



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, MAKHANDA)**

**Case No: 522/2022**

In the matter between:

**EMALAHLENI LOCAL MUNICIPALITY**

**Applicant**

And

**JACKSON COLLEGE ACADEMY**

**Respondent**

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**JUDGMENT**

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**BESHE J:**

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[1] This is the application that came before me on the 14 June 2022. It was brought on an urgent basis as can be gleaned from the certificate of urgency by *Mr Conjwa* for the applicant. The certificate bears the Registrar's date stamp of the 31 May 2022. In the said certificate *Mr Conjwa* asserts that the matter should be heard on an urgent basis because:

*"The applicant seeks an interlocutory interdict restraining and prohibiting the respondent from continuing with any unlawful construction on Erf 36, Indwe Road, Cacadu, Eastern Cape pending the finalization of the main application proceedings."*

[2] The main application was launched as an urgent application because a certificate of urgency was also filed in respect thereto on the 17 February 2022. In the main application the relief sought is an interdict against the

respondent, interdicting and restraining it from erecting a building on Erf 36, Indwe Road, Cacadu without the prior approval of building plans by the applicant. Having considered the certificate, *Bloem J* stated that there was no reason why the matter may not be set down on a day ordinarily reserved for motion court.

[3] The same relief is sought in the matter serving before me. Namely, an order “*Interdicting and restraining the respondent from conducting or allowing any unlawful construction on the property situated on Erf 36, Indwe Road, Cacadu, Eastern Cape Province*”. This pending the finalization of the main application.

[4] Following the main application being opposed, it was set down for hearing on the 27 October 2022.

[5] The notice of motion in the main application envisaged the issuing of a *rule nisi* returnable on a later date confirming the interdict sought.

[6] The 27 October 2022 is a date appointed, albeit provisionally for the hearing of the main application, was provided by the Registrar on the 7 June 2022.

[7] The deponent to the founding affidavit in respect of the application under consideration alludes to the fact that even though the main application was brought on urgent basis, the court considering it found that there was no urgency and directed that it be set down in the ordinary course.<sup>1</sup>

[8] The reason for embarking on these proceedings, so the applicant’s municipal manager explains, is that “*Prior to the applicant obtaining a date for the setting down of the matter (I understand reference being to the main application) officials of the applicant became aware that the respondent was not only continuing with the unlawful construction, but had also begun a fresh*

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<sup>1</sup> Page 17 of indexed papers.

*construction process, this time the boundary wall on the property and again without submitting building plans as required*".<sup>2</sup> Of course, this is not surprising because there is no order precluding them from building on the property. He does not tell us when the observation was made. He tells us that they were informed by their employees or on about the 16 May 2022 that a boundary wall was being constructed unlawfully. Tellingly, he states that they attempted to obtain a preferential date for the hearing of the main application, but unfortunately learnt that the closest date for the hearing of the matter on a preferential basis would be in October 2022.<sup>3</sup> He further goes on to state that this presented a challenge to the applicant who has a duty to safeguard the interests of persons within its area, that (I presume the construction) creates a potentially dangerous situation for both learners and community. It is on this basis that this urgent application was brought.

[9] The Registrar issued the applicant with a provisional date for the hearing of the main application being the 27 October 2022, on the 7 June 2022. The respondent was served with a notice of set down on the 9 June 2022. Applicant has been aware since about the 16 May 2022 that a boundary wall was being built at the premises in question without approved plans. On the 31 May 2022 papers were issued in respect of this urgent application proposing that the matter be heard on 7 June 2022, seeking essentially the same relief as is sought in the other application against the same respondent. The respondent was called upon to file its opposing papers not later than close of business on 31 May 2022. The notice of motion was emailed to respondent's purported attorneys on the 3 June 2022. Three days after the respondent was to file its notice to oppose.

[10] The urgency contented for in the certificate of urgency is that it is sought to restrain the respondent from continuing with unlawful construction of Erf 36, pending the finalization of the main application. In the founding affidavit, it is

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<sup>2</sup> Page 17 of indexed papers paragraph [20] of founding affidavit.

<sup>3</sup> Page 18 – 19 of the paginated papers paragraph [26], [27] and [28].

stated that the matter is also urgent because the respondent's conduct is endangering learners and staff members of the school because the integrity of the structures being constructed by the respondent cannot be ascertained.

[11] The respondent filed a notice to oppose on 6 June 2022. On the following day, the 7 June 2022 the matter was postponed to 14 June 2022 with applicant ordered to pay costs occasioned by the postponement. When the matter served before me on the 14 June 2022 no further papers had been filed. The applicant insisted on the matter being heard on the papers filed. *Mr Mzamo* for the respondent impugned the manner in which the matter was pursued by the applicant in complete disregard to the *Rules of this Court* and agitated for this matter to be struck off the roll.

[12] From the background of the application as sketched in the preceding paragraphs, it is clear that these proceedings were instituted solely to relive the pinch of having to wait for the hearing of the main application during October 2022. As I indicated, the same relief as in the main application against the same respondent. To me, this is nothing else but an abuse of the process. This is a means of unjustly jumping the queue. Without delving into the merits including the issue of urgency the application falls to be struck off the roll. In addition, no case of the matter being urgent has been made by the applicant. It must also be borne in mind that the rules that applicant sets in respect of "urgent" application must as far as practicable be in accordance with the rules of this court. Not so with the "rules" set by the applicant. The respondent was only put to terms in respect of filing its notice to oppose the application. No proposal is made as to when the respondent's answering affidavit was to be filed, if not according to ordinary rules relating to applications. *Rule 6* in particular 6 (5) (b) (iii), (d) and (f).<sup>4</sup>

**[13] Accordingly, the application is struck off the roll on the basis that it is an abuse of the process with costs.**

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<sup>4</sup> See in this regard *Caledon Street Restaurants CC v D'Aviera* [1988] JPL 1832 [SE] pages 7 – 9.

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**N G BESHE**  
**JUDGE OF THE HIGH COURT**

**APPEARANCES**

For the Applicant : Adv: Conjwa  
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For the Respondent : Adv: Mzamo  
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Date Heard : 14 June 2022  
Date Reserved : 14 June 2022  
Date Delivered : 21 June 2022