IN THE HIGH COURT OF SOUTH AFRCA
(BOPHUTHATSWANA PROVINCIAL DIVISION)

CASE 400/07

In the matter between:

POTCH ACTION GROUP	First Applicant
AFRIFORUM	Second Applicant

and

THE MEC FOR LOCAL GOVERNMENT	First Respondent
POTCHEFSTROOM CITY COUNCIL	Second Respondent

JUDGMENT

URGENT APPLICATION

MMABATHO

DATE OF HEARING	**:**	**22 February 2007**
DATE OF JUDGMENT	**:**	**19 March 2007**
COUNSEL FOR APPLICANTS (SC)	**:**	**Adv. T.G. Kruger** **With him** **Adv. G.T.S. Iselen**
COUNSEL FOR RESPONDENTS	**:**	**Adv. H. Lever (SC)**

GURA J:

Introduction

[1] The first applicant is a voluntary association whose aims and objectives are to participate in any process relating to the change of names in the Potchefstroom area. The first applicant and its members are based at Potchefstroom. The second applicant, Afrikaanse Forum vir Burgerregte, is a company registered and incorporated in terms of Section 21 of the Companies Act, 1973, with its registered address at Eendracht Streete, Kloofsig, Centurion.

[2] The applicants approached this court by way of urgency seeking the following relief:

> " 2. That the First Respondent be interdicted from taking a decision pursuant to the General Notice published in the Extraordinary Provincial Gazette of the North West Province, No 6375 (Volume 250) on 16 February 2007, after the 9th of March 2007 (being the deadline set for comments or inputs relating to the subject matter of the said General Notice), pending the disposal and finalisation of an application for review proceedings, to be brought by the Applicants against, respectively, the Potchefstroom City Council as First Respondent, the North West Province Geographical Names Committee as Second Respondent, and the South African Geographical Names Council as Third Respondent in a Court of appropriate jurisdiction.
>
> 3. That the Applicants be ordered to issue such application as aforementioned no later than within one calendar month from

the date of this order.

4. That the First Respondent be ordered to pay the costs of this application.

5. Further and/or alternative relief".

[3] On 9 March 2007, after listening to argument the Court made the following order:

"1. The Application is dismissed with costs due to lack of urgency

2. Reasons for judgment are reserved".

Here then are the reasons (for judgment).

Factual background

[4] On 8 July 2006, the second respondent took the following resolution (Motion 29). For the purpose of this application, only paragraph one thereof is relevant.

" 1. That the name of the 'Potchefstroom City Council' be changed to 'Tlokwe City Council ".

[5] On 16 February 2007, the MEC for the department of Developmental Local Government and Housing, purporting to act in terms of section 16(3) (c) of the Local Government Municipal Structures Act, Number 117 of 1998, issued a notice in a Government Gazette. See in this regard

Extraordinationary Provincial Gazette No. 6375 (Volume 250), Official Notice No. 2 of 2007.

[6] In the Gazette the MEC was giving notice of an intended amendment of the name "Potchefstroom City Council" to introduce a new name being "Tlokwe City Council" In terms of the notice, an invitation was extended to any person, party or interested entity who wished to make any comment or input in relation to the proposed name change to submit written comments or inputs on or before Friday, 9 March 2007.

[7] On 28 February 2007 the applicants submitted written comments to the MEC, opposing the proposed name change. Various grounds were advanced therein why this process was considered to be flawed. Paragraphs 18 and 19 of their letter read as follows:

> " 18. We therefore respectfully request that you stop the process of considering the proposed name change and take no decision until such time as the pending application by our clients referred to above in paragraph 12 has been fully disposed of. You are requested to give an undertaking in writing to my clients to that effect on or before 2 March 2007.
>
> 19. In the absence of such an undertaking my clients will have no other option to lodge an urgent application to stop the process currently under your jurisdiction to protect its interests as outlined above".

The MEC did not respond to this communiqué.

[8] The founding affidavit of the first applicant was deposed to by Mr Theodore Phillip Venter ("Venter") who averred that he had been authorised to bring this application in terms of a resolution entitled Annexure A. Unfortunately, however, this resolution authorised him "om navraag te doen by die relevante afdeling van die Potchefstroom Stadsraad in terme van Wet 2 van 2000 (Die Wet op die Bevordering van die Reg op Inligting) en om enige dokumentasie of namens Aksie Potchefstroom te teken en om enige uitgawe wat die versoek mag meebring, aan te gaan".

[9] In its answering affidavit, first respondent challenged the authority of Venter to institute these proceedings. In its replying affidavit, first applicant tendered its apology for the error and purported to substitute Annexure A with the correct resolution being Annexure F. Unfortunately, however, Annexure F was not attached to the papers. At the commencement of the hearing of the application, applicants' counsel handed in Annexure F (with leave of the Court). This resolution authorises Venter "om stappe te doen om die voorgeskrewe naamsverandering van die Potchefstroom Stadsraad en die naamverandering van die stad teen te staan, insluitend die bring van ń aansoek teen die relevante onwerheidsliggame, aflê van beëdigde verklaring en die doen van enige ander stappe wat nodig mag wees om daardie proses deur te voer"

The issues

[10] Counsel for the first respondent took two points *in limine; locus_standi* and lack of urgency.

10.1 Locus standi

He argued that Venter had no authority to bring this application and to depose to the first applicant's founding affidavit. He continued along these lines: the first annexure A was signed by Venter himself therefore authorising

himself. When first applicant had a second chance to submit a correct resolution, it did not. The Court must infer that there was no correct resolution (at the time when Venter deposed to the founding affidavit) which authorised him to institute these proceedings. Secondly, the alleged correct Annexure F still does not authorise him to bring this application for an interdict. His mandate is limited to "opposing" the name change but not interdicting the MEC from taking a decision.

10.2 Urgency

It was submitted on behalf of the first respondent that the applicants' problem occured on 18 July 2006. Counsel for the applicants disputed that suggestion. His view was that the present application is a sequel to the Gazette dated 16 February 2007. The applicants

could therefore not have brought an application prior to 16 February 2007. Even if the applicants would have brought an application (not based on urgency), so runs the argument, such application could not have been heard on or before 9 March 2007.

The law relating to urgency

[11] Urgency involves mainly the abridgement of the times prescribed by the Rules and, the departure from established filing and sitting times of the Court **(Luna Meubel Vervaardigers v Makin and Another 1977 (4) SA 136 (WLD)).** There are at least three considerations which the Court, in exercising its discretion to abridge the prescribed times has to bear in mind:

(a) the prejudice that applicants might suffer by having to wait for a hearing in the ordinary course;

(b) the prejudice that other litigants might suffer if the application is given preference; and

(c) the prejudice that respondents might suffer by the abridgement of the prescribed times and an early hearing.

IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty)

Ltd and Another 1981 (4) SA 108 (CPD)

Conclusion

[12] This Court has not been persuaded to disbelieve Venter's averment that he had the necessary authority when he deposed to the founding affidavit. The fact that he failed, twice, to produce the correct resolution cannot justify an inference of falsehood on his part. In any event, there is an explanation before this Court how these two errors occurred. If the first applicant would be required, to specify in its resolution, each and every step which Venter has to take in order to oppose the name change, that would be unreasonable. In my view, Venter holds a general mandate to take any lawful step in order to oppose the name change. The present application for an interdict is closely linked to the whole purpose of opposing the purported change. Its sole purpose is to keep the present process on hold until an application for review is instituted. It is my considered opinion therefore that the present application falls squarely within his general mandate. The first point *in limine* therefore fails.

[13] Paragraph 13 of the applicants' letter which was addressed to the MEC on 28 February 2007 reads:

> " 13. The premature process to have the name of the **City Council** changed which is currently being considered by you, was initiated by a City Council decision of 18 July 2006 and which led to a request to you to implement the name change in terms

> of the Local Government Municipal Structures Act 117 of 1998".

[14] It is clear that the applicants' grievance, and this is the evil which they intend to bring before a review court, occurred on 18 July 2006. Their main grievance centres around Motion 29 and not so much on the Gazette. It is in Motion 29 where a resolution was taken, on 18 July 2006, to change the name of the city council. From that date, all the applicants were aware or at least should have been aware that the next step in this name change process is a publication in the government gazette. Between 18 July 2006 and 20 February 2007 applicants did nothing to invalidate Motion No. 29. On 21 February 2007 after they had noticed the publication, instead of approaching court for a remedy, they reverted to the MEC in writing. In my view, the MEC's hands were tied in regard to this process from 16 February until 9 March 2007. Only after 9 March 2007 could he consider all the representations and comments received. The applicants' insistence that he should withdraw the publication on or before 2 March 2007 was a misguided missile. Assuming (without deciding) that Motion No. 29 is flawed, then, in my view, the act of publication in the Gazette appears to be more like fruits of a poisoned tree and not the poisoned tree itself.

[15] Had the applicants lodged an ordinary application (non-urgent application) on the last week of February 2007, the MEC would have been aware, as at 9 March 2007, that there was such an application pending before court which seeks to silence him. It

is my view that he would not have made a decision on the outcome of the public participation process until the application was finalised, even if the application was set down for April or May 2007.

[16] The last issue is whether there is any reasonable possibility that the applicants might suffer by having to wait for the hearing of the review application in the ordinary course. The argument of the applicants is to the effect that should the MEC take a decision about the name change, pursuant to the public participation process in terms of the Gazette, they will suffer prejudice in their proposed review application. Various reasons have been advanced why they anticipate the alleged prejudice. Unfortunately, however, I find none of these grounds to be legally or factually sound. The simple truth of the whole matter is this: If the process leading to the advertisement in the Gazette is fatally

flawed, the review court will be in a position to detect that, whether or not the MEC has announced the results. In brief, therefore, the fact that the MEC has spoken, does not deprive the review court of its powers to test the validity of the whole process.

[17] On these facts, the Court finds that there was no urgency in this application; if there was one, then it was self created.

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SAMKELO GURA

JUDGE OF THE HIGH COURT