Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED
_____	_____
DATE	SIGNATURE

CASE NO: 014507/2024

In the matter between:-

RUDIGOR ROSSEAU KLEYN N.O. First Applicant

LORINDA ROUX N.O. Second Applicant

(in their capacities as trustees of the Familie Kleyn Trust: […])

VS

MARIA PLANTINA TJETJE BOIKANYO First Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY Second Respondent

Coram: Kooverjie J

Heard on: 20 February 2024

Delivered: 29 February 2024 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 11:00 on 29 February 2024.

Summary: For a party to have *locus standi*, it must demonstrate that it has a direct interest in the matter and that its rights are being infringed or is likely to be infringed.

The applicant has made out a case for final relief. The relief sought in terms of Section 14(1) of the Building Standards Act is impermissible in law.

ORDER

It is ordered:-

1. The matter is urgent.

2. The first respondent is interdicted from continuing with any building activities on Unit 2 in the Sectional Title Scheme of the Mount Like Site, Scheme Number: [...], Waterkloof Ext. 1 ([…] C[...] Ave, Waterkloof

Heights, Pretoria) until the building plan approval is furnished by the second respondent in terms of Section 4 (1) of the National Building Regulations and Building Standards Act, 103 of 1977.

3. The first respondent is ordered to pay the costs of the application.

JUDGMENT

KOOVERJIE J

[1] In this urgent application the applicants, in their capacities as trustees of the Familie Kleyn Trust (the Trust), seek urgent interdictory relief against the first respondent, Ms Boikanyo. In essence, the Trust wishes to constrain the first respondent from continuing with building construction (building works) on her premises until the building plan approval is furnished by the Municipality (the second respondent) in terms of Section 4(1) of the National Building Regulations and Building Standards Act 103 of 1977 ("The Building Standards Act"). This application was instituted on Monday, 12 February 2024.

[2] The further relief sought was: to interdict the respondent from occupying or allowing occupation of the property in the absence of occupancy certificate issued by the Municipality in terms of Section 14 of the Building Standards Act and to

direct that the Municipality continues with its enforcement steps in terms of the Building Standards Act against the respondent should she contravene.

URGENCY

[3] The Trust is required to firstly pass the test of urgency. The first respondent argued that this application is superfluous. Its contentions are twofold: firstly, the building activities was ceased days prior to the urgent application being launched, and secondly, the Municipality is the authority mandated to ensure that Ms Boikanyo complies with the provisions of the relevant legislation entrusted to it.

[4] In response, the Trust contended that it had on numerous occasions sought an undertaking from Ms Boikanyo to cease with the building activities. Not once was such an undertaking made. I was referred to various correspondences commencing on 2 February 2024 until 9 February 2024 in this regard.

[5] The Municipality served the Section 4(1) notice on 6 February 2024. Therein Ms Boikanyo was, *inter alia*, requested to cease building activities and remove all building materials from the sidewalk of the property. On 7 February 2024, when the respondent's instructing attorney came on record, there was still no undertaking that the building construction would cease.

[6] The applicants' instructing attorneys persisted with their communication. On 8 February 2024, once again, Ms Boikanyo was requested to cease the building

works. Again the respondent's attorneys, in their response, on 9 February 2024, make no mention of the status of the building works nor was an undertaking furnished.

[7] The Municipality further advised the applicant that a Section 4(1) notice was issued on 5 February 2024. Ms Boikanyo however alleged that she only received the notice on Thursday of that week, that is also 8 February 2024. Upon receipt thereof she immediately took steps to cease the building works. On her own version, she confirmed that workers were on site until Saturday, 10 February 2024. She explained that they were requested to store the building materials and clean the site.

[8] However the photographs portray the contrary. They depict that workers continued with the building works, even after the Section 4(1) notice was issued.

[9] It is common cause that the builders were still on the premises on Saturday, 10 February 2024. Since the applicants were left in the dark of Ms Boikanyo's plans going forward, they instituted this application. Under these circumstances this application was deserving of an urgent hearing. It was only when the answering papers were filed did the applicants learn that the respondent had decided to cease the building works.

LOCUS STANDI OF THE APPLICANT

[10] The applicants' *locus standi* to institute these proceedings was placed in dispute. It was contended that the Trust was only able to institute this application with the authorization of the body corporate. Alternatively, if the applicants were acting in its their personal capacity then it was obliged to follow the procedure as set out in Section 9 of the Sectional Title Scheme Management Act 8 of 2011 ("STSM") to seek the appointment of a curator *ad litem*.

[11] It is not in dispute that the Trust is the owner of the property that is adjacent to the respondent's property. Simply put, they are neighbours. The applicants argued that this application was not instituted in terms of the Sectional Titles Act 95 of 1986 or the Sectional Title Scheme Management Act. Instead this application was instituted in its capacity as an owner of the adjacent property.

[12] In this regard the applicant relied on various authorities. Our courts have endorsed the principle- that a party has *locus standi* if it can show that it has an interest and that its rights are being infringed or likely to be infringed. [1] In this case the applicants have a direct interest in terms of its status as owner of its property. In the ***Lester*** matter[2], the Supreme Court of Appeal appreciated the sui generis nature of neighboring relationships and echoed that they are aimed to achieve a just and equitable result.

[1] Giant Concerts CC v Ronaldo Investments (Pty) Ltd and Others 2013 (3) BCLR 251 (CC) at paragraph [41]

[2] Lester v Ndlambe Municipality and Another 2016 (6) SA 283 (SCA) [2013] ZASCA 95, at paragraph [22]

[13] I am further surprised that this point was raised. All along, the Municipality indicated to Ms Boikanyo that the Trust was firstly required to approve the building plans before the matter could be considered by it. The question that begs an answer is why was approval sought from the applicants (the owner) regarding the building plans? This illustrates that approval was sought from the Trust which has a direct interest in the matter. It was further common knowledge that the body corporate was not in existence at the time. This right of the Trust must be distinguished from the enforcement processes that the Municipality obliged to effect.

INTERDICTORY RELIEF

Clear right

[14] If the applicants are to succeed in obtaining final relief, they must satisfy this court that they have a clear right; that there is actual injury or injury that is reasonably apprehended; and further that there is an absence of satisfactory remedy. As alluded to above, the applicants have an interest in this matter. The properties of the parties are adjacent to each other. Building construction on a neighboring property can affect the other party. It is not in dispute that even though the Municipality issued the contravention notice, the building construction continued until the end of the week, at least until 8 February 2024. The workers were even on site on Saturday, 10 February 2024.

[15] The photographs is evidence of the fact that workers were on site and that construction works continued. The respondent had not questioned the veracity of

these photographs in its papers, although it was raised in the oral submissions. The applicants' attorney in fact shared the photographs with the respondent's attorney and there was no response negating this fact. In my view, therefore, the Trust has a clear right to institute these proceedings.

Injury reasonably apprehended

[16] The respondent's contention that no harm has been caused to the elderly mother of the applicants, is an unassailable argument. The applicants' communicated with the respondent concerning the issue of the builders being on the property at night and that during the day the building activities would create a security risk. This risk was discussed with the respondent. From the outset, on 31 January 2024, in a letter, the respondent was reminded:

"We kindly request as discussed on the meeting, that you assist in the matter of security of the properties, as we understand your Builders sleep and make fire on the property. As you can imagine, this is of great concern to the Trustees … having their elderly mother stay on the adjacent property."[3]

[17] Hence there could be no doubt that the respondent was well aware of the security risk issue. In the minutes of the meeting it was recorded that measures would have to be put in place to mitigate the security risk. The respondent undertook to make provision for security services.

[3] Annexure FA 14

[18] All the applicants are required to show at this point is that there is a well-grounded apprehension of irreparable harm. In ***Westor and Others v Minister of Police and Others 1984 (4) SA 230 (SWA) at 244***[4] the court defined the term *"a reasonable apprehension of injury"* and stated that it is a situation *"which a reasonable man may entertain on being faced with certain facts … The applicant for an interdict is not required to establish that, on a balance of probabilities, flowing from the undisputed fact, injury will follow; he has only to show that it is reasonable to apprehend that injury will result … However the test of apprehension is an objective one … This means that, on the basis of facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."*

In my view the applicants have shown that it was reasonable to apprehend that prejudice will result.

No alternative remedy

[19] I am also satisfied that the applicants approached this court as the last resort. This is evident from the various correspondence sent to the respondent in the week that the construction took place. No undertaking was given that the construction would be halted. The relief sought by the applicants was to stop the building works. By seeking recourse later and even claiming damages could not be a satisfactory remedy. The main concern was the safety of the elderly mother on the property.

[4] see also Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd and Another 1961 (2) SA 505 W at 515

[21] The purpose of an interdict is to put an end to conduct in breach of the applicants' rights. The applicant invokes the aid of the court to order the respondent to desist from such conduct. The existence of another remedy will only preclude the grant of an interdict where the proposed alternate will afford the injured party a remedy that gives it similar protection to an interdict that is occurring or is apprehended.

[22] This court has an inherent discretion to grant relief to the applicants if circumstances warrant the relief sought and if the order will have a practical effect. The relief sought, in my view, would have a practical effect. The respondent commenced building works knowing and appreciating that it was unlawful to do so. Despite the Section 4(1) notice being issued, no undertaking was ever forthcoming. At the time of instituting this application and presently the applicants are entitled to the protection they seek.

RELIEF SOUGHT RE OCCUPATION

[23] An order was further sought against Ms Boikanyo, interdicting her from occupying or allowing to be occupied, the property in the absence of an occupying certificate in terms of Section 14 of the Building Standards Act.

[24] The respondent correctly contended that Section 14 does not find application to the circumstances of this matter. There was no approval from the Municipality

and neither was the building completed. Section 14 applies only to buildings already erected with the Municipality's approval.

[25] I conclude that the reliance on Section 14(1)(a) was misplaced. In ***Berg River Municipality***[5] the court explicitly held that Section 14(1)(a) does not apply to buildings that are being erected without local authority's approval.

[26] The court clearly stated that Section 14 only applies to buildings erected with the local authority's approval under the Act. In order for a building to be used or occupied it must first be erected with approval and then permission to use or occupy the building must be obtained. The court further commented that it is common sense that a unlawfully erected building as contemplated in Section 4(1) cannot be occupied unless approval is granted.[6] At paragraph [36], the court concluded:

"The lawmaker did not deal in Section 14 with buildings for which no approval existed because the lawmaker took it for granted that such building could not lawfully be erected and obviously could not be occupied."

[27] In the premises, the relief sought is impermissible in law. If the applicant sought relief in terms of the common law or as a consequence of Section 4(1), it would be a different matter.

RELIEF RE MUNICIPALITY TO ENFORCE THE PROVISIONS OF THE ACT

[5] Berg River Municipality v Zelpy 2065 (Pty) Ltd 2013 (4) SA 154 WCC (8 April 2013)
[6] Paragraph [31] of ***Berg River***

[28] In my view, the applicants are further not entitled to the order directing the Municipality to persist with their enforcement. The Municipality is constitutionally ordained to carry out its obligations in terms of the prescribed legislation entrusted to it. It has initiated its enforcement and is obliged to monitor compliance. In my view, the relief sought cannot be sustained.

[29] I was further referred to the matter of ***Beeslaar***[7] which I find to be distinguishable on the facts. Firstly, the respondent, in ***Beeslaar***, gave an undertaking the construction would be halted until the renewal of the building plans. In this instance, no such undertaking existed. The applicant continued with the building works despite the issuance of the Section 4(1) notice already on 5 February 2024. With the builders still being on site until Saturday, 10 February 2024, the applicant could not have known that the respondent had decided to cease the building works.

[30] Secondly, in this matter, it was common cause that a security risk was prevalent. The respondent, in fact, agreed to make provision to alleviate the risk from the outset. The applicants demonstrated that there was a well-grounded apprehension of harm. In ***Beeslaar*** however the court concluded that he requirement of harm was not met.

COSTS

[7] Beeslaar and Another v Mokone and Others [2023] ZAGPPHC 303; 2023/033278 (28 April 2023)

[31] In exercising my discretion and having regard to the circumstances of the matter, I am of the view that a punitive costs order is not justified.

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H KOOVERJIE

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the applicant:	*Adv. JA Venter*
Instructed by:	*Fuchs Roux Inc Attorneys*
Counsel for the first respondent:	*Adv AJ Lapan*
Instructed by:	*Harkison Nungul Inc Attorneys* *C/o Maphalla Mokate Conrandie Inc*
Date heard:	*20 February 2024*
Date of Judgment:	*29 February 2024*