

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

{ APPELLATE Provincial Division)  
Provinsiale Afdeling)

+ I.F.P. APPLICATION  
Appeal in Civil Case  
Appel in Siviele Saak

GEZANE REUBEN LABASA & ANOR. Appellant,

versus

WEST RAND BANTU AFFAIRS ADMINISTRATION BOARD Respondent

Appellant's Attorney Israel & Sackstein Respondent's Attorney  
Prokureur vir Appellant Prokureur vir Respondent Kende & Kende

Appellant's Advocate J. Unterhalter S.C. Respondent's Advocate  
Advokaat vir Appellant L. P. Lewis Advokaat vir Respondent No appearance

Set down for hearing on 20-2-1976  
Op die rol geplaas vir verhoor op

CORAM: WESSELS, TROTTIE, MELLER, CORBETT J.J.A. EN VILJOEN A.J.A.

(W.L.D.) I.F.P. APPLICATION

9.45 A.M. - 11.00 A.M.

11.15 A.M. - 12.30 P.M.

Application granted . Order as per Written Order.

D A/R.

Writ issued  
Lasbrief uitgereik

Date and initials  
Datum en paraaf

Bills taxed—Kosterekenings getakseer

Date Datum	Amount Bedrag	Initials Paraaf

IN THE SUPREME COURT OF SOUTH AFRICA.

APPELLATE DIVISION.

In the matter between:

GEZANE REUBEN MABASA .....FIRST APPELLANT.

and

REGINA MABASA .....SECOND APPELLANT.

and

THE WEST RAND BANTU  
AFFAIRS ADMINISTRATION BOARD .....RESPONDENT.

Coram : WESSELS, TROLLIP, MULLER, KOTZÉ, JJ.A. et  
VAN WINSEN, A.J.A.

Heard: 3 September 1976.

Delivered: 1 October 1976.

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J U D G M E N T.

MULLER, J.A. :

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This is an appeal, direct to this Court by

consent...../2

consent, against an order made by CURLEWIS, J., in the Witwatersrand Local Division, dismissing with costs an application by the first and second appellants.

In view of the fact that, at the hearing of the appeal, the parties, through their respective counsel, came to an agreement whereby only a single question of law was raised for our decision - a matter to be dealt with more fully later in this judgment - the facts of the case need only be stated in broad outline.

The first appellant is an adult Bantu male. He was born in the Alexandra Township on the Rand and has continuously resided there since birth.

The Alexandra Township is a Bantu township and falls within a "prescribed area" as defined in the Bantu (Urban Areas) Consolidation Act, No. 25 of 1945, known as the West Rand area.

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~~By reason of the facts aforestated the first~~

appellant...../3

appellant is entitled, in terms of section 10 (1) (a) of the said Act, to remain in the said area. His reference book is endorsed accordingly.

The first appellant is also the holder of a residential permit ("Housing Permit") entitling him to reside on site No. 1929, No. 18, 17th Avenue in the Alexandra Township. This permit was issued to him on 22 June 1971 by the <sup>then</sup> Peri-Urban Areas Health Board for the designated area of Alexandra, i.e. the Alexandra Township, in terms of the regulations published by the Administrator (Administrator's Notice No. 760 of 30 September 1964) under the Better Administration of Designated Areas Act, No. 51 of 1963. In terms of this permit the first appellant is entitled to occupy one room in a house at the address stated in the permit.

The second appellant, Regina Mabasa, is the wife of the first appellant. They were married on 10 March 1972. The second appellant is the mother of three

minor...../4

minor children.

The respondent, the West Rand Bantu Affairs Administration Board, is, by virtue of section 11 of the Bantu Affairs Administration Act, No 45 of 1971, the body now vested and charged with the rights, powers, functions, duties and obligations of an urban local authority in terms of the Bantu (Urban Areas) Consolidation Act, No 25 of 1945, in respect of the designated area of Alexandra (the Alexandra Township).

On 24 May 1975 the first and second appellant applied to the Witwatersrand Local Division for certain relief. The present respondent, The West Rand Bantu Affairs Administration Board, was cited as first respondent and the Minister of Bantu Administration and Development as second respondent. The Minister did not oppose the application and the Court a quo was informed that he would abide by the decision of the Court. In the premises the

Court...../5

Court a quo, in its judgment, referred to the first respondent (the Board) simply as the respondent and I shall do likewise.

The relief sought by the appellants was an order directing the respondent

- (i) to issue to the first appellant a residential permit authorising the residence of the first appellant, second appellant and her three minor children on site No. 1929, 18, 17th Avenue Alexandra (i.e. the room in respect of which first appellant holds a residential permit, as stated above), and
- (ii) to record in the reference book of the second appellant, the following particulars in terms of regulation 17(1) (i) (e) of Chapter 2 of the Bantu Labour Regulations (Government Ga-

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zette No. 1292, Notice No. R1892, of 3 December

1965)...../6

1965):

"Permitted to be in the prescribed area of the West Rand (as set out in Schedule H to Government Notice No. 294 of 2nd March 1973), in terms of section 10(1) (c) of Act No. 25 of 1945 as holder is the wife of and ordinarily resides with Reuben Mabasa who qualifies to be in the area."

In his supporting affidavit the first appellant alleged that prior to his marriage to the second appellant (on 10 March 1972) he was a partner in a customary union with the second appellant, the said union having commenced in 1963. He also alleged that he was the father of the second appellant's three minor children; that the said children were born in Alexandra and that they had resided there continuously since birth.

According to the first appellant, his wife, the second appellant, although having been resident in Alexandra for some years prior to 1966, was permitted on 10 August 1966 to "enter" Alexandra and remain there as a visitor until 23 August 1966. This permission was endorsed in

her...../7

her reference book which also contains a later endorsement that she had been ordered to leave Alexandra. She, however, refused to leave the area and has on more than one occasion been arrested and prosecuted for remaining unlawfully in Alexandra.

The first appellant also alleged that applications made by him for permission for his wife, the second appellant, and their three minor children to reside with him in the room which he is permitted to occupy in Alexandra, were refused.

The first appellant's contentions, in short, were

- (i) that the second appellant's three minor children, of which he (first appellant) is the father, are entitled to be and remain in the West Rand prescribed area, in terms of section 10(1) (a)

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of Act No. 25 of 1945, they having been born

in...../8



in the Alexandra Township, in the said area,  
and having, since birth, continuously resided  
in the said township;

(ii) that the second appellant is entitled, in  
terms of section 10 (1) (c) of the said Act,  
to be and remain in the West Rand prescribed  
area, inasmuch as she ordinarily resides with  
him in the Alexandra Township, in the said area,  
and

(iii) that his application for a permit authorising  
him, second appellant and their children to  
reside on site 1929, 18, 17th Avenue, Alexandra,  
should not have been refused, as the room on  
the said site which he is entitled to occupy  
is suitable accomodation for all of them.

The respondent opposed the application and filed  
an affidavit by one of its officials, Mr. Botes, the

Director...../9

Director of Development. Inasmuch as the application was dealt with as a matter of urgency, the respondent was allowed only a few days to prepare and file its opposing affidavits. This brought about that the respondent was unable to make proper investigation into all the factual allegations made by the first appellant. Within the time at its disposal, respondent was, however, able to make some investigations, as a result whereof respondent, inter alia,

- (a) denied that the first appellant was the father of all three of the second appellant's children, the averment being that he was the father of only one of them;
- (b) denied that all three of the second appellant's children were born in Alexandra or that they had resided there continuously since birth;
- (c) denied that second appellant was, in terms of

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section 10(1) (c) of Act No. 25 of 1945, quali-

fied...../10

fied to be in the prescribed area of the West Rand (which includes the Alexandra Township), and maintained that, in consequence, a residential permit could not be issued for her, and if issued, would not render her presence therein lawful;

- (d) denied that the room which the first appellant is entitled to occupy in the Alexandra Township, is suitable accommodation for five persons - the two appellants and the three children.

The Court a quo dismissed the application with costs. By consent an appeal was noted direct to this Court and on 23 February 1976 this Court granted the appellants leave to prosecute the appeal in forma pauperis. It was then also ordered that the costs of the application for leave to proceed in forma pauperis be reserved for the decision of the court hearing the appeal.

At the hearing of the appeal, after certain questions had been put from the Bench, counsel for the parties asked the Court for a short adjournment. When the

hearing...../11

hearing was resumed we were informed that the parties had agreed to submit only a single question of law for a decision by this Court. They formulated the question as follows :

"Whether or not the wife of an applicant for a residential permit in terms of regulation 5 of Chapter 2 of Administrator's Notice 760 of 30 September 1964 (Transvaal) must, before she qualifies as a dependant for purposes of such permit, be a person who satisfies the requirements of section 10 of the Bantu (Urban Areas) Consolidation Act 25 of 1945 in respect of the area in which she and the applicant wish to reside in terms of such permit."

We were informed that the agreement was that the Court should, by way of a declaration, pronounce only on the question submitted and, whatsoever the Court's decision may be, it should make no further order, whether as to costs or any other matter. Counsel explained that the parties were confident that, upon the legal question submitted being answered by the Court, they would themselves be able to

settle...../12

settle their differences.

I must say at once that the question, as put by counsel, is not adequately formulated. Indeed, it does not raise all the legal points which were debated before us. Both counsel readily admitted this to be the case and apologised for the manner in which the question had been formulated in the short time at their disposal. They said, however, that the real issues would be apparent from the contentions advanced by them respectively.

For a proper understanding of the contentions advanced by counsel on appeal, it is necessary, at this stage, to have regard to the legislative provisions which govern, or have a bearing on the matter in dispute. First there is section 10(1) of the Bantu (Urban Areas) Consolidation Act, No 25 of 1945, as substituted by section 47(a) of Act 42 of 1964, which provides as follows:

~~" (1) No Bantu shall remain for more~~  
than seventy-two hours in a prescribed area  
unless he produces proof in the manner pre-

scribed...../13

scribed that -

- (a) he has, since birth, resided continuously in such area; or
- (b) he has worked continuously in such area for one employer for a period of not less than ten years or has lawfully resided continuously in such area for a period of not less than fifteen years, and has thereafter continued to reside in such area and is not employed outside such area and has not during either period or thereafter been sentenced to a fine exceeding one hundred rand or to imprisonment for a period exceeding six months; or
- (c) such Bantu is the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Native Taxation and Development Act, 1925 (Act No 41 of 1925), of any Bantu mentioned in paragraph (a) or (b) of this sub-section and after lawful entry into such prescribed area, ordinarily resides with that Bantu in such area; or
- (d) in the case of any other Bantu, permission so to remain has been granted by an officer appointed ~~to manage a labour bureau in terms~~ of the provisions of paragraph (a)

of sub-section (6) of section  
twenty-one ter of the Native Labour  
Regulation Act, 1911 (Act No 15 of  
1911), due regard being had to the  
availability of accomodation in a  
Bantu residential area :

Provided that ----- : "

Inasmuch as the West Rand area is a "prescribed area" in  
terms of Act 25 of 1945, the provisions of section 10(1)  
apply to that area. Also applicable are the "Influx Con-  
trol" Regulations contained in Chapter 1X of the regulations  
published in Government Notice No R 1892 (Gazette No 1292)  
of 3 December 1965, which regulations control the influx  
of Bantu into prescribed areas. These regulations will,  
for convenience, be referred to hereinafter simply as the  
Influx Control Regulations. The particular regulations  
relevant to the present dispute will be dealt with later  
in this judgment.

And, finally, there are the regulations pub-  
lished by the Administrator (Administrator's Notice No 760)

on...../15

on 30 September 1964, in terms of Act No 51 of 1963, for the designated area of Alexandra (which, as already stated, falls within the West Rand prescribed area). These regulations will be referred to hereinafter simply as the Alexandra Regulations. Regulation 38(b), in Chapter 2 of these regulations, makes it an offence for any person to reside on a site in the designated area, the Alexandra Township, without a permit. Regulation 5, also in Chapter 2, makes provision for the issue to an applicant of a residential permit authorising his residence and that of his dependants in the Alexandra Township and the occupation by them of a site in the township. According to Regulation 5(2)(d)(ii), he has to qualify in terms of section 10(1) (a),(b) or, to the extent specified, (d) of the Act to be within the prescribed area. Regulation 1, in Chapter 1 of the said regulations, defines "dependant" as including, amongst others, the wife of a holder of a residential permit who ordinarily resides with him. There is no provision in the regulations that such dependants must qualify under section 10(1)(c) of the Act to be within the prescribed area before their names can be inscribed in the permit.



From what has been stated above, it follows that a Bantu who wishes to reside parmanently in the Alexandra Township must,

- (a) in terms of Act 25 of 1945, be a person entitled to be and remain in the West Rand prescribed area (which includes Alexandra) for more than 72 hours, and
- (b) have permission, in terms of the Alexandra Regulations, either as a permit holder or as a dependant of a permit holder, to reside in Alexandra and occupy a site in the said township.

On appeal before us counsel for both parties accepted the position as stated above. What they did not agree upon was the interpretation of section 10(1) of Act 25 of 1945 and particularly of paragraph (c) thereof.

The contention of counsel for the appellants was that, provided second appellant obtains the necessary permission, in terms of the Alexandra Regulations, to reside

in...../17

in the said township and to occupy a site therein, she automatically qualifies, in terms of section 10(1) (c) of Act 25 of 1945, to remain in the West Rand prescribed area if she ordinarily resides with her husband on that site - that is, she requires no permission from any official, either under Act 25 of 1945 or under the Influx Control Regulations, to be and remain in the said area. In this regard counsel argued as follows. Section 10(1) (c) of the Act entitles the wife of a Bantu who falls within the provisions of either paragraph (a) or paragraph (b) of section 10(1) to remain in the prescribed area, provided she entered the prescribed area lawfully and ordinarily resides with him in such area.

With regard to the requirement of lawful entry, counsel referred to the decisions in S.v Mapheele, 1963(2) S A 651 (A) and S.v Madevu, 1966 (3) S A 222 (C). He contended that, in view of the amendment of section 9(9) (b)

of the Act, by Act No 76 of 1963, after the decision in Mapheele's case, it is no longer necessary for a Bantu, other than a foreign Bantu (as to which see section 12 of the Act), to obtain permission to enter any location, Bantu village or Bantu hostel. With regard to the words "ordinarily resides" counsel argued that, according to Mapheele's case (at pp 655/656), these words mean lawful residence. And, said counsel, in view of the provisions of the Alexandra Regulations, second appellant cannot be said to be lawfully resident in the said township because no residential permit has been issued authorising her to reside in the township and to occupy a site therein. She is committing an offence in residing on a site in the township without a permit, from which it follows that her residence there is unlawful. But, said counsel, once such a residential permit is obtained she would automatically qualify, in terms of section 10(1) (c)

of...../19

of Act 25 of 1945, to remain in the West Rand prescribed area as long as she ordinarily resides with her husband on that site in Alexandra. It was not required, counsel argued, that before such a residential permit could be granted under the Alexandra Regulations, she had to be lawfully entitled to remain in the prescribed area under any of the provisions of section 10(1) of the Act.

Counsel for the respondent argued differently. Although he agreed with the contention that second appellant was residing in the Alexandra Township unlawfully - because she was not authorised, in terms of the Alexandra Regulations, to occupy a site in the township - he argued that the necessary residential permit under those regulations could not be issued as and while her presence in the West Rand prescribed area was forbidden and unlawful under Section 10(1) of the Act and that the issue of the necessary residential permit under those regulations would not entitle her to remain in the West Rand prescribed area.

His contention was that her presence in the West Rand area is unlawful inasmuch as she is remaining in the area without permission and cannot be said to be ordinarily resident with her husband in that area. She must, so counsel said, first obtain permission, in terms of Act 25 of 1945, to be and remain in the West Rand area.

Only...../20

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Only thereafter, said counsel, can consideration be given to an application for permission, in terms of the Alexandra Regulations, for her to reside in the said township and occupy a site therein.

In reply to a question as to the particular kind of permission which must be obtained by the second appellant to entitle her, in terms of section 10(1) of the Act, to remain in the West Rand area, counsel for the respondent said that the permission contemplated by him would be permission in terms of regulation 4 of the Influx Control Regulations.

I cannot agree with the contentions advanced by counsel for the respondent. It seems to me that, in enacting section 10(1) of the Act, the Legislature had in mind two broad classes of persons who would be entitled to remain in a prescribed area for more than seventy-two hours. In the first class would fall those persons who qualify on certain prescribed grounds such as birth and

continuous...../21

continuous residence in the area (paragraph (a)), employment in the area for a lengthy period or residence in the area for a lengthy period (paragraph (b) ) and also the wife and unmarried children of a Bantu qualified under paragraphs (a) or (b) who ordinarily reside with that Bantu in the area (paragraph (c) ). In the other, the second class, would fall Bantu who do not qualify under paragraphs (a), (b) or (c) but who have obtained permission under paragraph (d). Those in the firstmentioned class qualify by reason of the existence of one or other factual situation, without the necessity of obtaining permission, and those in the second class qualify only if and when permission has been granted. That, I think, necessarily follows from the fact that paragraph (d), which provides for permission to be obtained, is concerned only with Bantu other than those referred to in paragraphs (a), (b) or (c).

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The conclusion to which I have come as to the

interpretation..../22

interpretation of section 10(1) is, I think, reinforced by what is provided in the Influx Control Regulations contained in Chapter LX of the regulations published in Government Notice No R 1892 of 3 December 1965. Regulation 1, in the said Chapter, sets out the provisions of paragraphs (a), (b), (c) and (d) of section 10(1) of the Act. And regulation 2 provides as follows:

"Qualifications.

2. (1) If the municipal labour officer is satisfied that a Bantu qualifies under paragraph (a), (b) or (c) of regulation 1 of this Chapter to be in a prescribed area, he may endorse the reference book or document of identification of such Bantu as provided in sub-paragraphs (c) to (g) of paragraph (i) of sub-regulation (1) of regulation 17 of Chapter II of these regulations.

(2) - When a Bantu for any reason forfeits his qualification to be in the prescribed area or when the endorsement referred to in sub-regulation (1) was made in error, the municipal labour officer or any Bantu affairs commissioner may cancel any endorsement made in terms of the said sub-regulation by writing across it 'Cancelled', signing such cancellation over his designation and dating it."

From the above it is clear that, if a Bantu qualifies to remain in the prescribed area under paragraphs (a), (b) or (c) of section 10(1), all that happens is that his/her reference book or document of identification is endorsed accordingly - there is no mention of any permission to be granted to such a Bantu to remain in the area.

As I have already stated, counsel for the respondent intimated that the kind of permission which he had in mind, in so far as the instant case is concerned, is the permission provided for in regulation 4(1) of the said Influx Control Regulations. That regulation reads as follows :

"Visitors to Prescribed Area.

4. (1) Any Bantu not qualified to be in the prescribed area who is desirous of being in that prescribed area for a period in excess of seventy-two hours for any purpose other than employment shall apply beforehand to the municipal labour officer for the requisite permission, furnish the information required by such officer and if such officer is satisfied that suitable accommodation in a Bantu residential



area is available for such Bantu, he may permit such Bantu to be in such area for a period and purpose indicated by him. Any application for such permission shall, where that is practicable, be made through the office of the Bantu affairs commissioner of the area in which such Bantu resides."

From the provisions thereof, it is clear that the said regulation was intended to apply only in the case where a Bantu resides elsewhere and merely desires to visit the prescribed area for a particular purpose and for a limited period of time. It was not intended to apply to a Bantu who ordinarily resides, or intends so to reside, in a prescribed area.

Counsel for the respondent also drew attention to the fact that, when section 10(1) of the Act was substituted by section 47 of Act 42 of 1964, the words "after lawful entry" were introduced in paragraph (c) of the section, and he contended that that was indicative of permission being required in order to qualify under paragraph

(c). I cannot agree. It seems to me that, inasmuch as there is at present no provision in the Act prohibiting a Bantu (other than a foreign Bantu, as to which see section 12 of the Act) from entering a prescribed area, the requirement of lawful entry in section 10(1) (c) could only have been introduced in order to meet the case of a person who does require permission to enter such an area, namely a foreign Bantu.

I have already mentioned that the Alexandra Regulations require that only the applicant for a residential permit under Regulation 5 must be qualified under section 10(1) (a) (b) or (d) of the Act to be within the prescribed area when he applies for the permit. Nothing is said about his dependants having to be so qualified under section 10(1) (c). That is of significance for it accords with the reasoning above, i.e., the intention is that if the residential permit is granted covering them, those falling within the dependants mentioned in section

10(1) (c), including the wife, would then qualify under that provision to remain in the prescribed area.

We were not referred to any other statutes or regulations bearing on the problem.

For the reasons aforestated, I have come to the conclusion that it is not necessary that, before a residential permit can be granted under the Alexandra Regulations for second appellant to reside there with first appellant, she must have qualified in terms of section 10 (1) (c) of the Act to be in the prescribed area, and that, provided the second appellant is granted permission, in terms of the Alexandra Township Regulations, to occupy a site in the said township, she qualifies to remain in the West Rand prescribed area, in terms of section 10(1) (c) of the Act, if and for as long as she resides with her husband on that site. She then does not require any permission, either in terms of Act 25 of 1945 or in

terms...../27

terms of the aforementioned Influx Control Regulations, to remain in the said area. It appears to me that that was also the view taken by WATERMEYER, J., in S v Mlisa, 1967(2) S A 397 (C) at p 398 D-E.


In view of the fact, mentioned earlier in this judgment, that the question of law as formulated for our decision does not clearly raise the questions which in fact were debated before us, I prefer not to make a declaration on the question as formulated, but rather to make a declaration on the questions which were debated and, in making such declaration, to refer specifically to the first and second appellant and not to Bantu in general. It is accordingly declared that

it is not necessary that, before a residential permit can be granted under the Alexandra Regulations for second appellant to reside there with first appellant, she must have qualified in terms of section 10(1) (c) of the Act to remain in the prescribed area, and that,

provided:..../28

provided the second appellant is granted permission, in terms of the Alexandra Township Regulations published by the Administrator (Administrator's Notice No 760 of 30 September 1964) to occupy a site in the Alexandra Township, she qualifies to remain in the West Rand prescribed area, in terms of section 10(1) (c) of Act No 25 of 1945, if and for as long as she ordinarily resides with the first appellant on that site.

No other order is made.

  
G.V.R.MULLER, J.A.

WESSELS, J.A.     )  
TROLLIP, J.A.     ) Concur.  
KOTZÉ, J.A.       )  
VAN WINSEN, A.J.A.)