



**IN THE HIGH COURT OF SOUTH AFRICA,**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case Number: 4140/2020

In the matter between:

**MASILONYANA LOCAL MUNICIPALITY**

Applicant

And

**LETSHETLO KOKOANE AND OTHERS**

Respondents

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**HEARD ON:**

This application was determined on the basis of written arguments instead of an oral hearing.

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**JUDGMENT BY:**

DANISO, J

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**DELIVERED ON:**

This judgment was handed down electronically by circulation to the parties' representatives by way of email and by release to SAFLII. The date and time for hand-down is deemed to be 14H00 on 08 MARCH 2021.

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[1] The respondents seek leave to appeal the judgment and the order that I made on 10 June 2021 in terms of which I confirmed the *rule nisi* granted by Mbhele, J on 28 October 2020.

- [2] The precursor of the application was an urgent application in terms of which on 28 October 2020 Mbhele J granted a *rule nisi* calling upon the respondents to show cause on 10 December 2020 why an order interdicting and restraining the respondents from erecting and occupying structures on the applicant's land and from trespassing on the said land (Part A) should not be made final pending the final adjudication of an eviction application (PART B).
- [3] After various postponements (10 December 2020, 28 January 2021, 15 April 2021 and 13 May 2021) both the application for the determination of the return date and the eviction proceedings served before me on 13 May 2021 the judgment was handed down on 10 June 2021.
- [4] Written heads of argument were handed in by concurrence of the parties for this application to be determined without oral hearing, I don't deem it necessary to rehash them verbatim in this judgment except to refer to the relevant parts thereof.
- [5] The respondents' grounds for leave to appeal are embodied in a lengthy notice of application for leave to appeal containing about 9 grounds which are essentially that: the court should not have entertained and decided the urgent eviction application but ought to have dismissed it for lack of urgency with costs; the court should not have made a final order for the eviction of the respondents but ought to have treated the matter as an interim order pending the final determination of the final order by another court; the court dealt with the confirmation of the interim order (PART A) and failed to decide the eviction application (PART B) and it ought to have considered and decided both. (Paragraphs 1 to 3).
- [6] As regards the issue of urgency or the absence thereof, the respondents' argument in this regard is misconstrued. A court is not entitled to dismiss an application where urgency has not been established but to strike the matter from the roll. As correctly pointed out by the applicant's counsel at the time when this application was heard the issue of urgency was moot, Mbhele J had

already determined in the urgent court that the matter was urgent. See paragraph 3 of the interim order. The respondents have proffered contradictory averments relating to the hearing of the eviction proceedings. It is submitted that the court should have only dealt with the proceedings relating to the confirmation of interim order pending the final determination of the eviction order by another court. It is also argued the court should have dealt with both the confirmation of the interim order and the eviction application. The submissions are nonsensical. It was common cause that the issues to be determined were in relation to both the confirmation of the interim order and eviction proceedings. See page 1 to 2 at paragraph 1 to 2 of the applicant's heads of argument<sup>1</sup> and page 1 at paragraph 1 of the respondent's written heads of argument.<sup>2</sup>

- [7] The rest of the grounds for appeal, paragraph 4 to 9 are merely a regurgitation of the submissions made at the hearing of this matter. I'm of the view that in my written judgment I have addressed the issues raised in these grounds and in that regard, I'm not persuaded that there are reasonable prospects of succeeding with these grounds on appeal.
- [8] The omission of the dates upon which the respondents are to vacate the land and the date on which the eviction order may be carried out by the Sheriff in the event of the respondents' failure to vacate the land was an oversight. I'm thus inclined to vary the order to be in line with my conclusions in paragraphs 14 to 18 of my judgment.
- [9] In the result the following order is made:

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<sup>1</sup> "This is an opposed application for eviction...the applicant is applying for the confirmation of the *rule nisi* issued on 28 October 2020 and the relief as set out in Part B of the Notice of Motion.

<sup>2</sup> "This matter, we state from the outset it involves two critical issues namely: (a) the confirmation of the rule nisi and (b) the determination of the eviction application as found in Part B of the Notice of Motion..."

1. The application for leave to appeal to the Supreme Court of Appeal or the full bench of this division against my judgment granted on 10 June 2021 is dismissed.
2. In terms of Rule 42 (1)(b) of the Uniform Rules of Court the order granted on 10 June 2021 is corrected by the insertion of paragraph “3” as follows:

“3. Any person forming part of the Respondents occupying any home, dwelling, abode, shack and/or a structure on the land described as the Remaining extent of the farm number 720, Brandfort Townlands, Brandfort Regional Division, Free State Province, are hereby ordered to demolish, remove any structures and to vacate the said land by the 08<sup>th</sup> of April 2022, alternatively, the Sheriff of this court is authorized to carry out the eviction of any person forming part of the Respondents and to demolish and remove any home, dwelling, abode, shack and/or a structure on the said land.”

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**NS DANISO, J**

Counsel for the respondents: Adv. R. Ozoemena  
UFS LAW CLINIC  
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Counsel for the applicants: Adv. L.A. Roux  
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