REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

CASE NO: 23848/2013

DATE: 11 JULY 2013

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

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DATE SIGNATURE

In the matter between

THE ZOO LAKE BOWLING CLUB APPLICANT

And

CITY OF JOHANNESBURG PROPERTY COMPANY (SOC) LTD 1st RESPONDENT

CITY OF JOHANNESBURG METROPOLOITAN MUNICIPALITY 2nd RESPONDENT

CITY MANAGER, CITY OF JOHANNESBURG 3rd RESPONDENT

KENAKO CONSULTING (PTY) LTD 4th RESPONDENT

J U D G M E N T

KATHREE-SETILOANE J:

[1] The applicant seeks interdictory relief as a matter of urgency for an interdict restraining the first to third respondents from taking any steps to have the applicant evicted from the premises situated on Portion 37 Braamfontein 53 I R, which the applicant currently occupies and on which it conducts its activities as the Zoo Lake Bowling Club.

[2] The applicant also seeks to interdict the first, second and third respondents from concluding a lease agreement with the fourth respondent in respect of the premises which the applicant currently occupies pending the final determination of review proceedings to be instituted by the applicant within 14 days of the granting of such order. The applicant is Zoo Lake Bowling Club.

[3] On 14 June 2013 it received a notice to vacate the premises by 14 July 2013. In the letter requiring the applicant to vacate the premises, the second respondent informed the applicant that the facility was awarded to a successful bidder, and that the applicant was therefore required to vacate the premises. Significantly, in this regard, is that the applicant had also tendered for the lease of the premises. On the same day, the applicant addressed a letter to the second respondent seeking information about the award of the tender and calling upon the second respondent to withdraw its notice to evict, pending a review of the tender process.

[4] On 26 June 2013 the applicant received a letter from the second respondent informing it that the tender had been awarded to the fourth respondent. The

applicant was also told that should it require further information regarding the award of the tender it was required to apply in terms of the Promotion of Access to Information Act 2 of 2000, ("PAIA").

[5] On 1 July 2013, the applicant sent a letter advising the second respondent that it intended to bring an application for an interdict and that pending the finalization of such application, the second respondent was required to desist from taking any steps to evict the applicant and to refrain from concluding a lease agreement with the fourth respondent.

The second respondent replied on the same day, stating that it had no intention of suspending the conclusion of an agreement with the fourth respondent or undertaking not to evict the applicant from the premises.

[6] On 4 July 2013, as a matter of extreme urgency, the applicant launched an application for an interim interdict pending the review of tender request for proposal RFP 16/2012. The matter was set down for hearing on 11 July 2013, and the respondents were given until Monday 8 July 2013 to file an answering affidavit. The fourth respondent, against whom no relief or costs were sought, and to whom the tender was awarded, nevertheless filed its answering papers on 10 July 2012 at 10:00 and first, second and third respondents filed their answer this morning at 10:00.

[7] It has become clear from the answering affidavit of the first, second and third respondents that the lease agreement with the fourth respondent had already been concluded on 4 July 2012 and this was communicated to counsel for the applicant on 5 July 2013, albeit informally by Mr Makhubela, the attorney for the first, second and third respondents. Accordingly, the relief sought by the

applicant in prayer 2.3 of the notice of motion interdicting the first, second and third respondents from concluding a lease agreement with the fourth respondent has become academic.

[8] This, notwithstanding the applicant was never formally advised of this by the first, second and third respondents' attorney prior to the hearing of the matter this morning when the first, second and third answering affidavits were handed up to the court, even though as late as 8 July 2012, the applicant's attorney requested the first, second and third respondents to confirm whether a lease had in fact been concluded, and when it was concluded - having been informed informally by Mr Makhubela that he believed that the lease had already been concluded on 5 July 2013. In their letter of reply, dated 10 July 2013, the first, second and third respondents fail to respond to this request despite knowing full well, by this date, that the lease with the fourth respondent had already been finalized on 4 July 2012.

[9] In the same letter of 10 July 2013 the first, second and third respondents denied that there was any urgency in the matter because despite the notice of eviction of 14 June 2013 to the applicant, it was made clear to the applicant that they did not intend to evict the applicant through extra judicial means, i.e. without a court order.

[10] In the current constitutional dispensation, section 26 of the Constitution makes it unlawful for a party carrying out an eviction to do so without a court order. This principle, in my view, will apply equally to a commercial eviction and an eviction of a non-profit organisation or a public benefit organisation from premises which they occupy, for the purposes of the non-profit of public benefit

activities which they carry out. Accordingly, and in view of the fact the eviction of the applicant is not imminent, and that the interdictory relief sought in relation to the conclusion of the lease agreement by the fourth respondent has become academic, the applicant's application for interim interdictory relief must fail for lack of urgency.

[11] Mr Kung on behalf of the applicant has strongly urged me not to make a costs order against the applicant in the event of finding that the application lacks urgency, firstly, because the applicant is a public benefit organization with very limited funds, and secondly because of the first, second and third respondents' conduct in failing to apprise it of the requisite undertakings and information in relation to the conclusion of the lease with the fourth respondent.

[12] On this score, I am of the view that the applicant was entitled to seek the relief sought in prayer 2.3 of the notice of motion, and the court may very well have entertained argument on an urgent basis on the merits, and on the relief sought in prayer 2.3 had the issue not become academic. The court is accordingly of the view that the first, second and third respondents had acted irresponsibly and disingenuously in not advising the applicant formally, before today, that the agreement with the fourth respondent had already been finalized on 4 July 2013, the very day on which the application was launched on an urgent basis.

[13] Therefore, I see no reason why the applicant should be mulcted with the costs of this application, as it was directed at vindicating its constitutional rights to fair administrative justice.

In the premises I make the following order:

1. The application is struck from the role for lack of urgency.
2. The first, second and third respondents are ordered to pay the costs of the applicant jointly and severally the one paying the other to be absolved.

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F KATHREE-SETILOANE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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DATE OF HEARING:	11 July 2013
APPLICANT'S COUNSEL:	Adv. S Kuny
APPLICANT'S ATTORNEYS:	Schindlers Attorneys
FIRST, SECOND & THIRD RESPONDENT'S COUNSEL:	Adv. P.G. Seleka
FIRST, SECOND & THIRD RESPONDENT'S ATTORNEYS:	Mkhabela Huntley Adekeye Inc.
FOURTH RESPONDENT'S ATTORNEYS:	Siva Chetty Attorneys
FOURTH RESPONDENT'S COUNSEL:	Adv. V Soni

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