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**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: 5189/2020P

In the matter between:

**KWADUKUZA MUNICIPALITY**

**APPLICANT**

and

**AHMED EBRAHIM MAHOMEDY**

**FIRST RESPONDENT**

**ISMAIL EBRAHIM MAHOMEDY**

**SECOND RESPONDENT**

**ELITE CARS**

**THIRD RESPONDENT**

**UNLAWFUL OCCUPIERS: ERF [....] KWADUKUZA  
[....] K [....] G [....] ROAD, KWADUKUZA**

**FOURTH RESPONDENT**

**Coram: Koen J**

**Heard: 27 February 2023**

**Delivered: 17 March 2023**

**ORDER**

Judgment is granted in the following terms:

1. It is declared that it is unlawful for the respondents or any person to conduct the following activities at the property more fully described as Erf [...] Stanger (KwaDukuza) at [...] K [...] G [...] Road, KwaDukuza (“the property”):

- 1.1 repairing motor vehicles;
- 1.2 servicing motor vehicles;
- 1.3 otherwise attending to work on motor vehicles;
- 1.4 any activities that result in the discharge of oil onto the property; and
- 1.5 any activities allied to those in sub-paragraphs 1.1 – 1.4.

2. It is declared that all immovable structures on the property are unlawful in that no building plans have been submitted for those structures.

3. It is declared that it is unlawful to dump waste, litter and other items on the property or to permit such items to be dumped and/or stored at the property.

4. In respect of all built immovable structures on the property, the first and second respondents are ordered to demolish those built immovable structures within 40 days of the grant of this order.

5. If the first and second respondents fall to comply with the order in paragraph 4 above within the specified time period, the applicant is authorised to:

- 5.1 enter onto the property;
- 5.2 demolish all built immovable structures on the property;
- 5.3 claim from the first and second respondents, jointly and severally, the one paying the other to be absolved, the fair and reasonable costs incurred in such demolition;
- 5.4 set the matter down, on the same papers supplemented as may be necessary, for a money judgment against the first and second respondents to recover the costs contemplated in paragraph 5.3 above,

6. The respondents are interdicted from conducting the following activities on the property:

- 6.1 repairing motor vehicles;
- 6.2 servicing motor vehicles;
- 6.3 otherwise attending to work on motor vehicles;
- 6.4 any activities that result in the discharge of oil onto the property; and
- 6.5 any activities allied to those in sub-paragraphs 6.1 – 6.4.

7. The first and second respondents are ordered to take all steps necessary to restore the property to the condition it was in before the illegal activities commenced at the property and the unlawful structures were erected at the property, including, but not limited to:

- 7.1 removing all litter and waste;
- 7.2 removing all motor vehicles and vehicle parts;
- 7.3 attending to clean up and remedy all oil spillages and related environmental pollution on the property.

8. It is ordered that the first and second respondents are to report to the applicant in writing on what steps it has taken pursuant to this order within 30 calendar days of the grant of this order.

9. If the first and second respondents fail to comply with the order in paragraph 7 above to the reasonable satisfaction of the applicant, the applicant is authorised to:

- 9.1 enter onto the property;
- 9.2 attend to the remediation work outlined in paragraph 7 above or any further remediation work reasonably required;
- 9.3 claim from the first and second respondents, jointly and severally, the one paying the other to be absolved, the fair and reasonable costs incurred in effecting such remediation;

9.4 set the matter down, on the same papers supplemented as may be necessary, for a money judgment against the first and second respondents to recover the costs contemplated in paragraph 9.3 above.

10. The first and second respondents are ordered to take all steps reasonably necessary to prevent the property being used for the purposes in paragraphs 1.1 – 1.5 above and to prevent the unlawful erection of structures and / or buildings on the property, which steps must include fencing the property or taking other steps to ensure vagrants and other persons cannot readily access the property.

11. The first and second respondents are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, such costs to include the costs incurred by the applicant in procuring the reports of Mr Bundy and Mr Mendes.

## **JUDGMENT**

### **Koen J**

[1] Ownership is a conglomeration of rights and obligations. The rights include inter alia the right to possession of the res owned, the right to use it, the right to hypothecate it, etc. But an owner of a res not only has rights, but also obligations. Thus, at common law, an owner may not use property in a manner that causes harm to others. In the case of immovable property an entire body of law, commonly referred to as nuisance or neighbour law, has developed, which seeks to regulate the use of immovable property to protect the rights of neighbouring owners and occupiers. As urban areas developed, the need for the additional regulation of the development and use of immovable properties came to be recognized. Laws have accordingly been enacted, at various levels of government, to regulate the development and use of properties. These laws include, for example, the National Building Regulations and Building Standards Act 103 of 1977 (the Building Act) regulating improvements to be effected on immovable property; the National Environmental Management Act 107 of 1998 (NEMA) guarding

against environmental degradation of land; and the applicant's Spatial Planning and Land Use Management (SPLUMA) By-Law<sup>1</sup> and Problem Buildings By-Law<sup>2</sup> and the applicant's local municipality town planning scheme (the scheme),<sup>3</sup> which permit only certain uses of certain property according to their zoning.

[2] The first and second respondents (collectively referred to as 'the respondents') are the registered owners of the immovable property described as Erf [...] Stanger (KwaDukuza), situate at [...] K [...] G [...] Road, KwaDukuza (the property).

[3] The applicant maintains that the respondents have contravened provisions of: the Building Act, in having buildings on the property without approved plans, alternatively in having allowed the buildings on the property to fall into disrepair and to become dilapidated; NEMA in permitting pollution and degradation of the property; and the SPLUMA By-Law, the Problem Buildings By-Law, and the scheme in permitting the property to be used contrary to the zoning applicable to the property.

[4] It accordingly brought an application against: the respondents; Elite Cars, which conducted business on the property, as the third respondent; and unidentified unlawful occupiers of the property, as the fourth respondent, seeking the following relief, as set out in its notice of motion:

'1. It is declared that it is unlawful for the respondents or any person to conduct the following activities at the property more fully described as Erf [...] Stanger (KwaDukuza) at [...] K [...] G [...] Road, KwaDukuza ("the property"):

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<sup>1</sup> Published in Municipal Notice 106 in *KwaZulu-Natal Provincial Gazette* 2002 of 27 September 2018, and the short title is the KwaDukuza Municipality Planning and Land Use Management By-Law, 2016.

<sup>2</sup> Published in Provincial Notice 72 in *KwaZulu-Natal Provincial Gazette* 2089 of 13 June 2019, and the short title is the KwaDukuza Municipality: Problem Building By-Law, 2018.

<sup>3</sup> KwaDukuza Local Municipality Scheme, adopted by the council of the applicant on 26 June 2018 per council resolution C1006, with effective date 1 September 2018. The scheme has been replaced subsequently by the scheme adopted September 2021, and available on the KwaDukuza Municipality's Webpage: <http://www.kwadukuza.gov.za/index.php/bylaws/routedownload/land-use-21> (Accessed: 14 March 2023).

- 1.1 repairing motor vehicles;
- 1.2 servicing motor vehicles;
- 1.3 otherwise attending to work on motor vehicles;
- 1.4 any activities that result in the discharge of oil onto the property; and
- 1.5 any activities allied to those in sub-paragraphs 1.1 – 1.4.

2. It is declared that all immovable structures on the property are unlawful in that no building plans have been submitted for those structures.

3. It is declared that it is unlawful to dump waste, litter and other items on the property or to permit such items to be dumped and/or stored at the property.

4. In respect of all built immovable structures on the property, the first and second respondents are ordered to take the steps envisaged by Section 12 of the National Building Regulations and Building Standard Act, 1977 namely, to demolish those built immovable structures within 30 days of the grant of this order.

5. In the first and second respondents fall to comply with the order in paragraph 4 above within the specified time period, the applicant is authorised to:

- 5.1 enter onto the property;
- 5.2 demolish all built immovable structures on the property;
- 5.3 claim from the first and second respondents, jointly and severally, the one paying the other to be absolved, the fair and reasonable costs incurred in such demolition;
- 5.4 set the matter down, on the same papers supplemented as may be necessary, for a money judgment against the first and second respondents to recover the costs contemplated in paragraph 5.3 above,

6. The respondents are interdicted from conducting the following activities on the property:

- 6.1 repairing motor vehicles;
- 6.2 servicing motor vehicles;

- 6.3 otherwise attending to work on motor vehicles;
- 6.4 any activities that result in the discharge of oil onto the property; and
- 6.5 any activities allied to those in sub-paragraphs 6.1 – 6.4.

7. The first and second respondents are ordered to take all steps necessary to restore the property to the condition it was in before the illegal activities commenced at the property and the unlawful structures were erected at the property, including, but not limited to:

- 7.1 removing all litter and waste;
- 7.2 removing all motor vehicles and vehicle parts;
- 7.3 attending to clean up and remedy all oil spillages and related environmental pollution on the property;
- 7.4 report to the applicant in writing on what steps it has taken pursuant to this order within 30 calendar days of the grant of this order.

8. If the first and second respondents fail to comply with the order in paragraph 7 above to the reasonable satisfaction of the applicant, the applicant is authorised to:

- 8.1 enter onto the property;
- 8.2 attend to the remediation work outlined in paragraph 7 above or any further remediation work reasonably required;
- 8.3 claim from the first and second respondents, jointly and severally, the one paying the other to be absolved, the fair and reasonable costs incurred in effecting such remediation;
- 8.4 set the matter down, on the same papers supplemented as may be necessary, for a money judgment against the first and second respondents to recover the costs contemplated in paragraph 8.3 above.

9. The first and second respondents are ordered to take all steps reasonably necessary to prevent the property being used for the purposes in paragraphs 1.1 –

1.5 above and to prevent the unlawful erection of structures and / or buildings on the property, which steps must include fencing the property or taking other steps to ensure vagrants and other persons cannot readily access the property.

10. Subject to paragraph 11 below, all persons using or occupying the property for the purposes set out in paragraphs 1.1 to 1.5 are ordered to vacate the property within 14 calendar days of service of this order.

11. Service on the fourth respondent shall be by publishing this order in English and Isizulu in a newspaper circulating in the area of the property and by placing a copy of this order on a structure on the property and the 14 days shall run from the date of publication in the newspaper or placing on the structure, whichever is later.

12. The removal forthwith of any vehicles parked on a public road, which in the opinion of a traffic officer referred to in the Road Traffic Act, is likely to cause danger or obstruction to other traffic on such public road.

13. The first and second respondents, and any other respondent opposing the relief sought, are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, such costs to include the costs incurred by the applicant in procuring the reports of Mr Bundy and Mr Mendes as set out in the founding affidavit.

14. Such further and/or alternative relief as this Honourable Court may deem appropriate.'

[5] On 1 October 2020 an order was granted with the approval of the first and second respondents against the third and fourth respondents, which order: identified twenty four of the unlawful occupiers by name and joined them as the fifth to twenty-eighth respondents to the application; granted the relief in paragraphs 1, 3, 6, 10, 11 and 12 of the notice of motion against the third to twenty eighth respondents; adjourned the relief sought against the first and second respondents *sine die*; and reserved all issues relating to costs.

[6] The applicant now seeks an order, essentially as contained in the notice of motion, against the respondents.



[7] The application is opposed by the respondents on a number of grounds: they deny the applicant's allegation that there are no building plans in respect of the buildings on the property, or that the buildings have fallen into a state of disrepair and are unsafe or derelict; they deny that the site is covered in detritus and that noxious liquid waste is discharged or has been discharged in an uncontrolled manner on the property; they deny that the predominant use of the property, namely unregulated vehicle repair, is impermissible given the zoning of the property; and finally, they contend that any order granted will be ineffective as it simply will seek to achieve what the order granted against the third and fourth respondents already provides for, and which, despite attempts at enforcement, have apparently not achieved the cessation of the activities on the property, the respondents having lost control over their property. There is also a complaint that the affidavits were exchanged some time ago and that there's no evidence before the court as to the current prevailing factual position.

[8] It is convenient to start with the last point. By the very nature of litigation, decisions are made and appeals decided often years after the litigation commenced, on the factual position prevailing at the time that the affidavits were exchanged. Where conditions have changed and such change is material to the outcome of an application, leave must be obtained if required, for further affidavits to be filed. In the present matter, a supplementary founding affidavit was filed by the applicant to amplify the allegations in the founding affidavit, before the answering affidavit was filed. If there was a material change in circumstances which could affect the outcome of the application thereafter, then it was incumbent on the respondents to have adduced such evidence. The respondents have not done so. The application shall accordingly be decided on the allegations contained in the affidavits.

[9] It is common cause, or at least not seriously in dispute that: there are three structures on the property, which are identified in the founding affidavit as the 'main building', 'eastern building' and 'northern building'. Furthermore, the photographs in the founding affidavit depict these buildings, the property and activities conducted on the

property, being informal vehicle repairs, which is consistent with the broken down cars, litter and oil and/or solvents pollution visible on the photographs.

[10] The respondents however contend at the outset that their denials: of the applicant's allegations that no plans exist in respect of the structures on the property; of the use to which the property has been put requiring remediation; and the property being used contrary to its zoning, give rise to irresolvable disputes of fact which preclude final relief being granted on the affidavits.

[11] It is trite law that a mere denial of allegations in a founding affidavit does not preclude the granting of final relief. There must be a real, genuine and bona fide dispute of fact.

[12] In *Wightman t/a JW Construction v Headfour (Pty) Ltd*<sup>4</sup> Heher JA having referred to the formulation of the test for a real, genuine and bona fide dispute of fact in *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*<sup>5</sup> said:

'[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is

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<sup>4</sup> *Wightman t/a JW Construction v Headfour (Pty) Ltd and another* 2008 (3) SA 371 (SCA).

<sup>5</sup> *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E – 635C.

satisfied. I say “generally” because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.’

[13] In the founding affidavit of the applicant, the deponent, the ‘Director: Development Enforcement’ of the applicant states that:

‘According to the applicant’s records there are no building plans submitted or approved by the municipality for those structures on the property. The structures are dilapidated and dangerous. Business is conducted there in contravention of the town planning scheme. In particular, motor vehicle repair takes place there. This appears to result in the discharge of oil into the local soil and hydrology with significantly adverse environmental consequences.’

[14] In the answering affidavit the response of the first respondent is as follows:

‘The allegations contained herein are denied. The allegations are contrary to the Municipality’s own records. I refer to Annexure “B” of the founding affidavit which sets out the authorised uses of the Property.’

The answering affidavit then continues to deal with the permitted uses reflected in annexure “B” to the founding affidavit, being the zoning certificate in respect of the

property, and concludes with a statement that motor vehicle repairs fall under one or more of the categories of 'service station', 'industrial sales and service', or 'workshop', which do not require any special approval or consent.

[15] The respondents' response does not give rise to a real, genuine or bona fide dispute on the affidavits as regards the non existence of building plans in respect of all the buildings on the property.<sup>6</sup> If the respondents contend that the applicant's allegation that there are no plans was incorrect, that is a denial of a negative, in other words conveying that there are plans in respect of the buildings, then they should have produced those plans, or other evidence to prove that the plans exist.

[16] Further, the relevant part of s 12 of the Building Act provides:

'(1) If the local authority in question is of the opinion that –

- (a) any building is dilapidated or in a state of disrepair or shows signs thereof;
- (b) any building or the land on which a building was or is being or is to be erected or any earthwork is dangerous or is showing signs of becoming dangerous to life or property, it may by notice in writing, served by post or delivered, order the owner of such building, land or earthwork, within the period specified in such notice to demolish such building or to alter or secure it in such manner that it will no longer be dilapidated or in a state of disrepair or show signs thereof or be dangerous or show signs of becoming dangerous to life or property or to alter or secure such land or earthwork in such manner that it will no longer be dangerous or show signs of becoming dangerous to life or property: Provided that if such local authority is of the opinion that the condition of any building, land or earthwork is such that steps should forthwith be taken to protect life or property, it may take such steps without serving or delivering such

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<sup>6</sup> See also *Nelson Mandela Metropolitan Municipality v Greyvenouw* CC 2004 (2) SA 81 (SE).

notice on or to the owner of such building, land or earthwork and may recover the costs of such steps from such owner.’

[17] The respondents are accordingly in breach of the Building Act. Where the conduct of a respondent amounts to a violation of a statutory provision the continued violation of the statute should not be allowed.<sup>7</sup>

[18] That means that the buildings on the property are unlawful and should be demolished.<sup>8</sup> No evidence has been adduced to found any possible alternative just and equitable remedy being granted.<sup>9</sup> In the light of that conclusion it is strictly unnecessary to inquire into the state of the buildings. But if required, I would have no hesitation based on what is shown on the photographs and contained in the report of Mr Mendes (Pr. Eng.) to have concluded that they are dilapidated and structurally unsound as contemplated in s 12 of the Building Act,<sup>10</sup> and that this has not been remedied despite demand in terms of the Building Act. The material findings in Mr Mendes’ report speak for themselves. As they were not seriously disputed, they are not repeated herein.

[19] As regards the pollution of the site, the photographs speak for themselves and display accumulated rubble and rubbish and soil patently discoloured by the discharge of pollutants, probably oil from vehicles being serviced on the property. The latter is not simply a fanciful suspicion but a well-grounded reasonable apprehension supported by

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<sup>7</sup> *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE); *Bitou Local Municipality v Timber Two Processes CC and another* 2009 (5) SA 618 (C).

<sup>8</sup> *Lester v Ndlambe Municipality and another* [2013] ZASCA 95, 2015 (6) SA 283 (SCA), [2014] 1 All SA 402 (SCA).

<sup>9</sup> See *Bitou Local Municipality v Timber Two Processes CC and another* 2009 (5) SA 618 (C).

<sup>10</sup> Section 12 of the Building Act provides:

‘If the local authority in question is of the opinion that –

(a) any building is dilapidated or in a state of disrepair or shows signs thereof;

(b) any building or the land on which the building was or is being or is to be erected or any earthwork is dangerous or showing signs of becoming dangerous to life or property,

it may by notice in writing, served by post or delivered, order the owner of such building, land or earthwork, within the period specified in such notice to demolish such building or to alter or secure it in such manner that it will no longer be dilapidated or in a state of disrepair or show signs thereof or be dangerous or show signs of becoming dangerous to life or property or to alter or secure such land or earthwork in such manner that it will no longer be dangerous or show signs of becoming dangerous to life or property . . .’

the photographic evidence showing various vehicles in various states of disrepair with bonnets open to allow work to the engine compartments, on the property. This fact is also supported by the report of the expert, Mr Bundy. Although he had not done any scientific soil sample analysis, he expressed the view based on his expertise, knowledge and experience that there would be unlawful contamination.<sup>11</sup> Obviously the extent of any remediation required to restore the soil to its non-polluted state, might require soil samples to be taken and analyzed, and if remediation is not indicated, no remediation might be required. On the affidavits however the prima facie inference of pollution and environmental degradation of the property has not been countered by any evidence in rebuttal. Indeed, the relief granted previously against the other respondents was not opposed by the respondents, and accordingly the allegations of contamination are conclusive for the purposes of this application.

[20] Section 28(1) and (2) of NEMA imposes upon an owner 'an obligation to take reasonable measures' where a situation exists that 'has caused or may cause significant pollution or degradation of the environment' and such reasonable measures must 'minimise and rectify such pollution or degradation.' In addition, the applicants Problem Buildings By-Law provides that an owner may be required to 'remove all refuse from, such problem building and 'dispose of, destroy or remove any material or article accumulated, dumped, stored or deposited in any building/premises, which is refuse or waste and which is showing signs of becoming unsightly, insanitary, unhealthy or objectionable or is likely to constitute an obstruction'.<sup>12</sup>

[21] Despite demand to correct this state of affairs, the respondents have failed to do so. Such contravention must be interdicted, with suitable consequential relief.

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<sup>11</sup> See also *S v Haarburger* 2002 (1) SACR 542 (C) paras 20 to 21, where there was also not scientific evidence that the nuisance complained of, in that instance excessive noise levels, was relied upon.

<sup>12</sup> See s 8(a)(1) and 8(a)(5) of the KwaDukuza Municipality: Problem Building By-Law, 2018.

[22] As regards the zoning complaint, s 41(1) of SPLUMA By-Law<sup>13</sup> provides that the 'land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state'. It is not disputed that motor vehicle repairs are conducted on the property. The photographs certainly suggest irresistibly that this is done in an unstructured informal manner. The zoning certificate relating to the property is clear. The property is zoned INLI2 (light industry). Clause 9 of the zoning certificate deals with permitted uses. A 'vehicle repair shop' is not a permitted use under the light industry category.<sup>14</sup>

[23] The respondents argued that such use does not offend against the zoning of the property, as clause 9 of the zoning certificate permits a commercial workshop, a service station and a workshop, which they contend is what is being carried out on the property. These uses are all defined in the scheme.

[24] A 'commercial workshop' is defined in the scheme as<sup>15</sup>

'a light industrial building wherein the primary purpose is the selling of goods or services by retail and where the processes are operated specifically in conjunction with a shop or office to which the public, as customers has access. It includes such uses as a watch repairer, shoe repairer, radio/television repairer, computer repairer, electrician and may include a jobbing a printer, but excludes a garage or service station.'

[25] A 'service station', as per the scheme requires the sale of petroleum and related products and although it permits running repairs of a minor nature, lubricating and greasing and washing and cleaning it 'not include panel beating, spray painting or the

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<sup>13</sup> KwaDukuza Local Municipality Spatial Planning And Land Use Management By-Law.

<sup>14</sup> See the KwaDukuza Local Municipality Scheme, September 2021 at 132ffg and 136ffg.

<sup>15</sup> See the KwaDukuza Local Municipality Scheme, September 2021 at 226.

carrying out of body repair work, or repairs of a major nature to the engine or transmission system thereof.’<sup>16</sup>

[26] A ‘workshop’, as defined in the scheme, requires premises available for the creation, assemblage, and/or repair of artefacts, using hand-powered and table-mounted electrical machinery, and including their retail sale.’<sup>17</sup>

[27] The motor repairs conducted on the property are not ‘in conjunction with a shop or office. . .’ Indeed, there is no evidence of any ‘shop or office’ on the property. Accordingly, the activities conducted on the property cannot qualify as a commercial workshop.

[28] There is also no evidence of ‘the sale of petroleum and related products.’ The sale of petroleum and related products will require compliance with strict regulations in terms of the Petroleum Products Act 120 of 1977. The car repairs are accordingly not effected as part of operating a ‘service station.’

[29] There is also no evidence of any ‘retail sale’ of ‘artefacts’, which is required for the usage to qualify as that of ‘a workshop.’

[30] Not only is the use of the property in contravention of the applicant’s municipality scheme,<sup>18</sup> but it is also in contravention of the SPLUMA By-Law. Such contraventions must be met with an interdict.<sup>19</sup>

[31] The respondents’ attitude has been one of abdicating their primary responsibility as landowners to the applicant. The fact that an order had been granted against the remaining respondents cannot preclude an order being sought against the respondents as land owners to comply with their obligations in terms of the relevant legislation. In

<sup>16</sup> See the KwaDukuza Local Municipality Scheme, September 2021 at 229 – 230.

<sup>17</sup> See the KwaDukuza Local Municipality Scheme, September 2021 at 236.

<sup>18</sup> See the KwaDukuza Local Municipality Scheme, September 2021.

<sup>19</sup> *Huisamen & Others v Port Elizabeth Municipality* 1998 (1) SA 477 (ECD) at 483I-484B.



any event, the relief claimed in respect of the demolition of the buildings, is relief not sought and not competent against the remaining respondents and justified this application being brought in its own right.

[32] The applicant was substantially successful and there's no reason why it should not be entitled to the cost of the application. The reports of Mr Bundy and Mr Mendes were necessary and should be paid by the respondents.

[33] It follows that the following relief, which was the relief persisted with by the applicant, save that I have extended the time limit for performance in paragraph 4 below, should be granted:

1. It is declared that it is unlawful for the respondents or any person to conduct the following activities at the property more fully described as Erf [...] Stanger (KwaDukuza) at [...] K [...] G [...] Road, KwaDukuza ("the property"):

- 1.1 repairing motor vehicles;
- 1.2 servicing motor vehicles;
- 1.3 otherwise attending to work on motor vehicles;
- 1.4 any activities that result in the discharge of oil onto the property; and
- 1.5 any activities allied to those in sub-paragraphs 1.1 – 1.4.

2. It is declared that all immovable structures on the property are unlawful in that no building plans have been submitted for those structures.

3. It is declared that it is unlawful to dump waste, litter and other items on the property or to permit such items to be dumped and/or stored at the property.

4. In respect of all built immovable structures on the property, the first and second respondents are ordered to demolish those built immovable structures within 40 days of the grant of this order.

5. If the first and second respondents fail to comply with the order in paragraph 4 above within the specified time period, the applicant is authorised to:

- 5.1 enter onto the property;
- 5.2 demolish all built immovable structures on the property;
- 5.3 claim from the first and second respondents, jointly and severally, the one paying the other to be absolved, the fair and reasonable costs incurred in such demolition;
- 5.4 set the matter down, on the same papers supplemented as may be necessary, for a money judgment against the first and second respondents to recover the costs contemplated in paragraph 5.3 above,

6. The respondents are interdicted from conducting the following activities on the property:

- 6.1 repairing motor vehicles;
- 6.2 servicing motor vehicles;
- 6.3 otherwise attending to work on motor vehicles;
- 6.4 any activities that result in the discharge of oil onto the property; and
- 6.5 any activities allied to those in sub-paragraphs 6.1 – 6.4.

7. The first and second respondents are ordered to take all steps necessary to restore the property to the condition it was in before the illegal activities commenced at the property and the unlawful structures were erected at the property, including, but not limited to:

- 7.1 removing all litter and waste;
- 7.2 removing all motor vehicles and vehicle parts;
- 7.3 attending to clean up and remedy all oil spillages and related environmental pollution on the property.

8. It is ordered that the first and second respondents are to report to the applicant in writing on what steps it has taken pursuant to this order within 30 calendar days of the grant of this order.

9 If the first and second respondents fail to comply with the order in paragraph 7 above to the reasonable satisfaction of the applicant, the applicant is authorised to:

9.1 enter onto the property;

9.2 attend to the remediation work outlined in paragraph 7 above or any further remediation work reasonably required;

9.3 claim from the first and second respondents, jointly and severally, the one paying the other to be absolved, the fair and reasonable costs incurred in effecting such remediation;

9.4 set the matter down, on the same papers supplemented as may be necessary, for a money judgment against the first and second respondents to recover the costs contemplated in paragraph 9.3 above.

10. The first and second respondents are ordered to take all steps reasonably necessary to prevent the property being used for the purposes in paragraphs 1.1 – 1.5 above and to prevent the unlawful erection of structures and / or buildings on the property, which steps must include fencing the property or taking other steps to ensure vagrants and other persons cannot readily access the property.

11. The first and second respondents are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, such costs to include the costs incurred by the applicant in procuring the reports of Mr Bundy and Mr Mendes.

KOEN J

## APPEARANCES

For the applicant:

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