] This regulation is based on the reality that it is often helpful to create categories of where vehicles may or may not be parked without knowing or anticipating everything that may fit or come to fit within that category. The expression goes that the stating of one thing implies the exclusion of others.

[12] This means that where specific terms have been explicitly outlined in a regulation, that regulation may be interpreted not to apply to terms excluded from the regulation. When reading a specific regulation, reference must be made to other provisions that may or may not be applied in the composite regulations. These references may affect the meaning and function of the specific regulation at play. The text should be construed as a whole. A legal instrument typically contains many interrelated parts, and the entirety of the document provides the context for each of its parts.

[13] Moreover, a word or phrase is presumed to bear the same meaning throughout a text. Of course, there may exist meaningful variations that suggest that when the lawmaker has departed from the consistent usage of a particular term, the lawmaker intended for that particular term to have a different meaning. Every word and every provision should be given effect, and none should be ignored. Significantly, associated words bear on one another's meaning. This process may explain how broadly or narrowly a term should reasonably be interpreted.

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[3] Regulation 305(1)(e).
[4] Regulation 305 (6).

[14] In the end, a word is known by the company it keeps. Where words follow an enumeration of things, they apply only to the things of the same general kind specifically mentioned. Also, regulations dealing with the same subject are to be interpreted together as one and the same law. Thus, when interpreting the impugned regulation dealing with '*abandoned*' vehicles, one must regard the regulation dealing with *'parked'* vehicles read with the definition of *'park'* set out in the regulations. The appellant's vehicle was undoubtedly parked in such a manner as to encroach upon the sidewalk, and the respondent was entitled to remove and impound the appellant's vehicle. This was undoubtedly permissible in terms of the regulations.

[15] A textually permissible interpretation that furthers rather than obstructs the regulation's purpose should be preferred. This ensures that a text's manifest purpose is furthered, not hindered. Also, I find favour in relying on the ordinary meaning of the words in the regulations to discern the meaning of the language used. This approach also encourages more precisely drafted laws and more respect for the rule of law. The court is enjoined to look for the text's meaning. If and when regulations are unambiguous, the interpretive task ends with the plain meaning of the words. Thus, the appellant's motor vehicle was parked illegally in contravention of the regulations, and it was permissible for the motor vehicle to be removed at the instance of the respondent.

[16] What also weighed with me were the real-world consequences when interpreting a regulation that may or may not be ambiguous. It is so that context also matters for understanding the terms of the regulations. However, it is not the function of this appeal court to rewrite the regulations. In any event, in this case, there is no need to do so.

[17] At the heart of this appeal was the respondent's alleged unlawful deprivation of the appellant's motor vehicle. There was no unlawful deprivation of the appellant's motor vehicle. I say this because the appellant's vehicle was lawfully removed. After all, it was illegally parked on the sidewalk. It may be so that the appellant was alerted to the regulations dealing with the abandonment of his motor vehicle when it was so removed at the instance of the respondent. This issue is one to be remedied by way of costs.

[18] The appellant proceeded by way of *mandamus* to return his motor vehicle. The possession of his motor vehicle was restored by way of interim relief and remains so restored. The appellant says the respondent unlawfully deprived him of his motor vehicle. I disagree. This deprivation followed due legal process. In the opposing papers in the court of first instance, the respondent alleged that:

'…. the illegal parking of the applicant's [appellant's] vehicle disturbed the unrestricted usage of the sidewalk by pedestrians as the applicant [appellant] uses the sidewalk illegally for parking which it is not designated for …'

[19] The appellant did not engage with this factual allegation in his replying affidavit save for his averment that this would be dealt with through legal argument. The fact that the traffic officer who caused the motor vehicle to be removed believed the motor vehicle had been abandoned takes the matter no further. I say this because the issue is whether the vehicle was lawfully removed. It was. Thus, the appellant was not entitled to seek refuge in *mandamus* proceedings and irrespective of the legal reasoning of the judicial officer in the lower court, the ultimate decision was correct to set aside the interim order. This appeal lies against the order by the judicial officer in the lower court and not against the reasoning attached to it.

[20] The dispossession occurred strictly within the limits of the regulations that created the right to dispossess.[5] The appellant (on appeal) also raised a constitutional issue through argument for the first time. This was without due regard to the court rules and the joinder or otherwise of the appropriate parties to the application in the first place or to the appeal in the second place. This notwithstanding, this appeal does not possess any constitutional ingredients for determination. The respondent raised the issue of mootness. This at a very late stage. The respondent contended that the matter was moot because the appellant had been in possession of his motor vehicle since the granting of the interim order and any order by this court will have no practical effect. This then bears some further scrutiny.

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[5] A mandamus can only be granted on an unlawful act. (See Wessels' *History of Roman Dutch Law (*pp 481-2). Merula' s *Manier van Procedeeren* (4.37.2.8).

[21] Section 16(2)(a) of the Superior Courts Act provides as follows:[6]

'…(i) When at the hearing of an appeal, the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs…'

[22] A case that presents before an appeal court may eventually lose an element of justiciability and become moot. This may occur if the initial disagreement is no longer live due to a change in the circumstances of the parties involved. In this case, the appellant has his motor vehicle, and the respondent has lost its leverage to obtain from the appellant any towing and storage costs associated with the removal of the motor vehicle.

[23] Our courts have, over time, developed some exceptions to this mootness doctrine. One of these exceptions goes to equitable mootness, a cousin of the mootness doctrine. This is then in the form of a court's discretion in matters of judicial administration in the interests of justice. Thus, although moot, some disputes may have the potential of recurrence. This exception falls, however, to be used sparingly and applies only in exceptional circumstances. As a general proposition, judicial resources ought to be used efficiently. They should not be dedicated to advisory opinions or abstract propositions of law, and courts should avoid deciding abstract, academic, or hypothetical matters.[7] Thus, a court has only discretionary power to entertain even moot issues.[8] A recurrence of these unfortunate events is highly unlikely. Thus, looms the issue if it would be appropriate and competent for this court to decide the currently formulated challenges by the appellant. I say no because these challenges are all underpinned by historical facts and circumstances. Accordingly, the argument is whether the challenges by the appellant would or could not be dispositive of what may occur in future with a different variation. This reasoning applies equally to the challenges piloted by the respondent.

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6 Act 10, of 2013.

7 *J T Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC).

8 *South African Reserve Bank v Shuttleworth* 2015 (5) SA 146 (CC).

Costs:

[24] It is so that when awarding costs, a court has a discretion, which it must exercise judiciously and after due consideration of the salient facts of each case at that moment. The decision a court takes is a matter of fairness to both sides.[9] The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstances which may have a bearing on the issue of costs and then make such order as to costs as would be fair in the discretion of the court. No hard and fast rules have been set for compliance and conformity by the court unless there are exceptional circumstances.[10]

[25] In all the circumstances, a costs order is not warranted in these circumstances as the matter is undoubtedly moot. Moreover, the appellant was somewhat sidetracked by the reasoning of the traffic officer in the respondent's employ. Given what has been articulated in this judgment, it would be in the respondent's interests to consider this matter closed and not pursue any further action against the appellant for towing or storage costs.

Order:

[26] In all the circumstances, there is no room to interfere with the lower court's order on appeal. Thus, an order is granted in the following terms, namely:

1. That the appeal is dismissed as same is moot.

2. That there shall be no order as to costs.

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WILLE, J

I agree:

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NTHAMBELENI, AJ

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[9] *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at 1055 F- G.
[10] *Fripp v Gibbon & Co* 1913 AD 354 at 364.