




IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED.	
28/10/16 DATE	 SIGNATURE

28/10/2016

Case Number: 19300/16

In the matter between:

HIGHER EDUCATION TRANSFORMATION NETWORK

NPO REGISTRATION 116-851

Applicant

and

LUCKY LEMPIDITSE THEKISHO

First Respondent

HENDRICK YINGWANE MAKANETA

Second Respondent

EMMANUEL LEKGAU

Third Respondent

TEBOGO MOGSOANA

Fourth Respondent

HENDRICK SEKEPE THOBEJANE

Fifth Respondent

HIGHER EDUCATION TRANSFORMATION NETWORK

NPC REGISTRATION 2016046790/08

Sixth Respondent

THE COMMISSIONER: COMPANIES &

INTELLECTUAL PROPERTY COMMISSION

Seventh Respondent

MINISTER OF TRADE & INDUSTRY

Eight Respondent

JUDGMENT

SWARTZ AJ

[1] The applicant seeks final interdictory relief against the first to sixth respondents for the alleged unlawful and fraudulent usurping and public misrepresentations committed by the respondents, using the name and trademark of the applicant. An interim order was granted against the respondents by this court on 1 April 2016.

[2] The deponent to the affidavit on behalf of the applicant, Reginald Legoabe ("Legoabe"), avers that he is the Executive Director of the applicant. The applicant

is an independent non-profit network of graduates and alumni from various higher education and further education institutions in South Africa, committed to the transformation of higher education. Its aim is to collaborate with government, tertiary institutions, the private sector and developmental agencies to improve access to and the quality of education, amongst other. The name and logo of the applicant is registered with the Department of Trade and Industry.

- [3] The first and second respondents were co-founders and Board members of the applicant, who were removed from the Board of the applicant on 23 January 2016. Legoabe avers that after the removal of the first and second respondents from the Board of the applicant, they unlawfully and fraudulently applied for the trademark of the applicant on 27 January 2016, registered a non-profit company (the sixth respondent) on 3 February 2016, using the name and trademark of the applicant and commenced misrepresentations against the applicant. The applicant seeks a final interdict against the first to sixth respondents. It was submitted that despite the

interim order of 1 April 2016, interdicting the respondents, it continued to ignore the order.

- [4] The applicants submit that, should the application for final relief not be granted, the applicant, its membership, trademark, reputation and its lawful Directors stand to be severely prejudiced. It is exposed to the risk of litigation, due to "fraudulent, irresponsible and slanderous public statements being issued by the first, second, sixth and seventh respondents in its name". The first respondent has been issuing press statements on behalf of the applicant and issuing written correspondence using a fraudulently amended letterhead and trademark of the applicant to the applicant's strategic stakeholders and partners. Despite demand to desist, the first, second and sixth respondents are continuing to act as though they are the duly elected and appointed officials of the applicants. Over-and-above this, the first, second and sixth respondents "have further proceeded to fraudulently register a non-profit company without the permission of the applicant's Board on 3 February 2016, named Higher Education Transformation Network".

[5] In his answering affidavit on behalf of the respondents, Lucky Thekisho ("Thekisho") submitted that there is a factual dispute in the papers which cannot be ventilated or decided on paper. He avers that the respondents are the legitimate leaders of the Network and that, Legoabe is neither a member nor an Executive Director of the Network. It was submitted that the matter be referred to trial for oral evidence.

[6] It is trite that, in order to succeed with an application for final interdictory relief, the applicant must prove conduct on the part of the respondent which could either actually be taking place or which is reasonably feared will occur in future; the respondent's conduct actual or threatened, must be wrongful; the applicant should have no other remedy and, for interim interdictory relief, the balance of convenience should favour the applicant. See in this regard, *Setlogelo v Setlogelo* 1914 AD 221 at 227.

[7] In my view, the answering affidavit of Thekisho is nothing but a bare denial. In paragraph seven of the founding affidavit it is submitted that the first, second and sixth respondents have on 3 February 2016 fraudulently registered a non-profit company unlawfully, similarly named "Higher Education Network in a bid to provide a fraudulent corporate veil designed for public misrepresentation and fraudulent transactions". The respondents have on 27 January 2016 applied to register the existing logo and trademark of the applicant. This was formally objected to on 22 February 2016. In his answering affidavit Thekisho unsuccessfully attempts an explanation and merely states that, in essence, there was no malicious intent on his part.

[8] The applicant has proven a clear right; that the conduct of the respondents is wrongful, harmful; that they have no other remedy and that they face the real danger of irreparable harm should final interdictory relief not be granted. I see no reason why this matter should be referred for oral evidence. There is no real dispute of the relevant facts on paper.

[9] In the result, the following order is made:

- 9.1 The rule *nisi* issued by Moseame AJ on 1 April 2016 is confirmed;
- 9.2 The decisions and/or any consequential resolutions, commitments and statements arising from the respondent's "Extraordinary General Meeting" which was held on 27th of February 2016 under the banner of the applicant is permanently set aside.
- 9.3 The first to sixth respondents are permanently interdicted and restrained from continuing to incite:
 - 9.3.1 the public;
 - 9.3.2 existing and potential members of the applicant; and
 - 9.3.3 publicly misrepresenting themselves as the lawful Directors of the
Higher Education Transformation Network (NPO 116-851);
- 9.4 The first, second, fifth and sixth respondents are permanently interdicted from the continued usage of the unauthorized HETN Facebook page located

online at <https://www.facebook.com/HETN-on-the-News-1665771617934719/>.

- 9.5 The first, second, fifth and sixth respondents are permanently interdicted from the continued unauthorised public and private usage and issuing of media statements using the name and logo/trademark of the applicant.
- 9.6 The first, second, fifth and sixth respondent are permanently interdicted from holding any further meetings and/or collection of funds/resources in the name of the applicant.
- 9.7 The first to sixth respondents are permanently interdicted from utilizing the newly registered non-profit company (NPC) named Higher Education Transformation Network with a registration no 2016/O46790/O8 and interdicted from pretending to act on behalf of the applicant.
- 9.8 The seventh and eight respondents are ordered to deregister the non-profit company registered as Higher Education Transformation Network (HETN) under registration no 2016/O46790/O8 registered on the 3rd of February 2016.

9.9 The seventh and eight respondents are ordered to deregister the fraudulent trademark application no 2016/O2178 lodged by the first respondent on the 27th of January 2016.

9.10 The first, second and fifth respondents are ordered to pay the costs of this application on the party-and-party scale.

A handwritten signature in black ink, consisting of several overlapping, stylized strokes, enclosed within a horizontal oval shape.

E.L. SWARTZ

ACTING JUDGE OF THE HIGH COURT

CASE NO: 19300/16

HEARD ON: 17 October 2016

FOR THE APPLICANT: ADV. T. MOLEA

INSTRUCTED BY: Erich H. Louw Attorneys

FOR THE RESPONDENT: ADV. MATSETELA

INSTRUCTED BY:

DATE OF JUDGMENT: 28 October 2016