IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

DATE 15/7/24 [redacted] SIGNATURE

Case No: 2020/35964

In the matter between:

SURENDA SINGH Applicant

and

SOUTH AFRICAN RESERVE BANK First Respondent

FINANCIAL INTELLIGENCE CENTRE Second Respondent

JUDGMENT

DM LEATHERN, AJ:

[1] This is a matter about costs. It is a full-blown opposed application dealing with the costs of preparing an affidavit, which could not have been

substantial. There is however no indication on the papers what in fact these costs amounted to.

[2] In summary, the events giving rise to this application are the following:-

[2.1] in August 2020 the applicant (Mr Singh) launched a review application to set aside the decision of the South African Reserve Bank (the first respondent) to block an amount of R40,000,000.00 on the account of Mr Singh, which had been blocked using the exchange control regulations administered by the first respondent on the decision of a Mr Malherbe;

[2.2] the record of proceedings filed in terms of Rule 53 included an email message in which reference to the Financial Intelligence Centre (the proposed second respondent) ("the FIC") had been redacted and was sent by Mr Malherbe to the deputy governor of the first respondent indicating that he had received a report from the second respondent that Mr Singh was moving funds off-shore;

[2.3] thereafter Mr Malherbe took the decision to block the amount referred to in the email;

[2.4] Mr Singh asked for further clarification from the first respondent which was ignored;

[2.5] Mr Singh then launched an interlocutory application in December 2020 calling upon the first respondent to produce additional documents, among others all reports received by the first respondent from the second respondent concerning Mr Singh;

[2.6] at this stage, the second respondent was not cited as a respondent and Mr Singh sought no relief from it;

[2.7] in December 2020 the second respondent indicated that it wished to intervene and oppose the relief sought insofar as it related to a report sent by the second respondent to the first respondent;

[2.8] by February 2021, such application had not been launched and Mr Singh's attorneys advised the second respondent that it would proceed to set the matter down on the unopposed motion roll should it not receive the second respondent's intervention application by 5 February 2021;

[2.9] the FIC suggested that it first obtain an order by consent permitting it to join whereafter it would be granted fifteen days to deliver its answering affidavit;

[2.10] Mr Singh found this unacceptable because it would lead to a delay and advised that should it bring an intervention application that it would not be opposed, not because any concession was made, but believing that it would hasten matters and Mr Singh would in any event obtain the order he required.

[3] The second respondent did not prepare a substantive intervention application but only an affidavit which was delivered some three weeks later.

[4] In the interim the first respondent had filed an answering affidavit wherein Mr Malherbe had indicated that his version was that he had not relied on the report by the FIC.

[5] Mr Singh came to the conclusion that it was no longer necessary to obtain the report and withdrew the interlocutory application. He did not tender costs to either the first respondent or the second respondent.

[6] The present dispute then arose as the second respondent insisted on receiving a tender for its costs, such costs being those which it incurred in drafting the affidavit. The dispute raised was that as it had never been joined as a party in either the interlocutory or the main application it was accordingly not entitled to its costs. The second respondent's argument is simply that it was not necessary to bring an application for leave to intervene where it had been indicated on behalf of the applicant that its intervention would not be opposed, that the normal rule being that a party withdraws an application should tender the costs alternatively the other party can apply for a cost order in its favour should apply in the instant matter. For this reasons it now seeks to be granted leave to intervene and a cost order in its favour.

[7] Cost orders are discretionary and the Court must exercise its discretion judicially.

[8] It is not appropriate to seek to determine the merits of the opposition to the original application or the merits of the original interlocutory

application itself. The fact of the matter is that the present situation has been occasioned by the inordinate delay in filing the affidavit that the second respondent did in fact file. A perusal of the affidavit itself does not take the dispute between the first respondent and the applicant any further. It is replete with argument as to whether Mr Malherbe was in fact influenced by the report received from the second respondent and if so, to what extent. None of this is evidence which the second respondent can in fact place before Court and although it states in paragraph 11.7 of the affidavit that it has an interest in not having its reports made public as that might reveal its methods, sources and general approach, there is no indication that any of that would have been revealed in the report which was in fact filed or provided to the first respondent. The overriding impression is that the second respondent protests too much regarding the filing of such report.

[9] The fact of the matter is that the second respondent had not at the stage of withdrawal been joined as a respondent, was not a party to the *lis* and should have been satisfied with the fact that the interlocutory application had been withdrawn.

[10] The indignation of the second respondent is further indicated by the fact that it seeks costs on an attorney and client scale. This is a punitive cost order which is not normally granted and nothing is set out which justifies such a cost order.

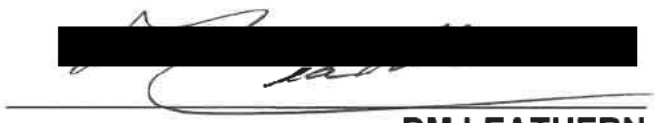
[11] In the present instance, the second respondent relies on the decisions in Apollo Tobacco CC and others v Commissioner for South African

Revenue Service[1] and Standard Bank of South Africa Limited v Tempu Air Services (Pty) Ltd (2018) JOL 39862 (GJ) in support of the general submission that where a party invites his opponent to a duel and subsequently withdraws such invitation, he must be in for the results thereof being the costs incurred. *In casu* however the applicant did not invite the second respondent to a duel, the second respondent invited itself to second the first respondent in such duel which assistance proved both unnecessary and uncalled for. It must furthermore be pointed out that there is nothing to indicate that the withdrawal of the application was in any manner occasioned by the filing of the opposing affidavit by the second respondent.

[12] Accordingly, I make the following order:-

1. The second respondent's application by way of its notice dated 28 June 2022 appearing at CaseLines 021-1 is dismissed.

2. The second respondent is to pay the applicant's costs, such costs to be on scale C.



DM LEATHERN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 14h00 on the 15th of June 2024.

[1] 74 SATC 204 at paragraph 23.

COUNSEL FOR THE APPLICANT:

Adv. R. Mastenbroek

COUNSEL FOR THE SECOND RESPONDENT:

Adv. K. Tsatsawane