



IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

JUDGMENT

Civil Appeal Case No.7/2014

In the matter between

COUNCILLOR NGANONO MANYATSI

Appellant

And

MUNICIPAL COUNCIL OF MBABANE

1st Respondent

PASTOR CHONG YANG KIM

2nd Respondent

AFRICA CONTINENT MISSION

3rd Respondent

Neutral citation:

Councillor Nganono Manyatsi vs Municipal Council of Mbabane and Others (7/2014) [2014] SZSC 71 (3 December 2014)

Coram:

RAMODIBEDI CJ, LEVINSOHN JA and DR ODOKI JA

Heard:

17 NOVEMBER 2014

Delivered:

3 DECEMBER 2014

Summary Application – locus standi – of Applicant to bring proceedings – not established. Application of dismissed

JUDGMENT

LEVINSOHN JA

[1] The Applicant, who describes himself as “Councillor Nganono Manyatsi”, launched motion proceedings in the court a quo in which he sought the following relief:-

1. That an order be and is hereby issued dispensing with the normal forms of service and time limits and hearing this matter on an urgent basis.
2. That an order be and is hereby issued stopping and/or preventing the 2nd and 3rd Respondents from proceeding with any form of construction at Plot No. 2629 at Mahwalala Zone 6 until all issues between the relevant stakeholders are resolved in accordance with the 1st Respondent’s undertaking issued on 24th April 2013.

ALTERNATIVELY;

3. That an order be and is hereby issued declaring that the construction presently undertaken by the 2nd and 3rd Respondents herein at Plot No. 2629 at Mahwalala Zone 6, Mbabane, is unlawful and contravenes the Urban Government Act, 1969 and/or the Mbabane Town Planning Scheme, 1998.
4. Cost of the application.

[3] The learned judge in the court a quo dismissed the application with costs and the Applicant appeals against that decision listing several grounds in his notice of appeal.

[4] I proceed to summarise in broad outline the case made out by the Applicant in his founding affidavit.

[5] The Applicant states that he is an elected councillor representing several constituencies within the municipal council of Mbabane including the residents of Mahwalala Zone 6. He asserts that by

law he is duly authorised to pursue the welfare of his constituency.

[6] The Applicant avers that the 3rd Respondent conducts a private learning institution at Zone 6, Mahwalala area. He alleges that initially it was intended to establish a community school in the area but this changed and the institution is at present privately operated.

[7] The area known as Mahwalala is still an informal settlement under development. Residents have been allocated plots but no title deeds have been issued. The Applicant asserts that the community, being the lawful settlers or possessors have “claim to it just like the other plots within the community.” He says that a number of stakeholders are laying claim to Plot no. 2629. These include the youth of the area including a Mtsetfwa family who reside near the plot.

[8] The stakeholders approached the Applicant in his capacity as a councillor to register their concerns. He advised them to address

a letter to the 1st Respondent. The latter responded stating that their concerns were being dealt with by the Ministry of Housing and Urban Development.

[9] Notwithstanding that, the above ministry had not responded to the alleged concerns, the 3rd Respondent commenced construction on the disputed plot.

[10] The Applicant avers that the building operations are illegal being in contravention of the Mbabane Town Planning Scheme 1998 inasmuch as the land is a designated zone and special consent is required. He further states that the development is in contravention of the Urban Government Act of 1969.

[11] One Linah Mtsetfwa, a member of the family referred to in the Applicant's affidavit, delivered a supporting affidavit in which she alleged that the 2nd and 3rd Respondents were in the process of erecting illegal structures. She avers that the land in question was to be an open space and was never allocated to the 2nd and 3rd Respondents.

[12] On the 14th May 2013, the 1st Respondent delivered notice of its intention to oppose the application. This was followed by an answering affidavit delivered the following day.

[13] The affidavit deposed to by one Barney Magagula, indicated that the 1st Respondent in fact abides the decision of the court. Magagula testified that the land in question was allocated to the 3rd Respondent by the ministry of Housing and Urban Development. The boundaries of the land in question were communicated to the 1st Respondent. Building plans in accordance with legislation were submitted and approved by the 1st Respondent. The building operations are being conducted within the allocated boundaries.

[14] The 2nd and 3rd Respondents delivered an answering affidavit on 16th May 2013. This was deposed to by the 2nd Respondent.

[15] The 2nd Respondent submitted in limine that the Applicant has no *locus standi* to bring this application. He avers that the Applicant is not directly affected by the construction on the site

nor is he an owner or occupier of Plot 2629 and therefore has no legal interest in it. The 2nd Respondent further submits that his position as councillor representing the people of Mbabane West does not entitle him to institute proceedings on their behalf.

[16] The 2nd Respondent makes the point that the land in question belongs to the Swaziland government and is managed by the Ministry of Housing and Urban Development. The latter in turn, offered to lease the land to the 3rd Respondent for a period of 99 years. There is no question of the 3rd Respondent claiming to be the owner thereof.

[17] The 3rd Respondent applied for and was given permission to commence construction of classrooms and teachers 'quarters on the site. These permits are annexed to the affidavit.

[18] I turn now to focus on what I consider to be the principal issue in this appeal namely the *locus standi* (lately referred to as "standing") of the Applicant to bring these proceedings.

[19] It is incumbent on an Applicant in motion proceedings to make his/her case in the founding affidavit. Generally speaking, an applicant will not be permitted to do so in reply.

(See *Hart v Pinetown Drive-in Cinema (Pty) Ltd* 1972(1) SA 464(D) at 469 C-E; *Pearson v Magrep Investments (Pty) Ltd* 1975(1) SA186 (D).

[20] As indicated in the summary the evidence adduced by the Applicant in his founding affidavit in regard to locus standi was essentially based on the assertion that as an elected councillor he represents several constituencies within the municipal council of Mbabane including the residents of Mahwalala Zone 6. He says, and I quote his words: “I am duly authorised to pursue the welfare of my constituency not only within the 1st Respondent **but also in other legal forums especially in cases where the 1st Respondent is not complying with the law or legitimate expectations.**” (My emphasis) Towards the end of his affidavit he continues this theme, and I quote: “10.2. As a councillor of the area in question, I have been approached by the youth who have threatened physical violence and destruction of the structure

being constructed by the 2nd and 3rd Respondents. **However as a responsible person, I have advised the youth that since I could not get help from the 1st Respondent that I will approach the above Honourable Court for the appropriate relief on an urgent basis”** (My emphasis)

[21] From the above testimony one can draw a fairly clear inference that the Applicant assumes that his position as a councillor confers on him an authority to approach court to adjudicate on a dispute which he believes has arisen in his constituency and which the 1st Respondent has not resolved to his satisfaction. It is true to say that the Applicant has been elected to represent his constituents. He does so as part of a democratic collective and he pursues the interests of his constituents within the structures of the council. He is bound by decisions taken or resolutions passed by council. As the learned judge in the court a quo pointed out, he cannot, if outvoted on an issue, approach a court to undo the wishes of the majority.

[22] Now, it seems to me that outside the council structures the Applicant has no blanket power or indeed authority to approach a court unless he establishes as an ordinary litigant would, that he has the necessary locus standi - in accordance with the time-honoured criteria laid down by the courts.

[23] A useful exposition of the law relating to *locus standi* is set out in Herbstein and van Winsen, the Civil Practice of the High Courts of South Africa (5th Edition) Volume 1 pages 192 to 198. The learned authors at page 192 summarise the applicable principles as follows:-

“Since this decision, the rule which South African Courts have consistently applied in matters concerning the enforcement of legislation, which are not concerned with the promotion or protection of constitutional rights, is:

(a) *Where the statute was enacted in the interests of a particular class of persons, any member of that class can take action to enforce it, irrespective of whether*

such person was personally adversely affected by the non-compliance

(b) Where the statute was enacted in the public interest, any member of the public who could show that he or she was being adversely affected by non-compliance with that statute would have locus standi to enforce it.”

[24] The Applicant did not attempt to establish locus standi on either of the above bases. The dispute with the council apparently stems from certain unknown persons' dissatisfaction with the allocation and or distribution of plots of land in the particular township and the Applicant's apprehension that they may commit acts of violence. Instead of some of these affected individuals or indeed, a community organisation with a real interest doing so, the Applicant himself has taken up the cudgels.

[25] As indicated at the commencement of this judgment the Applicant in the main seeks relief in the form of an interdict. Herbstein and van Winsen supra at page 195 state:

“At common law the person who was required to approach the court for an interdict was generally the person whose right was being infringed and who would suffer harm if the interdict was not granted.”

On this footing as well the applicant in my view falls short.

[26] To sum up so far. The Applicant has not established the necessary *locus standi* to bring this application. His assertion that he can act as a councillor in the interests of his constituents outside the structures of the council and approach a Court, falls to be rejected out of hand. As mentioned, he has not attempted in his founding affidavit to establish *locus standi* on any other factual basis consistent with the criteria mentioned above.

[27] It follows in the premises, that the court a quo correctly held that he had no *locus standi* and the appeal falls to be dismissed with costs. .

P. LEVINSOHN
JUSTICE OF APPEAL

M.M.RAMODIBEDI
CHIEF JUSTICE

DR B.J. ODOKI
JUSTICE OF APPEAL

For the Appellant

Mr N.M. Manana

For the 2nd and 3rd Respondents

Mr S.Bhembe

