THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 873/2022

In the matter between:

UBUHLEBEZWE MUNICIPALITY **APPELLANT**

and

HIRALALL RAMSUNDER **RESPONDENT**

Neutral citation: *Ubuhlebezwe Municipality v Ramsunder* (Case no 873/2022) [2023] ZASCA 165 (1 December 2023)

Coram: GORVEN, MEYER and WEINER JJA and CHETTY and UNTERHALTER AJJA

Heard: 10 November 2023

Delivered: 1 December 2023

Summary: Interdict – Final – Whether clear right established.

Interpretation – National Building Regulations and Building Standards Act 103 of 1977 – s 4(1) read with the definitions of ‘erection’ and ‘erect’ in s 1.

ORDER

On appeal from: Kwa-Zulu Natal Division of the High Court, Pietermaritzburg (Phoswa AJ, sitting as court of first instance):
The appeal is dismissed with costs.

JUDGMENT

Meyer JA (Gorven and Weiner JJA and Chetty and Unterhalter AJJA concurring):

[1] The appellant, Ubuhlebezwe Municipality (the municipality), initiated motion proceedings in the Kwa-Zulu Natal Division of the High Court, Pietermaritzburg (the high court) against the respondent, Mr Harilall Ramsunder (Mr Ramsunder), for an order interdicting him 'from carrying out any building operations and/or renovations and/or improvements and/or restoration to the immovable property' described as Erf 1, Stuarts town, situated at the corner of Main Road and Railway Street, Ixopo, Kwa-Zulu Natal (the property). On 2 February 2022, the high court (*per* Phoswa AJ) dismissed the application for a final interdict, with costs, including those of two counsel. The appeal is with leave of the high court.

[2] First, the background facts.[1] Mr Ramsunder had, at the time the proceedings were initiated, been in occupation of the property for approximately twenty-five years, since 1996. The property was initially owned by Transnet Ltd (Transnet). Mr

[1] Insofar as there are material disputes of fact on the papers, I must accept the facts alleged by Mr Ramsunder 'unless they constituted bold or uncreditworthy denials or were palpably implausible, far-fetched or so clearly untenable that they could safely be rejected on the papers. . . A finding to that effect occurs infrequently because courts are always alive to the potential for evidence and cross-examination to alter its view of the facts and the plausibility of the evidence'. *Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd* [2016] ZASCA 119; [2016] 4 All SA 311 (SCA); 2017 (2) SA 1 (SCA) at 18A-B. That stringent test has not been satisfied *in casu*.

Ramsunder's occupation of the property during 1996 arose from a lease agreement concluded between him and Transnet. The lease was to endure for an initial period of three years up to 1999, and thereafter upon renewal, for a further period of three years from 1999 to 2002.

[3] With Transnet's approval, Mr Ramsunder effected improvements to the property to house a supermarket, liquor store and a fruit and vegetable business. He caused the old buildings on the property to be demolished and new buildings were erected to house his businesses. The municipality approved the plans and specifications.

[4] Although Mr Ramsunder had been involved in negotiations to acquire ownership of the property, Transnet, unbeknown to him, sold the property to the predecessor of the appellant, the Ixopo Transitional Local Council. Ownership passed to the municipality on 25 May 2000. A new lease agreement was concluded between the municipality and Mr Ramsunder, in terms of which he continued to occupy the property.

[5] Negotiations ensued between Mr Ramsunder and the municipality with the aim that he acquire ownership of the property. Pursuant to an agreement in principle that he would purchase the property from the municipality for an amount of R450 000, the municipality granted him written authority to further improve the property. After the architectural plans, required by law, had been drawn and approved by the municipality, Mr Ramsunder caused a new supermarket, a warehouse, shops under the supermarket and steel structures over an existing store, a yard and taxi area to be constructed, comprising a total area of approximately 3 530m².

[6] Finally, on 12 February 2004, a written sale agreement was concluded between the municipality and Mr Ramsunder for a total purchase consideration of R450 000. Prior to the passing of ownership to Mr Ramsunder, at a full council meeting of the municipality held on 4 February 2005, it was resolved:

‘1) That the sale of Spoornet Property, Portion A of Erf 1 and B of Erf 2 situated in Stuartson, Ixopo to Mr. H. Ramsunder was improper and illegal since it was in contrast with the objects of acquiring the property.

2) That the sale should be stopped and cancelled immediately.

3) That the Municipal Manager does the necessary to cancel the sale and advise Mr. H. Ramsunder of the council decision.’

Mr Ramsunder disputed the validity of the municipality’s unilateral attempt to cancel the sale.

[7] The relationship between Mr Ramsunder and the municipality has become acrimonious since then. Matters could not be resolved, and on 20 September 2005, he commenced action proceedings in the high court, in which he claimed:

‘An order compelling the Defendant to take all steps necessary to transfer the properties referred to in Clause 1 of the Memorandum of Sale, dated 12 February 2004, between the Plaintiff and the Defendant, to the Plaintiff and to sign all documents and to take all steps necessary to give effect to this order within 30 days from the date of this order, failing which the Sheriff be and is hereby authorised and directed, to take all such steps and to sign all such documents on behalf of the Defendant to give effect to this order.’

[8] The municipality filed a plea in which it alleged that the sale is ‘voidable and unenforceable’ on grounds that are not presently relevant. It also instituted a conditional counter-claim in which it, *inter alia*, claimed Mr Ramsunder’s ejectment from the property. It denied the existence of a lease between itself and Mr Ramsunder, as alleged by him. Mr Ramsunder’s particulars of claim were then amended, to claim a lien based on the improvements which he had effected to the property. For reasons that are not presently relevant, Mr Ramsunder – according to him, erroneously – agreed to an order that the sale be declared invalid and of no force and effect. His enrichment claim and the municipality’s claim for his eviction were postponed *sine die*, and are presently pending.

[9] During July 2021, widespread civil unrest started in Kwa-Zulu Natal and spread to Gauteng. It was accompanied by egregious loss of life, public violence, burglary and malicious damage to property. Mr Ramsunder was one of the unfortunate victims of the widespread unrest. The buildings on the property from which he was conducting his businesses were damaged and he could no longer

conduct any business from these premises. It was imperative for him to undertake remedial construction to restore the buildings and recommence operating the businesses he had conducted. He had suffered great financial loss. His businesses employed approximately 90 persons and they have been left unemployed.

[10] This gave the municipality another arrow in its bow to resist Mr Ramsunder's enrichment claim. It maintained that the buildings on the property had been destroyed and burnt to the ground. Mr Ramsunder, on the other hand, presented evidence that although the property could not be occupied, some of the buildings were not damaged or the damage was minimal, and others were partially damaged.

[11] In order to curtail further losses, Mr Ramsunder engaged the services of a construction company, RockSteel, to undertake the required remedial construction to restore the buildings on the property to their original state, in accordance with the previously approved plans and specifications. Mr Ramsunder's evidence was as follows: that the municipality was aware of the damage to the property from at least 13 July 2021, when its officials conducted inspections of the extensive damage to the town; the municipality was aware since 3 September 2021 that remedial construction works were being undertaken at the property; no municipal inspectors attended the property and inspected the building construction from time to time; the remedial construction works were effected strictly in accordance with the approved plans and specifications; and that structural works were undertaken under the supervision of engineers employed by RockSteel. This evidence stands uncontroverted. No evidence was presented, *inter alia*, to the effect that there were any specifications originally approved for the construction of the buildings on the property that are outdated or no longer conform to best engineering and construction practice or principles.

[12] Surprisingly, the municipality commenced the application proceedings, being the subject of this appeal, by way of urgency in the high court. Its application was issued by the registrar of the high court on 28 September 2021, and the matter was set down for hearing on 1 October 2021, affording Mr Ramsunder insufficient opportunity to oppose the application for interim relief. He thus only opposed the

grant of final relief. One would have expected 'a good constitutional citizen'[2] rather to have sent its municipal inspectors to attend the property and inspect the building construction from time to time. If there were compelling reasons to require amendments to the originally approved plans and specifications, to tell Mr Ramsunder so and offer to re-approve the originally approved plans and specifications.

[13] Why then did the municipality instead rush to court to obtain an interdict? Mr Ramsunder's answer to this question:

'More disconcerting is the fact that the Applicant has tried to create the impression that I am a recalcitrant occupant who has no regard for the law. This is simply not true. To the contrary, it is the Applicant who is being opportunistic in attempting to constructively evict me due to the unforeseen unlawful riots that occurred. It does so in circumstances where it previously took no action to resolve the dispute between us, presumably because it was aware that it is liable to compensate me for the building I constructed before it is entitled to an order that I relinquish my possession of the leased premises.

. . .

The irresistible impression is that the Applicant intends on obtaining an indefinite interdict to obstruct my right to remain on and use the property solely to bolster its position in the pending litigation in which the parties' rights will be determined.'

[14] There are three requisites for the grant of a final interdict, all of which must be present. They are: (a) a clear right enjoyed by the applicant; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy available to the applicant. These principles are trite and require no citation of authority.

[15] The clear right upon which the municipality sought to rely, emanates from s 4(1) read with the definitions of the words 'erection' and 'erect' in s 1 of the National Building Regulations and Building Standards Act 103 of 1977 (the Act). Section 4(1) stipulates:

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[2] To borrow the phrase used by Cameron J in *Merafong City Local Municipality v AngloGold Ashanti Limited* [2016] ZACC 35; 2017 (2) BCLR 182 (CC); 2017 (2) SA 211 (CC) para 60.

'No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act.'

The words 'erection' and 'erect' are defined, thus:

'"erection" in relation to a building, includes the alteration, conversion, extension, rebuilding, re-erection, subdivision of or addition to, or repair of any part of the structural system of, any building; and "erect" shall have a corresponding meaning.'

[16] The municipality contended that Mr Ramsunder was required to have new plans and specifications drawn and approved by the municipality, prior to the commencement of the remedial construction works on the property. Mr Ramsunder, on the other hand, contended that the 2004 approved plans and specifications met the requirement of s 4(1). The remedial construction works were effected strictly in accordance with those approved plans and specifications. The high court agreed with Mr Ramsunder and concluded that the municipality has not established a clear right that required protection by way of a final interdict.

[17] An interpretative analysis of s 4(1), read with the pertinent definitions in s 1 of the Act, must follow the now well-established triad of text, context and purpose.[3] 'It is an objective unitary process where consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. The approach is as applicable to taxing statutes as to any other statute. The inevitable point of departure is the language used in the provision under consideration.'[4] 'Most words can bear several different meanings or shades of meaning and to try to ascertain their meaning in the abstract, divorced from the broad context of their use, is an unhelpful exercise'.[5] 'One should not stare blindly at the black-on-white words, but try to establish the meaning and implication of what is being said. It is precisely in this process that the

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[3] *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA).

[4] *Commissioner for the South African Revenue Service v United Manganese of Kalahari (Pty) Ltd* ZASCA 16; 2020 (4) SA 428 (SCA), para 8.

[5] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 25 (*Endumeni*).

context and surrounding circumstances are relevant.'[6] 'Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the purpose of the document'.[7]

[18] The manifest purpose of s 4(1) becomes clear when the provision is placed in proper perspective, and the context in which it was made is considered. The purpose of the Act is '[t]o provide for the promotion of uniformity in the law relating to the areas of jurisdiction of local authorities; for the prescribing of building standards; and for matters connected therewith'. The Act provides, *inter alia*, for applications to local authorities in respect of erections of buildings;[8] appointment of building control officers by local authorities,[9] who, in turn, *inter* alia, shall (a) make recommendations to a local authority, regarding any plans, specifications, documents and information submitted to the local authority in an application in respect of the erection of a building, (b) ensure that any instruction given in terms of the Act by a local authority be carried out, (c) inspect the erection of a building, and any activities or matters connected therewith, in respect of which approval was granted by a local authority, and (d) report to the local authority regarding non-compliance with any condition on which approval was granted.[10]

[19] The Act continues to provide for the approval by local authorities of applications in respect of the erection of buildings once the local authority has considered the recommendations of the building control officer and is satisfied that the application complies with the requirements of the Act and any other applicable law;[11] refusal by local authorities to grant approval of applications in respect of the erection of buildings if it is not satisfied that the application complies with the

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[6] In *Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd and Others* [2018] ZASCA 165; 2019 (3) SA 441 (SCA) para 16 footnote 6, Ponnan JA provided the above-quoted loose translation of the *dictum* - '. . . dat mens jou nie moet blind staar teen die swart-op-wit woorde nie, maar probeer vasstel wat die bedoeling en implikasies is van dit wat gesê is. Dit is juis in hierdie proses waartydens die samehang en omringende omstandighede relevant is . . .' - by Olivier JA in *Plaaslike Oorgangsraad van Bronkhortspruit v Senekal* 2001 (3) SA 9 (SCA) para 11.

[7] *Endumeni* para 18.

[8] Section 4.

[9] Section 5.

[10] Section 6(1).

[11] Section 7(1).

requirements of the Act and any other applicable law,[12] or if it is satisfied that the building to which the application in question relates is to be erected in such manner or will be of such nature of appearance that (a) the area in which it is to be erected will probably or in fact be disfigured thereby, (b) it will probably or in fact be unsightly or objectionable, (c) it will probably or in fact derogate from the value of adjoining or neighbouring properties, or (d) it will probably or in fact be dangerous to life or property.[13]

[20] Building control officers or any other person authorized thereto by the local authority are obliged and empowered to enter any building or land at any reasonable time to inspect the approved construction works to determine whether there is compliance with the statutory prescripts and conditions of approval.[14] A person appointed to design and to inspect the erection or installation of the structural, fire protection, or fire installation system of a building is, upon completion of the erection and installation of such system, obliged to submit a certificate to the local authority, indicating that the system has been designed and erected or installed in accordance with the approved application to erect the building.[15] Unless the local authority issues a temporary certificate of occupancy, a newly constructed building may not be occupied unless the local authority issues a certificate of occupancy. It will issue such certificate if it is of the opinion that the building has been erected in accordance with the provisions of the Act and the conditions on which approval was granted.[16] The Act vests local authorities with various other powers – such as the imposition of various conditions and prohibiting the erection or ordering the demolition of buildings in certain circumstances[17] – which require no further elaboration here.

[21] Section 4(1) thus forms part of a suite of legislative stipulations providing for municipal approval, oversight, and sign off on buildings that are safe, sound and aesthetically acceptable. Indeed, the legislature has cast the net for municipal authorisation wide in defining ‘erect’ in relation to a building, as it has done in defining a ‘building’. The evident intention with that is to ensure that the erection of

[12] Section 7(1)*(b)*(i).
[13] Section 7(1)*(b)*.
[14] Sections 6(1)*(c)* and 15.
[15] Section 14 (2A).
[16] Section 14(1)*(a)*.
[17] See, for example, sections 10-12.

all buildings (within the wide meaning ascribed to that noun) has been done in accordance with approved plans and specifications, even if, for example, the intended construction constitutes a mere re-erection of a pre-existing building that had originally been erected without the legally required municipal authorisation. Conversely, it could never have been the intention, as the municipality would have it, that new plans and specifications need to be submitted to and approved by a local authority prior to the commencement of remedial construction works being undertaken, in circumstances where the municipality had previously approved the identical plans and specifications, in accordance with which the remedial construction works are to be carried out, and in the absence of any suggestion that the local authority would have imposed amended or additional conditions.

[22] Indeed, the facts herein demonstrate the absurdity that would result from a contrary interpretation of s 4(1). It would amount to a mere *brutum fulmen* – an exercise in futility – to require the same application in respect of the same building to be submitted to the local authority each time an event, such as the 2021 riots, results in damage to the building, merely for an identical authorisation then to be issued to undertake the remedial construction works in accordance with the originally approved plans and specifications. Would the approach of the municipality apply to less serious damage, such as borer damage to a roof structure? Such insensible and unbusinesslike results are not to be preferred.

[23] The municipality has thus failed to show that the clear right requisite for the grant of a final interdict is present. In addition, its application appears to have an ulterior motive.

[24] In the result:
The appeal is dismissed with costs.

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P MEYER
JUDGE OF APPEAL

Appearances

For appellant:	M Pillemer SC with M Mbonane
Instructed by:	Tembe Kweswa Nxumalo Inc., Durban Maduba Attorneys Inc., Bloemfontein
For respondent:	No appearance
Instructed by:	Udesh Ramesar Attorneys, Pietermaritzburg Symington De Kok Attorneys, Bloemfontein