



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/17688

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
28 August 2019	
 SIGNATURE	

In the matter between:

AICAN CLEAN CARE (PTY) LTD

Applicant

and

MABOPHE, DIFFERENCE COLLEN

First Respondent

SOCOLLPESTCONTROL(PTY) LTD

Second Respondent

JUDGMENT

SPILG, J:

INTRODUCTION

1. On 31 May 2019 Senyatsi AJ granted a restraint of trade order effective for one year as from 29 April 2019 against the first and second respondents interdicting them from *inter alia* "securing or doing business with the applicant's clients as set out in Annexure A" The matter had been opposed, Mr Mabophe being represented by legal aid. He is the first respondent.

2. The order included a provision that the first respondent (Mr DC Mabophe) be removed as a director of the second respondent for the duration of the restraint.
3. On receipt of the order Mabophe contacted Ms Pieterse of the applicant and said that the order only prohibited them from contacting or becoming associated with the applicant's clients. His attention was then drawn to that part of the order requiring him to terminate his directorship.
4. By 13 June Pieterse again requested by way of letters proof that Mabophe had resigned as a director. Another conversation was held between the two subsequent to which Mabophe again called Pieterse stating that he would not remove himself as a director. He added that he was free to conduct his business and that
 - a. He will not comply with *any of the* prayers of the court order (my emphasis);
 - b. The court order is just a piece of paper;
 - c. He will bear the consequences of his actions
5. On 20 June the applicant then brought a contempt application to enforce the order of 29 April. The application was opposed by the respondents. Mabophe in his answering affidavit claimed that the judge warned him that he could not contact the applicant's clients.
6. The matter came before Monama J. Mabophe was legally represented and after argument the parties agreed that the provision regarding him being removed as a director would be excised from the order and that the matter would be postponed sine die pending compliance with the remainder of the court order of 31 May; and in particular prayers 2.1 to 2.8 of which the provision that the respondents do not do business with any client listed in annexure A was one.

7. The applicants then brought an urgent application for contempt on the grounds that the respondents had again breached the court order by doing business with one of those listed on annexure A.
8. On 23 July I issued a rule in the following terms:
- a. The first respondent is ordered to be present at the above court on Friday 26 July 2019 at 09:45 at courtroom 9E.”
 - b. Mr Jose Salamo Langa the co-director of the second respondent also attend;
 - c. The first responded is ordered to attend court on the above mentioned date and time and provide reasons why he should not;
 - i. be found and held in contempt the court order dated 31 May 2019 as varied by the court order dated 5 July 2019;
 - ii. pay the amount of R200 000.00; and
 - iii. be committed to imprisonment for a period of 10 days.
 - d. The first respondent and Mr Langa are ordered to bring to this court and disclose all of their and the second respondent’s accounting books, client’s orders, delivery notes, transaction meetings and contracts reflecting any orders taken from the applicant’s clients listed in Annexure A to the court order dated 31 May 2019.
 - e. The first respondent and Mr Langa must depose to respective affidavits in which they confirm under oath that the documentation and information disclosed at the hearing on this matter on the Friday 26 July 2019 at 09:45 are the only documentation and information in existence.”

There are various other provisions which are not relevant.

9. Mabophe came to court as did Langa. Mabophe gave evidence and said that he was not prevented from doing business if the clients of the applicant contacted him.
10. The relevant provision in order was read to him and he was asked what it meant. He accepted that it was clear.
11. Anyone who had engaged in an opposed application, not once but twice, over the same order, and successfully excising one of its clauses would have a clear understanding of the clause in question. I accept that Langa personally is the financier leaving the day to day operation of the business to Mabophe
12. I regard this as a criminal contempt. I am satisfied that the requirements for such a contempt have been proven. Mabophe simply noted the contents of the affidavit that dealt with his attitude to the court order and which I set out earlier (including that a court order is just a piece of paper). He did not dispute any of those allegations.

They demonstrated the contempt with which he holds orders of court.
13. This is not the first time that this court has had to deal with those who have failed to comply with court orders. In fact, during the urgent court week in question, there were two commercial contempts of which this was one and there were three that were brought against Correctional Service. Although those three were not pursued, there remained a concern that court orders were not being respected in regard to the two commercial contempts.
14. In both these cases there was a view that courts will not enforce orders, that they are pieces of paper and that no one will take the offender party on. It is time that a strong message is sent that court orders are to be respected and that there will

be consequences for those who either instigate others to break them or themselves ignore orders of a court.

15. In this case there are two orders which have been transgressed; one by Senyatsi AJ and the other by Monama J.

16. It is for these reasons that on 8 August 2019 I found both the first and second respondents to be in contempt for failing to comply with the order in this matter of 31 May 2019 as varied by the order of 5 July 2019 and further ordered that the first and second respondents are jointly and severally liable to pay a fine of R50 000.00 for contempt of the court order, which fine must be paid on or before 30 September 2019.

I also ordered that the first respondent is sentenced to seven days' imprisonment which sentence is wholly suspended provided the first respondent does not again breach the said court order until its expiry on 28 August 2020 and that the first and second respondents are jointly and severally liable to pay the costs of this application on the party and party scale including those of all the court appearances to date

17. I should have added that the basis of the determination of the monetary sum is derived from Langa's reference to the amount that he was obliged to inject into the company on a monthly basis. I should add that it was also contended that their business did not have one order placed as yet. This could not be challenged by the applicants at the time and is therefore accepted.



SPILG, J

DATE OF ORDER: 8 August 2019

DATE OF JUDGMENT: 28 August 2019