

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION PRETORIA

15/7/16
CASE NO: 42929/16

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	15/07/16
	DATE
	SIGNATURE

DAVID G GATAMA

APPLICANT

And

HUDDLESTONE T CHRGOI

RESPONDENT

JUDGEMENT

1. This matter was brought to court as one of urgency. This is a spoliation application in which the applicants seek an order to restore the applicants' access to business premises of the second and third respondents situated at Menlyn Square Office Park, Menlyn, Pretoria, as well as the restoration of facilities to the premises. The relief is sought together with interim relief, prohibiting the first respondent from interfering with the duties of the applicants

in relation to the second and third respondents, pending appeal of an order dated 27 June 2016. The applicants are denied access to the premises as a direct result of a previous court order handed down by Kollapen J. on 27 June 2016. In the application before the court on 27 June 2016, fraudulent activity was alleged and amongst the orders of that Court, is that the CIPC reverse all amendments in the companies register; reinstate the first respondent as a director of the third respondent and remove the second applicant as a director of the third respondent. On the strength of the court order of 27 June 2016, the applicants were denied access to the premises and facilities which form the subject matter of this application. The applicants have since delivered an application for leave to appeal the previous court order and written reasons for judgment were requested on 7 July 2016.

2. It was argued on behalf of the applicants that the application for leave to appeal suspends the operation of the order pending the appeal. Should the applicants be denied access to the premises and facilities, they are effectively denied participation in the second and third respondents to their own detriment and to the detriment of the second and third respondents. The applicants' concern relates to the contractual obligations of the second respondent towards the Municipality and the risk of losing its contract should it be found in breach thereof. The argument is that the applicants are now, in effect, as a result of the court order, disturbed in their peaceful possession and unfettered access to the premises and office equipment. The order they seek from this court is to restore the *status quo ante* and not to allow the first respondent "to take the law into his own hands".

The application is opposed. Counsel for the respondent raised the issue of jurisdiction and urgency. I find it necessary to deal only with the issue of urgency.

3. Urgent applications must be brought in accordance with Rule 6 and the guidelines in cases such as **Republikeinse Publikasies v Afrikaanse Pers Publikasies_1972 (1) SA 773 (A)** at 782 A-G, **Luna Meubel Vervaardigers v Makin & another 1977 (4) SA 135 (W)** and **Sikwe v SA Mutual Fire & General Insurance 1977 (3) SA 438 (W)** at 440 G- 441 A. The requirements for urgent applications are dealt with in Chapter 13.24 of this court's Practice Manual. Section 3.4 requires the applicant to set out explicitly the circumstances which render the matter urgent. Section 5.2 requires that deviation from the time period prescribed by the Rules of Court must be strictly commensurate with the urgency of the matter as set out in the founding papers.

Section 6 provide as follows:

6.1 *If the facts and circumstances set out in the Applicant's affidavits do not:*

6.1.1 *constitute sufficient urgency for the application to be brought as an urgent application; and/or*

6.1.2 *justify the abrogation or curtailment of the time periods referred to in Rule 6(5); and/or*

6.1.3 *justify the failure to serve the application as required in Rule 4,*

the Court will decline to grant an order for the enrollment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the Rules. Save for a possible adverse costs order against the Applicant, the Court will make no order on the application.

6.2 *The aforesaid requirements will be strictly enforced by the presiding Judge.*

4. The issue for determination is whether the matter is urgent; whether the spoliation application should succeed and whether the interim interdict should be granted pending the appeal. The crux of this matter is that issues related to fraudulent activity have been raised. In the order of 27 June 2016, CIPC is to furnish the first respondent with a report on the outcome of its internal inquiry as soon as possible after conclusion of such enquiry.

5. The filing of a notice of appeal suspends the operation of a court order. The main concern of the applicants is the continued functioning of the second respondent and the rendering of its services to its clients and contractual obligations. In paragraph 11.9 of his founding affidavit the first applicant states that:

...in the event that the second applicant and I do not oversee and supervise this process it could lead to the second respondent being in breach of contract and lead to cancellation of the contract.

This concern is the main reason for the applicants approaching this court on an urgent basis.

The first respondent denies that the operations of the second respondent will be in jeopardy if the applicants are denied access to the second respondent. In his answering affidavit the first respondent states at paragraph 47 thereof that:

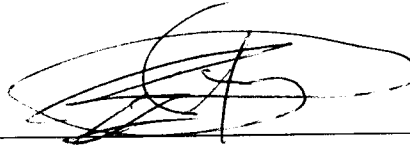
The applicants are not needed in the least to meet the entities legal obligations. To the contrary, their presence will further jeopardize the wellbeing of the entities.

He states further that the entities are back in order and that all employees are back at work.

The appeal process will probably run its course. There are allegations of fraud and in terms of the court order of 27 June 2016, "The First Respondent is ordered to furnish the applicant with a report of the outcome of its internal inquiry as soon as is reasonably possible after the conclusion of such an inquiry". On the issue of urgency in the bringing of this application, it appears to me that the concerns of the applicants regarding the smooth running and continued functioning of the second respondent is misplaced and unjustified. I am of the view that the facts and circumstances set out in the Applicant's affidavit do not constitute sufficient urgency for the application to be brought as an urgent application. There is no urgency whatsoever.

Order:

1. The matter is struck from the roll.
2. The applicants shall pay the respondents' party and party costs in the application.



HONOURABLE JUSTICE SWARTZ (AJ)