



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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City of Ekurhuleni Metropolitan Municipality v Tshepo Gugu Trading CC and Another (1054/2022) [2024] ZASCA 81 (28 May 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment granting the application for special leave to appeal and further upheld the appeal, with costs, including those of two counsel where so employed, against the decision of the Gauteng Division of the High Court, Johannesburg (the full court).

The municipality was the owner of the immovable property situated at Portion 988, Elandsfontein 90-IR described as 'Gillooly's Farm' (the site). The respondent, Tshepo Gugu Trading CC (the respondent), owned a large billboard. In March 2016, the respondent installed the billboard on the site. On 5 August 2016 the municipality launched an application in the Gauteng Division of the High Court, Johannesburg (the high court) for an order directing the respondent to remove the billboard and to restore the site to its original state. The basis for that application was that the respondent had erected the billboard in contravention of the municipality's Billboards and Display of Advertisements By-laws of 13 March 2017 (the By-laws) and the Local Government Municipal Systems Act 32 of 2000 (the Systems Act). The respondent opposed the application and filed a counter-application. Those applications were settled in terms of a written settlement agreement between the parties that was made an order of court per Victor J. However, the respondent did not comply with its obligations in terms of the said court order. On 23 January 2020 the municipality addressed a letter to the respondent requesting that it complies with the order, failing which, the municipality would have no option but to exercise its right to remove the billboard at the respondent's expense. The response from the respondent, through its attorneys on 30 June 2020 was that any removal of the billboard without the respondent's consent and without a court order would amount to a spoliation, entitling it to an appropriate remedy. The municipality nonetheless, acting on the Victor J order, dismantled and removed the billboard on 20 August 2020. The respondent in turn brought an urgent application for a *mandament van spolie* which served before Wepener J on the same day. The application was opposed by the municipality. Wepener J granted an order interdicting the municipality from taking any further steps, or continuing to take steps to dismantle and remove the billboard. The Municipality, however, submitted that the respondent had simply failed to comply with the provisions of the Victor J order and this non-compliance entitled it to invoke the provisions of that order.

The spoliation application was eventually determined by Senyatsi J (the court of first instance). Although the court of first instance found that the respondent was in peaceful possession of the billboard, it nonetheless refused to grant it any relief on the basis that: (a) the municipality had dismantled the billboard and reduced it to a pile of steel structures; (b) it was not possible to restore the *status quo ante* as the billboard had been dismantled; and (c) the remedy of spoliation had become moot because the order made on 11 September 2018 by Victor J had expired in September 2020. The respondent was granted leave to appeal to the full court.

Before the full court, two issues were raised: first was whether the impossibility of restoring the billboard was raised in the founding papers to warrant the court of first instance's consideration in that regard. The second was whether the facts of the case supported the conclusion by the court of first instance

that there was an impossibility of restoring possession of the billboard. With regard to the first issue, the full court found that that was not an issue that had been raised by the municipality in its answering papers. The issue was raised for the first time in the municipality's heads of argument. It held that the court of first instance, in concluding that the remedy of *mandament van spolie* did not find application in the matter before it, did so on the basis of facts that were not properly pleaded. As to the second issue, the full court reasoned that the court of first instance had not found that the billboard no longer existed but rather that the municipality had merely dismantled the billboard. The full court concluded that the integrity or functioning of the billboard was not destroyed and that it had simply been dismantled. On that basis there was no reason why, so the full court held, that possession could not be restored to the respondent.

Aggrieved by the full court's decision, the municipality lodged an application to this Court for special leave in terms of s 16(1)(b) of the Superior Courts Act 10 of 2013 (the Act), against the decision of the full court. Before this Court, the primary contention advanced by the municipality was that it had acted lawfully in terms of a valid court order when it removed the illegally constructed billboard from its site. Its case was that it did not take the law into its own hands as the order of Victor J entitled it to remove the billboard in circumstances where the respondent had failed to comply fully with the terms of that order. It was submitted that the respondent had been placed on notice on several occasions to comply with the order and to submit a fully compliant regularisation application in terms of the By-laws but it failed to do so. It was contended that ordering restoration of the billboard to the respondent in these circumstances would amount to sanctioning an illegality.

The central issue before this Court was whether the full court was correct in ordering the restoration of the *status quo ante*.

The SCA held that full court had erred by finding that the municipality had wrongfully interfered with the respondent's peaceful possession as it only focused on the issue of restoring possession to the respondent. The full court, according to the SCA, ignored the terms of the court order and the failure on the part of the respondent to regularise its otherwise illegal installation. The SCA further held that the Municipality had on numerous occasions given the respondent time to comply with its By-laws and the respondent failed on each occasion to comply. The municipality commenced with the dismantling of the Billboard only on 20 August 2020, almost seven months after its letter of 23 January 2020. The municipality was therefore within its rights to invoke the provisions of the Victor J order. In addition, the SCA held that it would be unnecessary to deal with whether the restoration of the *status quo ante* was competent in the circumstances where the billboard was partially dismantled as it was clear that the display screen, media player and control system had been removed and all that was remaining was the steel frame. The Court also held that, although the court would ordinarily order the restoration of the *status quo ante*, the difficulty facing the respondent was that the structure that was sought to be restored in any event violated the By-laws in terms of both its size and location. The SCA also held that from the time of its erection, the billboard did not comply with the law – it was an illegal structure. The respondent was aware of this fact throughout. Furthermore, according to the SCA, no court was permitted to countenance a glaring illegality. Nor should a court turn a blind eye on the prescripts of the law and the importance of observing them. After all, the By-laws were designed to maintain order, ensure public safety, and create harmonious living environments. They also played a vital role in promoting sound business interests and competition as well as regulating community life. As a result, the SCA held that the municipality had acted within the confines of the court order, and therefore, both the application for special leave and the appeal ought to succeed.

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