


REPUBLIC OF SOUTH AFRICA



**GAUTENG LOCAL DIVISION
JOHANNESBURG**

CASE NO: 19432/16

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>23/6/2016</u> DATE	
 SIGNATURE	

In the matter between:

VAN DEN BOS N O: JAN

Applicant

and

**THOSE INTERFERING WITH THE
ADMINISTRATOR'S CONDUCT: THE BODY
CORPORATE OF TYGERBERG**

Respondents

JUDGEMENT

CARSTENSEN AJ:

1. The Applicant seeks an urgent order including:

- 1.1. interdicting the Respondents from:
 - 1.1.1. conducting themselves as the Tygerberg Body Corporate;
 - 1.1.2. interfering with, threatening or intimidating the Applicant, his officers, security guards, employees or agents;
 - 1.1.3. preventing the Applicant, its officers, security guards, employees or agents from entering the building and conducting their legitimate business at the property;
 - 1.1.4. engaging, security, cleaners or other persons to conduct any kind of service at the property.
- 1.2. the Sheriff of the Court, or his lawfully appointed deputy, is authorised and directed to give effect to the terms of the interdict, including but limited to the following:
 - 1.2.1. removing any unauthorised security guards and other agents or service providers from the property;
 - 1.2.2. instating the Applicant's security company at the property and ensuring that they are not interfered with;

- 1.2.3. removing any persons from the property who purport to hinder the Applicant, his officers, security guards, employees or agents in the legitimate conduct of their business.
- 1.3. the Sheriff of the Court, or his lawfully appointed deputy, is authorised to approach the Johannesburg Metropolitan Police Department (JMPD) and the South African Police Services (SAPS) for whatever assistance he may require in the circumstances;
- 1.4. costs of suit.
2. Menye Attorneys Inc. represented certain of the Respondents, namely the Second, Third, Seventh, Eighth, Ninth, Tenth and Eleventh as well as the First Respondent, through the Second Respondent.
3. The Second to Eleventh Respondents were specifically joined.
4. These Respondents were all listed in the supplementary affidavit and opposed the application.
5. The Second Respondent purported, as did Menye Attorneys, to represent the First Respondent. The Fifth and Sixth Respondents appeared not to be represented and the Fourth Respondent was represented by Maseti Attorneys and filed her own answering affidavit.

6. The Respondents admitted the appointment of the Applicant as administrator in terms of the court order of the 11th January 2016.
7. The Respondents representatives also conceded that the proper course of conduct, if the Respondents were dissatisfied with the manner in which the Applicant was conducting the administration of the Body Corporate, was to seek an order of court securing his removal as administrator in terms of Section 46.
8. It appears that there are numerous complaints regarding his administration.
9. The Respondents also conceded that until his removal, the Applicant is obliged to administer the Body Corporate in accordance with the provisions of the court order and should not be unlawfully obstructed in this regard.
10. Menye Attorneys pointed out that in both his letters at page 33 and 35 of the record dated 29th April 2016, he incorrectly stated that he had instructions to act on behalf of the Tygerberg Body Corporate. However this was not conceded in the answering affidavit.
11. The answering affidavit of the Fourth Respondent:
 - 11.1. firstly denies that the matter was urgent on the basis that the MPN Manifesto is dated 2014. This is an irrelevant aspect as the date of the manifesto does not affect this application at all;

11.2. secondly states that there was an application to remove the administrator, heard on the 8th March 2016. I established from counsel appearing for the Fourth Respondent, that in fact this application was dismissed although he did not have a copy of the court order or judgement.

12. On behalf of the Fourth Respondent it was argued that the confirmatory affidavit of Phumlani Sithenbiso Nxumalo on which the Applicant relied to support the conduct complained of in paragraphs 3 and 4 of the supplementary affidavit, was not signed and consequently constituted hear-say evidence.

12.1. Nxumalo's affidavit, annexure SA1, in the court file was in fact signed on the 9th June 2016. Nevertheless this argument was persisted with by both Respondents representatives until I gave a ruling on the matter.

12.2. The Applicant's counsel had no explanation as to why this affidavit, signed in the court filed, but despite the lapse of some 12 days had not been given to the Respondents. This failure is unacceptable and the lack of an explanation is disappointing.

13. In addition, it does not appear that the Respondents' legal representatives were given indices to the application by the Applicant. This greatly hindered the hearing of the application and

the fault of this, again, must be laid at the doors of the Applicant.

14. The Fourth Respondent gave no undertakings and gave no evidence to contradict the allegations contained in paragraphs 3, 4, 5 and 6 of the Applicant's supplementary affidavit.
15. In regard to the remaining Respondents, there was in effect a bare denial of these allegations. Both the Respondents attempted to blame the EFF and MPN organisations which they say they were not members of.
16. During the hearing, the Fourth Respondent's representatives reservedly accepted the necessity for prayers 2.1, 2.3, 2.4 and 3.2 and the remaining Respondents accepted the necessity for prayers 2.1, 3.1, 3.2, 3.3 and 4.
17. The remaining Respondents essentially contended that the march on the 7th June 2016 was peaceful and the Respondents were not violent or disruptive and would not distract the Applicant in the execution of his duties. They did, however, confirm that the purpose of the march was to air their grievances to the Applicant. These grievances included that:
 - 17.1. the Applicant had failed to maintain and ensure the safety of the residents;
 - 17.2. the security company appointed by the Applicant was unfit, improper and incompetent and allowed persons to

sell drugs in the building;

17.3. the Applicant had removed the elevator and installed it in Berea Towers;

17.4. the Respondent's protest demands were lawful and the unscrupulous conduct of the Applicant lent trust funds, as personal loans, to the tenants;

17.5. the building was in a dilapidated state and was indebted to the municipality and other service providers;

17.6. the Applicant had been faking payments to his favoured tenants although no application was produced to prove this.

18. These allegations are disputed by the Applicant, but there is clearly a great deal of tension between the Applicant and certain owners of the units in the building, including the Respondents.

19. The Respondents have stated that there was no-one interfering or barring the Applicant from conducting his duties and the march only lasted 45 minutes and its purpose was to seek answers from the Applicant as to corrupt activities and the actions of the Applicant which left the building in a dilapidated state.

20. There were numerous other complaints regarding the alleged maladministration of the building.

21. I am not called upon to decide whether the Respondents complaints are legitimate, however, whilst the Applicant is the duly appointed administrator of the Body Corporate and the building, the Applicant is obliged to comply with his duties in terms of the court order and any unlawful obstructions to him performing his duties must be removed.

22. If indeed the Respondents, as they contend, do not intend interfering with his duties, there seems no reason for them not to have given an undertaking, to the extent of the prayers as sought in the court order.

23. Consequently, I am of the view that the Applicant is entitled to an order, although not to the extent that the Applicant seeks in the notice of motion.

23.1. In respect of prayer 2.1, it is clear from Meyne Attorneys' letter that the Respondents have purported to conduct themselves as the Tygerberg Body Corporate.

23.2. In respect of the prayers relating to interference, threats and intimidation in short, the Applicant's complaints of the conduct are that the Respondents listed above were part of a group who threatened security guards, shouted and threatened to cut the residents' power, that returned with security guards armed with batons and tried to force entry into the building. There are bare denials to these allegations, but these denials are of no substance and in light of the fact that no undertakings have been given by

the Respondents, I am of the view that the Applicant is entitled to order.

24. I do not, however, believe that the Applicant is entitled to the costs of the application, particularly in light of the procedural failures referred to above. I am also reluctant to order costs against the owners, who are certainly entitled to raise lawful complaints regarding any alleged maladministration, but unlawful conduct cannot be condoned.

Consequently, I grant the following order:

1. The Respondents are interdicted and restrained from:
 - 1.1. conducting themselves as the Tygerberg Body Corporate;
 - 1.2. interfering with, threatening or intimidating the Applicant, his employees or security guards;
 - 1.3. preventing the Applicant, his employees or security guards from entering the building and from conducting their legitimate business at the property;
 - 1.4. engaging security guards of their own at the property.
2. The Sheriff of the Court, or his lawfully appointed Deputy, is authorised and directed to give effect to the terms of the interdict, including:
 - 2.1. removing any unauthorised security guards from the

property;

2.2. reinstating the Applicant's security company at the property and ensuring that they are not intimidated or threatened;

2.3. removing any person from the property who threaten or intimidate the Applicant, his employees or security guards.

3. The Sheriff of the Court, or his lawfully appointed Deputy, is authorised and directed to approach the Johannesburg Metropolitan Police Department (JMPD) or the South African Police Services (SAPS) for whatever assistance he may require in the circumstances.

4. The parties are to pay their own costs.



**P L CARSTENSEN
ACTING JUDGE OF THE
HIGH COURT**

HEARD: 21 JUNE 2016
DELIVERED: 24 JUNE 2016

COUNSEL FOR APPLICANT: VERMAAK ATTORNEYS
INSTRUCTED BY:

COUNSEL FOR 1ST, 2ND, 3RD,
7TH, 8TH, 9TH, 10TH AND 11TH
RESPONDENTS:
INSTRUCTED BY:

MENYE ATTORNEYS INC.

COUNSEL FOR
4TH RESPONDENT: