IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 024646/2024

DATE: 20-03-2024

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
DATE
SIGNATURE

In the matter between

SUNNYBOY SELEMETJA Applicant

and

CITY OF JOHANNESBURG Respondent

J U D G M E N T

KILLIAN, AJ: This is an urgent application where the applicant seeks final interdictory relief against the respondents. The applicants seek to interdict officials of the 1st and 2nd respondents from committing any act which may be prejudicial to the 1st and 6th applicants and all those occupying the property described as erven 557, 559, 560, 561, of Extension 3 Glen Austin Midrand Township, to which I will refer to as a property, through or under them, including

inter alia harassment, intimidation, threatening, assaulting, or making derogatory remarks. The applicants also seek to interdict the 1st to 5th respondents from damaging any of the applicants' personal belongings, building material and other property to be found on the immovable properties. Further, applicants seek to interdict the 1st to 5th respondents from evicting them from the property without the necessary court order authorizing them to do so, and from demolishing and evicting the applicants from the property without a court order authorising them to do so.

This application was brought with very limited time afforded to the respondents to file notices of intention to oppose, to take legal advice and to prepare answering affidavits. Nonetheless the respondents all managed to do so and the applicants filed a replying affidavit.

Counsel for the parties argued the issue of urgency and the core essentials of the merits of this application. The facts that are domain to the issue of urgency are also relevant and material to the merits of the relief sought. I have decided to hear the matter on an urgent basis.

Central to this application are the allegations that on 16 February 2024 two unidentified officials of the 2nd respondent threatened to evict the entire community and to burn their properties to the ground come 30 March 2024. The said unidentified officials also allegedly branded their

weapons, stating that they will not hesitate to shoot to kill. Further threats were made that they, being the officials, will return on 30 March 2024 and that they will use the opportunity to kill the applicants. I pause here to say that the applicants stated that they do not bring this application on behalf of the entire community, but that they act in their personal capacities only. The applicants say that they have reason to believe that these threats will be carried out as the 1st and 2nd respondents acted unlawfully by previously evicting members of the community from the property on 17 March 2023 without an order of court authorising them to do so. The alleged eviction that occurred on 17 March 2023 led to an urgent application brought by the six applicants to this Court, where she sought similar interdictory relief against the 1st and 2nd respondents, and I call this application the 2023 urgent application.

The 3rd to 5th respondents were later joined as parties to the 2023 urgent application, as they are the owners of the property. Thus, it is contended by the applicants that this Court should urgently issue an order interdicting the respondents as set out above. They rely on the strength of threats issued against them on 16 February 2024, which threats expressly made reference to 30 March 2024 as a date on which their structures are set to be demolished.

The 1st and 2nd respondents deny that they intend to evict any person from the property, either on 30 March 2024 and at any other date. They claim to have no interest in the property or the continued occupation thereof by the applicants. The property belongs to the 3rd to 5th respondents. The 1st and 2nd respondents made the same declaration in opposing the 2023 urgent application. They also denied that they have carried out an unlawful eviction on 17 March 2023 and claim that they were not involved in any eviction that may have occurred on that day. The 1st and 2nd respondents further denied the events of 16 February 2024 and filed affidavits by the relevant officials in charge of the sector in which the property is situated denying such conduct. They state that they have not issued threats of eviction to the applicants, that their officials have not visited the property, and that they are not aware of, and have not scheduled any evictions for 30 March 2024.

It is common cause that the 3rd to 5th respondents launched eviction proceedings against all the occupiers of the property in the High Court, Gauteng Division, Pretoria, which I will refer to as the Pretoria application. The Pretoria application is opposed and still pending. The 1st respondent is a party to the Pretoria application and filed a report, stating amongst others, that it will abide by the decision of that Court. The 3rd to 5th respondents deny any

wrongdoing and claim that they are following the prescripts of law and pursuing the eviction of the occupiers of the property by means of the Pretoria application.

There is a clear dispute of fact on the central issue in this matter, namely allegations that the City employees are guilty of the conduct complained of. A real genuine and *bona fide* dispute of fact can exist only in circumstances where the party who purports to raise that dispute, in this case the respondents, have in their affidavits seriously and ambiguously addressed the facts said to be disputed. To my mind and on a reading of the affidavits, this is what the respondents have done.

Different considerations apply to the resolutions of disputed facts in motion proceedings. This is so because the Court has not had the benefit of observing and listening to witnesses. The Court has to decide on the papers before Court, namely the affidavits. It is important to note that it is not prudent for an applicant to approach the Court by way of motion for final relief where there is a likelihood of a serious and genuine dispute of fact arising. In such an instance it is preferable for the applicant to go by way of action. When confronted with a dispute of fact, the Court may dismiss the application or may refer the matter for trial or make an order for oral evidence to be led.

However, where the Court is inclined to adopt a

robust approach and resolve the matter on the papers, even though there is a dispute of fact, the Court is obliged to apply the principles in Plascon-Evans Paints LTD *v* Van Riebeeck Paints (Pty) Ltd and the reference is 1984 (3) SA 623 A.

> "Where the Court is required to consider whether on the facts averred by the applicant, which respondent has admitted, together with the facts averred by the respondent, the applicant is entitled to the relief that they claim."

And when considering the question, if there is a genuine dispute of fact, in the matter of Stellenbosch Farmer's Winery LTD *v* Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 C, the following was stated:

> "A respondent's version can be rejected in motion proceedings only if it is fictitious or so far fetched and clearly untenable, that it can confidently be said on the papers alone that it is demonstrably and clearly unworthy of credence."

By applying the test to this matter, in my view, there is a real and *bona fide* dispute of fact that cannot be resolved on the papers before me. This dispute was partly foreseeable.

The respondents made their stance clear in the

2023 urgent application. The applicants should have known that the 1st and 2nd respondents have no desire or power to seek their eviction. Over and above this, no case is made out that would justify any order being granted against the 3rd to 5th respondents. They seek the applicants' eviction but in accordance with the law, in the Pretoria application, there is no evidence to suggest that those respondents intended to act lawlessly. On this basis, the application stands to be dismissed.

Even if I am wrong about the existence of a dispute of fact, the application should still fail for reasons that follow. The requirements for granting a final interdict are well known and they are the following, a clear right, an injury actually committed or reasonably apprehended, and the lack of an alternative remedy. The meaning of reasonable apprehension was quoted with approval in the matter of Minister of Law-and-Order *v* Nordine, where the Court held the following:

> "A reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts. The applicant for an interdict is not required to establish that on a balance of probabilities flowing from the undisputed facts injury will follow. He has

> only to show that it is reasonable to apprehend that injury will result. However, the test for apprehension is an objective one. This means that on a basis of the facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."

In so far as the applicants seek a final interdict to prevent their eviction from the property without the court order, they have failed to meet the requirements for the final interdict, and I say so for the following reasons:

1. An order in those terms will be academic only. In law no person may evict another from land without an order of Court.
2. The 1st and 2nd respondents have no interest in evicting the applicants. They will abide by the outcome of the Pretoria application.
3. The Pretoria application is still pending and the applicants are opposing that application.
4. It is not the applicants' case that the 3rd to 5th respondents threatened to evict them by 30 March 2024.
5. Should anybody try to evict the applicants from 30 March 2024 without an order of Court, the applicants

will have a remedy available to them. They have exercised a similar remedy in the 2023 urgent application.

6. They have failed objectively to establish a reasonable apprehension that the eviction will take place on 30 March 2024. On their own version, the applicants say that the 2023 urgent application was withdrawn in February 2024, because the threat of eviction no longer existed.

Insofar as the applicants seek final relief based on the alleged acts of February 2024, on the facts available to me, it cannot be said on a balance of probability firstly that those events indeed occurred and secondly that the two unidentified officials will execute their alleged threats or violence and intimidation.

Based on all of the aforesaid facts, I am satisfied that the application stands to be dismissed with costs, and I make that order.

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KILLIAN, AJ

JUDGE OF THE HIGH COURT

DATE: ……