IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO LOCAL DIVISION, THOHOYANDOU)

CASE NO: 406/ 2016

DELETE WHICH IS NOT APPLICABLE

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

Date Signature

In the matter between:

LIMPOPO LEGAL SERVICES:	**APPLICANT**
And	
VHEMBE DISTRICT MUNICIPALITY:	**1st RESPONDENT**
MINISTER OF WATER AFFAIRS AND FORESTRY:	**2nd RESPONDENT**
THULAMELA MUNICIPALITY:	**3rd RESPONDENT**

JUDGEMENT

SEMENYA, AJ

[1] The applicant in this matter is a non - profit Voluntary Association (NGO) which aims at promoting, protecting and exercising human rights and access

to justice. Its principal address place of business is situated at 16A, Church Street, Polokwane, Limpopo Province.

[2] The summary of the salient facts of this case as deposed to in the founding affidavit by Takalani Margaret Ramanyimi (Ramanyimi), the Chairperson and member of the applicant are as follows:

[3] On the 13th May 2016 Judas Maluleke (Maluleke), a resident of Malamulele B Extension 1visited her business premises complaining about the respondents' failure to provide members of his community with basic essential services, in particular, sanitation. In order to give the court a clear idea of what Malamulele B Extension 1 looks like, applicant attached four photographs which depicts the type of houses residents built for themselves in that area.

[4] It appears from the founding affidavit that Madonsi Traditional Authority sold un-serviced residential sites within a Proclaimed area under the authority of the 3rd respondent to Maluleke and other community members in 2010. These transactions as well as the occupation of the said sites were

declared unlawful by the order of this court dated the 30th July 2010. Subsequent to this court order, 3rd respondent sold the residential sites to those already in occupation.

[5] The information given to Ramanyimi as deposed to in paragraph 15 of the founding affidavit is that although the area is proclaimed, the residents never had provision for proper sanitation nor reasonable toilet facilities since 2010. It is alleged that the residents have been relying on the nearby bush in case nature calls and that this did not present itself as a challenge to Maluleke and his family as it was in line with their past lifestyle.

[6] Coincidentally, on the 14th May 2016, a day after Maluleke visited the applicant's offices, he received information that the bush used by residents to relieve themselves is been cleared up by Xigalo Traditional Authority for the purposes of allocating residential sites for its subjects. On the 15th Ramanyimi visited the area in order to see for herself as to what was actually happening. She indeed found that the area was been cleared up which effectively meant that some of the residents were left with no place to go when nature called.

[7] These are in short the events that led to the urgent application before me.

[8] The orders which are urgently sought by the applicant are the following:

8.1 That the application be heard on an urgent basis;

Condonation of non-compliance with the provisions of section 35 of the General Law Amendment Act 62 of 1955.

8.2 Declaring the 1st and 3rd respondent's failure to take reasonable steps to provide sanitation to the residents to be invalid, unlawful and inconsistent with the Constitution.

8.3 Compelling the 1st and/or 2nd and/or 3rd respondents to take all reasonable steps to provide each affected resident with reasonable access to toilet facility in order to treat the elderly, women disabled and other vulnerable groups.

8.4 Alternatively, an order in terms of which the respondents are ordered to provide toilet facilities to residents who are unable to afford to install, having regards to available resources and other relevant considerations.

8.5 Declaring the conduct of the respondents invalid to the extent that it is inconsistent with section 152 and 153 of the Constitution read with section 4(2)(f) and 73 of the Local Government Municipal Systems Act, 32 of 2000.

8.6 Compelling the respondents to undertake in writing and sign such undertaking in consultation with other structures, including applicants, the realization of the provision of permanent access to sanitation to the residents.

[9] The respondents raised the points *in limine*. In the first instant, the respondents are challenging the applicant's legal standing; secondly, absence of urgency; thirdly, non-compliance with section 35 of the General Law Amendment Act.

[10] On the lack of *locus standi* issue, it was argued on behalf of 1st respondent that the applicant failed to show that any of its constitutional rights have been infringed by the conduct of the respondents. It was submitted that the applicant should have joined a number of the residents of Malamulele B

extension 1 as the persons who are directly affected by the alleged conduct of the respondents. It was further argued that the conclusion one can arrive at is that the only interested persons are the family of Maluleke and not the entire residents of that area and that there is nothing on the papers that shows that Maluleke is unable to build a toilet for his family.

[11] On behalf of the 3rd respondent it was submitted that the respondent failed to indicate whether it was duly registered as a non-profit organization and that the business address alone is not sufficient.

[12] In reply to the issue of lack of *locus stand*, the applicant attached its Constitution to the replying affidavit which proves that it is a juristic person with legal standing. The applicant further stated that the applicant has sufficient interest in the matter as an NGO aimed at protection, promotion of basic human rights of the ordinary citizens of the Republic of South Africa. In addition, the applicant is further relying on section 38 (a) to (b) of the Constitution of the Republic of South Africa, 1996. The section provides that:

> *"38 Enforcement of rights*
>
> *Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened,*

and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

(a) anyone acting in their own interest;
(b) Anyone acting on behalf of another person who cannot act on their own name;
(c) Anyone acting as a member of, or in the interest of, a group or class of persons;
(d) Anyone acting in the public interest; and
(e) Any association acting in the interest of its members."

[13] I am inclined to disagree with the submissions made by the applicant that the applicant can rely on all of the above sub-paragraphs.

[14] The applicant can, for obvious reasons, not rely on (a). As a juristic person, it cannot use a toilet.

[15] The applicant cannot rely on (b) too. It has failed to provide reasons why Maluleke and other people on whose behalf it purports to act cannot/ lacks capacity to act on their behalf.

[16] Counsel for the 1st respondent argued that what the applicant is trying to do is to bring a class action when it does not have the necessary authority to represent them. That it should either join them or obtain their signatures. Of note is the argument that the Supreme Court case of **The Children's**

Resources Centre Trust v Pioneer Foods 2013 (2) SA 213 (SCA) requires the applicant to obtain a certification from the court to proceed along those lines since it alleges that a number of human rights are being infringed by the respondents' failure to provide the residents with toilet or sanitation. I find this argument to be correct. Moreover, the applicant did not want state that the application can be classified as a class action.

[17] Sub-paragraph (c)is in my the only one that finds application in this matter as the applicant alleges that it is acting on behalf of the residents of Malamulele.

[18] In dealing with public interest standing, Yacoob J in **Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)** at [18] held that:

> *" the issue is always whether a person or organization acts genuinely in the public interest. A distinction must however be made between the subjective position of the person or organization claiming to act in the public interest on the one hand, and whether it is , objectively speaking, in the public interest for the particular proceedings to be brought...."*

[19] The particular importance in the instant matter is that although the applicant alleges that it is bringing this application in the interest of Malamulele B

Extension 1 residents, it did not join any of those people who are directly and substantially affected by the alleged infringement of right. All I have before me is the confirmatory affidavit of Maluleke. It appears from the founding affidavit that Maluleke and his family are not directly affected by the alleged failure to provide sanitation as it is stated in paragraph 13.4 of Ramanyimi's affidavit that he (Maluleke) is a contractor in the building industry and is currently living a successful life. Other than that, the photographs depict properly build and decent houses which appears to have proper toilets. A toilet is clearly visible in one of the pictures ("LLS 7"). This in itself contradicts the allegations that none of the residents ever had access to reasonable toilet facilities since their occupation of the area (Par 15 of Ramanyimi's affidavit).

[20] In the premise, I fail to find that the applicant is genuinely and objectively acting in the public interest and on this basis I find that it lacks *locus standi*.

[21] Applicant seeks condonation of non-compliance with section 35 of the General Law Amendment Act 62 of 1955 which requires it to serve the respondents with a notice to apply for an interdict before he could apply for

an interdict without stating the reasons thereof. I fail to find any reason why this conduct should be condoned.

[22] On urgency, Ramanyimi states that the residents occupied the area in 2010 and have been using the bush without a problem until they saw people clearing it, which left them with nowhere else to go when nature calls. I have already alluded to the apparent coincidence between Maluleke's visit to the applicant's offices and the clearing of the bush. Careful reading of the papers filed by the applicant leaves no doubt in my mind that this was in fact not a coincident but rather a carefully planned exercise in order to create urgency. If the residents were genuinely concerned about the lack of services, this application would not have waited for six years to materialize. The evidence is also contradictory in that in one paragraph it is stated that Maluleke and his family are used to the situation whereas elsewhere it is stated that ha they are well off as he is a contractor.

[23] I find that the respondents have made out a case and that the points *in limine* should be upheld.

[24] In the premises I make the following order:

1) Application is struck off the roll with costs.

M V SEMENYA

JUDGE OF THE ABOVE HIGH COURT