

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

CASE NO: 3750/2022

- | | |
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| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES:
YES/NO</u> |
| (3) | <u>REVISED.</u> |

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DATE

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SIGNATURE

In the matter between:

VELISANI NGEKETO AND 37 OTHERS

Applicants

and

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

First Respondent

MINISTER OF POLICE

Second Respondent

**KING SABATA DALINDYEBO LOCAL
MUNICIPALITY**

Third Respondent

J U D G M E N T

DREYER AJ

- [1] The applicants, contend that they occupied demarcated land in the Highbury area beyond the Mthatha River (“the Highbury land”) where . they had erected structures to live in. These structures the applicants contend were demolished on 29 July 2022 by officials of the first respondent the Minister of Justice and Correctional Service assisted by members of the police service employed by the second respondent the Minister of Police and officials of the third respondent The King Sabata Dalindyebo Local Municipality.
- [2] The Highbury land is state land under the control of the Minister of Justice and Correctional Services. This is land that was subject to a lands claim under the auspices of the Provincial Land Claims Commissioner. This land claim has been resolved by the land claims court, the claimants electing to be compensated. The land remains under the control of the Minister of Justice and correctional services. The state retains its ownership of the Highbury land.
- [3] The Highbury land has been the subject of prior litigation, where persons have attempted to assert rights to the land or unlawfully occupying the land or disturbing the state’s peaceful possession of its land.¹ The applicants rely on the decisions of this court in relation to the Highbury land.

¹ Unreported decisions of Ndzondo AJ in *Mamba & another v Njemla and others* under Case 608/2015 and Boqwana AJ in *Minister of Correctional Services v Chief Njemla & others* under Case 1047/2008

- [4] The applicants taking advantage of the fact that the Highbury land was vacant, decided to occupy it. The applicants contend they erected structures on areas demarcated on the Highbury land. There is no evidence, as to who demarcated the land, allocating the applicants the land on which they erected their structures. The applicants had no right to occupy the land at Highbury in the manner that they did.
- [5] The applicants do not live on the land allocated at Highbury, but at other locations in the Mthatha area. The applicants were not in peaceful possession of the land at Highbury on 29 July 2022.
- [6] The first respondent, has not entered into the fray.
- [7] The second and third respondents deny that the applicants had erected any structures by 29 July 2022. The second and third respondents deny that they demolished any structures belonging to the applicants on 29 July 2022. Their contention is supported by photographs taken on 29 July 2022.
- [8] The applicants seek urgent interdictory relief, preventing the respondents from demolishing the structures and ordering the respondents to rebuild such structures that were demolished. The applicants seek that these orders operate as interim interdict pending finalisation that the conduct of the respondents in demolishing the structures is declared unconstitutional and unlawful. In support of

such relief, the applicants contend that they meet the requirements for an interim interdict.

[9] These requirements are trite: a prima facie right; a well-grounded apprehension of irreparable harm if the interim relief is not granted; the balance of convenience for the granting of the interim relief in the absence of an unsatisfactory remedy

[10] The relief that the applicants seek, though couched as interim relief, is final relief in effect. This is so as the applicants seek restitution of their demolished structures. Consequently, it is necessary for the applicants to show that they are entitled to a final interdict.²

[11] To succeed with final relief, the applicants must show that they have a clear right.

[12] The respondent contend, that whether interim or final relief is sought the applicants are not entitled to any relief. I agree. The applicants cannot be granted an interdict as, on these facts, they cannot found an entitlement to it.³

12.1 The third respondent's deponent took photographs of the demarcation of the Highbury land on 29 July 2022. These photographs are attached to his affidavit. The photographs

² *National Commissioner of Police v The Gun Owners South Africa* 2020 (6) SA 69 (SCA)

³ *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* 2018 (1) SA 94 (CC) at 120 C-D

clearly show vacant land absent of any structures. The only thing visible on the vacant land is a tractor, which appears to be demarcating areas. The photographs show the presence of members of the South African Police Service observing the tractor.

12.2 The photographs support the respondent's contentions, that they did not demolish any structures. There were no such structures erected on the Highbury land on 29 July 2022, that could be demolished.

12.3 The applicants do not live on the Highbury land. This dispenses with any assertion to lawful eviction under PIE.⁴

12.4 the applicants have failed to show that they were either in peaceful possession of the property at Highbury or that they were spoliated (to meet the requirement of a mandament van spolie) nor that they had a prima facie or clear right to the property to permit their occupation of the land (to meet the first requirement of either an interim or final relief).

12.5 The applicants have failed to show that they have or will suffer irreparable harm.

⁴ _The Prevention of Illegal Eviction from Unlawful Occupation of Land Act 1998, MC *Denneboom Service Station CC v Phayane* 2015 (1) SA 54 (CC) @ para [17]

12.6 The applicants have failed to show that they meet the requirements of an interdict, whether interim or final.

[13] In the result to make the following order: the application is dismissed

DREYER AJ
ACTING JUDGE OF THE HIGH COURT

Representation for applicants

Counsel: Adv Nyobole

Instructed by: Nyobole Qaku Attorneys Inc

Representation for first and second respondents

Counsel: Adv Msiwa SC

Instructed by: State Attorney Mthatha

Representation for third respondent

Counsel: Adv Bodlani SC

Instructed by: TL Luzipho Attorneys