

Managing property properly

High Court ruling has big implications for gated estates

A recent Pietermaritzburg High Court ruling regarding traffic enforcement and movement of domestic workers has set the cat amongst the pigeons as far as estate living goes.

The background to the case involved a Mount Edgecombe resident, a Mr Singh who objected to the fact that his daughter had been fined for speeding on the estate by the Mount Edgecombe Country Club Estate Management Association.

Resident denied access to estate

As the homeowner, the fines were levied against Singh's account, who ultimately refused to pay the fines imposed on his daughter. The Association promptly suspended the family's access along the roads to their home, barring them from passing through the Association's boom control which is located on the entry road to the estate.

In handing down the judgement the court found that: "This denial of access by the Association and the simmering resentment on the part of both appellants regarding the manner in which the Association was implementing and applying certain aspects of its conduct rules, resulted firstly, in Singh instituting an urgent application for spoliatory relief and secondly, in both appellants instituting a separate application in which they challenged certain aspects of some of the Association's rules ('The rules application').

"To this application the Association filed a counter-application in which it sought an order entitling it to suspend the use of access cards to Mr Singh, his invitees and members of his family, together with the biometric access for such persons, for as long as certain fines issued in terms of its conduct rules were not paid.'

Court finds that estates can't enforce traffic laws

The court found that although associations needed to regulate traffic on estates, they needed to obtain permission from the relevant authorities, as the law stipulates. This is not an aspect governed by contractual arrangement between homeowners and associations, such as keeping animals or rules regarding the appearance of properties on an estate.

"It is common cause that the first respondent (the Association) did not apply for such permission at any stage. I consider that this failure on the part of the first respondent must render such rules and the contractual arrangement with the members illegal."

The court noted that because the roads within the estate are public roads, it was only the Minister of Transport or his authorised delegate who has the power to regulate any public roads. Without the Minister's permission, the Association did not have the power to levy fines.

Rules regarding domestic workers likened to apartheid laws

The second part of the judgement dealt with the freedom of movement of domestic employees. Singh sought an order directing the Association to allow certain contractors [such as domestic workers] engaged by him access to the estate.

According to the Association's rules, a domestic employee cannot walk on the roads within the estate and can only use the roads to get to the bus stop, although they were allowed to walk on the roads if the bus service provided by the Association was unavailable. Domestic employees could only gain access to the estate between the hours of 6:00 am and 6:00 pm.

From a constitutional point of view their rights in this regard are severely restricted.

The court found:

“Domestic employees are simply not free to traverse the public roads in the estate save in the limited manner provided by the rules. From a constitutional point of view their rights in this regard are severely restricted. The first respondent [the Association] appears to have categorised them into a class of people who pose a security risk to people living on the estate. Their position within the estate is reminiscent of the position that prevailed in the apartheid era: while they are good enough to perform domestic duties for their employers on the estate, which included the task of pushing perambulators on the roads, they are precluded from exercising any rights derived from public law and the Constitution.

“The restrictive nature of these rules is, in my view, an affront to their fundamental rights to human dignity, equality, freedom of association, freedom of movement, freedom of occupation and fair labour practices. It seems to me that the restrictions placed on domestic employees with regard to their movements on the roads in the estate, flow from a misconceived notion on the part of the first respondent that it is entitled to exercise usurped control over the public roads in the estate through its conduct rules. To the extent that these rules restrict the rights of domestic employees from freely being on and traversing public roads in the estate, I consider them to be unreasonable and unlawful.”

Judge's warning to other estates

The judges also made it clear that the court's ruling is not unique to the facts of this particular case, by concluding “If in fact there are other associations and/or estates in the country who, like the first respondent herein, either through ignorance or plain arrogance on their part, have seen it fit not to comply with statutory provisions, it's time that they did.”