



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

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE:

SIGNATURE:

CASE NO: 23897/2017

In the matter between:

STEPHEN PATRICK "SAM" SOLE

First Applicant

& OTHERS

and

**BLACK FIRST LAND FIRST
& OTHERS**

First Respondent

In re:

SOUTH AFRICAN EDITORS FORUM

First Applicant

And 11 Others

Second to Twelfth Applicants

and

BLACK FIRST LAND FIRST

First Respondent

ANDILE MNGXITAMA

Second Respondent

SUMMARY

WEINER J:**INTRODUCTION**

The applicants sought an order holding the first and second respondents in contempt of a court order handed down by Acting Justice Van der Westhuizen on 7 July 2017 (the court order). The court order was granted pursuant to an application brought by some of the applicants herein for an interdict against the first and second respondents.

The applicants contended that within a few hours of the order being granted, it was breached by the first and second respondents. The first breach, according to the applicants involved Karima Brown. It is alleged that the respondents intimidated and threatened her shortly after the court order was granted. Secondly, it took the respondents three days to comply with the terms of the court order and issue the public statement, that they do not condone any acts of harassment, intimidation and violence against the journalists. Thirdly, it is alleged that on 27 July 2017, the respondents occupied and disrupted an event hosted by the first applicant's organisation, amaBhungane, where they threatened, harassed, intimidated and assaulted certain of the applicants in the interdict application as well as other journalists present at the event.

The applicants also sought, in the present proceedings, to extend the court order to cover all journalists.

POSTPONEMENT APPLICATION

The respondents' counsel requested a postponement on the basis that the respondents required time to deal with the allegations in the affidavits.

Not only did the respondents fail to file their answering affidavit, but no application or affidavit was filed for the postponement application. The court stated that this showed disdain and a complete lack of respect in dealing with the court.

The court stated that the respondents were not ready to proceed, simply because they ignored the dates in the notice of motion and the procedures of this court. The respondents did not provide any facts which would elucidate why an opposing affidavit was not filed.

THE EVENTS OF 27 JULY 2017

It appears from the footage, and from the affidavits of the deponents, that the respondents and others, including some persons purporting to be members of the MVKA (the ANC Military Veterans Association) arrived at the venue shortly after the event started and began disrupting proceedings with loud singing, dancing, or chanting. The applicants submit that this was deliberate and designed to make it impossible for the event to continue.

It was also alleged that Mngxitama physically assaulted. It was not possible from the footage to ascertain precisely what occurred and the court could not decide on this dispute.

The applicants contended, and this is borne out by the footage, that the event descended into chaos. The court stated that the respondents appeared to be generally harassing, threatening and intimidating the journalists and others who were present.

The Court stated that Zanele Lwane (Lwane) a member of the first respondent, is seen to be making threatening gestures, verbally abusing and attempting to intimidate the attendees. As Lwane was present in court at the hearing, the respondents' counsel was requested to ascertain from her, whether she wished to dispute this portion of the video footage. She declined to comment.

OTHER INSTANCES OF CONTEMPT

Despite the court order, the respondent had continued with other forms of intimidation. A posting on their website is in direct contempt of the court

order, which prohibits BLF, *inter alia*, from going to certain journalists' homes.

It bears noting that, at the event on 27 July 2017, several of the journalists asked Mngxitama and members of the BLF whether they would like to be part of the debate; the respondents did not accept this invitation, but carried on with their unlawful conduct. This is contrary to what the respondents contend on their website.

The applicants accordingly submitted that, based upon the affidavits and contents of the video footage, which has not been disputed, there is no substantive opposition to this application and therefore the respondents cannot discharge the evidentiary burden resting on them to show that there is a reasonable doubt that the compliance was willful or *mala fide*.

Although the respondents' counsel referred to an allegation relating to the tampering with the video footage, the court stated that there is no evidence of this, but, in any event, this becomes irrelevant. Even if the footage had been tampered with, there are portions thereof which the respondents, when called upon to dispute, declined to comment. The court stated that from the postings on their website, it seems clear that the respondents do not deny the events, but, in fact the conduct described is part of their agenda.

In order to find that the events did not take place as described, the court would have to find that all of those who deposed to affidavits on behalf of the applicants have committed perjury and have fabricated the events. The court held that it is clear from the affidavits and certain portions of the video footage, as well as from the BLF's own website, that the respondents are in contempt of the court order.

The court stated that contempt proceedings are inherently urgent, more so, where parties are being threatened or where the consequence of the disobedience to the court order may cause harm to people. The court

stated that the respondents have clearly not taken this application or the court order seriously.

Having dealt with both the procedural failures surrounding the respondents' request for a postponement and the merits of the application as set out above, the court found that the respondent had not satisfied the court on the requisites for a postponement. Accordingly the application for postponement was refused. In addition, no legitimate defence had been raised to the merits of the application and the applicants were accordingly, entitled to relief.

RELIEF SOUGHT

The applicants sought relief in the form of imprisonment (to be suspended) as well as a financial penalty. However, the court did not intend to impose the financial penalty at this point. Such penalty will form part of the order for committal, both of which will be suspended. The court added that there is hope that the respondents will engage in more meaningful debate without harassing journalists, who are acting in accordance with their rights, enshrined in the Constitution.

The applicants sought an extension of the relief obtained in the court order to extend same to all journalists. It is apparent that the applicants and some of the respondents are not the only journalists who are being subjected to the unlawful conduct of the first and second respondents. The court held that such journalists are entitled to be protected where their rights are being abused.

COSTS

The applicants sought punitive costs. The court stated that the respondents' conduct was scandalous. Breach of a court order is destructive of the Rule of Law and leads to anarchy. In addition, it is clear that the respondents display contempt towards the rules of this court and

the procedures which enhance the administration of justice. The court stated that not only have they trampled on the rights of the applicants with their conduct, they have treated this court with complete disdain; and added this case is a prime example of when a punitive costs order should be granted.

Accordingly, the court made the following order:

1. The first respondent, Black First Land First, and the second respondent, Andile Mnxgitama are held to be in contempt of the court order handed down in this court by his Lordship Mr Acting Justice Van Der Westhuizen on the 7 July 2017.
2. Mngxitama is sentenced to imprisonment for a period of three months. Such order for arrest and imprisonment will be suspended indefinitely, on condition that neither the BLF nor Mngxitama breach the order granted by Van Der Westhuizen, AJ and or the order granted herein.
3. If the court order granted by Van Der Westhuizen AJ and/ or the order granted herein is breached, the first and second respondents are ordered to pay a fine to the Department of Justice of R100 000 (one hundred thousand rand)
4. The relief granted by his Lordship Mr Acting Justice Van Der Westhuizen on the 7 July 2017 is extended as follows:

The first and second respondents are interdicted and restrained from:

(a) engaging in any of the following acts directed towards any journalist: intimidation, harassment, assaults, threats, coming to their homes and acting in any manner that would constitute an infringement of their personal liberty.

(b) making any threatening or intimidating gestures or comments, towards any journalist, on social media and/or on the website of the BLF and/or on their Twitter pages.

5. The costs of this application are to be paid by the first and second respondents, jointly and severally, on the attorney and own client scale, including the costs of two counsel.