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IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO. 3464/86

1986.06.12

BEFORE THE HONOURABLE MR JUSTICE GOLDSTONE

In the matter between:

THE KRUGERSDORP RESIDENTS ORGANISATION

First Applicant

AND FOUR OTHERS

and

THE MINISTER OF LAW AND ORDER

First Respondent

AND TWO OTHERS

ON BEHALF OF THE APPLICANTS:

ADV J. BROWDE, S.C.
ADV. D.A. KUNY, S.C.
ADV. J. STRAUSS
ADV. J.H.A. MUNNIK

ON BEHALF OF THE FIRST
AND SECOND RESPONDENTS:

ADV. P.A. HATTINGH, S.C.
ADV. J.C. LABUSCHAGNE
ADV. B.W. BURMAN
ADV. J.J. WESSELS

ON BEHALF OF THE THIRD
RESPONDENT:

ADV. J.H. COETZEE, S.C.
ADV. Q. PELSER

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COURT RESUMES ON 1986.06.12:

MR BROWDE: My Lord, we have heard that last night all the, as far as we are aware, My Lord, all the Executive Members of the first applicant and the second applicant himself, My Lord, have all been arrested on the orders of the first respondent. Consequently, My Lord, we are in a position where we cannot take proper instructions from anybody and we are in a position, we have to ask Your Lordship to postpone the action sine die and as far as the costs are concerned, we will have to get clarification on this at a later stage. Therefore, My Lord, I (10) ask that the costs be reserved. I consequently move for that order, My Lord.

COURT: Which members of the Executive had been ...

MR BROWDE: Well, My Lord, I understand, we know for a fact that Laurence Ntlokoa has been arrested. That Mr Joe Makgothlo has been arrested, sister Ncube has been arrested, Bongani Dlamini has been arrested. We are not sure of Mr Genu. That virtually adds up to the whole of the Executive of the organisation, and in any event, the second applicant himself has been arrested, My Lord. We do not know on what basis they (20) have been arrested, for how long they are going to be detained, what is going to happen, My Lord, and until we have got clarification, we feel we are not in a position to carry on.

COURT: Mr Hattingh, are you able to throw any light on the ...

MR HATTINGH: I beg your pardon, My Lord?

COURT: Are you able to thrown any light on ...

MR HATTINGH: No, My Lord. I have been told what Your Lordship has now been told by My Learned Friend, by Mr Strauss this morning, but My Lord, as far as My Learned Friend's application is concerned, I accept that he cannot take (30)

instructions/

instructions from those people who have been arrested, but Mr Mabasa, who is under cross-examination, My Lord, he is present. I submit that we should proceed with his evidence. My Learned Friend cannot now consult with him and take instructions as far as his evidence is concerned. I am busy cross-examining him. He is here and there is n reason, in my respectful submission why we cannot proceed with his evidence and finish his evidence, and furthermore, My Lord, I submit that it is not necessary to postpone the matter sine die. We are going into recess tomorrow. (10)

COURT: Yes, in any event, it seems to me that if it is going to be postponed, it must get postponed to 21 July, when the matter is due to go on.

MR HATTINGH: As Your Lordship pleases.

COURT: Mr Browde, why cannot Mr Mabasa be concluded?

MR BROWDE: My Lord, he is a witness giving evidence for the applicants.

COURT: Yes?

MR BROWDE: We have to take instructions. Assuming, My Lord, for example, he gives an answer which might change the face of (20) this case ...

COURT: Yes?

MR BROWDE: One has to have one's client with one in court, My Lord. The client has been taken away. There is no client in court at the moment. We cannot take instructions on what to do about a witness. It is true I cannot speak to the witness, but that is not the end of the matter.

COURT: No, but I can understand that you might want to reserve your re-examination, but how can it affect cross-examination? -- With respect, My Lord, assuming for example, (30)

forget/

forget about this case. Assuming for example one has a witness in the box, My Lord, and one's client is away for some reason or another, now, My Lord, the witness may give an answer which it is very important to consult with one's client immediately. It may be, My Lord, that an answer may be given in which the client may say, well, now that he has said that, withdraw the action.

COURT: If that happens, is it not the time to ask for the postponement?

MR BROWDE: No, with respect, My Lord ...

(10)

COURT: Just talking with the point of view of convenience even of Mr Mabasa. Why should he have to come back again?

MR BROWDE: With respect, My Lord, it is important in any litigation that the parties be present in court. My Lord, it cannot be said that you can have a proper hearing of a matter when the one client, the client, My Lord, from whom you are taking instructions, is not available to you. You just cannot go on airily, My Lord, and say, well, we have other witnesses. My Learned Friend can say, well, they can call other witnesses in the meantime.

(20)

COURT: Yes, no, he is not suggesting that. I mean, he is only suggesting that Mr Mabasa's cross-examination can be continued.

MR BROWDE: I submit, My Lord, that while our clients are in jail and detained by order of the first respondent, My Lord, it is a charade to carry on with the case and until the people are released, My Lord, there is no point in carrying on with this case, particularly, My Lord, having regard to the nature of the case, the relief which is sought, My Lord, as I have said before, is a mere charade to carry on blisfully when the

(30)

first applicant, My Learned Friend's client, My Lord, has acted in a manner so as to preclude us from seeing our clients and I submit, My Lord, to avoid it being a charade, the matter should be postponed immediately.

Mr Hattingh, it seems to me that the reason the matter should not be allowed to continue, or a reason in addition to any point raised by Mr Browde, is that your cross-examination is now getting on to an aspect which involves directly the evidence of Mr Dlamini.

MR HATTINGH: Yes, My Lord.

(10)

COURT: Who has been in court and was in court over the last few days.

MR HATTINGH: Yes, My Lord.

COURT: Now, is he not entitled to hear that evidence?

MR HATTINGH: My Lord, with respect, I, with the greatest respect, I do not see why. He has given his evidence. There is nothing ...

COURT: It involves him.

MR HATTINGH: But he has given his evidence, My Lord. There is nothing that he can do about what he has already said under (20) oath.

COURT: No, but he can give instructions, not only for re-examination, but in due course what he has to say is relevant even to argument.

MR HATTINGH: My Lord, we have a running transcript of the ...

COURT: It is not the same thing. If it was the same thing, then there would not be need for a trial court. It can go straight to the Appeal Court.

MR HATTINGH: As Your Lordship pleases. My Lord, I submit that ...

(30)

COURT: But really, we have only got today and tomorrow left, Mr Hattingh. I am not, if the applicants in these circumstances seek a postponement, I am not disposed to refuse it.

MR HATTINGH: As Your Lordship pleases. My Lord, would Your Lordship then postpone the matter till 21 July ...

COURT: And reserve the question of costs?

MR HATTINGH: And reserve the costs.

COURT: Yes. Mr Coetzee, have you got any ...

MR COETZEE: My Lord, I suggest it is proper that the matter (10)
be postponed and that be done till 21 July.

COURT: Mr Browde, are you happy that I am going to postpone till 21 July?

MR BROWDE: As Your Lordship pleases. I have no ... That is perfectly in order.

COURT: It seems to be more sensible. That is when the matter is due go on. If it cannot go on then for any reason, well, we would have to deal with it then.

MR BROWDE: As Your Lordship pleases.

COURT ADJOURNS UNTIL 1986.07.21. (20)

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