



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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Ubuhlebezwe Municipality v Ramsunder (873/2022) [2023] ZASCA 165 (1 December 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the Kwa-Zulu Natal Division of the High Court, Pietermaritzburg. The appellant, Ubuhlebezwe Municipality (the municipality), initiated motion proceedings against the respondent, Mr Harilall Ramsunder (Mr Ramsunder), for an order interdicting him 'from carrying out any building operations and/or renovations and/or improvements and/or restoration to the immovable property' situated in the town of Ixopo, Kwa-Zulu Natal (the property). The clear right upon which the municipality sought to rely in order to obtain a final interdict, emanates from s 4(1) read with the definitions of the words 'erection' and 'erect' in s 1 of the National Building Regulations and Building Standards Act 103 of 1977 (the Act). The section stipulates that '[n]o person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act.' The words 'erection' and 'erect' are defined, thus:

"erection" in relation to a building, includes the alteration, conversion, extension, rebuilding, re-erection, subdivision of or addition to, or repair of any part of the structural system of, any building; and "erect" shall have a corresponding meaning.'

The buildings on the property were erected during 2004 in accordance with duly approved municipal plans and specifications. During July 2021, widespread civil unrest started in Kwa-Zulu Natal and spread to Gauteng. It was accompanied by egregious loss of life, public violence, burglary and malicious damage to property. Mr Ramsunder was one of the unfortunate victims of the widespread unrest. The buildings on the property from which he was conducting his business were damaged and he could no longer conduct any business from these premises. Mr Ramsunder engaged the services of a construction company, RockSteel, to undertake the required remedial construction to restore the buildings on the property to their original state, in accordance with the previously approved plans and specifications.

The municipality contended that Mr Ramsunder was required to have new plans and specifications drawn and approved by the municipality, prior to the commencement of the remedial construction works on the property. Mr Ramsunder, on the other hand, contended that the 2004 approved plans and specifications met the requirement of s 4(1) of the Act. The high court agreed with Mr Ramsunder and concluded that the municipality has not established a clear right that required protection by way of a final interdict.

The SCA agreed with the conclusion reached by and the order of the high court. In dismissing the appeal, the SCA held that s 4(1) forms part of a suite of legislative stipulations providing for municipal approval, oversight, and sign off on buildings that are safe, sound and aesthetically acceptable. Indeed, so the SCA held, the legislature has cast the net for municipal authorisation wide in defining 'erect' in relation to a building, as it has done in defining a 'building'. The evident intention with that is to ensure that the erection of all buildings (within the wide meaning ascribed to that noun) has been done in accordance with approved plans and specifications, even if, for example, the intended construction constitutes a mere re-erection of a pre-existing building that had originally been erected without the

legally required municipal authorisation. Conversely, it could never have been the intention, as the municipality would have it, that new plans and specifications need to be submitted to and approved by a local authority prior to the commencement of remedial construction works being undertaken in circumstances where the municipality had previously approved the identical plans and specifications, in accordance with which the remedial works are to be carried out, and in the absence of any suggestion that the local authority would have imposed amended or additional conditions.

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