



TO DEMOLISH OR NOT TO DEMOLISH, THAT IS THE LEGAL QUESTION.... (1)

SUMMARY OF CASE NO. 5306/2017

Court Information

- **Court:** High Court of South Africa, Free State Division, Bloemfontein
- **Case Number:** 5306/2017
- **Date Heard:** 7th November 2019
- **Judgment Delivered:** 16th January 2020

Parties Involved

- **Applicant:** Bet-El Faith Mission
- **Parties Involved:**
 - 1st Respondent: Jacob Seresengwe Motthamme
 - 2nd Respondent: Sarah Irene Motthamme
 - 3rd Respondent: Mangaung Metro Municipality

Background

The case revolves around an application by the Applicant, Bet-El Faith Mission, seeking a demolition order for a garage belonging to the Respondents, Jacob and Sarah Motthamme, which encroaches onto the Applicant's property. The Respondents oppose the application, requesting instead to pay reasonable compensation and to have the encroaching land transferred to them.

Property Details

- Applicant's Property:
 - Erf [...]3, Ashbury, Bloemfontein
 - Area: 1652 m², comprising a consolidation of four erven.
- Respondents' Property:
 - Erf [...]7, adjacent to the Applicant's property.



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Key Points of the Case

- **Encroachment Claims**
 - The Respondents built a garage that extends over the boundary line into the Applicant's property.
 - A land surveyor's aerial photograph confirms an encroachment of 4.5 meters wide, totaling 105 m².
- **Prior Notifications**
 - The Applicant attempted to resolve the issue by requesting the removal of the garage, but the Respondents refused.
 - In 2016, the Mangaung Municipality issued a notice to the Respondents regarding the illegal structure, which the Respondents ignored.
- **Previous Legal Proceedings**
 - Criminal proceedings against the Respondents were unsuccessful due to discrepancies in the erf numbers.
- **Negotiations**
 - The Respondents had offered compensation to the Applicant on multiple occasions but had not followed through with the removal of the garage.
- **Equity Considerations**
 - The Respondents argued that they had a bona fide belief that the garage was built on their own land and claimed that the Applicant had acquiesced to their occupation, which was refuted by the Applicant's evidence.
- **Legal Precedents**
 - The court referenced previous cases indicating that encroachment is considered an unlawful act, and the primary remedy is an order for removal.
 - The court emphasised that illegal structures cannot be condoned, aligning with the doctrine of legality and public policy.

Judgment

- The application for the demolition of the encroaching garage was **granted**.
- The Respondents were ordered to demolish the structure within **90 days** and were warned that failure to comply would allow the Applicant to appoint a contractor to perform the demolition at the Respondents' cost.
- The Respondents were also ordered to pay the costs of the application.

Conclusion

The judgment highlights the importance of property rights and the rule of law concerning unlawful structures. It emphasises that courts will not allow illegal conduct to continue and that property owners are entitled to seek the removal of encroachments even after lengthy negotiations or attempts at settlement.

Counsel for the Applicant: Adv. G.S. Janse van Ransburg
Counsel for the Respondents: Adv. J.F. Mitchley

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