



IN THE HIGH

COURT OF ESWATINI

JUDGMENT

HELD AT MBABANE

CASE NO.1116/2021

In the matter between:

MATSAPHA TOWN COUNCIL

Applicant

And

DIESEL SERVICES LTD

Respondent

Neutral citation: *Matsapha Town Council v Diesel Services Ltd (1116/2021) [2021] SZHC 107 (02 June 2022)*

Coram : **T. Dlamini J**

Heard : 13 July & 18 August, 2021

Delivered : 02 June 2022

[1] Civil law – Management and administration of a town – Town council’s authority – Building Act 34/1968 – Contravention of s.10 thereof –

Summary

The respondent is a company which operates business within the Matsapha Town, a town under the jurisdiction of Matsapha Town Council (the applicant herein) – The respondent applied to the Town Council to be issued with a permit for construction of a warehouse extension as required in terms of s.10 of the Building Act, 1968 – The respondent however, commenced the construction before being granted the permit – A notice of contravention was served upon it in terms of the standard building regulations made under the Building Act, 1968 – The notice informed the respondent that the construction work being carried out is without a permit, and that the respondent was to cease all operations and correct the infraction within seven days –

The notice was disregarded by the respondent – The applicant approached the court and sought to interdict the respondent from proceeding with the construction – In its opposing affidavit, the respondent denied that it was engaged in any construction work but claimed to be only enforcing the retaining wall which houses utility pipes that were in the open, and rerouting Eswatini Electricity Company lines from running above head to underground – Notwithstanding the denial, and while the matter was pending before court, the respondent proceeded with the construction of the structure – The applicant approached the court again and presented pictures in proof of the continued construction – The pictures depicted a totally different scenario from what the respondent alleged in its opposing affidavit – The pictures showed a completely roofed steel structure framework of a building, with a more than half completed block work of the wall on one side of the building – The applicant then sought, under further and/or alternative relief, a prayer for demolition of the structure.

Held : *That the conduct of the respondent is an illegality that also constitutes a criminal offence;*

Held further: *That such conduct undermined the function of this court as it caused the application pending before it to become moot; and*

Held further: *That a demolition order is an appropriate relief in the circumstances and is granted under further and/or alternative relief.*

JUDGMENT

[1] The applicant is Matsapha Town Council, a local authority established in terms of **s.111 of The Urban Government Act of 1969**. In terms of s.5 of this Act, it has the mandate and power, amongst other functions, to control and manage the affairs of the Matsapha Town, and to “*generally assist in the maintenance of order and good government, within the area of its authority*”. It also has the power to sue and to be sued in its own name, and to do and perform acts and things that bodies corporate may by law do and perform.

- [2] The respondent is a private company incorporated with limited liability in terms of the company laws of Eswatini. It operates business within the Matsapha town boundaries. Its director is businessman, Mr. Thomas Kirk, who deposed to affidavits on its behalf.
- [3] The applicant approached this court on 18 June 2021 and sought an interdict restraining the respondent from constructing a warehouse extension on **Portion 2 of Lot 445, Matsapha**, a place within the Matsapha Town. The interdict was sought because the construction was alleged to be carried out in contravention of **s.10** of the **Building Act No.34 of 1968** (hereinafter referred to as “the Act”).
- [4] The applicant also sought an order directing the respondent to comply with a Contravention Notice served upon it on the 9 June 2021. A copy of the notice is attached as **Annexure MTC 1**. The notice informed the respondent that the construction works it was carrying out on **Portion 2 of Lot 445, Matsapha**, is without a permit as required in terms of **s.10 (1)** of **the Act**. It therefore requested the respondent to correct the infraction within seven days of the notice.
- [5] Section 10 (1) of the Act provides as quoted below:

10. Permit to build, demolish or change use

- (1) No person shall –
- (a) conduct operations for the construction or demolition of a building; or
 - (b) change the use of a building;

unless there has been obtained from the local authority a permit for the construction, demolition or change in use, as the case may be, but nothing in this subsection applies to any operations for the alteration of a building which consist solely of the fitting of a

fixture of such kind as may be prescribed by the Minister for the purposes of this subsection.

[6] The applicant also sought an order, pending compliance with **s.11 of the Act**, interdicting and restraining the respondent or anyone acting on its mandate from conducting operations for the construction of building works presently underway on Portion 2 of Lot 445, Matsapha. Section 11 of the Act provides as quoted below:

11. Application for permit

- (1) A person who proposes to perform any act described in section 10(1) (a) or (b) shall send to the local authority an application for a permit to do so.
- (2) Every application for a permit shall be made in the manner prescribed.
- (3) The applicant shall provide such information as the engineer may require about the methods to be used and precautions to be taken during the construction or demolition of the building.

[7] The Act applies, in terms of **s.4** thereof, to a building situated in a controlled area, and defines a controlled area to mean an area within the jurisdiction of a town council or a municipality under the **Urban Government Act, No.8 of 1969**. The section provides as quoted below:

4. Application

- (1) This Act applies to a building situated –
 - (a) in a controlled area; or
 - (b) outside a controlled area and used or intended for use in commercial or industrial activities including a factory, hotel or a shop or a building used for public purposes or public

entertainment or a building to which the public have access;

and is of a class or type of building to which Regulations under this Act have been applied.

(2) For the purposes of subsection (1) a “controlled area” means an area within the jurisdiction of a town council or a municipality or town under the Urban Government Act, No.8 of 1969 or an area which the Minister after holding a public inquiry in the area concerned has by notice in the Gazette, declared to be a controlled area.

[8] The law which the respondent is said to have violated compels the respondent first to apply to the applicant for a permit to undertake the construction, and forbids it from undertaking the construction without first having been granted a permit.

[9] In its opposing affidavit, the respondent denied that it engaged in any construction. It deposed that it was only enforcing a retaining wall which houses utility pipes that were in the open, and that it was also rerouting Eswatini Electricity Company lines from running above head to underground. Below I quote what the respondent states in paragraph [8] of the opposing affidavit:

8. I specifically deny that the Respondent has commenced building operations on the site. The Respondent was merely enforcing the retaining wall which houses utility pipes. These pipes are out in the open and the intention is to conceal them in a ducting passage. We were also rerouting Eswatini Electricity Company lines from running above head to underground. This process entails trenching and putting concrete in the trenches in some areas.

[10] The matter appeared before my brother **J. S. Magagula J** on 18 June 2021, but was, however, removed from the roll by consent of the parties.

[11] On 8 July 2021 the applicant filed a supplementary affidavit in which it stated that the respondent was proceeding with the construction notwithstanding that its attorney, Mr. S.M. Jele, undertook to advise his client (the respondent) “*to desist from proceeding with its illegal construction works pending the outcome of its application for a building permit*”. Attached as **annexure MTC 2** is a letter by the applicant’s attorneys addressed to the respondent’s attorneys. It states what I quote below:

2. We refer to the tele-conversation that the writer had with your Mr. Jele on this day when it was agreed that the prosecution of the urgent application was now not necessary as the Respondent had since stopped all construction works upon **Portion 2 of Lot 445, Matsapha**.
3. It is in consequence of the above undertaking that it was also agreed that the matter be removed from the roll on **Friday 18th June 2021**.

[12] According to the applicant, the matter was removed from the roll on 18 June 2021 because the respondent made assurances that it would not proceed with the construction pending issuance of the permit. This assurance is consistent, in my opinion and finding, with the denial that the respondent made in its opposing affidavit as outlined in paragraph [9] above.

[13] In the supplementary affidavit, the applicant also deposed that on the 18 June 2021, the respondent filed revised drawings for its building. While the drawings were still under consideration by the Council, the respondent took advantage of the week of unrest and continued with the construction by erecting the building’s structural steel framework. **Annexure MTC 3** depicting pictures of the structural steel framework was attached to the supplementary affidavit.

[14] Indeed the structural steel framework of the building is visible from the attached annexure. The matter was then re-instated into the court's roll for 13 July 2021 and I became seized with it.

[15] Given that the respondent proceeded with the construction notwithstanding that it was being challenged and the challenge was pending determination by this court, I ordered the parties to file supplementary affidavits. This was to be a second supplementary affidavit by the applicant. The applicant was directed to detail all events that took place from the time that the respondent applied for the permit to undertake the construction, up to the stage of the construction as seen in annexure MTC 3. The respondent was directed to file a supplementary opposing affidavit, and a supplementary reply was, as well, to be filed by the applicant.

[16] Evidence placed before court by the applicant in the second supplementary affidavit is that on 08 May 2021, whilst on a routine patrol, its inspectorate division noted some site preparation and fencing activity being undertaken at the respondent's plot, namely; Portion 2 of Lot 445, Matsapha. This work was done under the supervision of Thomas Kirk, the director of the respondent. The applicant's officers cautioned Mr Kirk and reminded him to first comply with provisions of the Building Act, 34 of 1968. Indeed on 19 May 2021 the respondent applied for a building permit as required in terms of the Building Act and The Standard Building Regulations made under s.37 of the Building Act.

[17] On 09 June 2021 the inspectors noted that the respondent was back on site setting up the foundations of the structure. They spoke to Mr. Thomas Kirk and requested him to stop the unlawful construction. The respondent was, on

the same day, served with a Contravention Notice, a copy of which is attached to the supplementary affidavit as annexure MTC1, dated 09 June 2021. The contents of the contravention notice are detailed in paragraph [4] above. The notice informed the respondent to stop the construction works pending the grant of a building permit by the applicant.

[18] The application for a permit filed by the respondent on 09 June 2021 was declined, according to the applicant, through a letter dated 11 June 2021 which was hand delivered to Mr. Thomas Kirk. A copy of the letter is attached as annexure MTC2. The reasons for the refusal, according to annexure MTC2, are that the submitted site plan showed that the parking bays intended to service the intended development were located outside the respondent's plot, hence constituted an encroachment into the property of another. The respondent was then advised to revise its plans, an advice it took heed of, and filed another application on 18 June 2021. The revised plans showed that the encroachment had been rectified.

[19] The applicant also states in the supplementary affidavit that the respondent demonstrated a conduct of being *“hell-bent on being a law unto itself. This is evidenced by the fact that upon return from the week of the unrest, i.e. on the 6th July 2021, the Municipality found that Respondent had taken advantage of the situation and gone on to unlawfully erect a Steel Structural framework upon Portion 2 of Farm 445, Matsapha.”* (paragraph 15 of supplementary affidavit). Photographs of the structure are shown on annexure MTC3. The pictures show a construction that is way beyond the retaining wall enforcement and rerouting of Eswatini Electricity Company lines which the respondent alleged to be constructing.

[20] With this latest transgression, the applicant served upon the respondent another Contravention Notice on the 06 July 2021. A copy is attached to the supplementary affidavit as annexure MTC4. The second application which the respondent filed on 18 June 2021 was given due consideration, according to the applicant, but it also was unsuccessful because it made no provision for customer parking, including refuse and loading areas. The outcome of the application was communicated by what is written “Differal Notice” dated 12 July 2021, issued in terms of the Standard Building Regulations made under s.37 of the Building Act. According to the applicant, this notice was hand delivered on the same date to the respondent. A copy is attached to the supplementary affidavit as annexure MTC5. The comments thereon reflect that the plan is to “*indicate parking on site*”, “*comply with 2m set back at rear of building as stipulated in the Matsapha Town Planning Scheme 2019 or apply for special consent according to sub-clause (31.1) (a) in the Matsapha Town Planning Scheme*”.

[21] As a parting shot, the applicant states that the respondent continued with its unlawful construction from 06 July 2021 while being fully aware of its illegality, and that as of 15 July 2021 the structure had a completed roofing of the steel structural frame, and was erecting block work for the walls. Pictures of the structure were attached as **Annexure MTC 6**. The applicant therefore prayed for a punitive order in the form of a demolition order, of the structure that the respondent has constructed, because the construction continued without regard to the fact that the matter was pending before this court.

[22] In its supplementary opposing affidavit the respondent admits that it filed an application for a permit to undertake the construction but stresses that it did so on the 20 May 2021 and not on the 19 May 2021. It however denies that it

carried any construction work on 08 May 2021 as this day falls on a Saturday, and states that its director Mr. Thomas Kirk was at Dvokolwako on that day and was not in Matsapha as alleged. The respondent also denies that its construction works encroaches onto another property but stresses that the work is within the boundaries of its property.

[23] The respondent denies again that on 09 June 2021 it carried out any construction work but reiterates that it only enforced the retaining wall which houses utility pipes that were out in the open, and that it also rerouted Eswatini Electricity Company lines from running above head to underground. It explains that it was **“merely a co-incident that these works were conducted on the same space where construction was intended”** (per paragraph 14 of supplementary opposing affidavit). The respondent states that it ceased operations on the 09 June 2021 when it was served with the contravention notice (annexure MTC1). There was therefore no contravention committed, according to the respondent, when they were served with the notice, and also when the matter appeared in court on 18 June 2021.

[24] The director of the respondent, Mr. Tom Kirk, states in the supplementary opposing affidavit that he has been a director for the respondent for over 30 years, and that the respondent has conducted numerous construction undertakings both in Matsapha urban areas and elsewhere since then. He is therefore **“aware of the”** provisions of the Building Act and its Regulations, **“and all the do’s and don’ts in the construction industry including construction sites and perimeters”** (per paragraph 10 thereof). He proceeds to state that the **“aspect of parking bays is of no moment as the construction is merely an extension and the Revenue authority premises already has a**

parking bay. Furthermore, parking is not deemed construction in terms of the Building Act and Regulations” (per paragraph 17 thereof).

[25] The respondent proceeds in paragraph [18] of its supplementary opposing affidavit to state what I quote below:

18. It is also strange that the applicant has insisted on the parking bays requirement when they have granted at least two other businesses building permits without any parking and delivery bays. These two businesses are the Spar and Build It who are currently utilizing the 1st and 2nd Streets respectively main roads as delivery bays. These businesses are all near Respondent’s premises and at most times conduct deliveries on the main road, at times even blocking Respondent’s access. Annexed hereto and marked “DS 1” to “DS 8” are photos in proof of same.

[26] In reply to the above assertion by the respondent, the applicant states that it ***“is applying provision 26 of the Matsapha Town Planning Scheme, 2019, which the Respondent is privy of. The businesses being cited by the Respondent pre-exist the Matsapha Town Planning Scheme and laws are not applied retrospectively.”*** This means, in other words, that the laws being enforced against the respondent were not in existence at the time these two businesses were granted their permits.

[27] The respondent continues in paragraph 19 and states that ***“the applicant is refusing to grant the permit in bad faith as there are no reasons for such refusal. In fact the Applicant’s employees have granted oral permission to go ahead with the construction on the basis that the application was not seen as not complying with the relevant laws.”***

[28] It further states that at the “beginning of construction the statutory six (6) weeks had elapsed and there was nothing stopping the construction from

continuing. It avers, furthermore, that the second contravention notice was not served on the respondent or to its attorneys of record, and is unknown to the respondent. The applicant however maintains in its reply that the second contravention notice was served on the respondent. It goes on to state that the statute does not permit the respondent to proceed with the construction, after the six weeks period, without the permit being issued first.

[29] I have considered the evidence tendered in the affidavits together with submissions made on behalf of the parties. The court finds as a fact that as at 15 July 2021 when the applicant's supplementary affidavit was attested to before the commissioner of oaths, the respondent had constructed an extension of its building without being issued with a permit by the applicant as required by **s.12 of the Housing Act** and the **Regulations made under s.37** thereof. A steel structural framework of the building was constructed, and a roofing made of corrugated iron was done and completed. Block work of the walls had been constructed to above half of the height of the wall size on one end of the building.

[30] The respondent pleaded in its papers, and argued in court as well, that when the construction commenced, the statutory six weeks period had elapsed and therefore nothing stopped it from continuing with the construction. It is however common cause that the respondent submitted a second application, accompanied by a revised plan, on 18 June 2021. **Section 12 of the Housing Act** is relevant to the defence raised by the respondent that six weeks had lapsed and nothing therefore prevented it from proceeding with the construction. The section provides as quoted below:

12. (1) The local authority shall either issue a permit or refuse the application therefor within six weeks from the date the application is received by it.

(2) ...

(3) ...

(4) ...

(5) ...

(6) If the local authority fails to comply with subsection (1), the applicant may proceed with the proposed operations in the case of demolition and, in the case of construction, proceed therewith to foundation level, provided however, that any work done is in conformity with the application made to the local authority and with this Act. (underlining for own emphasis)

[31] Six weeks from 18 June 2021 lapsed on 30 July 2021. The applicant's evidence that the respondents continued with the construction on 06 July 2021 without being granted a permit is uncontroverted and confirmed by annexure MTC 3. I also accept the applicant's evidence that by the 15 July 2021 the structural steel framework of the building had been finished. Pictures shown in **Annexure MTC 6** support this evidence. A roofing, using corrugated iron sheets, had been undertaken and completed, with a block work on one side of the building constructed to above half of the wall height. The period of six weeks had not lapsed when the construction detailed above was done.

[32] Even if the six weeks period had elapsed, the respondent was, and is still not permitted to continue with the construction up to the level where it pushed it to. **Section 12** states that the local authority shall either issue the permit or refuse the application. If it doesn't do either of the two, the applicant for the permit may proceed with the proposed construction "**to foundation level**". In *casu*, the respondent did not act as permitted by this section. The construction went far beyond the foundation level. It included structural steel

framework, roofing and block work construction of the walls. There is therefore no hesitation that the respondent continued with the construction works unlawfully.

[33] It was submitted during arguments on 18 August 2021 that the construction of the structure has since been finished by the respondent. This submission was not challenged or denied by the respondent. A punitive order was on that basis sought by the applicant in the form of a demolition order. This order was sought under further and/or alternative relief because the interdict which was initially sought had become *brutum fulmen*.

[34] Was it by mistake or ignorance of the law that the respondent, through its director, violated the laws governing construction within the area under jurisdiction of the applicant? The answer, in my view, is a big NO. There is no mistake or ignorance of the law involved. I come to this conclusion after having considered the responses by the director of the respondent to the allegations made. He has stated that he has over 30 years' experience working with the local authority whilst a director of the respondent. He is aware of the provisions of the Building Act and the Regulations made under it. He has also stated that he knows the do's and don'ts in the construction industry sites and perimeters. He is therefore fully aware of the legislative requirements for construction within the local authority.

[35] In response to the applicant's queries relating to parking bays, the respondent stated that parking is not deemed construction in terms of the Building Act and the Regulations made under it. He also stated that it is strange to him that the applicant insists on the parking bays requirement yet

it granted building permits to at least two businesses without imposing the parking bays requirement on them. These businesses, according to the respondent, are using the 1st and 2nd streets roads as delivery bays.

[36] In the supplementary opposing affidavit, the director of the respondent states that the “**applicant is refusing to grant the permit in bad faith as there are no reasons for such refusal**”. He proceeds to state that “**the Applicant’s employees have granted oral permission to go ahead with the construction on the basis that the application was not seen as not complying with the relevant laws**”. He has however not stated who these employees are. He has also not demonstrated that the employees he refers to are persons empowered to authorize a construction to be embarked upon after they have given oral permission. Most unfortunately, no supporting affidavits deposed to by these people have been filed.

[37] The Act, under s.21, allows appeals to be made by any person aggrieved by a notice issued to him or decision taken. The appeal is to be made to a Building Appeals Tribunal.

[38] In terms of the above section, a person aggrieved may, within fourteen days after receipt of the notice or decision, appeal against the decision of, or notice issued by, the engineer to the Tribunal. He may also appeal against a decision of the Tribunal to the High Court on a matter of law only, or may appeal against a decision of the local authority to the High Court on a matter of law only, and on any other matter to the Tribunal.

[39] The above-mentioned remedy was not invoked by the respondent. It surprisingly did not do so notwithstanding the work experience of over thirty years which its director professed to have with the local authority of Matsapha, and again notwithstanding the professed knowledge of the provisions of the Building Act and the Regulations made under it.

[40] On the totality of the facts stated above, it is my finding and conclusion that the respondent committed an intentional and unlawful defiance of the applicant's authority, and thereby violated the laws administered by it. I am inclined, and do agree, with the submission made on behalf of the applicant that the respondent, represented by its director, has become a law unto itself and has no respect for the local authority and the laws it administers.

[41] The interdict which the applicant sought has now become moot, as the respondent has finished constructing the building. In the case of **Jan Sithole and 7 Others vs The Government of the Kingdom of Swaziland and 7 Others, Appeal Case No.50/2008 (unreported)**, a full bench of the Supreme Court stated what I quote below:

It is so trite that a court cannot interdict something which has already occurred that no authority for the statement is required. (paragraph 29)

[42] A demolition order is an appropriate relief under the circumstances, and may be issued by this court under further and/or alternative relief. It supports the case and order which was initially sought (to stop the construction until there is compliance with the relevant provisions of the law).

[43] In the case of **Rivergate Gate Properties (Pty) Ltd & Another v Mohamed Asmal N.O. & 2 Others (97167/16) [2018] ZAGPJHC 89, Molahleli J** dealt

with a matter involving a complaint relating to the erection of buildings done without compliance with the provisions of the National Building Regulations and Building Standard Act 103 of 1977 of the Republic of South Africa. The complaint is similar to the one in *casu*. He cited with approval the case of **Standard Bank of South Africa Ltd v Swartland Municipality & Others 2010 (5) SA 479** where the following is stated:

The unauthorized and illegal conduct of the third respondent [in unlawfully erecting a structure without approved plans] is *contra boni mores* and contrary to public policy, and cannot be condoned by the court. It militates against the doctrine of legality, which forms an important part of our legal system. (own emphasis)

[44] For the infraction dealt with by **Molahleli J**, the court ordered the first and second respondents, in their capacities as trustees of the third respondent, to demolish the illegal structures erected on the property under the control and management of the municipality.

[45] The conduct of the respondent constitutes an offence in terms of the Building Act and the Regulations made under it. **Majiedt JA**, with **Mthiyane DP**, **Cachalia** and **Theron JJ** and **Zondi AJA** concurring, in the case of **Lester v Ndlambe Municipality (514/12) [2013] ZASCA 95 (22 August 2013)**, states what I quote below:

“... the law cannot and does not countenance an ongoing illegality which is also a criminal offence. To do so, would be to subvert the doctrine of legality and to undermine the rule of law. (paragraph 23)

[46] Various Regulations have been enacted for the better carrying into effect the provisions of the Building Act. These are The Building Operations Regulations; The Building Forms Regulations; The Standard Building

Regulations; The Building Appeals Tribunal; and The Swaziland Building (Grade II) Regulations.

[47] Regulation 13 of The Swaziland Building Regulations empowers the court to order the demolition of any building not approved in accordance with the Regulations. It provides as quoted below:

Offences

13. A person who:

(a) ...

(b) ...

(c) builds, extends or alters any building not in accordance with the approved plan, or sites it contrary to Regulation 4; or

(d) ...;

commits an offence and is liable, on conviction, to a fine not exceeding five hundred emalangeni or imprisonment for a period not exceeding three months and, in the case of a continuing offence, an additional fine not exceeding twenty emalangeni for every day during which the offence continues, and the court may, in addition to the same, subsequent or adjourned proceedings, order:

(e) the demolition of any building not approved, built, sited or maintained in accordance with these Regulations; (Own emphasis)

(f) that any expense found by the court to have been incurred by the local authority, in consequence of a contravention of these Regulations, shall be paid to the local authority by the person convicted.

[48] The respondent proceeded with the construction of the building in violation of the law, and disregarded lawful notices issued to it by the local authority. In addition to that, its conduct undermined the function of this court as it caused the application pending before it, to become moot.

[49] The **High Court Act 20/1954** provides that this court is a superior court of record, and in addition to the powers conferred by the Constitution and other

laws, it possesses and exercises all the jurisdiction, power and authority vested in the Supreme Court of South Africa (s.2).

[50] In terms of the **Constitution Act 001/2005**, this court is a superior court of judicature (s.139). It is a superior court with unlimited jurisdiction. It therefore is endowed with *inherent jurisdiction* which enables it to fulfill itself as a court of law. As authority for this proposition, **Herbstein and Van Winsen, ‘The Civil Practice of the Superior Courts in South Africa’, 3rd ed., at p.23**, cite the case of **Connolly v Ferguson 1909 TS at 198** and state what I quote below:

The superior courts, differing in this respect from the inferior courts, have an inherent jurisdiction to make orders, unlimited as to amount, in respect of matters which come before them ... While inferior courts may do nothing which the law does not permit, the superior courts may do anything which the law does not forbid. (own emphasis)

[51] The **Australasian Federal Law Review for 2003** published by the Australasian Legal Information Institute ([2003] FedLawRw 2) contains an article by **Wendy Lacey** on ‘**The Meaning, Nature and Scope of Inherent Jurisdiction**’. Below I quote what it states:

As Abernathy describes, inherent jurisdiction ‘is the power to decide the *manner* in which the Court will adjudicate upon a subject-matter, adjudicate between parties, decide upon relief or decide upon any combination of these factors’. (own emphasis) [Seonaid Abernathy, ‘The Status of the District Court’ (1990) *New Zealand Law Journal* 360]

[52] I agree with the submission by the applicant’s attorney that if the court would condone the respondent’s conduct, that would set a bad precedent, and could be an invitation to members of the public to follow the course adopted by the respondent. In support of the submission, the court was referred to the case of **United Technical Equipment Co. v Johannesburg City Council 1987 (4)**

SA 343. This is an appeal case wherein the respondent (Johannesburg City Council) obtained an interdict restraining the appellant (United Technical Equipment Co.) from using property which was zoned as residential 1 in terms of the Town Planning Scheme of 1979 for business purposes. The appellant contended that the court *a quo* should have suspended the interdict pending a decision by Administrator for rezoning the property in question in terms of the Removal of Restrictions Act 84 of 1967.

[53] The appeal was dismissed and the court stated, amongst other reasons, that a lenient approach would encourage other members of the public to use land illegally with a hope of legalizing the illegal use in due course.

[54] In addition to the findings and conclusions I made, and in exercise of the inherent powers of the court, I make an order for demolition of the building which the respondent illegally constructed on Portion 2 of Lot 445, Matsapha, without a permit issued by the local authority as required in terms of s.10 of the Building Act.

[55] For reasons stated in this judgment, the application succeeds, and under further and/or alternative relief, I make the following orders:

[55.1] The building constructed by the respondent on Portion 2 of Lot 445, Matsapha, without a permit issued by the applicant as provided and required in terms of s.10 read with s.12 of the Building Act 34/1968 is ordered to be demolished by the respondent within 30 calendar days.

[55.2] Should the respondent fail to act in terms of the above order within the stipulated time period, the applicant is authorized to so act, and may recover the costs for doing so, from the respondent.

[55.3] Costs are granted against the respondent in favour of the applicant.

T. DLAMINI
JUDGE – HIGH COURT

For Applicants : Mr. S. Fakudze

For Respondents : Mr. S. Jeje