


**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 35017/2017**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	<u>5 June 2017</u>
<b>SIGNATURE</b>	<b>DATE</b>

In the matter between:

**JACOBUS ALBERTUS JOUBERT N.O.**

**1<sup>ST</sup> APPLICANT**

**DIONSZIA JOUBERT N.O.**

**2<sup>ND</sup> APPLICANT**

**TANTUS TRADING 151 (PTY) LIMITED**

**3<sup>RD</sup> APPLICANT**

**SPECIALISED PRECAST ELEMENTS CC**

**4<sup>TH</sup> APPLICANT**

and

**THE UNKNOWN INDIVIDUALS ATTEMPTING TO  
INVADE AND/OR SETTLE AND/OR SELL LAND ON  
THE IMMOVABLE PROPERTIES KNOWN AS-  
PORTION 3 OF THE FARM PIENAARSPOORT 338,  
REGISTRATION DIVISION J.R., GAUTENG,  
THE REMAINING EXTENT OF THE FARM  
PIENAARSPOORT 338, REGISTRATION  
DIVISION, J.R., GAUTENG**

**1<sup>ST</sup> RESPONDENT/S**

and

**THE REMAINING EXTENT OF PORTION 5 OF THE  
FARM PIENAARSPOORT 338, REGISTRATION  
DIVISION, J.R., GAUTENG**

**THE STATION COMMANDER-BOSCHKOP  
POLICE STATION**

**2<sup>ND</sup> RESPONDENT**

**MINISTER OF POLICE**

**3<sup>RD</sup> RESPONDENT**

**CITY OF TSHWANE METROPOLITAN**

**4<sup>TH</sup> RESPONDENT**

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**JUDGMENT**

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**KUBUSHI J**

**INTRODUCTION**

[1] Two applications are before me. Application in case number 35071/2017 and application in case number 35022/2017. The parties in both applications have agreed that the applications be heard together due to the fact that the facts, the issues and the relief sought are similar.

[2] The relief sought in the applications is intended to curtail mass land invasion by a group of unknown invaders ("the fourth respondent") on the applicants' properties.

[3] The matter was placed before me in the urgent court but urgency is not at issue.

[4] The applications are heard *ex parte* against the first respondent. The second, third and fourth respondents ("the respondents") are opposing the applications. The

opposition is directed not at the substantive claim but is against the relief sought by the applicants against them.

[5] Pertinent to the issues before me is prayer 2 of the applicants' notice of motion which is stated as follows:

"2. That a *rule nisi* be issued calling upon the respondents to show cause on a date determined by the Honourable Court why the following order should not be made final:

2.1 The First Respondent/s are ordered to immediately restore the Applicants In undisturbed possession of the immovable properties known as Portion 3 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Pienaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent of Portion 5 of the farm Pienaarspoort 338, Registration Division J.R., Gauteng;

2.2 The First Respondent/s are interdicted from entering and/or trespassing and/or settling on the immovable properties known as Portion 3 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Pienaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent of Portion 5 of the farm Pienaarspoort 338, Registration Division J.R., Gauteng;

2.3 The first Respondent/s are interdicted from enticing or instigating and/or procuring any other individuals from entering the immovable properties known as Portion 3 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Pienaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent of Portion 5 of the farm Pienaarspoort 338, Registration Division J.R., Gauteng, or selling and/or attempting to sell portions of said land;

2.4 The Sheriff is mandated and ordered to demolish all uninhabited structures/partial structures on the immovable properties known as Portion 3 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Pienaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent of Portion 5 of the farm Pienaarspoort

338, Registration Division J.R., Gauteng, and remove the building materials from the said premises;

- 2.5 The Second Respondent and/or Third Respondents are ordered to assist the Applicant and the Sheriff in giving effect to this order by taking all reasonable steps within their available resources in this regard;
- 2.6 The Fourth Respondent, through the Metro Police Service, is ordered to assist the Applicant and the Sheriff in giving effect to this order by taking all reasonable steps within their available resources in this regard."

## **FACTUAL MATRIX**

[6] It is not in dispute that the applicants are the owners of certain properties in the Registration Division J.R. Gauteng Province consisting of several farms individually owned by the applicants. Initially a group of about five women erected a Wendy-house on one of the farms without the consent and/or permission of the owner. It later emerged that the Wendy-house was erected there with the purpose of running an office to sell plots from the various farms.

[7] Members of the first respondent are said to be presently on some of the farms busy clearing portions of the property and/or demarcating stands and/or planting poles and/or attempting to erect structures. At the moment the number of invaders has swelled to approximately 300.

[8] The individuals selling the plots were informed that they have no entitlement to be on the farm or to conduct business there or to sell any plots to anyone. A charge of trespassing was opened with the police but the police could not assist. The applicants even procured the services of a private security company to diffuse the situation. This, also, did not work because of the sheer mass of the first respondent and the fact that they turned violent. The applicants have now approached court for relief as *per* the notice of motion.

## THE ISSUE

[9] The issue to be determined is whether there is a duty upon the respondents to assist the applicants and the sheriff in giving effect to the order in terms of prayer 2.4 of the notice of motion.

[10] In support of their opposition the respondents rely on the unreported full court judgment of this Division in *JR 209 Investments (Pty) Ltd v The City of Tshwane Metropolitan Municipality and Others*.<sup>1</sup> That judgment is, however, distinguishable in that the relief sought against the municipality and the police in that judgment and the issues that court had to resolve are different from the relief and issues in the matter before me.

[11] The relief sought in the *JR 209 Investments*-judgment above, was couched as follows:

- "2. That the first [the City of Tshwane Metropolitan Municipality] and second [The South African Police Service] respondents be ordered to take all necessary steps to prevent the unlawful:
- 2.1 trespassing and occupation of the applicant's properties being . . . . ("the subject properties").
  - 2.2 dumping of waste and sorting thereof on the subject properties.
  - 2.3 conduct of a waste recycling business on the subject properties."

[12] The issues to be determined were, firstly, whether a *mandamus* should have been granted against the first and second respondents compelling them to prevent the third and fourth respondents from trespassing upon and occupying the appellant's properties, the dumping and sorting of waste and the conducting of a waste recycling business on the properties. The crux being whether the first and

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<sup>1</sup>Case No. A204/16.

second respondents are obliged in law to prevent the activities complained of from taking place. The finding of the court was that both respondents were not obliged to do so.

[13] Secondly, whether a final interdict should have been granted as sought against the third and fourth respondents. That court found in favour of the third and fourth respondents in this regard. It dismissed the application against the two respondents on the basis of impracticability, that is, that an order as sought could not be granted against those *intending* to occupy property.

#### THE RELIEF SOUGHT AGAINST THE RESPONDENTS

[14] The relief sought against the second and third respondents and the substratum on which the relief is based is the same as in respect of the fourth respondent. The relief is stated as follows in the notice of motion:

- "2.5 The Second Respondent and/or Third Respondents are ordered to assist the Applicant and the Sheriff in giving effect to this order by taking all reasonable steps within their available resources in this regard;
- 2.6 The Fourth Respondent, through the Metro Police Service, is ordered to assist the Applicant and the Sheriff in giving effect to this order by taking all reasonable steps within their available resources in this regard."

The factual basis on which the applicants' rely for this relief is couched thus –

"The applicants are furthermore also entitled to protection from continued criminal conduct by the Second to Fourth Respondents (through the South African Police Service and the Metro Police) in terms of *inter alia* the Constitution of the Republic of South Africa, 1996 and the

South African Police Service Act, 68 of 1995. The applicants appreciate that this right is subject to limitations such as available resources."<sup>2</sup>

Based on the aforesaid the applicants claim a mandatory interdict against the respondents which compels them to assist the applicants and the sheriff to curtail an unlawful land invasion of the applicants' land.

### THE SECOND AND THIRD RESPONDENT'S CASE.

[15] The submission by the applicants' counsel is that the applicants' right to property is protected by the Constitution and that s 205 thereof confirms the existence of the police service and their objects and as such the applicants are entitled to the protection offered by the police service. A further submission is that section 13 (3) of the South African Police Service Act 68 of 1995 ("the Police Act") entitles the applicants to the relief they seek because only reasonable steps within available resources are requested.

[16] The police assistance to the sheriff when executing court orders, according to the applicants' counsel in the heads of argument, is nothing new and is in fact the case in most civilised countries. In this regard, counsel referred me to the judgment in *Sithole v Native Resettlement Board*<sup>3</sup> wherein Williamson J held as follows:

"There is a legal process by which the enforcement of rights is carried out. Normally speaking, it is carried out as a result of an order of court being put into effect through the proper officers of the law such as the sheriff, deputy sheriff, messenger of the magistrate's court or his deputies, reinforced if necessary, by the aid of the police or some such authority; in most civilised countries there exists the same principle that no person enforces his legal rights himself. For very obvious reasons that it is so; if it were not so, breaches of the peace,

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<sup>2</sup>See para 49 in case 35017/2017 and para 38 in case 35022/2017.

<sup>3</sup>1959 (4) SA 115 (W) on p117.

for instance, would be very common. It is clear, therefore, that if you want to enforce a right you must get the officers of the law to assist you in the attainment of your rights.”

This above quotation, so counsel asserts, was referred to with approval in the Appellate Division in *George Municipality v Vena and Others*<sup>4</sup>

[17] I am in agreement with this submission of counsel that the police should, where necessary, give assistance to the sheriff when executing a court order. In the *George Municipality*-judgment above, the court went further to remark as follows –

“That this is a fundamental principle of our law admits of no doubt. The need to avoid breaches of the peace can hardly be thought to be of less importance under present-day conditions than when the rule was first enunciated in the cradle days of our law. It is perhaps, not without interest that Sandars in his *Institute of Justinian 7<sup>th</sup>* ed at 488 in a note dealing with praetorian interdicts suggest that it was

‘originally, perhaps, only when subject of dispute was such as to render a breach of the public peace the probable result unless the matter was set at rest by the summary interposition of legal authority’,

that such remedies were granted where the dispute was entirely between private parties.”<sup>5</sup>

[18] I am fortified in my view that the police should, where necessary, give assistance to the sheriff when executing a court order by the words of Ranchod J in the *JR 209 Investments*-case above, whereat the following is said:

“[41] . . . ., where an applicant obtains an order for eviction then in that case a further order seeking the assistance of the police would not be inappropriate . . . Put differently, the appellant’s remedy as against the second respondent is not to force it to take preventative action as sought but rather, after having obtained an appropriate order against trespassing or the conducting of illegal activities seek the assistance of the second respondent in enforcing a court order.”

<sup>4</sup>1989 (2) SA 263 (A) at p2711 – 272A.

<sup>5</sup>See p272B – C.



[19] It is, therefore, my view that in the circumstances of this case it is necessary for the police to assist the sheriff when executing the court order. The facts of the matter are that there is a swelling in the number of the invaders and they have also turned violent, as such, it is necessary that when the sheriff goes to execute, she/he should be accompanied by the police.

[20] The relief sought against the sheriff is to demolish all uninhabited structures/substructures on the immovable properties and remove the building materials from the premises. I do not understand the assistance required here to mean that the police should physically assist the sheriff to demolish the structures and /or substructures and to remove the material from the premises. The assistance required here, which can be provided by the police, is for protection and nothing else.

#### THE FOURTH RESPONDENT'S CASE

[21] The key question here is whether the Metro Police have the same duties and powers as the South African Police Service to assist the sheriff when executing a court order. I do not agree.

[22] Metropolitan policing is a relatively new phenomenon on the South African policing landscape. This matter being in the urgent court I do not have enough time to research this topic extensively. I, as a result have to rely on submissions by counsel in their respective heads of argument.

[23] It is apparent from the submissions made in the fourth respondent's heads of argument that the powers and responsibilities of the South African municipal police are circumscribed. Municipal police officers have legal powers of arrest, search and seizure within their area of jurisdiction, but, they do not have powers to investigate a

crime. They are required to hand over criminal suspects to the South African Police for investigation and prosecution.

[24] The mandate of all metropolitan police, as is those of the City of Tshwane, is described in section 64E of the Police Act as:

24.1 traffic policing, subject to any legislation relating to the road traffic;

24.2 the policing of municipal by-laws and other municipal regulations;

24.3 the prevention of crime.

[25] In his heads of argument, the fourth respondent's counsel submits that the term 'crime prevention' in the context of metropolitan policing and the crime prevention mandate is undefined, unclear and misunderstood. He concludes, however, that the crime-prevention role of the metropolitan police is based on the concept of deterrence through visible policing.<sup>6</sup>

[26] The applicants' counsel on the other hand submits that the metro police are in terms of the By-Laws Relating to the Management and Control of Informal Settlements ("the By-Law"), members of the Land Invasion Reaction Unit and have a duty to assist the applicant and the sheriff. Even though this submission was objected to by the fourth respondent's counsels for not forming part of the applicants' founding papers, I found it to be of no assistance to the applicants' case. The Land Invasion Reaction Unit mentioned in the By-Law is designated by the Municipality to assist the Manager: Informal Settlements in the execution of her or his duties and to

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<sup>6</sup>See White Paper on Safety and Security (1998, The Role of Local Government) where the role is described as being:

*"... primarily exercised through the visible presence of law enforcement officials by means of point duty, foot, vehicle or other patrols."*

execute any eviction order to terminate an unauthorised informal settlement. The land invasion on the properties of the applicants is not described in the By-Law as an unauthorised informal settlement. It is important to note the distinction the By-Law places on 'informal settlement' which includes privately owned land and 'unauthorised informal settlement' which excludes privately owned land.<sup>7</sup>

[27] With the limited facts at my disposal, I have to assume without concluding, that the Metro police, because of their circumscribed responsibilities, do not have an obligation to assist the applicants nor the sheriff as prayed for in these proceedings.

#### CASE AGAINST THE FIRST RESPONDENT

[28] The question here is whether judgment should be granted against the first respondent because they are faceless individuals. I am the view that this issue should not be entertained at this stage of the proceedings without the benefit of argument from the first respondent.

#### COSTS

[29] The applicants applied for the costs of the application to be reserved pending the finalisation of the application. The submission by the fourth respondent's counsel is that if I find in the respondents' favour it would be unnecessary for the costs to be reserved. I have found in favour of the fourth respondent and do agree that it is unnecessary to reserve costs in that regard. Such costs, in my opinion, should not be on a punitive scale as applied for by the fourth respondent's counsel. As regards costs in respect of the other parties, it is my view that they be reserved.

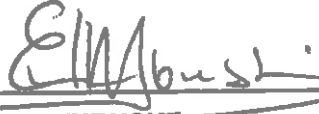
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<sup>7</sup>See paragraphs 1 and 5 of the By-Laws Relating to the Management and Control of Informal Settlements of the City of Tshwane Metropolitan Municipality.

[30] In the premises I make the following order –

30.1 The application against the fourth respondent is dismissed.

30.2 In respect of the other respondents, the draft order marked "XY" and initialled, duly amended, is made an order of court.

  
 E.M. KUBUSHT  
 JUDGE OF THE HIGH COURT

<b>Counsel for Applicant</b>	<b>: Adv. J.G.C HAMMAN</b>
<b>Instructed by</b>	<b>: HURTER SPIES INC.</b>
<b>Counsel for the 2<sup>nd</sup> &amp; 3<sup>rd</sup> Respondents</b>	<b>: Adv. MANAGA</b>
	<b>: Adv. V. MASHELE</b>
<b>Instructed by</b>	<b>: STATE ATTORNEY</b>
<b>Counsel for the 4<sup>th</sup> Respondent</b>	<b>: Adv. J. VORSTER</b>
<b>Date heard</b>	<b>: 26 MAY 2017</b>
<b>Date of Judgment</b>	<b>: 05 JUNE 2017</b>

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Before the Honourable Judge Kubushi**  
**On ~~26 May 2017~~ 5 June 2017**

Case No: 35017 / 2017

In the matter between:

**JACOBUS ALBERTUS JOUBERT N.O.**

First Applicant

**DIONYSIA JOUBERT N.O.**

Second Applicant

**TANTUS TRADING 151 (PTY) LIMITED**

Third Applicant

**SPECIALISED PRECAST ELEMENTS CC**

Fourth Applicant

and

**THE UNKNOWN INDIVIDUALS ATTEMPTING  
TO INVADE AND/OR ENTER AND/OR  
TRESPASS AND/OR SETTLE AND/OR SELL  
LAND ON THE IMMOVABLE PROPERTIES  
KNOWN AS-**

First Respondent/s

**PORTION 3 OF THE FARM PIENAARSPOORT  
338, REGISTRATION DIVISION J.R., GAUTENG,**

**THE REMAINING EXTENT OF THE FARM  
PIENAARSPOORT 338, REGISTRATION  
DIVISION, J.R., GAUTENG**

and

**THE REMAINING EXTENT OF PORTION 5  
OF THE FARM PIENAARSPOORT 338,  
REGISTRATION DIVISION J.R., GAUTENG**

**THE STATION COMMANDER - BOSCHKOP  
POLICE STATION**

Second Respondent

**MINISTER OF POLICE**

Third Respondent

**CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY**

Fourth Respondent

EM

"XJ"  
EM

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~~DRAFT ORDER~~

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After having heard argument and reading the documents filed and considering the matter

**IT IS ORDERED**

1. A rule *nisi* is issued calling upon the Respondents to show cause on 31 August 2017 at 10h00 why the following order should not be made final:
  - 1.1 The First Respondent/s are ordered to immediately restore the Applicants in undisturbed possession of the immovable properties known as Portion 3 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Pienaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent Of Portion 5 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng;
  - 1.2 The First Respondent/s are interdicted from entering and/or trespassing and/or settling on the immovable properties known as Portion 3 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Pienaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent Of Portion 5 of the Farm Pienaarspoort 338, Registration Division J.R., Gauteng;

- 1.3**        **The First Respondent/s are interdicted from enticing or instigating and/or procuring any other individuals from entering the immovable properties known as Portion 3 of the Farm Plenaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Plenaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent Of Portion 5 of the Farm Plenaarspoort 338, Registration Division J.R., Gauteng, or selling and/or attempting to sell portions of said land;**
- 1.4**        **The Sheriff is mandated and ordered to demolish all uninhabited structures/partial structures on the immovable properties known as Portion 3 of the Farm Plenaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Plenaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent Of Portion 5 of the Farm Plenaarspoort 338, Registration Division J.R., Gauteng, and remove the building materials from said premises;**
- 1.5**        **The Second and/or Third Respondents are ordered to assist the Applicants and the Sheriff through the SAPS in giving effect to this order by taking all reasonable steps within their available resources in this regard;**

1.6 The Fourth Respondent, through the Metro Police Service, is ordered to assist the Applicant and the Sheriff in giving effect to this order by taking all reasonable steps within its available resources in this regard

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2. The order in prayer 1 above and the sub-prayers thereto operate as *interim* Court Order with immediate effect and enforceability

3. The Sheriff is directed to serve a copy of this order on every adult person found on the immovable properties known as Portion 3 of the Farm Plenaarspoort 338, Registration Division J.R., Gauteng, the Remaining Extent of the Farm Plenaarspoort 338, Registration Division, J.R., Gauteng and the Remaining Extent Of Portion 5 of the Farm Plenaarspoort 338, Registration Division J.R., Gauteng

4. Costs are reserved for determination on the return date in respect of the applicants and second and third respondents.

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**BY ORDER  
THE REGISTRAR**

5. The applicants are ordered to pay the costs of the fourth respondents jointly and severally.

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