What is that awful smell? Neighbours and Offensive Odours

What if your neighbour operated a mushroom farming business, conducted operations or does something which leaves you and other neighbours in total irritation? In this article, we focus on a mushroom farming business which produces compost. The compost or substrate is commonly known as the material in which mushrooms are grown and which is utilised for mushroom farming.

Mushroom farming is quite profitable. The downside, however, is that the mushroom compost can emit gases with offensive odours, particularly ammonia. Ammonia has an acrid urine-like smell and a smell like rotten eggs (hydrogen sulphide). This is exactly what transpired in the case of *Jacobs NO and Others v Hylton Grange (Pty) Ltd and Others [2020] 2 All SA 89 (WCC)* ("Jacobs judgment").

The operations of mushroom farming were conducted by Modderdrift Trust. Neighbours around the Modderdrift area or farm ("Hylton Grange") started to complain of the odours which were emitted by the mushroom farming.

Hylton Grange alleged that the strength of the smell from the farm would often become unbearable, especially when the wind blows in the direction of the neighbouring properties. Some of the complaints, which were placed before the court, were that Hylton Grange and their guests could not go outside due to the awful smell emanating from the farm. They were forced to being prisoners in their own homes – closing windows and staying inside.

As a result of the above, Hylton Grange approached the Magistrates Court to stop the operations of Modderdrift Trust, and further sought an order that Modderdrift Trust should take certain positive steps to prevent or reduce the unbearable smell emitted from its operations. Hylton Grange was successful in its application which led to Modderdrift Trust approaching the High Court.

The High Court considered the general principles which apply to Nuisance Law and the requirements for interdicts. The Court also considered the rights which are entrenched in the Constitution in that everyone has a right to an environment which is not harmful to their health or well-being and other legal principles

contained in the National Environmental Management Act, 107 of 1998.

In so doing, the High Court highlighted that in instances such as the Jacobs Judgment, the first point of departure is the test for reasonableness. It held that reasonableness would involve the balancing of one person's right to the use and the enjoyment of their property on the one hand. On the other hand, the rights of the other person have to be considered. There are various factors a court will take into consideration, such as but not limited to:

- locality of the nuisance;
- materiality of the infringement;
- personality of the plaintiff or applicant (the person complaining of the nuisance) – they should not be overly sensitive;
- motive;
- proportionality;
- practicality of reducing the harmful effects; and
- least restrictive means to rectify the situation.

The general requirements for an interdict were also discussed which are summarised as one having to show that:

- the applicant has a prima facie or clear right;
- the applicant will suffer irreparable harm if the interdict is not granted;
- the balance of convenience favours the granting of the interdict; and
- there is no alternative remedy available for the applicant.

These are requirements which a person ought to meet to get an order from a court directing another person or an entity to take certain action (simply put, doing something or stop doing something).

Having considered the above, the High Court held that the matter and the facts which were before it were in favour of Hylton Grange and that Modderdrift Trust had failed to even take certain measures to meet the test of reasonableness or counter the interdict from being granted against it. The Court also stated that the interdict did not in any way seek to stop the mushroom farming from continuing business, but to take into consideration other people's right and to limit the awful gases emitted by their operations.

As a result of the above, the appeal by Modderdrift Trust was dismissed with

costs. The Modderdrift Trust was, thus, prohibited from their farming operations until such a time they would show to the Court through expert evidence that they have taken reasonable steps to limit the awful odour emissions.

All cases are decided on their own merits. A court will not in all instances grant an interdict premised on nuisance.

It is advisable to visit our offices and set up a consultation, should you find yourself in circumstances where you find your neighbour being a nuisance – in a less strict sense of the word.

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