

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2020/16177

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED

In the matter of:

**FIRE WINGS PROPERTIES 21 (PTY) LTD**

Applicant

and

**SUNRISE TECHNOLOGIES (PTY) LTD**

First Respondent

**THE CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

Second Respondent

**JOHANNESBURG ROAD AGENCY (PTY) LTD**

Third Respondent

**CITY OF JOHANNESBURG PROPERTY COMPANY (PTY)  
LTD**

Fourth Respondent

---

**JUDGMENT IN THE APPLICATION FOR LEAVE TO APPEAL**

BESTER AJ

[1] On 27 September 2022 I made an order in the following terms:

- a) The advertising signage structure owned, erected, and maintained by or on behalf of the first respondent and situated on the Corner of South and Rivonia Roads, Sandton, identified in FA5 to the founding affidavit, does not comply with the second respondent's outdoor advertising By-laws of 2009, and is an illegal structure.
- b) The first respondent must demolish and/or remove the structure within 20 days from date of this order at its own cost, failing which the Sheriff of this Court is authorised and directed to demolish and/or remove the structure at the expense and costs of the first respondent.
- c) The first respondent shall pay the applicant's costs of the application, excluding the costs of the substitution application.

[2] The first respondent launched an application for leave to appeal against the whole of the judgment and order to the Full Court of this Division, alternatively the Supreme Court of Appeal. In support of the application, it initially raised several grounds upon which it contended that the appeal would have prospects of success. However, at the commencement of the hearing of the application for leave to appeal, Mr Stevens abandoned these grounds.

[3] The first respondent persisted with only aspect of its application for leave to appeal, formulated as follows in its application:

“10. The Applicant intends to adduce evidence on appeal which indicates that the Order granted by the Court *a quo* is unenforceable and ineffective as against the Applicant in that the advertising structure was sold to a company called “*Friedshelf 422 (Pty) Ltd*” on 26 July 2022, this being prior to the judgement dated 27 September 2022.”

[4] Mr Stevens submitted that, if the first respondent is not the owner of the sign, it cannot fulfil the order granted, namely that it must demolish the structure, and therefore the order is unenforceable against it. Mr Hollander correctly points out that the order provides that, if the first respondent does not demolish the sign within 20 days from date of the order, the Sheriff is authorised to do so at the cost of the first respondent. Of course, the Sheriff is the official tasked as a matter of law with the execution of court orders. That really is the end of the matter.

[5] Even if the enquiry ought to go further, the first respondent must fail. Upon my inquiry, it transpired that it is not common cause between the parties that this structure had been sold in execution, nor is any other facts that may be relevant to the argument advanced by the first respondent. It has not placed before me the evidence it intended to raise on appeal to allow me to assess the possible effect thereof on the prospects of the proposed appeal. It

has not attempted to agree with the applicant on facts to be placed before me.

[6] There is thus no evidence before me, even though the application for leave to appeal turns wholly on the first respondent being able to adduce evidence on appeal that Friedshelf had become the owner of the sign prior to the order of 27 September 2022. The application must fail for this reason as well.

[7] Mr Stevens added a further leg to the argument, referring me to a judgment by Swanepoel AJ (as he then still was) granted on 20 September 2022 (thus a week before my order was granted). Through that order, the first respondent urgently obtained an interdict against Friedshelf, preventing it from demolishing five advertising structures pending an application by the first respondent for the setting aside of a sale in execution of various advertising structures. Mr Stevens submitted that I could take judicial notice of what has been stated in the judgment by Swanepoel AJ.

[8] However, there is no basis for the first respondent to place the judgment before me, and there is no basis upon which I may bind the parties before me to the factual findings there – such as they were, the matter being one for temporary interdictory relief. The judgment merely refers to five signs sold in execution, and it is not possible to ascertain ex facie the judgment that the

sign that is the subject of this application is one of the five that are subject to the interdict. This argument does not assist the first respondent.

[9] There is a final reason why the first respondent cannot succeed. It expressly abandoned its challenge to the finding that the structure is illegal. Its sole argument is that if it is not the owner, it cannot comply with the order. It contends that it is challenging its loss of ownership. This leaves the first respondent on the horns of a dilemma. On its own argument, if it successfully challenges its loss of ownership, it will be restored to a position where it can comply with the order. If it fails, then the new owner will have to let the sheriff demolish the structure. Whatever the first respondent does, there is no outcome where the structure will be legal and may remain standing.

[10] In the result, the application for leave to appeal is dismissed with costs.

[11] As a final word, I extend my apologies to the parties for the delay in this judgment.

---

**A Bester**  
**Acting Judge of the High Court of South Africa**  
**Gauteng Division, Johannesburg**

Application for leave to appeal heard on: 10 May 2023  
Judgment: 26 September 2023

Counsel for the Applicant:  
Instructed by:

Adv L Hollander  
Hirschowitz Flionis Attorneys

Counsel for the First Respondent:  
Instructed by:

Adv BD Stevens  
Jurgens Bekker Attorneys

Second Respondent:

No appearance