

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case no: 3278/2022

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

CENTRAL UNIVERSITY OF TECHNOLOGY

Applicant

and

**THE FREE STATE PROVINCIAL COMMISSIONER OF
THE SOUTH AFRICAN POLICE SERVICES**

First Respondent

THE MINISTER OF POLICE

Second Respondent

MPHO CANSLEY LITABE

Third Respondent

BANGANI MOHALE RADEBE

Fourth Respondent

MOHLOMI JACKSON MAPHIKE

Fifth Respondent

MOTHIBEDI JUSTICE SKHOSANA

Sixth Respondent

KGOSUITSILI MAKOKO

Seventh Respondent

STEPHEN STEFEN MOTETE

Eight Respondent

KAKGISO DIRADITSILE

Ninth Respondent

DINEO MOTAUNG

Tenth Respondent

KHANYISO DWAZA

Eleventh Respondent

THABANG MEKHOE

Twelfth Respondent

RORISANG F NKUNA

Thirteenth Respondent

MASHOPHA TISETISO POROTA

Fourteenth Respondent

JUNIOR MOROENYANE

Fifteenth Respondent

**ALL INDIVIDUALS ACTING UNDER/OR ON
BEHALF OF AND/OR IN CONCENT WITH THE
3RD TO 4TH RESPONDENTS AND/OR CONTRAVENING
ANY OF THE ACTIVITIES PROHIBITED BY ANY
ORDER GRANTED PURSUANT TO THIS
APPLICATION AND PERTAINING TO THE FACTS
ON WHICH THE ORDER WAS PREMISED**

Sixteenth Respondent

CORAM: OPPERMAN, J

HEARD ON: 27 October 2022

DELIVERED ON: 14 December 2022. The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 14

December 2022. The date and time for hand-down is deemed to be 14 December 2022 at 15h00

JUDGMENT BY: OPPERMAN, J

SUMMARY: Rule *Nisi* & interim interdict – confirmation & mootness – costs of the application for confirmation of order

JUDGMENT

[1] The application that lies before this court is for the confirmation of a Rule *Nisi* order that comprises an interim interdict. The disagreement is between the applicant and the third to fifteenth respondents. The issues in dispute, as correctly identified by the applicant, are:

1. Whether the relief sought by the applicant has become moot?
2. Whether the applicant is entitled to the confirmation of the Rule *Nisi* order as against the third to sixteenth respondents?
3. The costs of this application.

[2] This is the order that the applicant wants now and that was specified in a draft order that was attached to their heads of argument dated 19 October 2022:

10.

I will therefore move for an order in terms of the Draft Order annexed hereto as annexure “X”

DRAFT ORDER

THE FOLLOWING ORDERS ARE MADE:

1. Ad 1st and 2nd Respondents

By agreement between the Applicant and the 1st and 2nd Respondents the following final order is made:

1.1 The First and Second Respondent shall deploy and make available a reasonable number of the Public Order Police Force members, at the entrance to the Applicant's campus and on the campus grounds situated at No 1 Mothusi Road, Thabang, Welkom, Free State Province, if necessary, or wherever necessary, upon request of the Applicant and provide patrol services at the Applicant's entrance or entrances as reasonably possible and render such service/s **until 5 August 2022** and keep them so deployed as necessary **until 5 August 2022**.

1.2 The First and Second Respondents shall up until **5 August 2022**:

1.2.1 reasonably prevent any unlawful conduct by any of the Respondents being committed around or on the Applicant's campus;

1.2.2 prevent any of the Respondents that do not want to write exams from being present at the entrance of the Applicant's campus and to prevent them from entering the Applicant's campus and /or examination facilities;

1.2.3 Prevent the Respondents from enticing, intimidating, threatening and unduly influencing students not to write exams on the Applicant's campus.

1.3 No order as to costs against the 1st and 2nd Respondents.

2. Ad 3rd to 16th Respondents:

2.1 The Rule *Nisi* dated 13 July 2022 is confirmed with costs against 3rd to 15th Respondents.

2.2 The Rule *Nisi* dated 13 July 2022 is confirmed with costs against 16th Respondent, no order as to costs.

[3] The relevant part of the 13 July 2022 – order against the third to sixteenth respondents reads as follows:

3.3 The Third to Sixteenth Respondents shall:

- 3.3.1 refrain from protesting at the entrance to the Applicant's Welkom Campus or on the Applicant's Welkom Campus which is situated at No 1 Mothusi Road, Thabang, Welkom, Free state Province;
- 3.3.2 refrain from enticing, intimidating, threatening, disturbing and unduly influencing the Applicant's students by whatever means, not to write exams on the Applicant's Welkom campus from the date of granting of this order up and until 5 August 2022;
- 3.3.3 not interfere, in whatever manner, with the access of students onto and from the Applicant's Welkom Campus;
- 3.3.4 refrain from making any post on any social media or other platform/s intended to entice, intimidate, threaten or unduly influencing the Applicant's students not to write exams on the Applicant's Welkom Campus up and until 5 August 2022;
- 3.3.5 not enter the Applicant's Welkom Campus from date of granting of this order up and until 5 August 2022 unless they want to write the exams peacefully;
- 3.3.6 not obstruct and/or block any of the entrances, classrooms or buildings on or to the Applicant's Welkom Campus;
- 3.3.7 not obstruct, impede, disrupt or interfere with any scheduled exams;
- 3.3.8 not cause any damage to any property situated on the Applicant's Welkom Campus, whether movable or immovable and regardless of who the owner thereof may be.

3.4 Costs, only in the event of opposition to the application.

4. The orders contained in paragraphs 3.1¹ to 3.3.8 above shall operate as an interim interdict with immediate effect; (Accentuation added)

¹ 3.1 and 3.2 is in regard to the first and second respondents.

[4] The crux of the above is that the order of interdict is interim with immediate effect. It only had effect until 5 August 2022; this is the atmosphere and the intent of the order based on the prevailing facts.

[5] On the evidence adduced and the arguments of the applicant at the time of the application for the 13 July 2022 – order; the order was legal. It cannot be faulted.

[6] The facts that prompted the order have ceased to exist. The case has run its course.

[7] A Rule *Nisi* is a rule or order upon condition that is to become absolute unless cause is shown to the contrary. An interim interdict only has effect until the date and time it is due and ordered to lapse.

[8] Courts are not inclined to make moot orders. The Constitutional Court in *Normandien Farms (Pty) Limited v South African Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Limited and others* 2020 (6) BCLR 748 (CC) gave some direction on the subject of the mootness of the adjudication of cases and the resultant orders.

[46] It is clear from the factual circumstances that this matter is moot. However, this is not the end of the inquiry. The central question for consideration is: whether it is in the interests of justice to grant leave to appeal, notwithstanding the mootness. A consideration of this Court's approach to mootness is necessary at this juncture, followed by an application of the various factors to the current matter.

[47] Mootness is when a matter “no longer presents an existing or live controversy”. The doctrine is based on the notion that judicial resources ought to be utilised efficiently and should not be dedicated to advisory opinions or

abstract propositions of law, and that courts should avoid deciding matters that are “abstract, academic or hypothetical”.

[48] This Court has held that it is axiomatic that “mootness is not an absolute bar to the justiciability of an issue [and that this] Court may entertain an appeal, even if moot, where the interests of justice so require”. This Court “has discretionary power to entertain even admittedly moot issues”.

[49] Where there are two conflicting judgments by different courts, especially where an appeal court’s outcome has binding implications for future matters, it weighs in favour of entertaining a moot matter.

[50] Moreover, this Court has proffered further factors that ought to be considered when determining whether it is in the interests of justice to hear a moot matter. These include:

- (a) whether any order which it may make will have some practical effect either on the parties or on others;
- (b) the nature and extent of the practical effect that any possible order might have;
- (c) the importance of the issue;
- (d) the complexity of the issue;
- (e) the fullness or otherwise of the arguments advanced; and
- (f) resolving the disputes between different courts.

[9] This case begins and ends with the conclusion of the factual circumstances that demanded the interim interdict. It resolved on 5 August 2022 and there is no evidence that the third to sixteenth respondents have perpetuated their conduct. Imperative is the fact that any conduct from hereafter and after the date of the 5th of August 2022, will have to be the subject; and with a cause of action for a separate application and for another day.

[10] The matter has been classified by counsel for the third to fifteenth respondents as one that resorts under the *Bio-Watch* principle.² At paragraph 42 of their heads of argument they argued, and correctly so, that the respondents opposed the confirmation of the Rule *Nisi* in a good faith effort to protect their constitutional rights. Even were they to fail in their opposition, costs should not be awarded against them.

[11] The evidence that served before the court on the 13th of July 2022, and now; show that the applicant acted with the same good faith, in public interest and to protect order and constitutional decorum.

[12] The facts and circumstances of the case demand that each party that partook in the litigation *in casu* must carry their own costs. The first, second and sixteenth respondents did not join in the litigation and there was not any opposition from their side to the application; they will not be mulcted with a costs order.

[13] **ORDER**

1. The application as per the draft order attached to the heads of argument of the applicant is denied. The 13 July 2022 – Rule *Nisi* order is thus not confirmed.
2. Each party; the applicant and the third to fifteenth respondents must carry their own costs.

² *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC), 2009 (10) BCLR 1014 (CC), [2009] ZACC 14.

APPEARANCES

For the applicant:

ADVOCATE HJ CILLIERS

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First & second respondents

OFFICE OF THE STATE ATTORNEY:

FREE STATE, BLOEMFONTEIN

NO APPEARANCE;

UNOPPOSED

Third to fifteenth respondents

ADVOCATE JFD BRAND

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Sixteenth respondent

NO APPEARANCE; UNOPPOSED