



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, EAST LONDON)**

Case No: EL915/2021

In the matter between:

**THE CENTRE FOR LOCAL COMMUNITY RIGHTS NPO
(FARM 924, BONGWENI)**

Applicant

And

BUFFALO CITY MUNICIPALITY

Respondent

JUDGMENT

BESHE J:

-

[1] The applicant approached this court for an order in *inter alia* the following terms:

- 1. That the respondent takes immediate action to ensure that no further illegal dwellings are erected on Farm 924, Old King William's Town Road, East London;*
- 2. The respondent is to take all necessary action regarding the illegally erected developments on Farm 924 – including but not limited to having the illegal structures or dwellings taken down and removed, finding the illegal dwellers/persons residing in the property similar or alternative accommodation or housing and placing them in such housing or*

accommodation, building or erecting a fence, wall or similar structure to prevent further illegal structures/dwellings and squatters;

2. To disconnect and remove all illegal connections;

4. Costs of suite.

[2] It later turned out that the respondent had previously obtained an order against the persons who were attempting or threatening to unlawfully occupy the Farm in question, namely Farm 924, East London. In terms of the order which was confirmed on the 6 February 2018, the unlawful occupiers were interdicted and restrained from occupying the Farm 924. Part of the order directed the Sheriff of this court with the assistance of South African Police Services, were required, to take all steps to demolish and or dismantle any structure erected on the said property in contravention of this order. As to why the order has not been enforced or carried out, remains a mystery. Be that as it may, it is clear to me, and it would appear to both parties that there is an extant order which was granted in favour of the respondent meant to deal with the unlawful invasion of the farm. This in my view obviates the need for the order sought. It renders the matter moot. What remains is the determination of whether any of the parties is entitled to costs, and to what extent.

[3] It was only in the answering affidavit that existence of this order was revealed by the respondent. The application was preceded by the exchange of correspondence between the parties as well as a postponement to allow for respondent to file an opposing affidavit. Even after the emergence of the existence of this order, the applicant was not amenable to withdrawing the application in the absence of a tender for costs by the respondent on the basis that had it not failed to inform the applicant about the existence of the order in its favour, the proceedings could have been curtailed much earlier.

[4] One of the points raised *in limine* by the respondent is that the applicant has not established that it is clothed with *locus standi* to initiate these proceedings.

[5] The founding affidavit is deposed to by **Mr Christo Theart** who describes himself as the chairperson of the applicant, a Non-Profit Organisation (NPO). In the Constitution of the said NPO it is described as non-profit organisation based in East London, South Africa, comprising of local government activists who help the community, especially the poor and the disadvantaged to defend their rights of access to information, their rights to complain and to make representations to the municipality and their right to equitable access to municipal services.

[6] As to how these proceedings came to life, **Mr Theart** states that "*During or about April 2021 I was approached by members and owners of surrounding farms 922 and 924, old King William's Town Road, East London pertaining to a development of an informal settlement on Farm 924*".¹ He goes on to outline the information he received regarding this development at length. At paragraph 12 of the founding affidavit he states that the members of the community have engaged the respondent and various other role players since December 2020. He however does not tell us of the substance or subject of the said engagement. To this end, he refers the court to an affidavit deposed to by **Ms Maria Herman** who is said to have addressed correspondence to the respondent, Eskom and other role players. We are not informed of the subject of this correspondence. In her confirmatory affidavit **Ms Herman** only confirms **Mr Theart's** affidavit in so far as it relates to her. She goes on to say the situation which is transpiring across the road from the road is spiralling out of control as more shacks are being developed. The illegal dumping is increasing which is creating an awful smell in the area and attracting vermin and flies. The problem with **Ms Herman's** affidavit is that she seems to only confirm that

¹ Paragraph [7] of founding affidavit page 6 of indexed papers.

she wrote letters to the respondent. But as I said, we do not know what the subject of the correspondence was. Secondly, she states that she resides on Farm 925 yet **Mr Theart** stated that he was approached by members and owners of Farms 922 and 924. The upshot of this is that there is no confirmation of what **Mr Theart** alleges he was informed and advised of by those who approached him. There is also no confirmation that he was approached by the members of the community as he alleges.

[7] In the circumstances, as outlined hereinabove, is **Mr Theart** or the applicant (NPO) clothed with the *locus standi in judicio* to institute this application? If it is not, in my view, the NPO will not be entitled to the costs of the application.

[8] The requirement for *locus standi in judicio* are said to be the following:²

- o the applicant for relief must have adequate interest in the subject matter of the litigation – a direct interest.*
- o The interest must not be far removed.*
- o It must be actual, not abstract or academic.*
- o It must be a current interest not a hypothetical one.*

It is also trite that the duty to allege and prove *locus standi in judicio* rests on the party instituting the proceedings. Applicant has neither alleged or proved that it has *locus standi* to institute these proceedings. This issue was pertinently raised in the respondent's answering affidavit namely lack of *locus standi in judicio*. The applicant did not address the issue at all in the replying affidavit. None of the factors listed under *Section 38* of the Constitution are raised by the applicant as clothing it with the requisite *locus standi*. Those are:

- (a) anyone acting in their own interest;*
- (b) anyone acting on behalf of another person who cannot act on their own;*

² Erasmus Superior Court Practice 2nd Edition Volume 2 by Loggerenburg: D1-186.

- (c) *anyone acting as a member of or in the interest of a group of a class of persons;*
- (d) *anyone acting in the public interest;*
- (e) *an associate acting in the interest of its members.*

None of these factors have been alleged and proved to be clothing the applicant with the necessary *locus standi in judicio*. On this ground alone, the application fell to be dismissed.

[9] It is my considered view therefore that the applicant is not entitled to an award for costs. I am further of the view that there should be no order as to costs given that the applicant is a non-profit organisation and the nature of the application as well as the manner in which the respondent handled the matter. In particular, by its failure to inform the applicant that there was an extant order dealing with the same issue.

[10] Accordingly, the application is dismissed. There will be no order as to costs.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant : Adv: B C Tarr
Instructed by : NIEHAUS McMAHON ATTORNEYS
43 Union Avenue
Selborne
EAST LONDON
Ref: B Blignaut /mk/MAT 8178
Tel.: 043 – 721 3322

For the Respondent : Adv: S Y Malunga
Instructed by : SMITH TABATA ATTORNEYS
12 Helena Road
Beacon Bay
EAST LONDON
Ref: Mr Y Mngqaba/gn/04E044864
Tel.: 043 – 748 6300

Date Heard : 5 May 2022
Date Reserved : 5 May 2022
Date Delivered : 26 July 2022