

**REPORTABLE**

**Case No 15997/2008**

**IN THE HIGH COURT OF KWAZULU-NATAL, DURBAN  
REPUBLIC OF SOUTH AFRICA**

In the matter between :

**eTHEKWINI MUNICIPALITY**

Applicant

and

**NITHINATHAN NADARAJAN MOODLEY**

First Respondent

**VASAN MOODLEY**

Second Respondent

**ADMARK INVESTMENTS CC**

Third Respondent

**THE MINISTER OF TRANSPORT**

**FOR THE REPUBLIC OF SOUTH AFRICA**

Fourth Respondent

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Delivered : 16 October 2009

**J U D G M E N T**

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**LEVINSOHN DJP**

[1] On 5<sup>th</sup> December 2008 the applicant moved  
urgently for the following relief: -

"(a) that the first, second and third  
respondents are directed forthwith to  
remove from the first and second  
respondents' property situated at 38  
Elvira Road, Berea West, Extension 4, FT,

KwaZulu-Natal in extent 4747 square metres), the billboard and supporting structures erected thereon as depicted in annexures "C1" - "C5" to the affidavit of Alisande Bradshaw hereto;

(b) that in the event of the first, second and third respondents failing to comply with sub-paragraph (a) above within forty-eight (48) hours of the grant of this Order, the Sheriff of this Court is authorized and directed to take all such steps as may be necessary, including using the services of the applicant or its agents, to remove the billboard and structure;

(c) that the first, second and third respondents are interdicted and restrained from erecting any billboard structures or other advertising signs within the applicant's boundaries without having :-

(i) made proper application to the  
applicant for permission to

do so; and

(ii) obtained the grant of such  
permission

from the applicant;

(d) that the first, second and third respondents are directed to pay the applicant's costs of this application jointly and severally, such costs to include those incurred consequent upon :-

- (i) any execution of this Order in terms of paragraph (b) above; and
- (ii) the employment of two counsel."

[2] The first, second and third respondents opposed the application and after a hearing Jappie J granted a rule *nisi* with interim relief. This is the extended return date of the said rule.

[3] It is convenient at the outset to set forth in brief outline some of the salient background facts that emerge from the affidavits.

[4] On 24<sup>th</sup> November the applicant's advertising signage department received complaints from members of the public regarding the construction of a large billboard/sign (hereinafter referred to as "the sign") upon the property 38 Elvira Road, Berea West, Title Deed description Erf 387, Berea West Extension 4, FT KwaZulu-Natal in extent 4747 square metres ("the property"). This sign had been erected over

the weekend of 22<sup>nd</sup> and 23<sup>rd</sup> of November 2008. It was alleged that none of the owners of the neighbouring properties had given their consent to its erection and indeed they suffered considerable inconvenience as a result of the activities that weekend.

[5] The applicant's officials after investigation discovered that a large advertising sign had been erected and this overlooked the N3 Freeway almost directly opposite the Pavilion shopping centre in the Westville area. It is averred that the sign significantly impeded the view of road signs on the freeway some 100 metres from it.

[6] An application to erect the sign in question had been submitted to the applicant on 14<sup>th</sup> November 2008. This was on the face of it submitted in terms of the relevant bylaws pertaining particularly to signage. However it appeared that no application had been submitted in terms of the National Building Regulations and Building Standards Act of 1977. The structure supporting the sign is

regarded as a building in terms of the relevant building regulations.

[7] After receipt of the application on 14<sup>th</sup> November the Ethekewini traffic authority refused the application.

[8] It also appears that the the erection of the sign in question also infringed the section 50(1)(c) of the South African National Roads Agency Limited and National Roads Act 1998 in that no person is permitted to display any advertisement visible from a national road in an urban area on any land adjoining the national road. Furthermore, the erection of the sign contravened the Westville town planning regulations in the course of preparation. Clause 6.4 of the latter provides that no advertisement or hoardings should be erected without the written authority of the relevant local authority. The case is made out that the erstwhile Westville local authority has been incorporated into the applicant.

[9] Appended to this judgment is a photograph graphically depicting the sign in question.

[10] The sign and its supporting structures were removed pursuant to the interim order granted. The issue before me on the return date is concerned principally with the costs of the application.

[11] There is no dispute that the third respondent caused the sign to be erected. It had apparently concluded a contractual arrangement with the first and second respondents, the owners of the property. Likewise it is common cause that the third respondent had applied for permission to erect the sign. However at the date of the application no permission had been granted.

[12] The third respondent has taken what can be described as points *in limine*. It seeks to assail the fundamental premise upon which the application is based including the applicant's *locus standi* to bring the application. Essentially the argument is that the applicant has not made out a case for the relief sought in its founding affidavit as supplemented.

[13] It was also argued that a full disclosure was not made to Jappie J when the urgent application was

moved. The founding papers referred to the Durban Town planning regulations when the Westville ones were applicable. Counsel for the applicant drew the learned judge's attention to this error - this emerges from the transcript which is before me. Undoubtedly there were errors in the original founding papers. The applicant sought to correct these in a subsequent supplementary affidavit. In my view the respondents suffered no prejudice whatsoever and there is no merit in these points

[14] Reference to the legislation to which I have been referred establishes clearly that both the bylaws and the town planning regulations of the "old municipalities", such as Westville in the present case, are now deemed to be the bylaws of the applicant and are in force in the area of jurisdiction of such "old municipality". (See sections 16 and 17 of Provincial Notice 461 Of 2000 dated 1st December 2000.)

[15] It follows from this that in the first instance the bylaws "for the control of temporary advertisements and pamphlets in the

borough of Westville are applicable. "Advertisement" is defined in section 1 as including any free-standing sign. Section 2 prohibits the affixing, attaching any advertisement without the approval of the council.

[16] Secondly, the Westville Town Planning Scheme in the Course of Preparation also deals with advertisements. Clause 6.4 thereof provides: -

**"ADVERTISEMENT"**

No advertisement shall be displayed of hoardings erected without the written authority of the Local Authority. Any person proposing to erect any sign, advertisement or hoarding, shall submit drawings, of any such sign or advertisement or hoarding to the Local Authority for approval. No hoarding or advertisement shall be permitted which is likely to cause injury to the amenity of the neighbourhood. Name plates not exceeding, 5m<sup>2</sup> in extent are not considered to fall under this heading. This clause does not apply to casual advertisements for entertainment's property for sale, auctions to be held on the premises or



meetings, provided they are not, in the opinion of the Local Authority, unduly ostentatious."

[17] Finally The South African National Roads Agency Limited and National Roads Act 7 of 1998 is also relevant and applicable *in casu*. Section 50(c) provides: -

**"50 Advertisements on or visible from national roads**

(1) Except as provided in subsection (2), no person may-

.....

....

(c) display any advertisement visible from a national road in an urban area, on any land adjoining the national road or on land separated from the national road by a street, or permit it to be so displayed."

[18] In my opinion on a cursory reading of the provisions the erection without consent and approval offended against this whole array of legislation referred to above.

[19] It was also contended that the applicant does not possess the requisite *locus standi* to enforce the provisions of the National Roads Act referred to in paragraph [17] above. The applicant has adduced

evidence which indicates that there exists a close relationship between the applicant and the National Roads Agency. Counsel for the third respondent argues that this can hardly serve as a basis for conferring *locus* on the applicant local authority. In my view Counsel is taking an undue narrow view of this issue. The situation that we encounter here is somewhat unusual since the sign is erected on private property within the municipal area. As indicated, the local bylaws are implicated. At the same time it overlooks a national road and clearly contravenes the national legislation that governs the erection thereof. There is no doubt that the National Roads Agency is obliged in terms of Regulation 40(5) promulgated under the said Act 7 of 1998 to consult with the relevant local authority and that serves as the statutory basis for the applicant's assertion in the papers that a reciprocal relationship exists between it and the agency.

[20] In my view all this leads to an inescapable conclusion that the local authority has a very real

interest in all aspects pertaining to the erection of the sign in question. It clearly has a duty to enforce these laws in its area of jurisdiction and at the same time, restrain illegalities. I am persuaded that in the instant case that the applicant possessed a clear right to seek a mandatory interdict against the respondents and in particular the third respondent whose actions in my view displayed a flagrant disregard for the law. I am also not convinced by the argument that the applicant ought to have afforded the respondents more time, or at least to allow the statutory notice period to run its course before launching the application. In my view the matter was inherently urgent involving issues of road safety and the preservation of the amenities of the owners of the adjacent properties. Jappie J was satisfied in the exercise of his discretion that the matter was urgent. He also had no hesitation in granting an order for immediate interim relief. Looking at all the circumstances I too am satisfied that this was undoubtedly the proper course to take.

[21] I turn now to consider the final point made by counsel for the third respondent. The sign was taken down by servants of the applicant after the respondents failed to do so notwithstanding undertakings given. It is suggested that this conduct by the applicant amounted to unlawful self-help, especially since the removal was apparently not done under the auspices of the Sheriff. This Court should show its disapproval by making an appropriate costs order against the applicant. The point taken is a somewhat technical one given that this Court had authorised the removal and therefore there is no question of the applicant taking the law into its own hands properly so called. The probabilities are that in any event the Sheriff would have invoked the assistance of the applicant which has the necessary infrastructure to attend to the removal. Be that as it may, the real issue before me is whether the applicant had made out a case for a mandatory interdict. That question in my opinion, as indicated, must clearly be answered in the affirmative.

[22] It follows therefore that the rule *nisi* issued out of this Court on 5<sup>th</sup> of December 2008 is hereby confirmed with costs, such costs to include the costs consequent upon the employment of two counsel.

**DATE OF JUDGMENT :** 16 OCTOBER 2009

**DATE OF HEARING :** 15 MAY 2009

**COUNSEL FOR APPLICANT :** MR G. LOPES SC with him  
MS S. MAHABEER

**INSTRUCTED BY :** NAIDOO MAHARAJ INC,  
DURBAN

**COUNSEL FOR FIRST AND  
SECOND RESPONDENTS :** NOT REPRESENTED

**ATTORNEYS :** MARAJ ATTORNEYS, DURBAN

**COUNSEL FOR THIRD  
RESPONDENT :** MR V. I. GAJOO SC

**INSTRUCTED BY :** R. SHAM & ASSOCAITES  
C/O ARTHEE MAHARAJ &  
ASSOCIATES, DURBA

**COUNSEL FOR FOURTH  
RESPONDENT :** NOT REPRESENTED

**ATTORNEYS :** STATE ATTORNEY,  
DURBAN

**ANNEXURE F3 "52"**

