

REPUBLIC OF SOUTH AFRICA



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

Case No: 25671/2020

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

DATE: 23 August 2022

SIGNATURE:

In the matter of:

RAPID IT SOLUTIONS

Plaintiff

and

NATIONAL HEALTH LABORATORY SERVICES

First Defendant

SEAN GRIMMETTE

Second Defendant

MICHAEL SASS

Third Defendant

JUDGMENT

Todd AJ

1. This matter came before me as an interlocutory matter on the opposed motion roll on 16 August 2022.

2. The main proceedings were instituted by way of action. It is apparent from the file that the matter has been the subject of a number of different interlocutory proceedings. In part these have been attributable to the fact that the Plaintiff in the action is not legally represented, and the matter is being conducted by Mr Jethro Diphare, stated to be a director of the Plaintiff.
3. The status of the action proceedings is that, following an exception brought by the Defendants the Plaintiff amended its particulars of claim and the Defendants have filed specials pleas and a plea dated 20 April 2022. Pleadings have now closed.
4. According to Ms Lefaladi, who appeared for the Defendants, all that is left to be done for the matter to be trial ready is for the parties to comply with their respective discovery obligations and to hold a pre-trial conference, and the matter should then be able to be enrolled for trial.
5. The application that came before me on 16 August 2022 was an application for an interdict and certain related consequential relief that Mr Diphare had first conceived more than a year ago, in June 2021. At that time, according to Mr Diphare, he had hoped to secure interlocutory relief, pending the action, that would prevent the underlying contract which has given rise to the dispute from lapsing.
6. In the interim, between the time when the interlocutory papers were delivered and the matter was argued before me, the contract had in fact lapsed. Mr Diphare accepted that he could no longer seek an order preventing that from happening, and he indicated that he no longer sought the interdictory and related relief that was set out in the notice of motion in the interlocutory application. Instead, in submissions before me he indicated that he sought instead, on the same papers, an order for the payment of part of the amount of damages that he was claiming by way of action.
7. The application was opposed by the Defendants. Ms Lefaladi submitted that the application was simply an abuse of process, and that this was but one of a number of similar instances of irregular conduct by the Plaintiff in the course of the proceedings. I do not have before me the details of the other interlocutory matters to which Ms Lefaladi was referring, but Ms Lefaladi submitted that the present interlocutory application was ill-conceived and that it unnecessarily ratcheted up costs in the action proceedings. She submitted that the application should simply not have been brought in the first place, or enrolled at this stage of the proceeding, and that it should

consequently be dismissed with costs. She further submitted that costs should be awarded on a punitive scale.

8. Mr Diphare submitted in reply that if the application was indeed misconceived this was a consequence of the fact that he was unfamiliar with legal practice and procedure, that he was learning as he went along, and that in those circumstances the costs of this application should be deferred for determination at the eventual trial of the matter.
9. I have carefully considered the papers in the notice of motion that Mr Diphare filed and have considered whether there are any grounds on which this court can or should come to the assistance of the Plaintiff at this stage, pending finalisation of the action. Put simply, however, there are no grounds on which Mr Diphare could or should have approached the court in this manner at this stage. The application should, therefore, be struck from this court's roll as an abuse of process. I intend to make an order along those lines.
10. As regards costs, the court is sympathetic to Mr Diphare's position. He submits, from the bar, that Plaintiff is unable to afford legal representation, that his business has suffered in consequence of the issues that have given rise to the dispute (for which he attributes blame solely to the Defendants), and that it would be unduly burdensome on the Plaintiff to saddle it with the costs of today's proceedings.
11. On the other hand, the fact of the matter is that Mr Diphare has initiated and persisted with unwarranted interlocutory proceedings that have put the Defendants to significant costs in circumstances in which this was unnecessary and unwarranted. The application had no legitimate cause of action nor any foundation in the rules of this Court, and constituted an abuse of process.
12. Mr Diphare characterised his conduct in pursuing the application as an indication of the frustration that he has experienced in consequence of the fact that the Defendants had not responded favourably to a settlement proposal that had been communicated to them by the Plaintiff's erstwhile legal representatives. From this submission it is apparent that Mr Diphare deliberately sought to enrol the matter on an interlocutory basis either to pressurise the Defendants or in reaction to their failure to respond to a settlement proposal. This indicates a deliberate abuse of this court's processes for purposes for which they are not intended.

13. Despite this I have decided to defer decision on the question of wasted costs arising from the proceedings before me on 16 August 2022, including the question whether, if costs are awarded, this should be on a punitive scale, pending the further case management process to which I refer below. Those costs will be dealt with as part of that process.
14. This matter should be brought to trial in a manner that minimises or excludes further unnecessary costs, whether in relation to interlocutory proceedings or otherwise. With the Plaintiff unrepresented and with Mr Diphare learning as he goes along, as he explained in his submissions, there is an obvious risk that the matter may not be brought to trial efficiently and expeditiously.
15. As a result, I intend to convene a case management meeting shortly with a view either to securing agreement on each of the further steps necessary to bring the action proceedings to conclusion or if the parties cannot agree those steps issuing directions as appropriate.
16. My secretary will be in contact with the parties shortly to schedule a case management meeting.

ORDER

The application brought by way of notice of motion dated 15 June 2021 which came before me on 16 August 2022 is struck from the roll. The costs of the application are reserved for later determination.



C Todd

Acting Judge of the High Court of South Africa.

REFERENCES

For the Plaintiff:

Mr Jethro Diphare

Instructed by:

In person

For the Defendants:

Adv. K Lefaladi

Instructed by:

H.M Chaane Attorneys Incorporated

Judgment reserved:

16 August 2022

Judgment delivered:

23 August 2022