

## INTERDICTING YOUR NEIGHBOUR FOR BUILDING WITHOUT APPROVED PLANS

### *Kleyn and Another v Boikanyo and Another (014507/2024) [2024] ZAGPPHC 187 (29 February 2024)*

Property owners are often alarmed when trucks with cement and bricks arrive at their neighbour's home and mostly want to be assured that the latter is acting in accordance with building and municipal laws. What can one do if your neighbour builds without having obtained municipal plan approval, nor bothers to cease building works after the municipality directed her to do so? The court in this matter granted the concerned neighbour an interdict to stop the ongoing building work, after they had made every effort to engage with the neighbour, without success..

The Judgment can be viewed [here](#)

### FACTS

The Familie Kleyn Trust ('the Trust') and Ms Boikanyo are neighbours. Their relationship did not kick off on a high note, the dispute addressed in this judgment arising when Ms Boikanyo embarked on a building project on her property. This is because, at the time when the building works commenced, Ms Boikanyo had not yet received approval of the plans from the municipality, as is required in section 4(1) of the National Building Regulations and Building Standards Act 103 of 1977 ('the Building Standards Act').

The elderly mother of the trustees resided in the house on its property. The trustees were concerned for her safety, as the builders slept at the building site and made fires at night.

The trustees engaged with Ms Boikanyo and initially she intimated that she would address the concerns and arrange for security officers to attend the premises. This however did not transpire. She also refused to accede to a request from the trustees to cease building works until such time as building plan approval has been obtained - not even after the municipality had served a section 4(1) notice on her. In this notice Ms Boikanyo was requested, amongst other things, to cease building activities and remove all building materials from the sidewalk of the property.

The situation became untenable and both parties appointed attorneys to represent them. The Trust's attorneys initially engaged with Ms Boikanyo and later with her attorneys, requesting an undertaking that the building work would stop. This was not forthcoming.

This prompted the Trust to institute proceedings for an urgent interdict, prohibiting (i) Ms Boikanyo from continuing with the building work until such time as the municipality had issued approval of the building works; and (ii) occupation of the building site until the municipality has issued an occupancy certificate (as provided for in section 14 of the Building Standards Act). The Trust also sought (iii), an order directing the municipality to continue with its enforcement steps against Ms Boikanyo should she continue to contravene the municipality's notices.

### HELD

- In order to succeed with an urgent interdict, the Trust had to show that it has a clear right; that there is actual injury or injury that is reasonably apprehended; and further that there is an absence of satisfactory remedy.

#### *Clear right*

- The Trust's and Ms Boikanyo's properties are adjacent to each other. Accepting that building work on a neighbouring property can affect the other party and that, in the present case, the neighbouring owner refused

The Big Small Firm

stbb.co.za

Commercial Law | Conveyancing | Development Law | Labour Law | Estates | Family Law | Litigation | Personal Injuries & Third Party Claims

Cape Town  
Claremont  
Fish Hoek  
Helderberg

T: 021 406 9100  
T: 021 673 4700  
T: 021 784 1580  
T: 021 850 6400

Blouberg  
Tyger Valley  
Illovo  
Fourways

T: 021 521 4000  
T: 021 943 3800  
T: 011 219 6200  
T: 010 001 2632

Centurion  
Bedfordview  
East London

T: 012 001 1546  
T: 011 453 0577  
T: 043 721 1234

to accede to a municipal notice to cease building work, it has been established that there is a clear right on the side of the Trust to institute these proceedings.

- Injury reasonably apprehended
- The concern for the safety of the trustees' mother was discussed with Ms Boikanyo prior to the proceedings being instituted. She even undertook to put measures in place to mitigate the security risk. This undertaking came to naught and, in the context, established that there existed a reasonable apprehension of injury.

#### *Well-grounded apprehension of irreparable harm*

- The phrase 'a reasonable apprehension of injury' refers in this context to a situation "which a reasonable man may entertain on being faced with certain facts ... The applicant for an interdict is not required to establish that, on a balance of probabilities, flowing from the undisputed fact, injury will follow; he has only to show that it is reasonable to apprehend that injury will result ... However the test of apprehension is an objective one ... This means that, on the basis of facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."
- Against the background of the foregoing, it is apparent that it was reasonable to apprehend that prejudice will result.

#### *No alternative remedy*

- The Trust had approached the Court as the last resort. This is evident from the various correspondence sent to Ms Boikanyo in the weeks leading up to the hearing. No undertaking was given that the construction would be halted. The relief sought by the Trust was to stop the building works: By seeking recourse later and even claiming damages cannot be a satisfactory remedy. The main concern was the safety of the elderly mother on the property.

#### *Conclusion*

- The purpose of an interdict is to put an end to conduct in breach of an applicant's rights. An applicant invokes the aid of the Court "to order the respondent to desist from such conduct. The existence of another remedy will only preclude the grant of an interdict where the proposed alternate will afford the injured party a remedy that gives it similar protection to an interdict that is occurring or is apprehended."
- Ms Boikanyo commenced building works knowing and appreciating that it was unlawful to do so. Despite receipt of the section 4(1) notice issued by the municipality, no undertaking was ever forthcoming to allay the concerns of the trustees.
- Therefore, at the time of instituting the present proceedings, the trust is entitled to the protection it seeks.

#### *Relief sought re occupation prior to the occupancy certificate*

- An order was further sought against Ms Boikanyo, interdicting her from occupying or allowing to be occupied, the property in the absence of an occupying certificate in terms of section 14 of the Building Standards Act. That section does not find application in the present matter as the building work was not authorised by the municipality. Section 14 applies only to buildings already erected with the Municipality's approval.
- In the premises, the relief sought is impermissible in law. Had the Trust sought relief in terms of the common law, it may have been a different matter.

#### *Relief re municipality to enforce the provisions of the act*

- The Trust was also not entitled to an order directing the Municipality to persist with their enforcement. The Municipality is constitutionally ordained to carry out its obligations in terms of the prescribed legislation entrusted to it. It has initiated its enforcement and is obliged to monitor compliance.