


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 57392/16

26/5/2017

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED
	
SIGNATURE	26/5/2017
	DATE

In the matter between:

**HARVEST BOPP BAGS MANUFACTURING
(PTY) LTD**

Applicant

and

**LIBERATED METAL WORKERS' UNION OF
SOUTH AFRICA**

1st Respondent

MARTHA NTITE

2nd Respondent

NKELE FRANCINA LEHODI

3rd Respondent

MARTIN CHAUKE

4th Respondent

TINYEKO LYDIA MASHIMBYE

5th Respondent

TSAKANI LIZEN CHAUKE

6th Respondent

PORTIA BEZILLE BALOYI	7th Respondent
LUFUNO LURULI	8th Respondent
MALEBO FRANCINAH MADISHA	9th Respondent
JOSINAH MMATAEMANE CHABALALA	10th Respondent
MONKGATI DORAH MATJI	11th Respondent
GRACE MASWANGANYI	12th Respondent
SARAH ZANELE	13th Respondent
MMATSATSI MARIA SOEMA	14th Respondent
SARAH SITHOLE	15th Respondent
KHENSANI SHARON CHAUKE	16th Respondent
NKOKOANE RACHEL KOLOBE	17th Respondent
BONGANI MAKHUBELA	18th Respondent
CATHRINE MMALEPHUTI MOTSHELE	19th Respondent
MARIA SALELENG BALOYI	20th Respondent
LESEGO JOSEPHINAH MODIBA	21st Respondent
DIKELEDI ELINA KEKANA	22nd Respondent
BUNICE MODEKA	23rd Respondent

TSAKANI RIBOMBO	24th Respondent
CLANCINA NTSAWLENG MOLAPO	25th Respondent
WILLIAM CHAUKE	26th Respondent
HILDA NTEPANE MONALEDI	27th Respondent
FIONA MOHALE	28th Respondent
SINAH KGOMOTSO MAPENGU	29th Respondent
DINEO NDLOVU	30th Respondent
EUNICE LINDIWE SIBISA	31st Respondent
TSHEPISO REBECCA KEKANA	32nd Respondent
JOHANNAH MASHIANE	33rd Respondent
NTABISENG PRECIOUS MATLALA	34th Respondent
GETRUDE RATSELA	35th Respondent
MASEL ETHEL MOLOKWANE	36th Respondent
ANNALI MATHIPE MASANGO	37th Respondent
EMMACULATE XOLISILE APHANE	38th Respondent
EMILY THENKGO RAPHIRI	39th Respondent
BETTY MOLEFE	40th Respondent

RACHEL NKATODI RABILE	41st Respondent
ELLEN KUTUMELA	42nd Respondent
OCTAVIA LEKALEKALE	43rd Respondent
MONEA ROSINAH MOGALE	44th Respondent
TINYIKO NBYELI RIKHOTSO	45th Respondent
REFILWE PHELLISTAS TEFFO	46th Respondent
RABELINA MADAVHA	47th Respondent
ALFRED LETLHOGONOLO RASEROKA	48th Respondent
GOMOTSEGAN GOITSEONE MOKONE	49th Respondent
PHILEMON LEBOGANG MPUFANE	50th Respondent
RESIMATE HUMPHREY BILA	51st Respondent
THAPELO JONAS	52nd Respondent
PORTIA KATLEGO MOSIPHA	53rd Respondent
RUTH KOMANE	54th Respondent
MABLE LAKA	55th Respondent
TEBOGO ALLETA MACHAKA	56th Respondent
AGNES TINYIKO CHAUKE	57th Respondent

J U D G M E N T

MALI J

- [1] This is an application to have interim interdict granted on 22 July 2016 to be made final. The interim interdict was granted on urgent basis. The return date for the *rule nisi* was 11 August 2016, the first respondent only filed its answering affidavit on 26 August 2016. The second to fifty seventh respondents did not file affidavits. The *rule nisi* was extended on numerous occasions until the matter was finally set down in the opposed motion court roll. The first respondent opposed the application. The second to fifty seventh respondents did not oppose the application.
- [2] The applicant is a limited liability company incorporated and registered within the laws of the Republic. It primarily conducts business in the manufacturing and supply of plastic bags mainly for the agricultural industry.
- [3] The first respondent is a trade union duly registered within the laws of the Republic. The second to fifty seventh respondents were the employees of the applicant and are members of the first respondent.
- [4] The terms of the interim interdict sought to be made final are as follows:

The respondents are interdicted and restrained from

- 4.1 preventing access to the applicant's business premises;
- 4.2 causing malicious damage to the applicant's property;
- 4.3 intimidating, harassing , assaulting or threatening to assault the applicant's employees, replacement employees, suppliers, customers;
- 4.4 unlawfully interfering with the applicant's business operations and from co-opting any third party to do so.
- 4.5 The respondents were also ordered to remain at least 500 meters from the applicant's premises.

BACKGROUND

- [5] On or about 5 July 2016 second to fifty seventh respondents (*"the respondents"*) embarked on an unprotected industrial action (*"strike"*). It is not in dispute that on 5 July 2016 the respondents were issued with letters requesting them to return to work and refrain from the unprotected industrial action. It is apparent that they refused to accede to the request and to the ultimatum issued on 6 July 2016 and they were then dismissed. The respondents employment was terminated on 8 July 2016.

[6] On 11 July 2016 the respondents gathered in front of the applicant's main entrance and blocked same. The applicant considers the gathering as unlawful, hence the respondents were dismissed. The applicant had a meeting with the first respondent and requested that the members of the first respondent and its officials refrain from the unlawful gathering and causing disturbance by intimidating other employees who were not part of the respondents from going to work. The said meeting did not yield positive results instead the officials of the first respondent who are not employees of the applicant joined the unlawful gathering. It is not in dispute that the officials of the first respondent who joined the strike are Mr Lebogang Mphufane, Ms Sarah Skosane and Ms Martha Chauke.

[7] The respondents continued with the illegal gathering and intimidation of non-striking workers until the morning of 21 July 2016. The respondents uttered threats such as *"We will burn you"* and *"you will shit, you will burn"*.

[8] According to the applicant it reported the incident to the police, however the police failed to take action against the respondents. The applicant was thus compelled to bring this application.

ISSUE

[9] The issue to be determined is whether the applicant has met the requirement of a final interdict.

LAW

- [10] It is trite law that an applicant desirous of approaching a court for a final interdict must demonstrate (i) clear right; (ii) an injury actually committed or reasonable apprehended; and (iii) the absence of alternative remedy. See **Setlogelo v Setlogelo**¹ and **Pilane and Another v Pilane and Others**².

ARGUMENTS

- [11] Counsel for the first respondent submitted that the issue of urgency was still pending and had to be decided in this matter. I reject this contention, the interim interdict was granted in the urgent court where all the issues regarding urgency were considered.
- [12] On behalf of the applicant, regarding the first requirement; it was submitted that it has a clear right to protect its property. The applicant has a duty to provide a safe and healthy working environment to its employees, to be economically active as well as to conduct business undisturbed and peacefully.
- [13] The first respondent's counsel submitted that respondents were involved in a peaceful demonstration. Counsel did not counter the applicant's argument regarding the clear right, except to insist on the unlawful dismissal of the respondents who are not opposing the

¹ 1914 AD 221

² [2013] ZACC 3, 2013 (4) BCLR 431.

application. The issue and the manner of the respondents dismissal has no relevance in this application.

[14] With regard to the second requirement, that of injury committed or well grounded apprehension; the respondents had threatened to burn the applicant's property. They had severely disrupted the business activities of the applicant. It was further submitted that the applicant employs international technicians from amongst other countries, China, the Phillipines, Naples and India. The unlawful conduct of the respondents also had a negative impact on the applicant's diplomatic relations with the said countries.

[15] As a result of respondent's unlawful and threatening activities the applicant had to cancel all the shifts for 22 July 2016 leading to economic loss. The mere fact that they had managed to intimidate the non-striking employees is a reason for apprehension for future intimidation if the final order is not granted. Furthermore the threats of burning the property and harming people cannot be ruled out in the respondents' future behaviour.

[16] To the above it was submitted on behalf of the first respondent that the first respondent's involvement through its officials and its members was not true. Counsel for the first respondent stated that there was no evidence to prove the involvement of the first respondent as there were no photographs taken to prove same. In the founding affidavit of the applicant it stated that video footage of the

events is available in the event the court requires same. The first respondent did not raise the issue of the video footage in the answering affidavit and in the heads of argument. The first respondent has no basis to state that there was no injury suffered and to be apprehended by the applicant.

[17] In regarding the requirement of the absence of an alternative remedy, the applicant submitted that it reported the matter to the police who refused to attend to the matter. According to the first respondent the applicant had and has a remedy to report the matter to the police. The first respondent does not agree with the applicant's version because there is no confirmatory affidavit filed by the police. The court is persuaded by the applicant's submissions. The applicant's affidavit clearly states that the matter was reported to Themba Police Station to one Constable Langa. Police Officers are not required to file confirmatory affidavits. The first respondent could have confirmed with the police in the event it did not believe the applicant's version.

[18] The entire case of the first respondent is a bare denial. Having regard to the above I find that the applicant has met the requirements for the granting of a final interdict.

COSTS

[19] The applicant prays for costs against the first respondent on attorney and client scale. This is because the members of the first respondent

were requested on several occasions to refrain from their unlawful conduct. Furthermore the involvement of the first respondent's officials in the unlawful action had an effect of inciting the other respondents. It was expected of the first respondent to assist to quell the undesirable and unlawful conduct. However the situation was aggravated by the fact that not only its members but also its officials had participated in the unlawful conduct. No order of costs is sought against the second to fifty eight respondents as they did not oppose the application.

[20] The grounds upon which the court may order a party to pay an opponent's attorney - and- client costs include the following: that the party has been guilty of dishonesty or fraud or had vexatious, reckless and malicious, or frivolous motives³ or committed grave misconduct either in the transaction under inquiry or in the conduct of the case.⁴

[21] The court's discretion to order payment of attorney- and-client cost is not restricted to the grounds mentioned above. It includes all cases in which special circumstances or considerations justify the granting of such an order.

[22] In the present matter the court finds that the conduct of the first respondent, in particular the involvement of its officials in the unlawful conduct, is considered to be a special circumstance. Therefore punitive costs are justified against the first respondent.

³ Real Estate & Trust Corporation v Central India Estates Ltd 1923 WLD 121

⁴ Van Dyk v Conradie 1963(2) SA 413 SA at 418 E-F.

[23] In the result I make the following order;

23.1 Interdicting the first respondent, and it's officials, and the second to fifty seventh respondents from preventing the applicant's employees, replacement employees, suppliers, customers and the general public access to the applicant's business situated at Stand 82, 9th Street, Babelegi Industrial Park, Pretoria (and more specifically the main entrance and exit gates, all pedestrian gates and other gates);

23.2 Interdicting and restraining the first respondent, and it's officials, and the second to fifty seventh respondents from causing malicious damage to the applicant's property and from intimidating, harassing, assaulting or threatening to assault the applicant's employees, replacement employees, suppliers, customers and the general public and from unlawfully interfering with the applicant's business operations in any way whatsoever and furthermore refraining from co-opting any third party to do so;

23.3 An order directing the first respondent, and it's officials, and the second to fifty seventh respondents to remain at least 500 meters from the premises of the applicant situated at Stand 82, 9th Street, Babelegi Industrial Park, Pretoria;

23.4 The first respondent is ordered to pay the applicant's costs,
costs to be on the scale of attorney and client scale.



N.P. MALI
JUDGE OF THE HIGH COURT

Counsel for the Applicant: Adv. Bekker

Instructed by: HAHN & HAHN ATTORNEYS

Counsel for the Respondents: Mr. Faku

Instructed by: FAKU ATTORNEYS

Date of Hearing: 2 May 2017

Date of Judgment: 26 May 2017