



IN THE HIGH COURT OF SOUTH-AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 044138/2022

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

DATE 16. 02. 2023.

SIGNATURE

IN THE MATTER BETWEEN:

LET'S CARE HOUSING
(PTY) LIMITED

APPLICANT

AND

THUTLWA VICY MAFAPHLA

1ST RESPONDENT

MAPHANGA MANQOBA BOY

2ND RESPONDENT

MAKHAYA SIPHO ALLI

3RD RESPONDENT

MANGANYI MANQOBO DONALD

4TH RESPONDENT

MOREMI MASILO LUCIA

5TH RESPONDENT

M.M TLADI AND THE
233 OTHERS LISTED ON
ANNEXURE "A" TO THE
NOTICE OF MOTION

6TH TO 223RD RESPONDENTS

THE FUTHER UNLAWFUL OCCUPIERS
OF THE UNITS LISTED IN ANNEXURE
"A" TO THE NOTICE OF MOTON

224TH RESPONDENTS

THOSE WHO SEEK TO INVADE
THE LET'S CARE HOUSING PROJECT

225TH RESPONDENTS

THE CITY OF EKURHULENI
METROPOLITAN MUNICIPALITY

226TH RESPONDENTS

THE STATION COMMANDER
SPRINGS POLICE STATION

227TH RESPONDENTS

JUDGMENT

STRIJDOM AJ

1. The urgent relief sought by the applicant follows the order granted on 9 November 2022 by Mia J in terms of Part A of the applicant's application¹. The urgency of the application is not in dispute.

¹ Caselines: 07 - 2 to 07 - 5

2. In terms of the order of 9 November 2022 inter alia: -

2.1. A rule nisi with immediate effect was granted with a return date of 25 January 2023;

2.2. an order of substituted service was granted;

2.3. the draft notice² in terms of section 4(2) of the Prevention of Illegal Occupation of Land Act 19 of 1998 ("the PIE Act") was authorised and the service of the unissued notice was condoned.

3. The order granted on 9 November 2022 was served by the Sheriff on 15 November 2022 at the applicant's immovable property by service: -

3.1. on the second respondent personally

3.2. on one of the occupiers personally

3.3. by affixing copies of the application at various parts of the applicant's immovable property.

4. In terms of the applicant's notice of motion the respondents were required to oppose Part B of the applicant's application by 12h00 on 11 November 2022 and to deliver an answering affidavit by 12h00 on 18 November 2022. None of the respondents have opposed the application or delivered an answering affidavit.

5. On the 14th of December 2022 the respondents filed two special pleas without filing a notice to oppose or an answering affidavit³.

² Caselines: 02 - 1

³ Caselines: 002 - p5 - 10

6. On 24 January 2023 the applicant filed a supplementary founding affidavit⁴.

THE FIRST SPECIAL PLEA: LIS ALIBI PENDENS

7. The onus lies upon a party who wishes to raise a *lis pendens* to allege and prove the following:

(a) There must be litigation pending;

(b) the other proceedings must be pending between the same parties on their privies;

(c) the pending proceedings must be based on the same cause of action;

(d) the pending proceedings must be in respect of the same subject matter. In order to establish whether the subject matter is the same regard must be had to the pleadings and to the evidence.

8. It was submitted by counsel for the respondents that the applicant and the respondents are currently embroiled in two similar matters based on the same cause of action in respect of the same subject matter at the Springs Magistrate's Court under Case numbers 2483/ 2022 and 2485/ 2022.

9. No case records or pleadings of the aforementioned cases were placed before me to prove the requirements of *Lis Alibi Pendens*.

10. The matter presently before me is the return date of an interdict granted by Justice Mia on the 9th of November 2022. The eviction application is not presently before me. Justice Mahalelo ordered, on 6 December 2022, the City of

⁴ Caselines: 01 – p136

Ekurhuleni to file a report, whereafter the eviction element of this application will be enrolled⁵.

11. In my view there is no element of *Lis Alibi Pendens* arising for present purposes. The eviction element of the application will be dealt with in due course.

THE SECOND SPECIAL PLEA

12. The respondents alleges that the deponent in this application lacks the necessary locus standi to litigate on behalf of the applicant.

13. It was submitted by respondents that the deponent failed to attach the company resolution authorising her to depose to an affidavit as alleged in paragraph 1.2 of her founding affidavit and neither did she annexed her appointment letter as a managing agent or power of attorney thereof.

14. On 25th January 2023 the applicant filed a Power of Attorney wherein the applicant resolves that Ingrid van Biljon is authorised to depose to all affidavits⁶.

15. On 25th January 2023 the applicant filed a Resolution of The Board of Directors authorising the appointment of Zebri Properties as property managers for Sondela Phase 1 and 2. The Board Chairperson Ms B Masukume was delegated to sign any contracts or documents relating to the management of Sondela Village Phases 1 and 2.

16. The mechanism for a party to impugn the locus standi of another party is to file a notice in terms of Rule 7 of the Uniforms Rules of Court. No such notice has been filed. Notwithstanding this, the applicant filed a resolution prior to the hearing of this application.

⁵ Caselines: 010 - 1

⁶ Caselines: 02 - 14

17. In my view there is no merit in the second special plea of the respondents.
18. The respondents have purported to file a special plea and did not file an answering affidavit.
19. Having considered the uncontested facts placed before me and the submissions made by the parties, I am of the view that a proper case has been made out by the applicant for the final relieve sought in Part A of the notice of motion.
20. In the result the court dismissed the special pleas and the Draft Order marked " X" is made an order of court.



STRIJDOM AJ
ACTING JUDGE OF THE HIGH
COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Heard on: 25.01.2023.

Judgement: 16.02.2023.

Appearances:

For Applicant: L Peter
Instructed by: Vermaak Marshall
Wellbeloved Inc.

For Respondents: Ramalekana Inc.