

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2013/33567

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

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DATE

.....
SIGNATURE

In the matter between:

IRVIN PERUMAL

Applicant

And

SHAHEEN BHYAT

First Respondent

DUNNEWELS BODY CORPORATE

Second Respondent

SANNETTE ERASMUS

Third Respondent

JANINE TARGETT

Fourth Respondent

OLIETE PERESTRELO

Fifth Respondent

VHUMBANAI PROPERTY SOLUTIONS

Sixth Respondent

JUDGMENT (CONTEMPT PROCEEDINGS)

MAKUME, J:

[1] This application finds its origin in the judgment of Ranchod J dated the 12th June 2013 which judgment I have already set aside as having been erroneously sought and granted on incorrect information.

[2] Paragraphs 4, 5 and 6 of that order reads as follows:

- “4. *The First Respondent provides a detailed and comprehensive statement as to how the original court order was replaced by the new order (‘the new order’) and in the absence of a Rule 42 application. This act be deemed a nullity and that this Honourable Court takes appropriate authorities for investigation.*
5. *The First Respondent provides full detail and comprehensive statement as to how the original order was replaced by the new order and in the absence of a Rule 42 application, this act be deemed a nullity and this court order the Registrar of this court forward a copy of this judgment after it has been transcribed to the Law Society of the Northern Provinces for further investigation of the First Respondent’s conduct and take such necessary steps as may be required in that regard.*
6. *The First Respondent is to pay the costs of this application which was brought on urgent basis.”*

[3] In a nutshell the applicant says for having failed to comply with the order of Ranchod this Court should find that:

3.1 The First Respondent be held in contempt.

3.2 That he be compelled to comply with the order of the Honourable Ranchod under Case No 19691/2013.

3.3 That he be interdicted from manufacturing and generating documents in order to prejudice the applicant.

[4] The contempt proceedings should have been brought under the case number from which the conduct emanates namely Case No 19691/2013 instead of case number 33567/13. This is irregular and not in compliance with procedure and falls to be dismissed. In any case that court order itself no longer exists even if it was still in existence this application would not have succeeded.

[5] After reading the founding affidavit in this matter especially paragraphs 17, 18 and 19 I have come to the conclusion that the applicant is a teller of tall tales some taller than others. I say this guardedly for I hold the view that credibility ought not to be decided on affidavit. In this instance I am prepared to deviate from this noble rule and I find that applicant cannot be believed.

[6] In his affidavit he says that after he had served a notice withdrawing the application under Case No 19059/2013 the first respondent used the same document to manufacture his own withdrawal notice for the matter

under Case No 2013/19691. He denies having withdrawn Case No 19691/2013 and yet a scrutiny of both notices establishes that he was the author of both notices in any case he sought the same relief in both cases.

[7] For an applicant in contempt proceedings to succeed he must amongst others prove *mala fides*. It is not an offence to disobey a false court order in the same way that it is not an offence to resist an unlawful arrest.

[8] In the matter of *Claremont v Claremont* 1961 (3) SA 861 (C) at 866 it was held that a person's disobedience of the order must be not only be wilful but also *mala fide*. In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at 346 it was held that an honest belief that non-compliance is justified or proper is incompatible with intention to violate the court's dignity, repute or authority.

[9] The first respondent as an attorney knew that the court order of the 12th June 2013 was defective and rightfully disobeyed same.

[10] The applicant further seeks an order to compel first respondent to comply with the order of Ranchod. That order has been set aside and there is accordingly nothing to compel him to comply with.

[11] The applicant next seeks an interdict against the first respondent from generating documents that are aimed at prejudicing him. The applicant has not made out a case for either interim or final interdictory relief. No facts have

been established in support of that relief. Accordingly that request must also fail.

[12] Lastly he seeks an order against the Law Society to investigate. He has submitted no proof that the Law Society is in fact not doing so. However, no case has been made for such a relief.

[13] Accordingly the order that I make is as follows:

The application is dismissed and the applicant is ordered to pay first respondent's taxed party and party costs.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPLICANT:	IN PERSON 21 DUNNEWELS COMPLEX 7 MAIDEN STREET ROBINDALE RANDBURG
RESPONDENT:	ADV G STEYN
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DATE OF HEARING:	3 RD MARCH 2014
DATE OF JUDGMENT:	25 TH MARCH 2014

